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This judgment was given in private. The judge gives permission for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of this judgment the anonymity of any of the children and members of their family must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

IN THE FAMILY COURT SITTING AT LEEDS

CASE NO.: LS23C50725

Neutral Citation Number: [2024] EWFC 242 (B)

IN THE MATTER OF THE CHILDREN ACT 1989

AND IN THE MATTER OF Child X and Child Y

BETWEEN

Leeds City Council

Applicant

and

A

First Respondent

and

B

Second Respondent

and

The children

(through their Guardian)

Third and Fourth Respondents

and

C and D

Intervenors

Ms Anning and Ms Ross (instructed by Leeds City Council) for the Applicant

Mr Tyler K. C. and Mr Lindsay (instructed by Switalskis Solicitors) for the First Respondent

Mr Feehan K. C. and Ms Lennon (instructed by Grahame Stowe Bateson LLP) for the Second Respondent

Ms Garnham and Ms McNally (instructed by Ramsdens Solicitors) for the Third and Fourth Respondents

Ms Burnell K. C. and Ms Hughes (instructed by JMW Solicitors LLP) for the Intervenors

Hearing Dates: 3rd June 2024-11th June 2024, 14th June 2024

JUDGMENT

A: Introduction

1. In these proceedings I am concerned with the welfare of two children: X, a boy born in 2013, aged 10 and Y , a girl born on in 2015, aged 9. I shall refer to them, as required in this judgment, as X and Y. They are represented through their Guardian Sallie Newman by Ms Garnham and Ms McNally.
2. The mother of the children is A, represented by Mr Tyler K. C. and Mr Lindsay. The father of the children is B, represented by Mr Feehan K. C. and Ms Lennon.

3. The intervenors are C and D. They are represented by Ms Burnell K. C. and Ms Hughes.
4. The Local Authority which brings these proceedings is Leeds City Council, represented by Ms Anning and Ms Ross. I shall refer to that body as LA where required.
5. This judgment sets out my conclusions following a fact-finding hearing of the LA's allegations against B that he caused injury to the genital area of a child who was in the joint care of him and his wife over the weekend of the 14th-17th July 2023. That child is called Z. She was a toddler in July 2023. I shall refer to her as Z throughout this judgment. At the relevant time, and presently, Z resided/s in the care of her foster carers C and D.
6. If that factual finding is made, the LA contends that the threshold criteria is established in relation to X and Y on the basis of a likelihood of significant harm at the time of the LA's protective intervention into their lives.
7. In order to determine these allegations, I have heard evidence from the following witnesses: those who gave evidence by video link are marked (V):

   Dr R: Bristol SARC paediatrician (V), Dr C : Bristol SARC paediatrician (V), Dr L : Leeds SARC paediatrician, Tim McAteer: social worker from Leeds City Council, Dr Teebay: Single Joint Expert paediatrician (V), F : social worker for Z(V), C, D, A and B.
8. I received detailed written submissions from all parties at the conclusion of the evidence.

B: Relevant background

9. The parents have known each other since 2008 and were married in 2012. Their two children are the subjects of this application. A is pregnant with the couple's third child who is due to be born in July 2024. This family has never come to the attention of the LA before the events of July 2023. There are no direct concerns about the parenting that the children have received to date from either parent. The children have been universally described by professionals in these proceedings as delightful, well-presented and articulate.
10. Neither parent has any criminal convictions beyond some driving offences on B's record. Although there has been a police investigation into the matters covered by this judgment, the enquiry has now concluded with no further action being taken against any person.
11. A qualified as a social worker in May 2023.
12. B is a paternal second cousin of Z. After Z was born, she lived with her mother in the geographical area covered by North Somerset Council [NSC]. In March 2022 Z was made the subject of a Child Protection Plan and in June 2022 she moved to live with C and D as foster carers. The concerns that led to Z's removal from her mother's care had been foreshadowed by the pre-proceedings process which was initiated before Z was born. Essentially those issues were Z being exposed to domestic violence, unsafe adults, substance misuse and poor home conditions. Issue was also raised about the mental health of Z's mother.
13. A and B put themselves forward to care for Z and they had a full assessment which concluded in April 2023. That assessment is in the bundle of documents provided for this hearing and it is unwaveringly positive about both parents, their care of their own children and their reasons for wanting to care for Z.

14. DBS checks were awaited at the time the assessment concluded. B did not disclose during this assessment that two separate allegations of sexual assault had been made against him by adult females in the past. The first allegation was made on the 23rd February 2020 when B was delivering parcels: he is alleged to have sexually assaulted a female Royal Mail worker by putting his arm around her twice around the waist. This was said to have been an unwanted act and B is alleged to have gone on to give this woman his number. The alleged victim declined support and no further action was taken. B was not arrested in relation to this allegation. B has stated that he did give his name and number to a woman at this time, but he denies any sexually inappropriate behaviours.
15. On the 26th January 2021 it was alleged that when B was delivering a parcel to a home he sexually assaulted the female occupant by touching her hand and her breast over clothing. B was dismissed from work owing to this allegation. The alleged victim declined support and B was not arrested. B denies any wrongdoing.
16. By May/June 2023 plans for a transition of Z to the care of A & B were being discussed. Introductions commenced and on the 10th June 2023 A & B visited the foster carer's home. On the 11th June 2023 Z met X and Y.
17. Only a few days later Z was taken to Leeds to visit A&B's family: C drove Z to Leeds from the foster placement, and they stayed in a hotel in Leeds as the cot bed had not been erected in A&B's home. Z spent time with A&B on the 14th June and the 15th June 2023.
18. C again transported Z to Leeds on the 19th June 2023 and they met with A&B on the 20th June 2023.
19. On the 8th-9th July 2023 A went to the foster placement to see Z without B who did see Z on Facetime.

20. On the 14th July 2023 C took Z to Leeds and left her in the care of A and the children X and Y. B had arrived home that morning at about 2am having been away from home working as a domiciliary carer. Z stayed the night with C in a local hotel and the next day, the 15th July 2023, C took Z back to A&B's home. Z stayed overnight in a travel cot in the same bedroom as X and Y.
21. Over this weekend it is common ground that A undertook most of the care of Z, assisted by her children. B was occupied online on a church conference and did not interact very much with Z whilst she was in the family home that weekend.
22. On Sunday evening, the 16th July 2023, A left the home with Y to collect a cot bed for Z. B was initially unsure whether this was the Sunday evening or the Monday. It is now accepted that B was alone with Z and his son X that evening for between an hour and an hour and a half. When A arrived home, she described Z as being asleep in the same position in which she had left her.
23. This weekend visit appeared to go well. There are no reports of any accidents or incidents involving Z, or indeed any person over that weekend. C reported positively about Z's growing relationship with A in particular.
24. C collected Z at around 9.30am on the morning of the 17th July 2023 and many of Z's belongings were left at A&B's property as the plan was for Z to be placed in their care permanently on Thursday 20th July 2023.

C: Precipitating Incident

25. C drove Z back to the foster placement without a break on Monday the 17th July 2023. In her fostering notes C described Z during the car

journey as being in a position that she had not seen her in before in the car; her legs were spread open with one leg either side of the car seat. She was asleep but even after waking she returned to the same '*sprawled leg*' position until they returned home.

26. On arrival home, C tried to change Z's nappy and she kept her legs together and was playfully uncooperative with the process. The nappy was eventually removed, and Z told C that her bottom was sore, and she was reluctant for C to wipe the area. She said *'owww'* and put her hands over her genital area. Some 25 minutes later Z had soiled her nappy and when C changed her Z said that her bottom was sore, and she asked C to be careful. C did not see nappy rash or redness. Z repeated the request to C to be careful when she was putting cream on after Z's bath that evening.

27. Later that evening, C was changing another dirty nappy and she was again uncooperative. C explained to Z that she would be careful, and Z said: '*uncle daddy hurt my bottom'.* C asked her if Z had been changing her nappy and she said *'uncle daddy had [name's] clippers. I said no, no, no. He hurt my bottom.'* C assured Z that she would be careful with her, and Z went on to say that *'Uncle daddy not careful, hurt me. I say waa waa (crying noise). Auntie mummy said no, no, no'.* C noticed that Z's *'vagina opening*' as she described it in her fostering notes, was *'redder'* and *'looked like an elongated 'o'. It looked different'.* C did not see any blood in any of the nappies she had changed that afternoon, nor is there any account of any person who undertook Z's personal care observing any bleeding at any point either in Z's intimate area or in any used nappies.

28. C took appropriate action to inform the relevant authorities about what Z had said and her own observations. She initially informed E, her

Supervising Social worker from the National Fostering Agency, and he took steps to inform the Emergency Duty Team who made referrals to the Leeds Duty Social Work Team and the police child protection team. C was advised to contact 111 which she did on at 8.55am the 18th July 2023 as she wanted to wait until Z was awake before doing so.

29. I have listened to an audio recording of that 111 call.

30. At 9.45am on the 18th July 2023 C spoke to E, and during that conversation D told C that Z had made a further comment in his presence. Z is reported to have said *'uncle daddy hurt my (unclear) bottom'*. This was said without prompting from D who asked if Z was OK. She said that she was and did not say anything further.

31. A strategy meeting was held on the 18th July 2023 and a decision made that Z would undergo a Sexual Assault Referral Centre [SARC] medical on the 19th July 2023: this was undertaken by Dr R at The Bridge SARC which is part of the University Hospital Bristol and Weston NHS Foundation Trust. Both C and D took Z to this appointment and noted that she travelled in the car in the position that C had seen her adopt on the way back from Leeds a couple of days before. A photograph was taken of her position which I have seen.

32. After this examination, Z remained in the care of C and D. Later that day, Z told C that her bottom was sore when C had held her on her hip. She tried to push her bottom off C's hip, forcing a change in the position in which she was being held.

33. The detail of this medical examination and the conclusions reached will be detailed later in this judgment but essentially Dr R reported findings in Z's genital area of a laceration of the hymen at the 3 o'clock position with associated erythema (redness) and oedema (swelling) of the hymenal edge between 3 and 6 o'clock. She also found an associated

abrasion of the inner hymenal edge at 5 o'clock. It was Dr R's view that in the absence of an accidental explanation or event, sexual abuse should be considered. A colposcope was used during this examination and videos taken of the process.

34. Both parents were arrested on the evening of the 19th July 2023. I have seen the bodycam footage of both arrests. B was arrested from the family home at about 7pm when A was out shopping with the children. A attended at the police station having been contacted by them and asked to attend. She left her children sitting on a bench in the police station as requested by the police and she was arrested outside and led away in handcuffs.

35. West Yorkshire Police used their powers of protection and X and Y were placed in foster care that evening. A joint Local Authority Designated Officer (LADO) and Person in a Position of Trust (PIPOT) referral was made because both parents were involved in professions which involved children and/or vulnerable people.

36. On the 19th July 2023 in the evening, C changed Z's nappy and Z told her to be careful: she also clamped her legs shut to prevent wiping. On being reassured by C, Z stated that *'uncle daddy hurt my bottom. Do gently'.* Z said her bottom was sore when being changed on the 20th July 2023 and C felt that her vagina opening looked different, more *'pronounced.'*

37. F, social worker, visited Z on the 20th July 2023 and spoke to Z alone with C and D in another room. She asked Z if she had been to the doctors and when Z said yes, she asked why she had been there. Z replied with *'because uncle daddy hurt my bottom'* and she began to clutch at her vagina. Asked by F what had happened, Z became distracted and did not say anything further of forensic relevance.

38. The parents were released from police custody on the 20th July 2023 after being interviewed. Both parents denied any knowledge of how Z had come to be injured in their care as Dr R set out in her report.

39. On the 22nd July 2023 C contacted E to tell him that Z had asked her where Uncle Daddy was and she had replied that he was in Leeds. C tried to change Z's nappy, but Z put her legs together again and said *'No, Uncle Daddy hurt my bottom'*, she further asked C to be careful. On the 23rd July 2023 Z complained that her bottom hurt when she was on a scooter.

40. Police powers of protection expired on the 22nd July 2023. The LA determined that X and Y could spend the following week with their maternal aunt for pre-planned holiday. The LA was of the view that it was appropriate for the children to then return to the care of A with B moving out of the family home. The parents agreed to this readily and signed a written agreement to this effect which stipulated that B was not to have any unsupervised contact with either child. A was deemed to be an appropriate supervisor of B's contact.

41. NSC determined that it no longer sought to place Z with A&B as a direct result of the events of this weekend.

42. On the 11th August 2023 C and D's family were packing for a holiday and Z asked if they were going to Leeds and if they would see Uncle Daddy. C reported that Z seemed to freeze when this was being discussed which C linked to her seeing the suitcase that had been used when they had travelled to Leeds together. The next day when the car was being packed up, Z saw the suitcase again and asked if they were going to stay in the hotel in Leeds.

43. On the same day, the 11th August 2023, X and Y underwent Child Protection Medicals at Mountain Healthcare in Leeds. Dr L undertook

those examinations and nothing of any concern was found. Dr L expressed some concerns about the investigations undertaken in North Somerset and he has set those out in a detailed statement. I have also heard from him directly about these issues.

44. A follow-up SARC medical was undertaken by Dr R on the 26th September 2023. Dr R's findings at this examination were of an irregular hymen edge with a deep notch at 3 o'clock and a bump at 9 o'clock. It was Dr R's view at the time that the presence of the deep notch at 3 o'clock could have been present as a consequence of the healing of the laceration found on the first examination. Again, she proffered that sexual abuse should be considered in the absence of an accidental explanation. She found no evidence of a medical cause for her findings on either examination.

45. There was a peer review of Dr R's findings on the 4th October 2023. There was no consensus on the findings based on the images. It was agreed that there was an anomaly present at 3 o'clock on Z's hymen on both examinations. A bump was seen at 9 o'clock. Dr C , who attended that peer review, has made a statement in these proceedings and has given evidence at this hearing.

D: The proceedings

46. A referral was made to the LA by NSC on the 19th July 2023. The decision to issue proceedings in respect of X and Y was made on the 21st September 2023, with the application being issued on the 2nd October 2023. A parenting assessment was completed in advance of the issue of proceedings and further information was awaited from the second SARC examination of Z and the peer review of both SARC examinations. The LA also made enquiries with forensic psychologists to determine

whether a risk assessment could be undertaken without any findings or admissions of responsibility. That was not deemed to be possible by those professionals who were consulted.

47. The proceedings first came before the Court on the 7th October 2023 briefly and then for a contested interim hearing on the 26th October 2023. The LA applied for Interim Supervision Orders in respect of the children. No change was proposed to the interim arrangements which were governed by the written agreement which the parents had signed months before the issue of proceedings. The Court determined that the interim threshold was made out on the basis of the allegation that B had caused injury to Z's genital area. No public law order was made at that hearing, by agreement between the parties. There has never been cause, throughout these lengthy proceedings, for that decision to be reviewed. The children have therefore, with the exception of a few days in foster care in July 2023 and the following week with a maternal aunt on holiday, remained in the care of A where they are thriving. They see their father regularly and no difficulties or concerns have been reported with that contact or the adherence to the written agreement which governs it.

48. On the 12th October 2023 A and B attended at the Family Court in Bristol to make an application for party status in order to pursue an ultimate placement of Z in their care. That application was refused, and that decision was not the subject of an application for permission to appeal.

49. During the proceedings, there have been issues regarding disclosure of documents from a number of sources including NSC and the National Fostering Agency. Those matters were resolved in a series of hearings before Mr Justice Poole and there are no outstanding issues of disclosure at the time of this hearing.

50. The information available to the Court at this hearing is extensive and includes very detailed notes made by C as part of her role as Z's foster carer along with medical notes and reports and police documentation.
51. Permission was given during the proceedings for the instruction of Dr Teebay as a Single Joint Expert paediatrician and Professor Craig as a Single Joint Expert Forensic Psychologist.
52. On the 18th December 2023, B issued an application for a transfer of the proceedings relating to Z to the Leeds Family Court. That application was refused and was the subject of an unsuccessful application for permission to appeal. B also applied for an intermediary assessment of Z which was subsequently withdrawn.
53. The care proceedings in relation to Z were concluded on the 10th January 2024 by HHJ Cope sitting at the Family Court in Bristol. Care and Placement Orders were made in respect of Z.
54. A&B made an application for party status in those proceedings for the second time on the 9th January 2024 and that application was refused. They also made applications for a transfer of Z's proceedings to the Family Court in Leeds which was refused. A&B sought permission to appeal those decisions and that was refused.
55. On the 17th January 2024, an application was issued by B for a further intimate examination of Z: permission to withdraw this application was given on the 7th March 2024.
56. Z remains in the care of C and D under the Placement Order. An adoptive placement is being sought for her.
57. On the 12th April 2024 the Court made C and D intervenors by agreement between the parties. Whilst no party pursues an active case against them, the complexities of the medical evidence about the timing of any injuries observed to Z leave open the possibility that the Court could

consider them to be part of a list of potential perpetrators of those injuries, should it be satisfied that those injuries were indeed present at the relevant time.

E: Findings Sought

58. The LA seeks the following findings:

At the time that protective measures were taken, being 19th July 2023, X and Y were likely to suffer significant harm pursuant to section 31(2) Children Act 1989. That likelihood of harm, namely physical and emotional harm, was attributable to the care given to them by B not being what it would be reasonable to expect a parent to give a child.

The Local Authority seeks to establish the following:

Injuries

1. On 19th July 2023 Z underwent a genital and anal examination by Dr R. At the time of that examination Z had the following injuries;

a. A healing laceration to her hymen at the 3 o'clock position;

b. Erythema (redness) and oedema (swelling) of the hymenal edge between 3 and 6
o'clock

c. An abrasion of the inner hymnal edge at 5 o'clock

Timing

2. The injuries to Z's hymen occurred between 14th July 2023 and 17th July 2023 whilst in the care of A and B.

Causation

3. The injuries to Z's hymen were caused by inflicted trauma to her hymenal area.

Perpetrator

4. The injuries were caused by B

Likely Harm to X and Y

5. By reason on the facts above X and Y at the time that protective measures were taken are likely to suffer significant emotional and/or physical
harm;

a. Emotional harm by exposure to their father's abusive behaviour; and/or

b. Direct physical or emotional harm perpetrated by their father against them.

59. The findings are disputed by B who denies that he did anything to cause any injury/ies to Z, if indeed any were present.
60. A supports the position taken by B. No findings are sought against her by any party. No party asserts that A is anything but a witness of truth.
61. C and D deny any wrongdoing and no party puts an active case against them. Equally, they do not take an active position to support or contest the findings sought by the LA.
62. The Children's Guardian, at the conclusion of the evidence, does not support the findings sought by the LA and therefore considers that threshold criteria have not been proved. I commend the Children's Guardian for taking an active position in respect of these issues on behalf of the children whom she represents.

E: Legal Principles

Threshold

63. By virtue of section 31 of the Children Act 1989 the court may make a Care or Supervision Order only if satisfied, on the balance of probabilities, that the child concerned is suffering or is likely to suffer significant harm; and that the harm, or likelihood of harm, is attributable to the care given to the child or likely to be given to him if the order were not made, such care not being what it would be reasonable to expect a parent to give to the child.

64. In this case, the LA contends a likelihood of significant harm to the subject children as a result of factual findings it asks the Court to make. With regard to a likelihood of harm in the event those facts are established, the LA invites my attention to the authority of *Re J (Children)* [2013] UKSC 9, a case in which Lady Hale reviewed the authorities relevant to a likelihood of harm and how it might be established. The principles set out in *Re H* [1996] AC 563 were endorsed as follows:

a. The standard of proof of such allegations is the simple balance of probabilities;

b. "likely" in section 31(2) does not mean *"more likely than not";* rather, it means likely *"in the sense of a real possibility, a possibility that cannot sensibly be ignored having regard to the nature and gravity of the feared harm in the particular case"* and

c. A decision by a court on the likelihood of a future happening must be founded on a basis of present facts and the inferences fairly to be drawn therefrom.

Burden and standard of proof

65. The burden of proof lies with the LA. The LA brings these proceedings and identifies the findings it invites the court to make. Therefore, the burden of proving the allegations rests with them.
66. The standard of proof is a simple balance of probabilities as per Baroness Hale in *Re B (Care Proceedings: Standard of Proof)* [2008] UKHL 35. I have directed myself to the following passages of that judgment:
67. First, Lord Hoffman:

'14. Finally, I should say something about the notion of inherent probabilities. Lord Nicholls said, in the passage I have already quoted, that —

> *"the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability."*

15. I wish to lay some stress upon the words I have italicised. Lord Nicholls was not laying down any rule of law. There is only one rule of law, namely that the occurrence of the fact in issue must be proved to have been more probable than not. Common sense, not law, requires that in deciding this question, regard should be had, to whatever extent appropriate, to inherent probabilities. If a child alleges sexual abuse by

a parent, it is common sense to start with the assumption that most parents do not abuse their children. But this assumption may be swiftly dispelled by other compelling evidence of the relationship between parent and child or parent and other children. It would be absurd to suggest that the tribunal must in all cases assume that serious conduct is unlikely to have occurred. In many cases, the other evidence will show that it was all too likely. If, for example, it is clear that a child was assaulted by one or other of two people, it would make no sense to start one's reasoning by saying that assaulting children is a serious matter and therefore neither of them is likely to have done so. The fact is that one of them did and the question for the tribunal is simply whether it is more probable that one rather than the other was the perpetrator.'

68. Secondly, Baroness Hale:

'72. As to the seriousness of the allegation, there is no logical or necessary connection between seriousness and probability. Some seriously harmful behaviour, such as murder, is sufficiently rare to be inherently improbable in most circumstances. Even then there are circumstances, such as a body with its throat cut and no weapon to hand, where it is not at all improbable. Other seriously harmful behaviour, such as alcohol or drug abuse, is regrettably all too common and not at all improbable. Nor are serious allegations made in a vacuum. Consider the famous example of the animal seen in Regent's Park. If it is seen outside the zoo on a stretch of greensward regularly used for walking dogs, then of course it is more likely to be a dog than a lion. If it is seen in the zoo next to the lions' enclosure when the door is open, then it may well be more likely to be a lion than a dog.

73. In the context of care proceedings, this point applies with particular force to the identification of the perpetrator. It may be unlikely that any person looking after a baby would take him by the wrist and swing him against the wall, causing multiple fractures and other injuries. But once the evidence is clear that that is indeed what has happened to the child, it ceases to be improbable. Someone looking after the child at the relevant time must have done it. The inherent improbability of the event has no relevance to deciding who that was. The simple balance of probabilities test should be applied.'

69. The Court must caution itself against reversing the burden of proof. It is not for the parents in this case to prove anything.

Judicial approach to evidence

70. The Court must decide if the facts in issue have happened or not: "*There is no room for finding that it might have happened. The law operates a binary system in which the only values are 0 and 1*,"- Lord Hoffman in *Re B* at §2. This applies to the conclusion as to the fact in issue, not the value of individual pieces of evidence which fall to be assessed in combination with each other.
71. The Court must consider a wide canvas of evidence as set out by Lord Nicholls in *Re H and R (Child Sexual Abuse: Standard of Proof)* [1996] 1 FLR 80:

"[101B] I must now put this into perspective by noting, and emphasising, the width of the range of facts which may be relevant when the court is considering the threshold conditions. The range of facts which may properly be taken into account is infinite. Facts

including the history of members of the family, the state of relationships within a family, proposed changes within the membership family, parental attitudes, and omissions which might not reasonably have been expected, just as much as actual physical assaults. They include threats, and abnormal behaviour by a child, and unsatisfactory parental responses to complaints or allegations. And facts, which are minor or even trivial if considered in isolation, taken together may suffice to satisfy the court of the likelihood of future harm. The court will attach to all the relevant facts the appropriate weight when coming to an overall conclusion on the crucial issue."

72. The evidence of the parents and of any other carers is of the utmost importance. It is essential that the Court forms a clear assessment of their credibility and reliability. They must have the fullest opportunity to take part in the hearing and the court is likely to place considerable weight on the evidence and the impression it forms of them (as per *Re W and another (non-accidental injury)* [2003] FCR 346.)

<u>Lies</u>

73. The case of *R v Lucas* [1981] QB 720 has some relevance in the family courts. The principle is this; "*if the court concludes that a witness has lied about one matter it does not follow that he has lied about everything. A witness may lie for many reasons, for example out of shame, humiliation, misplaced loyalty, panic, fear, distress, confusion and emotional pressure.*"
74. The Court of Appeal in Re *A, B and C (Children)* [2021] EWCA Civ 451 (per Macur LJ), confirmed some core principles in relation to the treatment of lies in family cases.

“54. That a witness's dishonesty may be irrelevant in determining an issue of fact is commonly acknowledged in judgments, and with respect to the Recorder as we see in her judgment at [40], in formulaic terms: "that people lie for all sorts of reasons, including shame, humiliation, misplaced loyalty, panic, fear, distress, confusion and emotional pressure and the fact that somebody lies about one thing does not mean it actually did or did not happen and / or that they have lied about everything". But this formulation leaves open the question: how and when is a witness's lack of credibility to be factored into the equation of determining an issue of fact? In my view, the answer is provided by the terms of the entire 'Lucas' direction as given, when necessary, in criminal trials.

55. Chapter 16-3, paragraphs 1 and 2 of the December 2020 Crown Court Compendium, provides a useful legal summary: "1. A defendant's lie, whether made before the trial or in the course of evidence or both, may be probative of guilt. A lie is only capable of supporting other evidence against D if the jury are sure that: (1) it is shown, by other evidence in the case, to be a deliberate untruth; i.e. it did not arise from confusion or mistake; (2) it relates to a significant issue; (3) it was not told for a reason advanced by or on behalf of D, or for some other reason arising from the evidence, which does not point to D's guilt. 2. The direction should be tailored to the circumstances of the case, but the jury must be directed that only if they are sure that these criteria are satisfied can D's lie be used as some support for the prosecution case, but that the lie itself cannot prove guilt. ...

56. In Re H-C (Children) [2016] EWCA Civ 136 @ [99], McFarlane LJ, as he then was said: *"99 In the Family Court in an appropriate case a judge will not infrequently directly refer to the authority of Lucas in*

giving a judicial self-direction as to the approach to be taken to an apparent lie. Where the "lie" has a prominent or central relevance to the case such a self-direction is plainly sensible and good practice. 100 ... In my view there should be no distinction between the approach taken by the criminal court on the issue of lies to that adopted in the family court. Judges should therefore take care to ensure that they do not rely upon a conclusion that an individual has lied on a material issue as direct proof of guilt."

57. To be clear, and as I indicate above, a 'Lucas direction' will not be called for in every family case in which a party or intervener is challenging the factual case alleged against them and, in my opinion, should not be included in the judgment as a tick box exercise. If the issue for the tribunal to decide is whether to believe X or Y on the central issue/s, and the evidence is clearly one way then there will be no need to address credibility in general. However, if the tribunal looks to find support for their view, it must caution itself against treating what it finds to be an established propensity to dishonesty as determinative of guilt for the reasons the Recorder gave in [40]. Conversely, an established propensity to honesty will not always equate with the witness's reliability of recall on a particular issue.

58. That a tribunal's Lucas self-direction is formulaic, and incomplete is unlikely to determine an appeal, but the danger lies in its potential to distract from the proper application of its principles. In these circumstances, I venture to suggest that it would be good practice when the tribunal is invited to proceed on the basis , or itself determines, that such a direction is called for, to seek Counsel's submissions to identify: (i) the deliberate lie(s) upon which they seek to rely; (ii) the significant issue to which it/they relate(s), and (iii) on what

basis it can be determined that the only explanation for the lie(s) is guilt. The principles of the direction will remain the same, but they must be tailored to the facts and circumstances of the witness before the court."

Credibility

75. The Court's assessment of the parents and other carers of the child is very important. As Baker J (as he then was) said in *Re JS* [2012] EWHC 1370:

"The evidence of the parents and any other carers is of the utmost importance. It is essential that the court forms a clear assessment of their credibility and reliability. They must have the fullest opportunity to take part in the hearing and the court is likely to place considerable weight on the evidence and the impression it forms of them (see Re W and another (Non-accidental injury) [2003] FCR 346)."

76. Jackson J (as he then was), referred in *Lancashire CC v. The Children, M & F* [2014] EWHC 3 to 'the impact of 'story creep' "*. . . a faulty recollection or confusion at times of stress or when the importance of accuracy is not fully appreciated or there may be inaccuracy or mistake in record-keeping or recollection of the person hearing that and relaying the account. The possible effects of delay and repeated questioning upon memory should also be considered as should be the effect of one person of hearing accounts given by others. As memory fades, a desire to iron out wrinkles may not be an unnatural process – a process which might inelegantly be described as 'story-creep' may occur without any necessary inference of bad faith."*

77. Commenting on the assessment of credibility, Mostyn J in *Lancashire County Council v R* [2013] EWHC 3064 said:

> *"The assessment of credibility generally involves wider problems than mere 'demeanour' which is mostly concerned with whether the witness appears to be telling the truth as he now believes it to be. With every day that passes the memory becomes fainter and the imagination becomes more active. The human capacity for honestly believing something which bears no relation to what actually happened is unlimited. Therefore, contemporary documents are always of the utmost importance".*

78. King LJ in *Re A (A Child)* [2020] EWCA Civ 1230 referred to the need for a balanced approach to the significance of oral evidence and said:

> *"41. The court must, however, be mindful of the fallibility of memory and the pressures of giving evidence. The relative significance of oral and contemporaneous evidence will vary from case to case. What is important, as was highlighted in Kogan, is that the court assesses all the evidence in a manner suited to the case before it and does not inappropriately elevate one kind of evidence over another*."

79. More recently, Peter Jackson LJ in *B-M (Children: Fact Finding)* [2021] EWCA Civ 1371 [§§28-31] stated that:

> *"28. Of course in the present case, the issue concerned an alleged course of conduct spread across years. I do not accept that the Judge should have been driven by the dicta in the cases cited by the Appellants to exclude the impressions created by the manner in which B and C gave their evidence. In family cases at least, that would not only be unrealistic but, as I have said, may deprive a judge of valuable insights. There will be cases where the manner in which evidence is*

given about such personal matters will properly assume prominence. As Munby LJ said in Re A (A Child) (No. 2) [2011] EWCA Civ 12 said at [104] in a passage described by the Judge as of considerable assistance in the present case: "Any judge who has had to conduct a fact-finding hearing such as this is likely to have had experience of a witness - as here a woman deposing to serious domestic violence and grave sexual abuse - whose evidence, although shot through with unreliability as to details, with gross exaggeration and even with lies, is nonetheless compelling and convincing as to the central core...

Yet through all the lies, as experience teaches, one may nonetheless be left with a powerful conviction that on the essentials the witness is telling the truth, perhaps because of the way in which she gives her evidence, perhaps because of a number of small points which, although trivial in themselves, nonetheless suddenly illuminate the underlying realities.

Still further, demeanour is likely to be of real importance when the court is assessing the recorded interviews or live evidence of children. Here, it is not only entitled but expected to consider the child's demeanour as part of the process of assessing credibility, and the accumulated experience of listening to children's accounts sensitises the decision-maker to the many indicators of sound and unsound allegations.

None of this will be news to specialist family judges and in future I would hope that in conventional family cases any submissions that unduly labour arguments based upon the dicta that I have been considering will receive appropriately short shrift. As to the fallibility of memory, the dangers are again familiar to working judges, as are the problems of suggestibility in children".

Expert Evidence

80. Whilst of course appropriate attention must be paid to expert evidence, as Charles J in *A County Council v KD and L* [2005] 1 FLR 851 §39- 44 observed:

> "*It is important to remember i) that the roles of the court and expert are distinct and ii) that it is the court that is in the position to weigh the expert evidence against the findings of the other evidence. The judge must always remember that he or she is the person who makes the final decision.*"

81. Where the evidence permits, and subject to the need to give its reasons for disagreement, the court may come to a conclusion which is contrary to a body of expert evidence (as per *Re B (Care: Expert Witnesses)* [1996] 1 FLR 667.
82. The court needs to ensure that each expert keeps within the bounds of his or her own expertise and defers where appropriate to the expertise of others (as per *Re S* [2009] EWHC 2115 Fam, Mrs Justice Eleanor King (as she then was).)
83. As Mr Justice Ryder (as he then was) observed in *A County Council v A Mother and others* [2005] EWHC Fam 31*:*

> *"A factual decision must be based on all available materials, i.e. Be judged in context and not just upon medical or scientific materials, no matter how cogent they may in isolation seem to be."*

84. Dame Elizabeth Butler-Sloss identified the following important considerations in *Re U (Serious Injury; Standard of Proof)* following the decision in *R v Cannings*:

-the cause of an injury or episode that cannot be explained scientifically remains equivocal

-recurrence is not in itself probative

-particular caution is necessary in any case where the medical experts disagree, one opinion declined to exclude a reasonable possibility of natural cause

-the court must always be on guard against the over dogmatic expert, the expert whose reputation is at stake or the expert who has developed a scientific prejudice

-the judge in care proceedings must never forget that today's medical certainty may be disregarded by the next generation or experts or that scientific research would throw light into corners that are at present dark.

85. The findings made by the judge must be based on all the available material, not just the scientific or medical evidence; and all that evidence must be considered in the wider social and emotional context as per *A County Council v X, Y and Z (by their Guardian)* [2005] 2 FLR 129.
86. This was expressed as; "*the expert advises, and the judge decides"* in *Re B (Care: Expert Witnesses)* [1996] 1 FLR 667.

Approach to breaches of Achieving Best Evidence ['ABE'] Guidance

87. There is no ABE interview of Z . However, she was spoken to by F in the course of her section 47 enquiries and it is contended that interaction fell foul of a number of principles established by the ABE guidance.
88. The case of *Re JB (A Child) (Sexual Abuse Allegations)* [2021] EWCA Civ 46 provides a useful summary of the approach of the family court to alleged breaches of the ABE guidance.
89. Baker LJ stated as follows from paragraph 11 onwards.

11. The importance of complying with the ABE guidance, which is directed at both criminal and family proceedings, has been reiterated by this Court in a series of cases including TW v A City Council [2011] EWCA Civ 17, Re W, Re F [2015] EWCA Civ 1300, Re E (A Child) [2016] EWCA Civ 473, Re Y and F (Children) Sexual Abuse Allegations) [2019] EWCA Civ 206 and in the judgments of MacDonald J in AS v TH and others[2016] EWHC 532 (Fam) and Re P (Sexual Abuse: Finding of Fact Hearing) [2019] EWFC 27. It is unnecessary to repeat at any length the extensive comments set out in some of those judgments. For the purposes of this appeal, the following points are of particular relevance. (Save where indicated, the paragraphs cited are from the ABE guidance.)

(1) "The ABE guidance is advisory rather than a legally enforceable code. However, significant departures from the good practice advocated in it will likely result in reduced (or in extreme cases no) weight being attached to the interview by the courts" (Re P (Sexual Abuse: Finding of Fact Hearing), supra, paragraph 856)

(2) Any initial questioning of the child prior to the interview should be intended to elicit a brief account of what is alleged to have taken place; a more detailed account should not be pursued at this stage but should be left until the formal interview takes place (paragraph 2.5).

(3) In these circumstances, any early discussions with the witness should, as far as possible, adhere to the following guidelines.

(a) Listen to the witness.

(b) Do not stop a witness who is freely recalling significant events.

(c) Where it is necessary to ask questions, they should, as far as possible in the circumstances, be open-ended or specific-closed rather than forced-choice, leading or multiple.

(d) Ask no more questions than are necessary in the circumstances to take immediate action.

(e) Make a comprehensive note of the discussion, taking care to record the timing, setting and people present as well as what was said by the witness and anybody else present (particularly the actual questions asked of the witness).

(f) Make a note of the demeanour of the witness and anything else that might be relevant to any subsequent formal interview or the wider investigation.

(g) Fully record any comments made by the witness or events that might be relevant to the legal process up to the time of the interview (paragraph 2.6, see also AS v TH, supra, paragraph 42).

(4) For all witnesses, interviews should normally consist of the following four main phases: establishing rapport; initiating and supporting a free narrative account; questioning; and closure (paragraph 3.3).

(5) The rapport phase includes explaining to the child the "ground rules" for the interview (paragraphs 3.12-14) and advising the child to give a truthful and accurate account and establishing that the child understands the difference between truth and lies (paragraphs 3.18-19). The rapport phase must be part of the recorded interview, even if there is no suggestion that the child did not know the difference between truth and lies, because "it is, or may be, important for the court to know everything that was said between an interviewing officer and a child in any case" (per McFarlane LJ in Re E, supra, paragraph 38).

(6) In the free narrative phase of the interview, the interviewer should "initiate an uninterrupted free narrative account of the incident/event(s) from the witness by means of an open-ended invitation" (paragraph 3.24).

(7) When asking questions following the free narrative phase, "interviewers need fully to appreciate that there are various types of question which vary in how directive they are. Questioning should, wherever possible, commence with open-ended questions and then proceed, if necessary, to specific-closed questions. Forced choice questions and leading questions should only be used as a last resort" (paragraph 3.44).

(8) Drawings, pictures and other props may be used for different reasons – to assess a child's language or understanding, to keep the child calm and settled, to support the child's recall of events or to enable the child to give an account. Younger children with communication difficulties may be able to provide clearer accounts when props are used but interviewers need to be aware of the risks and pitfalls of using such props. They should be used with caution and "never combined with leading questions". Any props used should be preserved for production at court (paragraphs 3.103 to 3.112).

(9) "The fact that the phased approach may not be appropriate for interviewing some witnesses with the most challenging communication skills (e.g. those only able to respond "yes" or "no" to a question) should not mean that the most vulnerable of witnesses are denied access to justice". It should not be "regarded as a checklist to be rigidly worked through. Flexibility is the key to successful interviewing. Nevertheless, the sound legal framework it provides should not be departed from by interviewers unless they have discussed and agreed the reasons for doing so with their senior managers or an interview advisor" (paragraph 3.2).

(10) Underpinning the guidance is a recognition "that the interviewer has to keep an open mind and that the object of the exercise is not simply to get the child to repeat on camera what she has said earlier to

somebody else" (per Sir Nicholas Wall P in TW v A City Council, supra, at paragraph 53).

90. I also direct myself to the case of *Re C (A Child) (Fact-Finding)* [2022] EWCA Civ 584 at paragraph 23 where Baker LJ said:

"This is not the occasion for any further general comment about the ABE Guidance. This Court has considered appeals based on failures to comply with the Guidance on a number of occasions in recent years, most recently in Re JB, supra. For present purposes, the key point is that made by MacDonald J in Re P, endorsed in Re JB, and recited above. Significant departures from the Guidance are likely to result in reduced, and in extreme cases no, weight being attached to the interview. It is for the judge to consider the interviews, and the extent to which they comply with or depart from Guidance, in the context of all the other evidence. The approach of the appellate court to this exercise is no different from every other appeal against findings of fact. The assessment of evidence, and the apportionment of weight to be attached to each piece of evidence, are matters for the judge at first instance. An appeal court will only interfere with findings of fact by trial judges where there is a very clear justification for doing so."

<u>Cases involving sexual abuse allegations</u>

91. I have been helpfully directed to the case of *Re P (Sexual Abuse: Finding of Fact Hearing) [2019] EWFC 27*, a decision of MacDonald J which provides guidance in cases involving allegations of sexual abuse. At paragraph 240 of that judgment, the judge says as follows:

'Before turning to the foundational legal principles that govern the court's determination, it is important to articulate the following matters, in the

context of which the legal principles that follow must be applied. I have borne carefully in mind these matters when evaluating the evidence before the court:

i) Cases of alleged sexual abuse, and of alleged sexual abuse involving the number and extent of the allegations seen here, are highly emotive and can and do give rise to strong feelings and robustly expressed views and opinions. Notwithstanding the emotive subject matter however, the task of this court is to take an entirely dispassionate approach to the process of determining whether on the relevant and admissible evidence available to the court the facts alleged by the local authority are established on the balance of probability (see Re A (A Child) (Vulnerable Witness: Fact Finding) at [77]).

ii) Within this context, and where the court is, at this stage of the proceedings, concerned with the dispassionate determination of issues of fact, the court must resist the siren call of what has been termed the "the child protection imperative" (see Oldham DC v GW and PW [2007] 2 FLR 597 at [97]). The need for caution in this regard in the context of cases of alleged sexual abuse was articulated eloquently by Hughes LJ (as he then was) in Re B (Allegation of Sexual Abuse: Child's Evidence) [2006] 2 FLR 1071 at [43] when he observed that:

"...the fact that one is in a family case sailing under the comforting colours of child protection is not a reason to afford to unsatisfactory evidence a weight greater than it can properly bear. That is in nobody's interests, least of all the child's."

The fact that the allegations with which this court is concerned relate to alleged sexual abuse of children is not a reason to relax the forensic rigor the court brings to bear when deciding disputed issues of fact, nor the rules of evidence that apply to that exercise.

iii) Finally, a decision by the court to make no findings, or only some of the findings sought by the local authority does not constitute a 'failed' or 'unsuccessful' outcome. As Baroness Hale observed in Re S-B [2010] 1 FLR 1161 at [19]:

"We should no more expect every case which a local authority brings to court to result in an order than we should expect every prosecution brought by the CPS to result in a conviction. The standard of proof may be different, but the roles of the social workers and the prosecutors are similar. They bring to court those cases where there is a good case to answer. It is for the court to decide whether the case is made out. If every child protection case were to result in an order, it would mean either that local authorities were not bringing enough cases to court or that the courts were not subjecting those cases to a sufficiently rigorous scrutiny."

That observation applies with equal force to these proceedings notwithstanding their unprecedented scale and cost to the public purse. If the quality of the evidence, or the absence thereof, demands it, the fact that a long and expensive hearing results in no or limited findings is as much a valid result as one in which all findings were found proved to the requisite standard.'

92. At paragraph 948, the judge says, following the guidance given by the Royal College of Physicians[1]:

"In the absence of semen, blood, foreign objects or, in the case of a female child, pregnancy, medical evidence with respect to the physical signs of sexual abuse is almost never diagnostic, very often non-specific, ambiguous or equivocal and, on occasion, controversial. The position is complicated further by the fact that 'normal' in the context of the

[1] I shall refer to this guidance as the 'RCPCH guidance' in this judgment. Its full title is 'The Physical Signs of Child Sexual Abuse, An evidence-based review and guidance for best practice.' The most recent version is dated May 2015.

anal and genital anatomy of children is not a single, fixed point but rather a spectrum."

93. Repeated on a number of occasions in the approved abstract of *Re P* is the following summation of the thorough review of all relevant material by MacDonald J:

i. *Children, and especially young children, are suggestible.*

ii. *Memory is prone to error and easily influenced by the environment in which recall is invited.*

iii. *Memories can be confabulated from imagined experiences, it is possible to induce false memories and children can speak sincerely and emotionally about events that did not in fact occur.*

iv. *Allegations made by children may emerge in a piecemeal fashion, with children often not reporting events in a linear history, reporting them in a partial way and revisiting topics.*

v. *The wider circumstances of the child's life may influence, explain or colour what the child is saying.*

vi. *Factors affecting when a child says something will include their capacity to understand their world and their role within it, requiring caution when interpreting children's references to behaviour or parts of the body through the prism of adult learning or reading.*

vii. *Accounts given by children are susceptible to influence by leading or otherwise suggestive questions, repetition, pressure, threats, negative stereotyping and encouragement, reward or praise.*

viii. *Accounts given by children are susceptible to influence as the result of bias or preconceived ideas on the part of the interlocutor.*

ix. *Accounts given by children are susceptible to contamination by the statements of others, which contamination may influence a child's responses.*

x. *Children may embellish or overlay a general theme with apparently convincing detail which can appear highly credible and be very difficult to detect, even for those who are experienced in dealing with children.*

xi. *Delay between an event recounted and the allegation made with respect to that event may influence the accuracy of the account given.*

xii. *Within this context, the way, and the stage at which a child is asked questions / interviewed will have a profound effect on the accuracy of the child's testimony.*

94. I have also been directed to the case of *Re JB (A Child) (Sexual Abuse Allegations) [2021] EWCA Civ 46* which restates with force the need for great care in the gathering of evidence from young children.

95. Mr Feehan K. C. draws my attention to the case of *A Local Authority v A* [2011] EWCA 23 (Fam) in which Theis J set out the proper approach to the medical examination of a child in these circumstances. At paragraph 135 she states:

"Detailed written recording of the examination, including the use of drawings is, in my judgment, essential. This is particularly so if an examination is being done in the context of a potential disagreement between clinicians and/or anticipated legal proceedings (criminal or family). The RCPCH Guidance states at para 9.5.3 'Document injuries in full. Draw body plan. Record any hymenal and anal signs and their location using a clock face notation. Record and document the examination positions. A permanent record (still photographs, video, CD or DVD) of the genital/anal findings must be obtained. These images may be obtained via a colposcope. Para 9.7.1 'If the images do not demonstrate the clinical findings the reason for this should be recorded in the notes'".

<u>Identification of the perpetrator of injuries</u>

96. This is not a case where the LA pleads that there is a pool of perpetrators, but C and D are intervenors on the basis that the medical evidence about when some of the marks to Z's genitalia could have been caused does encompass a time when she was in their care. No party puts an active case against either C or D.

97. For the avoidance of doubt, I do direct myself to two cases in relation to the approach of the court to cases where the perpetrator is said to be uncertain. In *Re B (Children: Uncertain Perpetrator)* [2019] EWCA Civ 575, Peter Jackson LJ explained the proper approach as:

> *48. The concept of the pool of perpetrators should therefore, as was said in Lancashire, encroach only to the minimum extent necessary upon the general principles underpinning s.31(2). Centrally, it does not alter the general rule on the burden of proof. Where there are a number of people who might have caused the harm, it is for the local authority to show that in relation to each of them there is a real possibility that they did. No one can be placed into the pool unless that has been shown. This is why it is always misleading to refer to 'exclusion from the pool': see Re S-B at [43]. Approaching matters in that way risks, as Baroness Hale said, reversing the burden of proof.*
> *49. To guard against that risk, I would suggest that a change of language may be helpful. The court should first consider whether there is a 'list' of people who had the opportunity to cause the injury. It should then consider whether it can identify the actual perpetrator on the balance of probability and should seek, but not strain, to do so: Re D (Children) [2009] EWCA Civ 472 at [12]. Only if it cannot identify the perpetrator to the civil standard of proof should it go on to ask in respect of those on the list: "Is there a likelihood or real*

possibility that A or B or C was the perpetrator or a perpetrator of the inflicted injuries?" Only if there is should A or B or C be placed into the 'pool'.

98. This case was followed by *Re A (Children) (Pool of Perpetrators)* [2022] EWCA 1248, a decision of the Court of Appeal with King LJ giving the lead judgment. This case confirms the guidance given in the case of *Re B (Children: Uncertain Perpetrator)* [2019] EWCA that the court should consider:

    i) The list of people who had the opportunity to inflict the injuries

    ii) Is the court able, on the balance of probabilities, to identify the perpetrator?

    iii) If that finding cannot be made can the court, be satisfied that there was a real possibility that those on the list inflicted the injuries?

99. The Court of Appeal expressly disapproved the direction that the court should not strain to identify a perpetrator in such cases. The test is whether, on a simple balance of probabilities, the court can identify a perpetrator or not. Only if the court cannot identify a perpetrator on balance should it go on to consider who is in the pool of perpetrators based on a *'real possibility'* that they caused the injuries.

F: Evidence

Dr R

100. Dr R is a Consultant Paediatrician at the Bridge SARC. She has been a consultant since 2005 and she has 18 years of specialist experience in the assessment and management of children who have

been physically and sexually abused. She undertakes examinations of children regularly and has completed approximately 600 of these during her career. She is involved in local and regional peer reviews.

101. Dr R was called by the LA as a witness of fact. She is the only person who observed with the naked eye Z's genital area at her examinations on the 19th July 2023 and the 26th September 2023. In its written opening prepared for this hearing, the LA states that: *'the current position of LCC is that it will rely on Dr R as the primary witness of fact of what could or could not be seen during the two examinations. LCC accepts that the interpretation of what was seen, times for healing and causation are the primary remit of Dr Teebay.'*

102. On Friday 24th May 2024 I had cause to hear an urgently issued application made by the LA for the colposcope images to be played during Dr R's evidence. A question was asked of Dr R after that hearing to determine whether she would find it useful to have the images played in Court during her evidence. In the course of her reply to these questions she stated that the video of her first examination did show the laceration she says that she saw at 3 o'clock and the deep notch she says that she saw at 3 o'clock at the second examination. She had already stated in her reports that the oedema, erythema and abrasion were not seen on the images. Her conclusion was that it was not necessary for the Court to view the images as they are referred to in her reports.

103. The LA withdrew its application for the colposcope images to be viewed during the evidence of Dr R or Dr Teebay. No other party sought to pursue that application.

104. Dr R had seen parts of the bundle before she gave her evidence and indeed had been sent the report of Dr Teebay some time ago. She

indicated in writing that she would not be changing her opinion in light of the contents of any of the documentation sent to her.

105. Dr R's reports state that Z was examined on two occasions using the colposcope. The first examination was conducted in the supine and knee-chest positions. Line drawings were captured on a body map. Most of the observations were normal. Dr R found: a healing laceration of the hymen at 3 o'clock with associated erythema (redness) and odema (swelling) of the hymenal edge between 3 and 6 o'clock. There was an associated abrasion of the inner hymenal edge at 5 o'clock.

106. Dr R's clinical opinion of what she saw was that a laceration would have been caused by blunt force splitting the tissues. Hymenal lacerations are described in the literature as being present in 33 % of prepubertal girls with a history of vaginal penetration. She stated that genital abrasions were a sign of trauma and although there are few studies of these injuries, a study in children selected for non-abuse found none in the 195 children who were examined. Dr R's view was that: *'in the absence of a history of accidental trauma sexual abuse should be considered. I found no evidence of a medical cause for my findings today'.*

107. In Dr R's initial opinion, she described the laceration as *'healed'.* In an email to PC Carritt on the 22nd August 2023 Dr R corrected that to *'healing'* and went on to state that *'healing in the genital area is variable dependent on the age and degree of injury. Evidence shows that hearing of minor injuries in the genital area occurs rapidly (within 3-4 days)'*

108. The second examination was on the 26th September 2023. Z was examined in the supine position: Z was not able to tolerate examination in the prone position. Again, a colposcope was used and a recording taken. Dr R reported mild vulvovaginitis which was a normal variant.

The hymen edge was said to be irregular, and Dr R found a deep notch at 3 o'clock and a bump at 9 o'clock. The former could have been present as a result of the healing of the finding at the first examination. Again, Dr R stated that sexual abuse should be considered in the absence of any history of accidental trauma.

109. Dr R was called by the LA and examined-in-chief for some time to clarify the contents of her two reports.

110. Dr R told me that she had viewed the colposcope images that morning before giving her evidence. She described what had led her to conclude that she had seen a laceration on her first examination of Z: she said there was a *'red and raw edge'* to the mark that she saw, and it was that redness of the edges of the mark that led her to believe it was a laceration and not a notch. Her view was that the redness she had seen was apparent on the images but that her opinion was a combination of the images and her recollection of what she saw with her naked eye. It was her view that she had seen white slough at the site of this laceration and that was further evidence that it was a healing injury. This white slough was not particularly visible on the video but had been clear to her with the naked eye.

111. She accepted later in her evidence that the relevant area of Z's genitalia measured about 1cm-1.5cm and that Z had been wriggling whilst the examination had been carried out.

112. Asked why she had not given information about the size of the laceration she told me that is not her practice because that would be an inaccurate measurement because of the nature of the hymen which is a *'flexible, flat membrane which can change depending on the position the child is in. You could measure it in one position and then another and get a different measurement, so it is not a particularly helpful thing to do.'*

113. Dr R also described her findings at between 3 o'clock and 6 o'clock and her view that there was an abrasion at 5 o'clock. The abrasion had not been measured.

114. Dr R was unable to examine Z in the prone position because she was uncooperative with that exercise. She told me that it is *'ideal'* to examine in that position as part of the investigation because the hymen drops down in that position and elongates so it helps the doctor to interpret the findings seen in other positions.

115. In her initial notes, Dr R did not describe the laceration as either healed or healing. Her first notes do not describe any red or raw edge to her observation. In her more formal first report, which was written up at some unknown time after her examination, she refers to the laceration as *'healed'* twice in the course of that document. Asked about this in evidence, Dr R said that she: *'took the point but it should have stated healing'.*

116. Dr R accepted that the difference between the descriptions of healed/healing is significant, she preferred the latter term because of her recollection of the appearance of the edges of the laceration with the slough and the redness. She described the various appearances of the word *'healed'* as *'typos.'* She was unable to explain why a paediatric nurse who was working alongside her at the time of the examinations reported to the strategy meeting that the laceration was healed.

117. Asked why she had only mentioned the white slough in her police statement which is dated the 5th October 2023, several months after the examination, Dr R said that she would have reviewed the images again and checked them before making a statement to the police. Her earlier reports and notes were for the purposes of safeguarding actions, and they can be subject to change when formal evidence is requested.

118. Dr R recalled having shown Dr C the images after her first examination of Z in order to get her advice on the interpretation of them. There is no note of this conversation. That conversation seems to have led to the offer of the second examination of Z.

119. At the time of the second examination Dr R observed no redness and no slough at 3 o'clock. The angle of the defect she observed at 3 o'clock was wider. The abrasion she had seen at 5 o'clock was not present. The area between 3 o'clock and 6 o'clock was not red.

120. Dr R participated in the peer review of her images and examinations. She did not take the opportunity to state in her subsequent report why she had not changed her view about what she had seen. The peer review had not dissented with her findings, it had simply been a lack of consensus, so she felt that it was unnecessary to set her views out again.

121. I accept Dr R's expertise and experience and her desire to assist the Court when providing her evidence. She gave evidence as to her recollection of what she saw in an examinations which were conducted 11 and 9 months ago and she presented as confident about what she had seen. She did have the benefit of reviewing the images of those examinations before giving evidence.

Dr L

122. Dr L is a forensic physician in private practice. He qualified as a doctor in 2019 and had been undertaking SARC medicals alone from September 2022.

123. He conducted the SARC medicals of X and Y on the 11th August 2023. He reported no concerns about the results of those examinations.

There was a peer review of his examinations and reports on the 7th January 2024.

124. The initial report of Dr R had been sent to Dr L before those examinations took place. Dr L expressed some concerns about the process of Dr R's examinations and in relation to the general investigation being conducted by NSC. He expressed those concerns directly to NSC in email form.

125. The LA in these proceedings asked Dr L to provide a statement to this Court in order to be completely transparent about the views and concerns he had expressed. Ms Anning expressly asked for permission to cross-examine Dr L and he was therefore called by Ms Garnham representing the Guardian.

126. Dr L 's statement makes clear from the outset and throughout that he does not hold himself out as an expert in these proceedings. He acknowledged in his evidence that he was relatively junior at the time these events unfolded and he did, in my view, make appropriate concessions in his evidence that some of the language he had used was, at times, not totally in line with the role that he had in this investigation. He has never seen the colposcope images and has only seen Dr R's report of her initial examination of Z in July 2023.

127. There are certainly parts of his lengthy statement which go beyond his role: for example, the discussion about the interpretation of what a child has said are not matters for a doctor who has never seen or interacted with the child in question. Dr L freely conceded that he should not have been so definite in some of the language he had used about that matter. He told me that he had not intended to undermine the accounts given by Z in making these remarks but was simply highlighting that the account of such a young child should not lead to

any automatic conclusions being drawn about what might have happened to her.

128. Ms Anning asked Dr L whether he felt he had entered into the role of an advocate in his interactions with NSC and subsequent statements in the case. He denied this and told me that he had dwelt on this issue but was conscious of his role.

129. Dr L told me that in making his comments about Dr R's report and her findings, he was not seeking to undermine her, but he felt that the suggestion that an injury had been seen on examination was very unusual in a child of Z's age. He was also concerned that, if there had been an injury identified, the pool of possible perpetrators was significantly wider than seemed to be being looked at by NSC. Dr L was worried that Z was being placed at risk of significant harm by this approach and he felt, as per the guidelines to him as a professional person where a safeguarding issue had been raised in relation to a child, that he should raise the issue with the relevant authorities. He had struggled to get hold of Z's social worker and she advised him that she had been told not to have any further contact with him. He felt that he had done his duty in reporting his concerns and had no further involvement with the investigation.

130. Dr L is not a court-appointed expert. He is a witness with expertise who is on the fringes of the evidence in this case. He has expressed views about a number of issues which the Court disregards as well beyond that expertise. Dr L did the right thing in alerting NSC to the issues he had noted in his tangential involvement in their investigation. He also did the right thing in complying with the request to provide a statement in these proceedings and coming to Court to give evidence freely.

131. Dr L 's evidence is of little assistance globally to this Court because of his very limited role in these proceedings. The concerns he expressed about Dr R's initial report are to some extent mirrored by Dr Teebay and it is she who provides the expertise on which the Court relies to analyse the overall evidential picture in this case.

Dr C

132. Dr C is a Consultant Paediatrician and Clinical Director for the SARC centre The Bridge in Avon and Somerset. She has more than 18 years of experience in the assessment and management of children who have been abused including the assessment of children who have been acutely sexually assaulted or raped. She regularly undertakes medical examinations for suspected child abuse, and she is involved in local and regional peer reviews. She was present at the peer review of Dr R's two examinations on Z which involved looking at the images from both of those examinations. She is not a court-appointed expert witness.

133. The peer review concluded that there was a bump at 9 o'clock and an anomaly at 3 o'clock. Consensus was not reached on the nature of the findings on the images at 3 o'clock.

134. Dr C recalled that she had discussed the case with Dr R before the peer review. She did not remember looking at the images but said that she might have looked at the images from the first of Dr R's examinations. She suggested to Dr R that there should be an offer to examine Z again and that is how the second examination came about. There was no note of this discussion which Dr C described as a *'corridor conversation'* not a formal sit-down interaction. She could not date the conversation, but she thought the next time she had cause to consider this case was at the peer review on the 4th October 2023.

135. Dr C told me a little about the peer review process which involves a number of people being present in a room with between 10-15 cases being presented to them. Most of those people simply look at the images from the colposcope but the examining doctor has their report in front of them and they effectively outline what they see. She told me that if the images are of poor quality that should be recorded on the peer review, and it was not in this case. Her recollection was that she had seen a lot worse in terms of the quality of images and the images of the second examination had been good. The first set of images were good enough for the people present to see what they thought might be findings. Z was wriggling quite a lot on the first examination but those present at the peer review were able to see something at 3 o'clock. All persons present at the peer review have a chance to say what they think and what they can see on the images: the examining doctor then states her own view. The examining doctor is then supposed to complete an addendum report outlining the peer review findings and detailing whether she has any changes to make to her own views.

136. The evidence of the peer review and Dr C does not assist the Court greatly in circumstances where I have heard the direct evidence of Dr R and the court-appointed expert Dr Teebay. It is a matter of record that the peer review was unable to reach a consensus about the nature of the anomaly at 3 o'clock. It appeared that the images were good enough for the peer review to consider them.

Dr Teebay

137. Dr Teebay is the Single Joint Expert instructed in these proceedings. Her report is dated the 10th February 2024. In common

with Dr R, Dr Teebay is a very experienced paediatrician who has worked in the field of forensic sexual medicine since 2001.

138. Dr Teebay's overall conclusion, both in her report and during her oral evidence, is that the medical evidence of sexual abuse in this case is *'tenuous'*.

139. She sets out some issues about Dr R's examination in her report, namely that Dr R did not describe the shape of the hymen as a whole or an indication of the size of the hymenal laceration or abrasion. She also comments that there was no colour palette for any of the images. Whilst she was of the view that the images were sufficient to demonstrate the main areas of concern as outlined in Dr R's reports, her own view was that the precise detail of the marks as described by Dr R was not visible on the images.

140. Dr Teebay was able to see the following from the examination on the 19th July 2023: a v-shaped partial defect of the hymen edge in the 3 o'clock position no more than 50% of the depth of that tissue. There are no other details that Dr Teebay could see of this defect or any evidence of colour variation. That could be a normal variant or a healed injury. The hymen tissue between the 3 o'clock and the 6 o'clock position appeared to be thicker and have more tissue which was slightly redder than the rest of the hymen. That was a normal variant in her view. The hymen edge at the 5 o'clock position has a tiny area of purple/red discolouration which was difficult to see.

141. With regard to the examination on the 26th September 2023, Dr Teebay was able to see that between the 3 o'clock and the 6 o'clock positions the hymen appeared to be thicker and folded with more tissue in this part compared to the rest of the hymen, as seen in excess/sleeve like or redundant hymens, a normal variant of shape. There is no colour

variation. The hymen edge at the 5 o'clock position had no area of discolouration as seen on the earlier video. There was a bump at 9 o'clock which was a normal variant. There was shallow notch at 3 o'clock which was less than 50% deep.

142. In essence therefore, the primary areas in which Dr Teebay differed from Dr R in her written reports were as follows:

i) she was unable to identify the features which would support an acute injury to the hymen as noted by Dr R at the examination on the 19th July;

ii) the swelling reported by Dr R on the 19th July was a normal variation seen on both sets of examinations;

iii) the notch seen on the September 2023 examination was superficial and not more than 50 % depth;

iv) the lesion at 5 o'clock could have been due to a medical cause but could have been due to trauma.

143. In summary, Dr Teebay's interpretation of the findings was that they either represented a possible healed hymenal injury or normal variants with an unexplained hymenal lesion.

144. Dr Teebay had the benefit of being present for the evidence of Dr R. Dr Teebay did not change any of the conclusions reached in her written reports in her oral evidence. She was an impressive, fair and objective witness throughout.

145. She was not generally critical of the form or process of Dr R's examination but maintained her view as expressed in her written remarks about some aspects of them. She told me that observing a child in the prone position can lead to the hymen having '*a very different appearance…even a sharp v-shaped mark can look very different*'.

146. Dr Teebay told me that it was best practice for the examining clinician to look at the video recording and to make a comment in the notes that the images were either of good quality and captured the clinical findings or that they did not. She did accept that the *'naked eye'* examination can give the clinician a memory of something that is not subsequently apparent to others viewing the video recording.

147. An acute injury at 3 o'clock on the 19th July could be consistent with the presentation of a healed defect at that position on the 26th September: this is most accurately described as a notch.

148. Asked about Dr R's observation that she was able to see white slough on the laceration at the July 2023 examination, Dr Teebay maintained that she had not seen those signs, but she concurred with Dr R that if they had been present that would be suggestive of a healing injury. Dr Teebay told me that an observation of this type should have been written down straight away.

149. Dr Teebay stated she would have been more cautious in the way she described the finding at 5 o'clock which she felt was a *'tiny red dot'* which could be a medical abnormality or a normal variant. The absence of this defect in the later examination does raise the possibility of resolved or healed injury.

150. Dr Teebay felt that the description of an area as *'swollen'* was problematic as Dr R had not examined Z before, so she had little to which to compare that area of her genitals. That finding could be consistent with traumatic injury but may also be a normal variant. Dr Teebay felt that, as it was also present on the 26th September examination, it was more likely to be a naturally occurring shape of Z's hymen. The presence of a swelling and sleeve-like hymen on the 19th July was not ruled out.

151. Dr Teebay was noticeably cautious when she was being asked about the things Z had said about her genital area and the issue of whether she was experiencing pain. She told me that the fact Z appeared to be indicating she was hurt and gesturing to her vulva/vaginal area would be consistent with her having suffered an injury in that part of her body. She also remarked that the word *'owww'* could indicate pain or it might indicate discomfort: *'it is difficult because many children say that they are sore, and they may indicate that they are uncomfortable in a generic way'.* There could be many causes of pain or discomfort in a child in that area.

152. Dr Teebay told me that she did not attribute any significance to the way in which C had described Z's vagina as looking different at the time of the 111 call.

153. Asked about the second examination, Dr Teebay confirmed that the images were different during this exercise. A number of factors could contribute to this, including that the injury present in July had healed but also including that the child was examined in a slightly different position on the bed. She maintained her view of what she saw in these images which were of better quality than the earlier examination.

154. Asked whether she considered whether the medical examination on each occasion could have been of a totally normal genital area, Dr Teebay replied *'yes'.* If Dr R was right about her findings, then Dr Teebay considered that an injury was a possibility.

155. Dr Teebay was asked whether, if Z had suffered a tear to her hymen, there would have been bleeding. She told me that it was difficult to say on the available evidence because there was no clarity about the extent or the depth of that injury. If it was a small laceration, it might

only produce small amounts of blood which might still be apparent to a carer. If it had been a larger injury, then it would have bled a lot more. Soiled nappies might have hidden any bleeding from the genital area, but it was still possible for blood to be seen because the soiling of a nappy is towards the rear of that garment. Dr Teebay was reluctant to speculate on how a child might react on this injury being caused to her genital area.

Summary of the totality of the medical evidence

156. There are a number of issues with the overall reliability of Dr R's evidence in my judgement. As I consider these matters, I remind myself of the passages from the cases of *Re P* and *A Local Authority v A* cited in the legal section of this judgment.

157. Z would not tolerate examination in the prone position which did not allow the fullest of physical investigation on either occasion. That is not a criticism of Dr R, it would be totally unethical and inappropriate to force a child to submit to that examination. Both Dr R and Dr Teebay told me that examination of the hymen in this alternative position can lead to a very different set of findings: that was particularly Dr Teebay's evidence, which I accept.

158. The LA specifically and fairly accepts in its closing submissions that Dr R's written record of the examination in July 2023 *'failed to include the description of relevant appearances that she subsequently included in her police statement and her oral evidence':* this is of particular importance in respect of the suggestion that white slough could be seen and the red raw edge that Dr R reports was visible. This is contrary to best practice as set out in the RCPCH Guidance. This is more than just a technical breach of guidelines: the failure to record, at

anything like the time of the examination, a set of observations about the appearance of the laceration to Z's hymen, is a significant issue and one which has to call in to question the reliability of those later observations. Of course, Dr Teebay did not see either the red raw edge or the white slough in her viewing of the images and whilst it was Dr R's position that she could see them on the video, she accepted that they may not have been visible to someone who had not conducted the examination.

159. Dr R's written work variously stated that the laceration was healed and healing. Again, this is a very important matter of detail about a very significant finding. The suggestion that the use of the word *'healed'* was a typographical error is belied by it appearing more than once in the initial documentation and the paediatric nurse being of the understanding that was Dr R's view when she attended the strategy meeting.

160. The examination was conducted without a colour reference palette which is contrary to good practice in Dr Teebay's view.

161. There was no attempt to describe the size of the laceration on the first examination. Whilst it is understood this is fraught with difficulty, it is Dr Teebay's evidence that it should be done, at least in terms of a percentage depth of the hymen that has been observed to be damaged.

162. The images of the first examination were sufficiently good to allow the peer review to conduct its assessment of the findings and for Dr Teebay to express a view about her own findings. Dr Teebay, the court appointed expert in the interpretation of the images and a very experienced paediatrician working in this area could not see many of the findings described by Dr R using the footage in which she contended some of them are present and can be seen.

163. Dr R did not follow the best-practice guidance that if colposcope images do not reflect the findings seen with the naked eye then a clear recording should be made of this detailing what was seen and why it was not visible on the images. That was very important in this particular case, and I have already set out the deficiencies in the way things were recorded.

164. I have weighed against these issues the fact that Dr R examined Z in person on two occasions. Dr Teebay acknowledged the importance of the eye-witness account of examinations also. I also acknowledge that Dr R is an experienced witness who was not expecting to observe the signs she described in her report, and I am not persuaded that this experienced professional was swayed by what was said to be an allegation of sexual abuse from such a young child in to finding things during a medical examination that were simply not there. That would be quite extraordinary for such an experienced professional.

165. To find, as the LA invites me to, that Z had a healing laceration at the 3 o'clock position, redness and swelling of the hymenal edge between 3 o'clock and 6 o'clock and an abrasion of the inner hymenal edge at 5 o'clock on the basis of the medical evidence alone, I would have to prefer Dr R's eyewitness observation to the view of Dr Teebay as expressed in her report and her oral evidence. Much of detail of those observations were not recorded at the time of the examination, now some months ago, during which Z was wriggling whilst a very small area of her genitalia were being examined.

166. I have to weigh those observations of the medical evidence alongside the other evidence in the case.

F

167. I heard from F who is Z's allocated social worker. She confirmed her statements to the Court and also the exhibits to one of her statement, including a note of her visit to Z on the 20th July 2023 at the home of C and D and the section 47 report that she had completed after Z made her allegations against B. She also confirmed that she had taken part in the fostering assessment of A&B: she had completed the parts that related to Z herself and her colleague had undertaken the substantive assessment of the family.

168. F had about 2 years' experience as a social worker at the relevant time. She had not had specific training in the ABE guidance, and she accepted that her visit to see Z on the 20th July 2023 had not been the subject of any detailed planning. The reason she gave for her visit to see Z fluctuated between a general check on her welfare after the events of the weekend before to giving Z the opportunity to talk to her, someone with whom she was familiar, about *'anything that was worrying her'.* Beyond the general principles of *'being led by the child'*, asking open questions and seeing the child on her own, F struggled to articulate any of the other principles of the ABE guidance. She had not been involved in a case before with a child making allegations of abuse directly to her. It was felt appropriate by the members of the strategy meeting that F visit Z and talk to her on that day.

169. The conversation between F and Z lasted only a couple of minutes and she had not taken notes during the exchange. Neither had she taken the opportunity to make any notes before leaving the house or shortly thereafter. The note of the visit that she attached to her statement bears the date of the 21st August 2023 which is when she made that record of her conversation. She did say that she had updated the section 47 record as she went along with that process but, other than a final date on that

document of the 1st August 2023, it was unclear when she had first made any record of what Z had said to her on that day. F accepted that she should have written the case note sooner.

170. Asked about her questions to Z asking her if she had been to the doctors and why she had been to the doctors it was put to F that she had asked these questions with a view to Z possibly giving an account of possible sexual abuse. F responded with: *'yes, I knew why she had been to the doctors'*. Asked if she had hoped Z would given an account of abuse she said: *'I just gave her the space to do it if she wanted to'*. Z had replied with *'uncle daddy hurt my bottom'* and she began to clutch at her vagina. F said *'daddy?'* and Z said *'no, uncle daddy.'* Asked by F what happened, Z lost interest and did not engage any further. F was unable to clarify what further interaction she had with Z during a conversation she had said had lasted two minutes: the reported content as outlined in her case note seemed to be a significantly shorter interaction.

171. F accepted that in her conclusions to the section 47 enquiry she had formed a definite view that Z had been sexually abused in the care of the A&B's. She also accepted that she had worked on the basis of that assumption since that time.

172. F was asked some questions about her interactions with A who it was said had tried to contact her a number of times to express some concern about C who she felt was trying to conduct a further assessment of her ability to care for Z. There was ultimately a conversation between F and A, but F did not recall that A had mentioned any concern about the issue of female genital mutilation having been raised with her by C. F told me that she had written that part of her statement, about the conversation she had with A, with the benefit of a case note. Asked to produce that note she seemed reluctant and said she was unable to do

so at the present time. After a short break, brought about by the visible distress of A in the courtroom, F told me there was no such note and she had been *'flustered'* when she said that there was. The account in her statement was the first account she had written down about her conversation with A which she considered to be *'informal.'* F did not recall much of the conversation but did not think the detail provided by A in her statement about it had been provided to her. In any event, she seemed to be rather dismissive about the conversation as a whole, indicating that she had such a level of confidence in C that she was not concerned about the issues A was raising.

173. C had played an important part in the transition of Z to the care of A&B but she had not taken control in the way that A alleged in her statement. There had to be liaison between C and D's and A and B's families about the transition because of the distances involved and the fact that both families have other children to consider. C's input was very much valued by F who obviously rated her very highly as a carer. C and D had always said that they would not be able to adopt Z.

174. F was asked about the contact made with NSC by Dr L , the doctor from Leeds who was expressing some concerns about the NSC investigation into what had happened to Z. F confirmed that he had spoken to a colleague of hers whilst she had been on Annual Leave and that conversation had been reported back to her on her return. She had said to Dr L that she had been advised by her legal team not to have any further contact with him. That message had also been given to her by her manager, [name] and that is the approach she had taken.

175. She told me that NSC had done the section 47 enquiry and the outcome was known. She did not wish to prolong the proceedings for Z and there was '*no way that we would recommend she would go to their*

care after this.' She said again *'I did not want Z to go to their care based on what happened'.* That was the reason why the applications made by A&B to be parties to the proceedings in Bristol were opposed by NSC. She told me that she had spoken to A during the section 47 enquiry but not to B.

176. F confirmed in answer to Ms Burnell K. C. that she thought she had passed on to C and D the conclusions of the medical assessments and her ultimate, definite, conclusion that Z had been the victim of sexual abuse in the A&B's household.

177. Reminding myself of the ABE guidance and the approach to be taken to breaches of that guidance as set out in the legal section of this judgment, I find it difficult to place any reliance at all on F's report of what Z said to her. There was no planning of this visit and F attended alone. Her note taking process was totally unclear during her evidence. She did not appear to realise the importance of the visit she was being asked to undertake and the need to exercise caution about its parameters. More care should have been taken by those higher up in the structure to ensure that F was aware of the purpose of her visit and the imperative that a very clear, if possible contemporaneous, note of what was said to R and what R said was made.

Tim McAteer

178. The social work evidence from Leeds is contained in two assessments dated the 20th September 2023 and the 14th March 2024 along with a number of statements. There are two ways in which this evidence is important, firstly as it relates to the wider canvas of evidence about these parents and their overall presentation and secondly the forensic importance of the hearsay evidence of X and Y

about the events of the weekend of the 14-17th July 2023 and the accounts of each of the parents of those events.

179. I heard from Mr McAteer who has co-worked the case with his colleague Ms Ogland with the exception of a few months between February -March 2024 when he was off work.

180. Apart from the allegations relating to Z, there continue to be no concerns about either parent or their care of their children. Mr McAteer confirmed that both children have a very happy home life but that they have been affected by the proceedings and the position of their father who is currently not living at the family home.

181. As part of this work, Mr McAteer has spoken both to the parents and to each of the children. He gave further detail about those enquiries in his oral evidence.

182. Mr McAteer was part of two initial conversations with the children: one on the 21st July 2023 when they were seen in their foster placement and one on the 23rd August 2023 when they were seen at home.

183. The first visit was conducted by Mr McAteer and his colleague Ms Ogland. Mr McAteer confirmed that the children had not seen or spoken to their parents from the time they had been arrested on the 19th July 2023 until after the conversation they had with Mr McAteer and Ms Ogland. The parents had only been released from custody on the evening of the 20th July 2023. Mr McAteer agreed that there could therefore be no suggestion that the children had been influenced in what they were saying to the social workers by their parents.

184. Neither child raised any concern with Mr McAteer about the events of the previous weekend when Z had been in their family home. They had given an account which was quite consistent and what the

family had been doing that weekend. Mr McAteer had no concerns at all about how the children presented during this discussion: they presented well and were *'confident, articulate and bright'*. The conversation had been easy to engage in and Mr McAteer described it as *'enjoyable.'*

185. Mr McAteer confirmed the recording in the assessment that both children understood the meaning of truth and lies. X expressed that *'lying is terrible'* and Mr McAteer confirmed that X had *'immediately presented with a strong sense of right and wrong which was very clear'*. Asked whether he was satisfied from his observations and knowledge of X that he had told him the truth that day, Mr McAteer replied *'yes, absolutely*.'

186. In a similar vein, Y had been able to identify the clear lie in the example given to her by Mr McAteer when he was establishing her understanding of truth and lies. She added that her mother had always told her to tell the truth, and this had come out spontaneously without prompting. Mr McAteer told me that there were many positive things about A as a mother and he accepted that the children are well brought up and that they come from a *'nice family.'* There is no evidence of either child having a tendency to lie or deliberately withhold information from anyone either in Mr McAteer's dealings with them or from information gathered from their school.

187. Mr McAteer spoke to the parents later on the same day and felt that the accounts given were broadly consistent with those of the children. A had told Mr McAteer that she had gone out on the Sunday evening with Y as they needed to pick up a cot bed. B said that at one point he remembered A and Y going out, but he hadn't realised as he had been asleep. He had thought it was during a morning and then that

he thought it was Monday evening as Z had not been there at the time. B said he had got confused with the days.

188. The detail of the conversations with the children on the 23rd August 2023 is set out in the assessment completed by Mr McActeer and he confirmed the contents of those discussions. He spoke with X alone and asked him about the events of the Sunday evening when Z was at his home. These answers were extracted by the use of open questions, Mr McAteer said. X stated that his mother and Y had gone to get the cot for Z but that he had not gone with them. He played on his Playstation and his father was in the bath. The Playstation is in the living room: Mr McAteer could not help with whether X routinely played on it with headphones or not. Z had been sleeping. X had gone on to say that he heard a mumbling from Z who was upstairs, and he went upstairs and tiptoed quietly into the room to see her. X said his father was still in the bath. Mr McAteer said that nothing in X's account made him feel that it had been rehearsed and he felt it was a genuine account of X's recall of that evening. X's account was itself consistent with what A had told Mr McAteer about the evening, namely that Z had been asleep when she left the home and she found her in the same position when she returned, asleep.

189. Mr McAteer confirmed that the family home is small and that it was feasible that X had heard Z *'mumbling'* from the living room as the children's bedroom in which Z was sleeping was directly above the living room area. He confirmed that if Z had made a significant noise that evening X would have heard that. He also accepted that to be the case more generally; that everyone in the household would have heard Z if she had been making significant noise at any time when she was with the A & B family.

Reports of Professor Craig

190. Professor Craig is a Forensic Psychologist who was instructed to provide an opinion on each parent. I have not heard from him in evidence at this hearing.

191. In so far as each parent spoke to Professor Craig about the events of the weekend of the 14th-17th July, their accounts to him were broadly consistent with the accounts given in the proceedings. B did tell Professor Craig, when he met with him on the 19th December 2023, that he had a bath lasting 45-60 minutes on the Sunday evening the 16th July 2023. He said that he had spent the weekend in his bedroom attending a virtual church conference based in Blackpool and had little interaction with Z during that time.

192. In his summary of his views about A, Professor Craig states that she is a *'positive protective factor'* and *'essentially well-functioning, generally adaptive with no major personality disturbances'.* She could not offer any explanation as to how Z's injuries occurred, but she recognised the need to work with the LA. As a mother and a qualified child protection social worker, A recognised that professionals had concerns about the potential risk posed to the children by B as a result of the allegations made against him.

193. In his first report about B, Professor Craig describes him as having an unremarkable upbringing that was *'free from abuse, neglect or deprivation.'* There was no history of mental health difficulties. His profile did suggest as tendency towards *'overly self-favourable presentation.'* B described unremarkable psychosexual development and there was not evidence of sexual obsession, compulsivity, problematic pornographic behaviours or atypical sexual outlets.

194. Professor Craig states that the allegations made in respect of Z are *'unusual in the absence of other offence related behaviours (a history of inappropriate behaviours towards children, gaining access to children, a history of suspicious behaviour around children)'.* In this report Professor Craig considers that there is insufficient information on which to conduct a robust risk assessment, but he noted B's insight into the LA's concerns and his willingness to adhere to the contact agreement in relation to his own children.

195. In more general terms, Professor Craig states:

'Typically, less than 1% of non-offending adult males report a desire (wish to experience) sex with a child (age < 11 years: paedophilia) in the general population. The percentage of those expressing sexual interest in infants (age < 2 years: Nepiophilia) is lower. Nepiophilla is particularly unusual with less than 10 % of people diagnosed with paedophilia showing interest in infants, suggesting that Nepiophilia is a unique subcategory of Paedophilia'

196. Professor Craig was asked to complete a further report on receipt of more information about the allegations made against B in 2020 and 2021. He notes that the allegations have not been formally adjudicated upon but states that there is a common theme across both incidents which *'may indicate sexual entitlement beliefs around sexual contact and distorted attitudes to women and the expectations of sexual contact with women'.* It is also noted in this assessment that B had admitted having an extra-marital affair and to having a high sex drive involving masturbation (to adult pornography) two or three times a week.

C's evidence

197. C gave evidence from the witness box and confirmed her statements. She also confirmed her fostering notes as true and accurate recordings of her observations of Z at the relevant time. C told me that she would make the notes as soon as reasonably possible after leaving the child. She was aware of the importance of recording things that were said to her by Z. I note at this point that the notes are incredibly detailed, very involved documents which reflects the degree of C's dedication to her task.

198. C and her husband have been foster carers for 18 years and they have cared for a number of children and babies in that time. They used to offer placements for parents and babies. They have cared for Z for 2 years, although they thought that she would only be with them for 3 months when she was initially placed with them. C said that they had never felt in a position to care for Z in the longer term, either as adopters or Special Guardians for a number of reasons, one of which was that they were going through a process of adopting one of the children in their care when Z was placed with them.

199. Asked about Z's language and her verbal abilities, C was referred to the report by the registered intermediary which was undertaken at the police station in order to determine whether Z could be video interviewed. C told me that Z had only been in the room with this professional for a short while. She said that Z was not talking in full sentences, but she was of the view that the intermediary had not observed Z's complete abilities at this time. She was someone that Z didn't know, and C was of the view that Z would be more forthcoming with her than with a stranger. C felt that Z was more advanced than an average child of her age: she was perfectly capable of identifying people

in her life using various names such as uncle daddy and auntie mummy for the A&B's.

200. C was keen for Z to achieve a permanent placement. She agreed that she had written a note to the social worker in January 2023 when the plan for a possible kinship placement of Z had been raised. This note refers to information passed to C by F that *'within their culture they raise each other's children'.* C confirmed her hope that *'during the assessment this statement will be explored to confirm that the family's cultural expectations and Z's needs align.'* A link is then pasted into the notes to an NSPCC document about case reviews where culture and faith were raised as issues. This link had been given to C by her own social worker. C felt that it was important to share this information and she confirmed her desire for any placement to be the right one for Z. C did accept her tendency to *'share all my thoughts.'*

201. C told me about the transition plan and the process of Z going to live with A&B. She had been quite involved in that plan as the practical arrangements had to be made for Z to spend time with the family in Leeds which involved travel arrangements.

202. In the early part of the transition process, C had expressed some concerns about the transition planning: she told me that she had done adoption training herself so had felt able to comment about the plan in general. She had also expressed concern at what she had felt to be B's lack of engagement in the process. C did acknowledge her own note that she was *'jumping out of her lane'* a bit in making some of these observations but she denied any hyper-vigilance, telling me that *'all the children in my care get the same level of diligence from me'.*

203. Asked about the cultural aspect of Z's placement with A&B, C freely admitted that she had brought up the issue of female genital

mutilation with A and A had told her that it was not a part of her culture. C had found these discussions interesting and had not been anxious about the issue but more curious. She had asked for A&B to be given training in dealing with children with trauma, as she considers Z to be, but she denied that this was evidence of her being hypervigilant and anxious in the course of the transition plan.

204. C accepted that Z had found the transition process hard and had become more of a *'shadow'* of her and her husband than previously. There had also been some issues with the contact she had been having with her birth mother at this time.

205. C was referred to a note she had made of a trip to Leeds with Z. On the 13th June 2023 Z had spent some time with A&B but was staying overnight with C in a hotel. That evening whilst in bed she had undressed herself, including taking off her grow bag, removed her own nappy and had smeared faeces over her face, her body, her bedding and her cot sides. She was very unsettled that evening. C said her behaviour was *'unusual'.* The next evening, after spending time with A&B, Z called out three times in the night and was thrashing in her bed calling *'monster, get me.'* which was again unusual for her. Asked if these were examples of behaviours which C felt might be indicative of an emotional reaction to the transition plan, C said that Z had also been coming down with an illness at this time.

206. By the time of the final visit of Z to A&B on the 15-17th July, C was very positive in her communication about that trip to F. She said the weekend was *'overwhelmingly positive'* and she was very positive about A and their children in the witness box. Less so about B, with whom she had not engaged with very much. She expressed concern that he, who she had been told would be Z's main carer, had not been as involved or

as present as A to care for Z during the transition visits. C confirmed that she had never seen anything that caused her any concern about the way that Z was cared for in the A&B household: she did not appear to have any fear of B in the times she observed them together.

207. When she collected Z on the morning of the 17th July 2023 it was a short visit. She noted that B went out and did not really say goodbye to Z as he was going to the shop. C had collected some bread for the family on her way to collect Z so she had thought it strange that B needed to go out so urgently without saying goodbye to Z individually: he did shout goodbye from the hallway.

208. C was asked about her accounts of Z during the rest of that day which are recorded in detail in her extensive notes. She talked about the strange position Z was in in the car seat: this had happened after this date but has not persisted. It stopped soon after this weekend.

209. On her arrival home with Z that afternoon, C confirmed that Z said her bottom was sore: C did not notice redness or a rash at that point. That initial conversation was seconds in length. C denied that she had asked Z a question. It was D who had the foul-smelling nappies and not C.

210. C was referred at times to notes and recordings made by others about what she had apparently told them, including the social worker and Dr R. C told me that her own notes were the best account of things that she recalled Z having said to her: the notes of others were created by them as a result of conversations had with C when she did not have her notes to hand. I accept that observation as a general point: I have no doubt that the extensive notes of C represent the best version of her recollection of these events. With regard to the notes of what Z said to her on the 17th July 2023, C could not say exactly when she made those

notes but she told me it was her practice to do so as soon as she was able.

211. On leaving A&B's home on the morning of the 17th July 2023, C said that she had wanted A to continue the practice of reading Z a bedtime story but she had learnt that the family was very busy over the following few days as family were visiting because of A's graduation.

212. C made the 111 call the morning after Z had made allegations to her. Z was present when this call was made but not when C was telling the operator what Z had said to her. The phone had not been on loudspeaker.

213. On the 19th July 2023 C told me about Z reporting she was sore when being carried on C's hip. She said that she had not interpreted what Z said as that the action of being carried had hurt her: it was just something that she was saying. She did move Z's lower body off her hip, however.

214. C accepted that she had been told by NSC that they had come to a clear view that Z had been sexually abused and she had never had specific advice about being careful with Z and what was said to her about her allegations beyond her general training.

215. C expressed surprise that A had concerns about some aspects of her involvement in the transition plan and some of the conversations she had with her.

216. C is clearly a highly committed and supportive carer to those children who are placed in her home. She has a track-record of caring for children over a significant period of time and is used to the process of those children moving on from her care either to adoptive placements or to placements within their family. Her devotion and love for Z was apparent from her evidence to the Court. I am satisfied that C

was acting in good faith throughout her dealings with the A&B family and that she had Z's best interests at heart throughout the process.

217. It is not my view that C has done anything directly or deliberately to influence Z to make, or repeat, allegations about B. I am satisfied that C told me the truth about her recollection of what Z told her and that she recorded Z's comments as faithfully as she was able to in her fostering logs which she produced as soon as she was able to with customary diligence. C acted appropriately in reporting what Z had said in accordance with her protective duties to a child in her care.

218. It is my view that C was a little anxious about the ultimate placement of Z in the care of A&B and the inevitable change in the relationship that she would have with Z thereafter. It is difficult to quantify that, or to assign evidential significance to it, in a case which involves such a young child who had a very significant attachment to C after spending a long time in her primary care.

219. It is not necessary to resolve every dispute between C and A about things that were said between them that caused A some concern. I am satisfied that, in trying to demonstrate a cultural curiosity and interest in A&B's family's heritage and their religion, C stumbled a little clumsily in to issues where more caution should have been exercised, such as raising with A, at a very early stage of their relationship, the issue of female genital mutilation.

220. It is also my view that C did have quite a wide role in terms of the design of the transition planning and her feedback as to how that process was progressing seemed to be the only monitoring that was being conducted by NSC. That was probably down to a combination of the lack of experience of F, the extensive experience of C and the complexity of the arrangements for the transition plan to take effect

because of the distances involved. I do not reference that by way of criticism of C but rather an acknowledgement that A's feelings about the process and C's central involvement in it are understandable.

D's evidence

221. D gave evidence after his wife and confirmed the content of his statements. He also confirmed that, having heard his wife's evidence, he did not disagree with any part of it. The fostering notes were made by C, and he had no role in that process. He described C as shocked when he came home, and she told him what Z had said to her on the 17th July 2023. D had been out at a meeting at the time Z made her allegations.

222. D spoke about Z making an allegation directly to him on the 18th July 2023 at 9.54am. She said: *'uncle daddy hurt my [word unrecognised] bottom'.* Z had been playing in the kitchen at the time and said it in a very matter of fact way. She had not been distressed and there was no change to her demeanour. She moved on to something else and D had not asked her to elaborate. As C had been on the phone to E at the same time as this had happened, he passed the information on to him immediately.

223. D was also asked about something Z said to him on the 29th July when she had a dirty nappy and he was changing it. She crossed her legs and refused to uncross them. She said *'uncle daddy hurt my bottom'* and again she was matter of fact about this, exhibiting no distress about it.

A's evidence

224. I heard from A from the witness box. She was a calm and dignified witness who was occasionally emotional when speaking about

her children and when talking about Z. She told me that her statements and her account to the police in her interview were true. She produced a set of photographs and diagrams showing the layout of the family home. There were also photographs of her children and one of Z. A was quietly upset when she saw Z on the photograph.

225. A took me through the diagram of the house with accompanying photographs. It is a small house, and it was A's view that if Z had been screaming or crying or making significant noise at any time that weekend, any other person in the property would have been able to hear that clearly.

226. A told me of her relationship with B whom she has known since 2008. In those 16 years she had never had cause to be concerned that he has sexual interest in children or babies. She also freely accepted that she had come to know things about B during these proceedings that she had not known about him before, such as the way in which he lost his job because of an allegation made against him by an adult female and his having extra-marital affairs.

227. Z had been like a little sister to X and Y: they had both formed a significant attachment to her in the time they had spent getting to know her. X was very caring towards Z and A described her daughter Y as a *'deputy parent'* to Z. A had not been concerned at the way B had participated in the transition plan for Z. Whilst it was the ultimate intention of the family for B to be the primary carer for her, A was going to take some time to settle Z into the family before she took employment as a newly qualified social worker. She told me that there was nothing unusual in B not being centrally involved with Z in the time that she had spent with the family. She also told me later in her evidence that Z

would ask for B: she did not show any signs of being uncomfortable around him.

228. A told me that Z could say short sentences at this time such as '*playdough please*' and she could ask for food. If she was given something that she didn't want she would push it away and sometimes scream.

229. Z spent the weekend of the 15-17th July 2023 essentially in the care of A and her children. B had arrived back from his domiciliary work in the early hours of Friday morning. The family would usually have attended a church conference that weekend but, because they wished to prioritise the transition of Z to their care, they had decided not to attend. B watched some of the conference online during that weekend. A told me that she had not mentioned that during her police interview because she had not been able to recall every detail given the way she had been arrested and subsequently interviewed. A told the social workers the day after the police interview about the conference.

230. A told me that the only time Z had been with B as the sole adult that weekend was the Sunday evening when she and Z had gone to collect a travel cot for Z that they had bought on Facebook Marketplace from somewhere in Keighley. A thought she was out of the house between 7.30pm and 8.30/9pm; between an hour and an hour and a half.

231. A told me that she had undertaken Z's sleep routine before she left: Z had been bathed and a bedtime story had been read to her. She had been *'fast asleep'* when Z left and did not usually wake in the night. She had a nappy on with resealable tabs, not a pull-up style nappy. She then she had 2-piece pyjamas on and a baby grow/bag which zipped up at the back. Z was asleep on her back when A left her. X was playing on his PlayStation. He does not have a headset. A thought that B was in the

bedroom as she left. She did not recall having told B specifically that she was going out because she knew Z was asleep and X was also present. She assumed B was asleep as he had been when she had last checked on Z before leaving the house.

232. A arrived home at about 9pm and first saw X who was not playing on his Playstation by that time, but he was in the lounge area. A thought he was playing with something else. That door was slightly ajar. A went upstairs to check on Z who was in the *'same position I had left her in'*. There was nothing about Z, her clothing, or bedding that was in any way unusual. She was sleeping *'peacefully'* in A's view. There was no indication whatsoever that anything out of the ordinary had happened to Z whilst A had not been with her.

233. B was in the bedroom when A returned but she did not recall going into that room on her return. Some time later, when A had seen to her own children, she went into the bedroom and B was on the iPad with his earphones in. A had not known that B had a bath until X told social workers this in August 2023.

234. Asked about what X had said about Z in A's absence: that he had heard her *'mumbling'* and had gone to check on her, A told me that would be typical of X to want to go and see if Z was alright. A recalled that X had told her that Z *'had sounded like she was talking'* and that he went to check on her. A had not told the police this because X had not said that Z was awake, and she had not recalled X having told her about having heard something from Z that evening. A was referred to a position statement prepared by her solicitor in October 2023 in which her solicitor sets out her instructions as being that X had reported to A that Z had sounded *'distressed'* but that he went to check on her and she had settled and was still asleep. A denied that was what X had told her at

any time, or that she had used that word to report the contents of her conversation with X.

235. A reported no difficulties with Z either overnight or on the morning of the 17th July when C came to collect her. C was there only briefly. That is the last time A saw Z. A had given Z a quick wash that morning and had taken her nappy off and put her under the shower which is contained in the bath in the bathroom. She thought it might have been Y who had taken the nappy. Asked about the nappy found in the downstairs bathroom by the police, A said that Y must have put it there. That bin is changed every evening A said. In any event, A stated that she had not changed Z's nappy overnight and the nappy she had changed that morning had been wet but not soiled. There had been no blood visible in the nappy.

236. Asked about her overall relationship with C, she told me that she felt C was a *'lovely woman'* but there were things about her that were concerning A and she had tried to relay these to F. An example of this was C raising, at an early stage in their relationship, the issue of female genital mutilation as being something that was undertaken in African countries. A told me that this was not something undertaken in her country of origin and indeed she had not been aware of the practice until she had come across discussion about it during her social work studies.

237. A had felt that C was undertaking her own assessment of A and her family and she expressed that she felt that there were some cultural misconceptions and that C had been *'grilling'* her about things like her religion and her church and how Z would fit in to those aspects of A&B's family life. She had felt that there was an insensitivity about some of

these enquiries and she felt that C had been very emotionally involved with Z. C wanted the placement to be *'perfect'* for Z.

238. A had understood C to say that she wanted to undertake the last few nights of Z's bedtime routine in order to spend that final bit of time with Z before her move to A&B's the following week, meaning that A&B would not be involved in that process.

239. A told me about her arrest after her voluntary attendance at the police station. She had been made aware that something was wrong because F had contacted her on the morning of the 19th July to ask her if anything had happened to Z whilst she had been in her care that weekend. A had told the children that someone thought Z had been hurt because she had been out shopping with the children when the police had called to ask her to attend at the station. A had not spoken with B about this information as they had family round that weekend celebrating A's graduation.

240. On attendance at the police station, A left her children on a small bench inside the police station and an officer took her outside to be handcuffed and arrested. She did not see them again for several days and nights. She had never been away from them before. She described the impact of this process on the children as *'enormous'* and *'emotional harm beyond repair.'* She also described the impact on the family of the restrictions relating to B's presence in the household which are governed by the written agreement.

241. I found A to be a very impressive witness. No party, including the LA, contends that A has lied to me during any part of her evidence and that position accords with my own analysis of her evidence. She is clearly a loving and protective mother who cares very deeply about her children.

B's evidence

242. B was the last witness to give evidence. He confirmed his statements and the contents of his police interview as true.

243. B told me of his pride at being a father and that they way that his children present is not a mistake: he and A have raised the children in the way they thought appropriate. They were hoping to offer the same upbringing to Z. He denied that he had not participated fully in the transition process for Z but said that the combination of the dynamics of their household and his work commitments out of the local area had contributed to how things had worked out during that process.

244. Asked about his extra-marital affairs he was open with the Court about his regret, and he apologised directly to A about his actions. He told me that he didn't wish to try to justify his actions as that might come across as being disrespectful to A, but he had been unhappy at the time the affairs occurred and he thought he could find happiness in those relationships. He described being almost happy that these things had come to light because it has allowed him and his wife to talk about the issues and repair their relationship. He told me that he respected women and denied any wrongdoing in the exchanges that took place with the women who have previously made allegations against him.

245. B also addressed me about the impact of the current restrictions on the time that he spends with the children.

246. During the weekend of the 14th-17th July B had been engaged with the church conference via Facebook and he had an earpiece almost constantly in his ear all day Saturday and until the conference finished at 1pm on Sunday. He did attend family meals and was present when C came to the house. He confirmed he had not been alone with Z at all that

weekend other than the Sunday evening when he was present with X also being in the house. When the live conference had finished, he took time to rewatch parts of it because his position in the church meant that he wanted to have a full picture of the talks and events of this important weekend.

247. At the time of this weekend, B was under some pressure as the sole financial provider for the family; he also had an issue with being paid which was causing some concern at that time. When it was suggested to him that some of those pressures had led him to sexually assault Z, he denied this to be the case, calmy and clearly, as he did throughout his evidence.

248. B was asleep when A and Y left the house on the Sunday evening. At some point he had woken up and went to have a bath whilst catching up on his iPad with parts of the church conference that he had missed. He did not check to see who was downstairs, but he became aware that X was present when he came upstairs to check on Z. He had not heard Z make any noise and he told X not to wake Z up. He had heard X because the house has wooden floors which make noise as someone is coming up the stairs. He denied being untruthful about this.

249. B accepted he had not told the police about being alone with Z and X on the Sunday evening. He was asked if he had been 'alone' with Z and did point out that he was not alone because X was also present. He said that it simply hadn't come into his mind about the Sunday evening period because he was *'traumatised'* and having to think about everything that had happened that weekend.

250. Asked about his initial account to the social workers that he thought A's trip to get the cot bed was on the Monday when Z had not been present, he said that he had been confused and his *'life was*

crumbling before my eyes, I got the dates wrong'. He denied that he had lied to the social workers by omitting to mention that he knew his wife and Y were out of the house because X had told him when he came upstairs to check on Z.

251. B's account of having been in the bath whilst A and Y were out of the house was only put forward by him in a statement dated the 11th October 2023: it was not a feature of his police interview or his conversations with social workers. It was put to him that he had put this account forward only after seeing that X had told social workers about his having been in the bath in the assessment which is dated the 20th September 2023 and which his solicitors confirmed they had received on the 27th September 2023. B denied that he had changed his evidence to accord with what X had reported.

252. It was put to him that he had lied about the Sunday evening deliberately because he knew that he had assaulted Z during that time. He denied this, calmly but firmly.

253. It was put to B that he had heard Z cry out, that he went into her bedroom, picked her up and took her in to the bathroom where he injured her genitals. That was the reason why, it was suggested, he had lied about the Sunday evening and why he had been reluctant to disclose his presence in the bathroom. He responded, calmy but firmly, that he had not done that.

254. By the time A and Y came back home, B was back in the bedroom, and he thought that he continued to watch the church conference playbacks.

255. B had been aware that there was an issue with Z before his arrest: F had spoken to A and she had told him what F had said; that Z had been taken to see a doctor. B *'brushed this off'* as he said there had always

been feedback after Z had visited them that she was unwell. He denied that he had understood by this conversation that Z was having a *'medical'*, rather that it was a trip to the doctors.

256. B told me about his arrest and the process of being held by the police prior to his interview. He wanted to give an account to the police because *'I had nothing to hide.'* He received very little information about his children's whereabouts or what was happening to his wife. By the time he was interviewed by the police he had been in the cell for a number of hours and told me that he was very confused.

257. After the police interview B did not discuss with A what might have happened to cause Z injury that weekend. He told me that they were sure that it hadn't happened in their care and their priority at that time was to try to locate their own children who had been placed in police protection. As the allegation involved the rape of Z, he did not feel that he needed to question A about this issue.

258. B gave evidence confidently and with dignity. He maintained eye contact with the questioner at all times, even when the most serious allegations were being put to him. He was occasionally indignant and almost exasperated at his accuser. That demeanour would be more consistent with an innocent person being falsely accused than a guilty person being rightly accused. His demeanour had no artifice in my view.

259. The LA contends that B has lied to the Court in three material respects: the failure to mention that he had been in the house with Z and X to the police and social workers in the immediate aftermath of the weekend of the 14th -17th July, the failure to mention being in the bath on the evening of the 16th July 2023 and the evidence he gave about being unable to hear Z when he was in the bath, despite X being able to hear her from downstairs and B hearing X coming up the stairs to tend to her.

260. I direct myself to the guidance in the legal section of this judgment in relation to the treatment of alleged lies. I am not satisfied that the confusion over who was in the house when that weekend is an example of B telling a deliberate untruth. I have seen the footage of the manner of B's arrest in which he presents as totally disbelieving, saying many times *'is this a joke?'.* He is clearly deeply shocked at his arrest. He was questioned after many hours in custody when he did not know the whereabouts of his wife or his children. He was asked whether he had been alone in the house with Z over that weekend and he replied in the negative. This, of course, is true. Whilst it might have been expected that he would have gone on to mention the events of the Sunday evening when A and Y were out of the house, I am satisfied that the combination of the trauma of his arrest and what seemed to him to be an innocuous detail, led him not to mention it at that time.

261. B told the social workers on the 21st July that he had thought he might have confused the days. At this meeting he was aware that the social worker was also speaking to his wife A, a person who B would have known would be absolutely truthful in her accounts to professionals.

262. It is not my view that a deliberate lie is established when looking at B's initial accounts of when he was left alone with Z.

263. In relation to the fact that B had a bath on the Sunday evening, this was not mentioned by him until these proceedings commenced and he filed a response document. It is right that this follows a document being produced in which X's account of B being in the bath was set out. Again, I am not satisfied that it can be said with confidence this was a deliberate lie told to deflect attention from the bathroom where it is said B assaulted Z. B had no recollection of seeing what X had said to social

workers before he signed his statement. He had no unsupervised contact with X in the period between July and the filing of his statement in October 2023. There is no evidence of him being remotely reluctant for professionals to speak to X or that he demonstrated any anxiety about what X might have said. X himself, a child said to be extremely honest and open, had forgotten that B was in the bath when he gave his initial account to the social workers.

264. Sometimes witnesses fail to remember things that seem innocuous to them at the time and remember those things later with time and space away from those events. B's focus that weekend was on a combination of his church conference and his family. He was listening to his church conference whilst in the bath and that was his primary recollection. Owing to the delayed issue of the proceedings, B did not provide a detailed evidential statement of events until several months later.

265. I cannot and do not find that B lied deliberately to the police and social workers when he failed to mention the bath in his initial conversations with them in July 2023.

266. With regard to B's evidence about what he could hear from the bathroom, I note that he says he had his iPad in the bath with his earphones on. His attention was not particularly on Z who was asleep. He did not know that he was alone with Z until X appeared and told him that A and Y had gone out. X on the other hand is reported to be very caring towards Z and is likely to have been being vigilant, in the absence of his mother and sister, as to her wellbeing. I don't assign any particular suspicion to B's account of what he could and could not hear at this time and I certainly am not of the view that this evidence constitutes a deliberate lie, told by B to distance himself from any

interaction with Z whilst A was not in the property because he had sexually assaulted her.

267. The assessment of the credibility of key witnesses is a part of the Court's task at this hearing and I remind myself of that section of the legal part of this judgment. B had to endure the most serious allegations being put to him, properly, by the LA in furtherance of its case. In my view he dealt with that experience well. His occasional indignance is perhaps to be understood.

Z

268. At the time of these events, Z was a toddler. She had lived with C and D for just over a year, having been removed from the care of her mother in June 2022.

269. In the fostering assessment undertaken of A&B, Z is described as being *'strong-willed and determined'* and *'very smart'.* She was described as a child who liked to learn and enjoyed the company of other people. She was reported to be a good sleeper who slept all night and had one nap per day. She was said to find long car journeys *'very tiring'* and was noted to be unsettled at times in the evening after a long drive.

270. When Z first came in to care a delay in her speech and language was noted and a referral was made to audiology in this respect. No concerns were raised at that appointment. C and D reported that Z had made good progress with her speech in the time she had been in their care, and she was able to identify and name people in her family and foster placement correctly. In June 2023 the foster care records indicate that Z was able to use approximately 50 + words and that she could put 2-3 words together. Her pronunciation was sometimes difficult to understand for those unfamiliar with her language.

271. On arrival in to care, Z was noted to be wary of men and this appears to have continued to some extent during the relevant time. C describes this as Z having some *'wariness around men'* in a note dated the 9th July 2023 which she attributes to Z's early experiences which are *'likely not to have been positive'* in her view.

272. As part of the police investigation, an intermediary assessment was commissioned and was undertaken by Nicola Bailey-Wood. She is a registered intermediary and a qualified speech and language therapist. She sets out her extensive experience of working with children and young adults with a range of difficulties. Her report is dated the 18th March 2024. She assessed Z on the 28th February 2024, 7 months after the allegations she is said to have made about B.

273. Ms Bailey-Wood concluded that Z would struggle to participate in answering questions in any cross-examination situation and she: *'does not yet have the communication skills to talk about her experiences, as her skills are appropriate to the level expected of a 3-year-old'.* Her understanding of language is said to be appropriate for her young age and her vocabulary is likewise age-appropriate. Z was not able to request repetition of a question when needed and would not indicate if she had not understood a question. She had *'immature attention and listening skills, in practice this is limited to less than 2 minutes on a certain task'.* The assessment concludes that, even with the support of an intermediary, it would be very difficult for Z to give evidence as *'her extremely young age does not afford her the basic skills to do this'.*

274. As a result of this advice the police did not seek to conduct a video interview of Z.

275. It is the position of C in particular that this report does not reflect the level of ability of Z because it was undertaken by someone who was

a stranger to her in an unfamiliar environment. C reports that Z was more relaxed with her in the home environment and was able to articulate the things C has reported her to have said.

276. I accept that Z is likely to have been more comfortable in the care of C and D than she would have been in the police station being asked questions by stranger and that they are likely to have had a better understanding of things Z was saying than someone who Z did not know.

277. The available evidence from Z about the alleged events of the weekend of the 14th July-17th July is hearsay as reported by a combination of C, D and her social worker F. There is a considerable amount of documentary evidence which supports the reporting of what Z said to C and D in particular. I have already dealt with the evidence provided by F.

278. It is the LA's final position that the allegations made by Z beyond the 17th and 18th July are reduced in evidential reliability because of her having undergone the SARC medical examination and some of the things said to her by C and D which they said in her best interests, but which might serve to undermine the reliability of what Z continued to say to them. I consider that to be a very proper concession by the LA and an example of the fair approach to the evidence that they have put forward in their final submissions to the Court.

279. I therefore focus on the things said by Z on which the LA does seek to rely which are as follows:

-Z's indication in words, sounds and actions that she hurt between her legs on 3 occasions to C on the 17th July 2023 at 14.35, 15.00 and 18.35;

-Z report at 19.15 that *'uncle daddy hurt my bottom'*, this was repeated, and she also said *'he hurt my bottom';*

-on the 18th July 2023 Z told D that *'uncle daddy hurt my *word unrecognisable* bottom'*

280. The reports of what Z said on the 17th July 2023 are recorded in C's notes in some detail, albeit it has not been possible to ascertain how long had passed between when Z said these things and when those matters were recorded. The report of what Z said to D was reported to E very soon after it was said because C was on the phone to him at that time. These interactions with Z are momentary.

281. I accept that both C and D were motivated to make accurate recordings and reports of what Z said to them and they are people who have some experience of safeguarding issues. I do not criticise either of them and I am satisfied that they told the truth about their recollection of what Z said to them.

282. However, I warn myself against an over-reliance on notes made of very short conversations with a toddler in the middle of a nappy changes where she was being occasionally uncooperative. It would be almost impossible for C to remember with pinpoint accuracy exactly what was said to complete a totally comprehensive note of things said by and to Z some time afterwards. That is not intended as a criticism of C at all. She was not conducting an interview of Z, let alone an ABE process, and nor should she have been. Her priority was to care for Z at that time, and rightly so.

283. At the 14.35 nappy change, Z was kicking out and laughing as she did so. After that she complained of being sore and put her hands over her genital area. She said owww. There was no blood observed in the nappy. There does not appear to be any other outward sign of pain: C did not report Z to have been crying or otherwise upset at this point. Z also complained of pain when being held by C when she was carrying

her away from the SARC medical with her nappy on. I remind myself of Dr Teebay's evidence about complaints of pain from young children and of the evidence which suggests that Z had runny stools and foul-smelling nappies at this time. It is difficult to attribute, with clarity, general complaints of pain to any specific issue.

284. Indeed, those initial reports of Z being in pain were not linked by her to any allegation involving *'uncle daddy'* until the nappy change at 19.15. C records that Z said, spontaneously, *'uncle daddy hurt my bottom'* and C then asked her if he was changing her nappy. Z responded with *'uncle daddy had [name's] clippers, I said no no no. He hurt my bottom.'* C reported that she replied: *'oh dear I will be careful'* and Z continued *'uncle daddy not careful, hurt me, I say waa waa waa. Auntie mummy said no no no'*

285. This is one of the two core allegations on which the LA place significant reliance. It contends that this was a spontaneous allegation made to a trusted carer in C. However, there are two parts of this allegation which are not relied upon by the LA: that B used [redacted name's] clippers to hurt Z and that A was somehow aware of what was happening and said *'no no no'*. The former would have been totally impossible because [redacted] is the adult child of the foster carers and her clippers, whatever that word meant, were not anywhere near to Z at the relevant time. Neither has it been suggested to any witness that there was an alternative interpretation of what Z was trying to say in using this phrase or what she might have been trying to impart.

286. The second part of Z's allegation which is not relied upon by the LA is Z's clear indication that A said: *'no no no'*. No party has ever seriously believed that A could have witnessed Z being abused by B and simply said *'no'* three times. Or that she would then lie about it to the

police, the professionals and the Court and maintain her relationship with a man who had done something so abhorrent to a child in their combined care.

287. Yet both of these matters were a part of what Z reported in her first allegations to C on the 17th July 2023. In my view the presence of those statements serves as an important reminder of what the Court is dealing with. These are the reported words of a toddler undergoing a significant period of emotional transition and a degree of disruption in her life. Much has been made of Z's capabilities with language and her ability to identify people using clear words. Yet she said two very significant things in her first set of allegations which are demonstrably untrue. I exercise real caution about a heavy reliance on Z's remarks to C on the 17th July 2023, although of course they fall to be considered in the wider canvas of evidence and are certainly not dismissed entirely.

288. Repetition is also relied upon by the LA as being probative: Z repeated her allegation to D somewhat innocuously the day after on the 18th July 2023 but there was a word/s that was unclear in what Z said to him. I don't doubt that Z said to D *'uncle daddy touched my [unclear] bottom'* and this was reported to E at the time and was D's clear evidence to the court. Z was not distressed when she said this and gave no context to her remarks but carried on playing. It could well be that this repetition is as a result of Z remembering something that had happened to her that weekend. Equally, she could simply be recalling and repeating what she had said the day before.

289. Whether Z was trying to describe something that had actually happened to her or something she had imagined, dreamt or otherwise been exposed to is highly debatable. She complained of pain to her bottom when she was being carried by C on the day of the SARC

medical. She had previously acted-out and had a bad dream at an earlier stage of the transition process as C told me and as was apparent from her detailed notes about that event.

290. It is very difficult on the available evidence about what Z said to determine whether she was describing an event that had happened to her and, even if she was, what that event consisted of. Z's accounts have to be weighed alongside all the other evidence in the case with the caveats set out above.

F: Discussion

291. I stand back from the evidence I have heard and read in this case to consider the whole picture. The wide canvas of evidence that I have considered is set out in the body of this judgment. The broader evidence tells me that there is nothing in B's background, forensic history, relationship history or his parenting that indicates any tendency towards abusive behaviour to a child or any other vulnerable person. I attach no weight to the unproven allegations in relation to his conduct to adult women in 2020 and 2021 but, even if those matters were true, they are not allegations made by children.

292. B has been married to A for 12 years and has had children for 10 of those years without any concern being expressed about his relationships with them. In fact, the contrary is true; B is a very good father. He has also acted in the role of a professional carer for some time now with no issue being raised within that employment. There is nothing in his psychological or emotional history or presentation that indicates any tendency towards behaviour of this nature.

293. That being said, I acknowledge that the abuse of children, particularly sexual abuse, is an insidious and secretive, often

opportunistic, act. Every person who has abused a child has done so on a first occasion.

294. The narrower forensic canvas has to be analysed rigorously. It is the LA's case that the only opportunity B had to abuse Z was on the evening of the 16th July when A and Y were not in the house for a maximum of 1 ½ hours. Ms Anning put directly to B that he heard Z cry out, he got out of the bath, went to her room and lifted her out of her travel cot, took her in to the bathroom, undressed her (including sleeping bag, pyjamas and nappy), abused her to cause injury to her genitals and then redressed her and placed her back in her travel cot in a position which A said was exactly the same position in which she had left her. In itself that sequence of events seems very unlikely.

295. That has to be the LA's case because it has accepted that A is a witness of truth. The LA has also accepted, through the evidence of Mr McAteer, that X is a truthful child, and it is noteworthy that he does not indicate that he heard anything out of the ordinary that evening, save for Z *'mumbling'* and him going upstairs to see her to make sure she was alright.

296. If B decided to abuse Z that evening, he did so without any indication whatsoever that anything was wrong, either before or after A and Y left or whilst he was in the process of that act. A and F could have returned home at any time.

297. If B did abuse Z that evening, he would have done so knowing that X, a much-loved child who in turn was very attached to Z, was metres away downstairs and could easily have overheard something happening between him and Z or, worse still, could have come across B during the act. From everything that I have learnt about B as a father to his own

children, I find the notion that B would expose X to witnessing or overhearing that horrific act to be incredibly unlikely.

298. I accept that it is possible that Z made no sound at all whilst she was being assaulted and Dr Teebay was reluctant to be prescriptive about the precise impact of an assault on a child of this nature. However, it is not just the moment of assault that falls to be considered but all that must have led to it: Z had woken or been woken from sleep (both of which would have been unusual), had been taken into the bathroom and undressed (at least partially) and then abused in her genital area. She had then been redressed and put back into her cot bed. The notion that a child of Z's age who had been subjected to all of those acts would have made no sound at all that would have been audible to X who was very alert to Z's wellbeing is extremely unlikely in my judgement. When X checked on Z, she had mumbled but was settled by the time he saw her. The LA's contention that this was Z *'comforting herself after the assault'* is a rather unattractive attempt to make the reliable X's evidence fit the LA's theory of what happened that evening.

299. Z appeared to be completely fine the morning after this incident and said nothing to A with whom she had a close relationship. Her nappy was changed, and no blood was seen by A. A could have missed it but in my view that is unlikely. No nappy has been recovered by the police with blood on it. Z had a short shower in the bath before getting ready to leave with C that morning. There is no evidence of B being anxious about Z or concerned that she might tell A or the children about something that had happened to her the evening before. B knew that Z was about to spend her last days in the care of C and D before being placed with A&B permanently very shortly after this weekend.

300. The wider canvas and the narrower, forensic canvas does not support the findings sought by the LA.

301. It is the LA's position that the totality of the evidence allows me to make the findings that it seeks. It has conceded that, if I am not satisfied that the combination of the medical evidence and Z's accounts establishes that Z had an injury to her hymen on the 19th July 2023 then the LA's case fails at that stage. It accepts that Z's accounts on their own do not establish the findings. That concession is appropriate and is another example of the LA's fair approach to the case in the closing submissions in particular.

302. I have already analysed the medical evidence and the accounts of Z. It is my view that the combination of that evidence does not establish, on a balance of probabilities, that Z had an injury to her hymen as alleged by the LA. There are weaknesses inherent in each of those pieces of evidence which I have set out above. I acknowledge the point about the co-incidence of a child complaining of apparent pain in the genital area and a qualified medical professional observing what she believed to be clear signs that an assault had taken place.

303. However, I have come to the clear view that it would be unsafe to combine those two pieces of evidence, each of which has forensic difficulties, in order to conclude that Z's hymen was injured. I cannot be satisfied that Z had any injuries that are based on Dr R's examination alone and Z's accounts cannot and do not add sufficient weight to Dr R's findings for me to find them established.

304. I am not therefore satisfied that the LA has proved that Z had a healing laceration to her hymen at the 3 o'clock position on the 19th July 2023. The other findings of Dr R of redness and swelling of the hymenal edge between 3 o'clock and 6 o'clock and the abrasion of the inner

hymenal edge at 5 o'clock are not established as injuries. The interpretation given to those observations by Dr Teebay is preferred by the Court.

G: Conclusions

305. The LA has not established that Z was injured as set out in paragraph 1 of its threshold findings. There is therefore no need for the Court to consider the issue of perpetration.

306. Accordingly, there is no factual basis on which the Court can find that X and/or Y were likely to suffer significant harm at the time of the protective intervention of the LA into their lives 11 months ago.

307. The statutory threshold criteria are not established.

308. The proceedings are therefore at an end.

309. That is my judgment.

HHJ Murden

14th June 2024