



Neutral Citation Number: [2023] EWHC 3513 (Fam)

Case No: NG22C50215

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 14/08/2023

**Before :**

**MRS JUSTICE LIEVEN**

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**Between :**

**A LOCAL AUTHORITY**

**and**

**AZ (THE MOTHER)**

**and**

**BX (THE FATHER)**

**and**

**CX**

**and**

**DZ**

**and**

**FX**

**Applicant**

**First Respondent**

**Second Respondent**

**Third Respondent**

**Fourth Respondent**

**Fifth Respondent**

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**Mr Sam Momtaz KC and Ms Sara Davies** (instructed by **A Local Authority**) for the **Applicant**  
**Ms Liz McGrath KC and Ms Nicola Beese** (instructed by **Hawley and Rodgers Solicitors**)  
for the **First Respondent**  
**Ms Nick Goodwin KC and Mr Stephen Williams** (instructed by **Jackson Quinn Solicitors**)  
for the **Second Respondent**  
**Ms Anne Buttler** (instructed by **Tallents Solicitors**) for the **Third Respondent**  
**Ms Vickie Hodges** (instructed by **Hopkins Solicitors**) for the **Fourth Respondent**  
**Mr Joshua Hazelwood** (instructed by **Bhatia Best Solicitors**) for the **Fifth Respondent**

Hearing dates: **31 July – 4 August 2023**  
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## **Approved Judgment**

This judgment was handed down remotely at 10.30am on 14 August 2023 by circulation to the parties or their representatives by e-mail.

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MRS JUSTICE LIEVEN

This judgment was delivered in private. The judge has given leave 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 the judgment the anonymity 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.

**Mrs Justice Lieven DBE :**

1. The Court is concerned with the welfare of DZ aged 16 years, FX aged 15 years, and CX aged 2 years. The mother of the children is AZ (“Mother”), and the father of the children is BX (“Father”). The Father shares parental responsibility for all of the children.
2. The principal issue is that DZ has made very serious allegations against the Father, including that he had sexually abused her on numerous occasions. However she subsequently withdrew those allegations. The Local Authority (“LA”) asserts that the allegations were true, and they form the basis of the Threshold statement.
3. I held a joint fact finding and welfare hearing on 31 July – 4 August 2023. In practice it has proved impossible to finalise welfare decisions for reasons that will become obvious below.

Factual Background

4. The family originates from India. The parents married in February 2003 when the Mother was aged 18 years old. The parents also have an older child, GX, who is currently aged 18 years and is living in the family home with his mother and brothers.
5. On 31 October 2022, DZ attended at school and asked to speak with her best friend, TL, in the toilets. DZ told TL that she had been raped by her father since the age of 10 and that she had told her mother about the rape on more than one occasion. DZ told TL that she wanted to report her father to the police and TL allowed DZ to use her phone to make a call to 999.
6. DZ repeated the allegations to the 999 operator who dispatched a police officer to the school. Whilst waiting for the police to arrive, a member of the safeguarding team at the school, entered the toilets to check on the girls. DZ told the safeguarding team member that she had called the police and they were en route. The safeguarding team member asked the girls to wait in a private room. DZ told the safeguarding team member that she couldn’t tell her the reason why she contacted the police but she agreed to write it down. DZ then wrote a letter alleging that she had been physically and sexually abused by her father and that her mother was aware of the abuse. DZ alleged that the last time she had been raped by her father was the previous day on 30 October 2022.
7. PC D and PC K arrived at the school. PC D spoke privately to DZ together with the safeguarding team member, and PC K spoke privately to TL. DZ repeated the allegations of sexual abuse and rape against her father and the allegations that she had previously told her mother about the sexual abuse when she was aged 12/13 years.
8. The police made a referral to the LA on 31 October 2022 and on the same date the Mother was spoken to by the social worker and police. During this conversation the Mother admitted that GX and FX are physically chastised by their father but she denied that he was physically abusive to her and DZ. The Mother denied any knowledge of the sexual abuse allegations made by DZ against her father. GX also denied any knowledge of the sexual abuse allegations.

9. On 31 October 2022 the Father was arrested and he was bailed on 1 November 2022 with bail conditions remaining in force until the end of March 2023. The Father was interviewed by the police on 1 November 2022. He had the benefit of an interpreter albeit he didn't use him for the majority of the interview which was given in English. I will make reference below to various things that he said to the police.
10. On 1 November 2022 DZ attended a Sexual Assault Referral Centre and was seen by Dr Charlotte Porter, Consultant Community Gynaecologist who confirmed "*on examination there was a full thickness transection of the hymenal ring at 7 o'clock consistent with pre-menarchal penetration and a history of bleeding which was given. There was also some over healing between 1 and 2 o'clock, these findings were consistent with the history given.*"
11. DZ said she was frightened that her mother could not protect her and she was worried that she would be pressurised by her mother and her brothers to retract her allegations. DZ asked to become a Looked After Child on 1 November 2022. DZ was taken to a foster placement on 2 November 2022 and she was accommodated in accordance with s20 Children Act 1989. FX and CX remained at home in the Mother's care, as they have since. The Father has lived elsewhere since the allegations were made.
12. DZ was ABE interviewed by the police on 3 November 2022 and she repeated her allegations of sexual abuse, including rape, and physical abuse against her father and that she had told her mother that she was being raped by her father on two separate occasions. The first was when DZ was about aged 12. She said that her mother challenged her father and he denied the allegations made against him suggesting that they were false as DZ was upset after having been scolded the previous week. DZ alleged that her father warned the family not to talk about the allegations or they would face deportation. The second occasion DZ said that she had told her mother was on 31 October 2022. DZ said that her older brother, GX, overheard her telling her mother about the sexual abuse perpetrated by her father and he advised DZ to call the police and report it after she was safe at school. GX denies this took place.
13. On 7 November there is a record by Ms Furniss, the social worker, of a conversation with DZ where she refers to her mother having been abused for years by the Father and her mother having told her about conversations with the Grandfather in India who had spoken to the Father about the abuse, but he was too poor to do anything. I note this conversation because of its specificity in terms of events DZ was describing.
14. On 21 November DZ told Ms Furniss that she did not want to continue with any complaint. She did not make clear at this stage whether she was saying the allegations were not true.
15. An Initial Child Protection Conference ("ICPC") took place on 16 November 2022 which was attended by the Mother. The Mother was assisted at the ICPC and generally around that time by PIM, who gave evidence to the Court. PIM indicated that the Mother would not work openly and honestly with the LA because she was afraid of being deported. The Mother also disclosed at the ICPC that she had been in contact with the Father, despite having previously provided assurances that she had not seen the Father. The Mother said it was true that DZ tried to tell her about the abuse earlier and that she had challenged her husband at that time but she did not tell anyone else about it as she was not aware of who to go to. The Mother now says that she did not understand

much of what was said at this meeting because of a poor interpreter who was interpreting in Urdu and not Punjabi.

16. An urgent hearing took place on 18 November 2022 before HHJ Clark, at which the LA sought the interim removal of CX from the care of his mother into foster care due to concerns about her dishonesty and her failure to protect. FX was adamant that he opposed interim separation and given his age and the strength of his expressed wishes and feelings, the LA conceded that he should remain in his mother's care. The court made Interim Care Orders ("ICO") in respect of all 3 children alongside an exclusion order against the Father, the court sanctioned the continued interim separation of DZ, with CX and FX remaining in the care of the Mother.
17. The Mother filed her First Response Document on 22 November 2022 in which she stated:
  - a. *'The first respondent accepts that she saw the bruises to [DZ] and that she was present during the assault. The first respondent could not stop the second respondent assaulting [DZ]. The first respondent will state that she was not abused by the second respondent.'*
  - b. *'The first respondent does accept that [DZ] did make her aware that she was being raped by the second respondent and that she challenged the second respondent about the alleged rape which he denied.'*
  - c. *'The first respondent accepts that she was spoken to by the social worker and police officer on the 31 October 2022 and she admitted that [GX] and [FX] are physically chastised but she denied that the second respondent is physical to her and [DZ]. The first responder was too frightened of the repercussions from the second respondent if she admitted that the second respondent was physical to her and [DZ].''*
18. The Mother filed her first statement on 6 December 2022, countersigned by a qualified interpreter, in which she states:
  - a. *'[DZ] did not tell me about being abused by her father but if she has said this, I accept it and believe her.'*
  - b. *'I do not accept that the second respondent physically abused the children but there were occasions...he would hit them with his hand on their bottom.'*
  - c. *'The second respondent was a good husband and father, he looked after us. We were a happy family and all of a sudden [DZ] made a complaint against her father. It came as a surprise to me.'*
  - d. *'[DZ] brought the friend's iPhone home again. The second respondent was angry only and not physical with [DZ]... There was*

*no physical abuse by the second respondent in relation to [DZ]. He spoke to tell her off but he did not touch her in any way.'*

- e. *'I did not see any of the bruises referred to. I did not see the second respondent beating [DZ].'*
  - f. *'I did tell social services that I did not know anything about the abuse from [DZ].'*
  - g. *'I was not aware of what was happening to [DZ] and that she was being abused by the second respondent.'*
19. On 12 December 2022, DZ told the social worker that she lied about her father raping her as she was angry because her father was so strict and would not allow her to have a mobile phone, but she said she did not lie about being hit by her father. DZ also told the social worker that she had been sexually active with a boy at her home when her mother was at work and her father and brothers were away, although she did not know his name. DZ told the social worker she was going to write her a letter.
20. On 6 January 2023 DZ told the social worker that she lied about the allegations against her father and she had not been sexually abused or beaten by her father but he had slapped her around the face before. DZ also said that she had not had sexual intercourse with a boy but said that a boy at school told her to make up allegations of rape in order to go into foster care and the boy advised her to use a sex toy on herself so people would believe she had been raped. The boy provided DZ with a sex toy which she used a few times before disposing of it into the bin.
21. DZ filed a statement on 3 February 2023 in which she says she lied about the allegations made against her father because she was upset with him for waking her up at 8am on Sunday 30 October 2022 and because he was too strict with her, and that she used a sex toy given to her by a boy at school before throwing it away in someone's bin.
22. The Mother filed her Second Response Document on 9 February 2023 in which she states:
- a. *(In relation to the alleged beating with a belt) 'The first respondent was not aware of any argument between [DZ] and the second respondent about the mobile telephone. The first respondent was not aware of physical or emotional harm caused by the second respondent to [DZ]. The first respondent denies having been present when this alleged incident took place and was not aware at the time that the incident was taking place.'*
  - b. *'The first respondent denies that she was aware of the sexual abuse against [DZ] and denies having been informed about it on 2 occasions.'*
  - c. *'The first respondent denies having questioned the Father about the sexual abuse as she was not aware of the sexual abuse.'*

23. DZ informed the police on 10 February 2023 that she no longer wanted to pursue a police investigation and she signed the police notebook to confirm her decision. The police investigation concluded, and the Father's bail conditions lapsed. The exclusion order that was made against the Father at the first hearing remained in force alongside the ICO. At this stage DZ was continuing to say she did not wish to live at home.
24. DZ had a direct supervised contact with her father on 2 March 2023 which was reported to be positive. However, DZ has declined to have any further contact with her father.
25. On 22 March 2023 DZ's foster carer found a concealed mobile phone in DZ's bedroom. DZ told her foster carer that the phone had been given to her secretly by her mother during contact and it was used as a means of covert communication between DZ and her parents. DZ asked her foster carer to keep the phone as she did not want her parents to contact her anymore as she was feeling pressure to return home and to have contact with her father. DZ spoke to her foster carer about the alleged sexual, physical and mental abuse she was subjected to and told her foster carer that 'her dad fucked her every night' and he beat her up, he beat her mum and her older brother. DZ told her foster carer that she would kill herself if she had to go back home.
26. On 23 March 2023 DZ spoke with the school safeguarding worker. DZ told her that she did not want to go home but she felt pressured to do so by her mother and if she went home life would not be worth living.
27. On 14 April there was a contact session with the Mother. DZ subsequently told the school safeguarding worker that her mother had said that if she did not come home she would be disowned and would not see her baby brother again. The Mother says this was misunderstood and she was simply saying DZ would miss seeing her brother grow up.
28. The Mother filed her second statement on 26 April 2023 in which she states that when her First Response Document was prepared on 11 November 2022 she had the assistance of a friend, PIM, who speaks her language and assisted her at her request. The Mother alleged that PIM told her that she would get her daughter back in her care if she agreed with what her daughter was saying to the social worker and that she should say she saw the bruises on DZ then the court would say she was favouring her daughter and she would get her back. The Mother also alleged that she was pressured by the first social worker, Sally Furniss, to say she agreed with what her daughter was saying.
29. On 21 April 2023 DZ's foster carer told the social worker that DZ had been very upset all night the previous night due to her brother approaching her at school saying mum is crying every night, why don't you come home. DZ's brother asked her what she is going to do when she is 18 years old and she has nowhere to go. DZ told her foster carer that her mother had shown her the family's bank account during contact which has worried DZ as her mother has said she will soon not have enough money to feed herself and her brothers. DZ told her foster carer that she does not want to go home because of the harm that she suffered and she did not lie about the allegations she made about her father to the police but retracted these through worry for her mother and siblings and because she didn't want her father to go to prison.
30. On 29 June 2023 DZ filed her second statement with the court confirming that she did tell her foster carer that the allegations she made were true, but in fact the allegations

that her father sexually abused her were false and these allegations were made because she wanted more freedom. DZ alleged that her friend, TL, told her to make false allegations of sexual abuse against her father so that they could live together (TL is in long term foster care). DZ reiterated her allegation that she met a boy at school who provided her with a sex toy which she used on herself in an attempt to substantiate her false allegations of rape made against her father. DZ confirmed that she would like to return home to her family including both of her parents and her brothers.

31. On 29 June 2023 DZ met with her social worker and said that she missed her family and hoped that her father had changed and he had learnt his lesson and that things would be different. DZ said she wanted the judge to decide about whether she should return home.
32. On 3 July 2023 DZ spoke to her social worker and said she does not want to return home but she felt unable to say this to her mother and father and she felt pressured to return home due to how upset her mother would be and the impact it would have on her siblings. DZ said that she wishes for the court to decide on her behalf.
33. On the Thursday before the hearing commenced DZ decided to go home from the foster carer. When the foster carer cleaned her room she found a letter written in Punjabi. At the start of the hearing the letter was translated. I set out its entirety:

*“My dear daughter [DZ], darling everyone is missing you at home, come home, the whole household is finished, we don’t know where Papa is, Papa tried to commit suicide, but we saved him for your sake. [DZ] darling take your complaint back, save your Papa, Papa will be jailed for 19 years, Papa will die, don’t take this sin on yourself, God will never forgive you, Papa is saying tell my [DZ] to forgive me, made a mistake, darling forgive me once, I will not say anything to you ever, I will go to jail for you ten times. I will lose all my respect. What will Mx Uncle, Mz, Mb Uncle and other people say about it? Can you forgive Papa darling? Do a favour to your Papa – can you forgive him? For your father’s sake take your complaint back, I was annoyed with Papa and Papa annoyed me, not to use the phone, not to watch TV and just do your studies, and that’s it. You were making me angry, I got angry then I had to lie. The social worker won’t say anything to you. Say it with emotion/anger I want to take the complaint back and also say I love my dad and I want my dad back. Say that we will be separated otherwise. We love you dear.”*

#### The law

34. The law to be applied in fact finding hearings is well known and does not require detailed recitation.
35. There is no dispute between the parties on the legal principles and the case law that should be applied in this case. The following represents an agreed distillation of those principles and the considerable volume of applicable case law.
36. The burden of proof is on the LA. There is no obligation on the parents to provide explanations for any complainant’s complaint although the court is entitled to weigh the absence of such explanation alongside all the other evidence in the case. The civil



standard of proof applies, namely the balance of probabilities. If the LA proves that it is more probable than not that a disputed event occurred, then it becomes an established fact for the purposes of these proceedings. If the event in question is not proved, it is treated as having not occurred. That is the binary system that operates in the Family Court.

37. The court must reach decisions in relation to disputed allegations on evidence, not speculation or rumour. It may, however, draw logical inferences from evidence that it has accepted.
38. The court must reach a conclusion in respect of each separate allegation but must also take care not to compartmentalise its analysis – the entire canvas of evidence must be surveyed and each piece of evidence must be considered in the context of the other evidence.
39. The role of the judge and the expert are very different. The responsibility for making decisions always rests with the judge and not the expert - the expert advises and the court decides. It is important that the expert evidence in this case is considered as part of the overall evidence in the case and not analysed in isolation.
40. The parents' evidence is very important. The court will assess their credibility and their accounts carefully. The court will factor in the difficulties and stresses inherent in giving oral evidence and the distressing nature of the allegations. The court will also be mindful of the fallibility of memory. The court will acknowledge the dangers of inferring that because a parent has not explained the reason behind a complainant's complaint, the real explanation must be a sinister one.
41. Where it is alleged that a person has lied the court must approach this allegation with considerable care, as highlighted in *R v Lucas* [1981] QB 720. First, having identified the alleged lie in issue, it must ask itself whether the local authority has proved, on the simple balance of probabilities, that the alleged lie has been told. The court must accordingly seek to distinguish a lie from, for example, "story creep", mistake, confusion, memory failure or distortion arising from impairment.
42. Once the court has undertaken that analysis it will move to the second stage, by which it will consider why the proven lie has been told. This is important because people may lie for many different reasons - embarrassment, a sense of shame for having caused an injury accidentally, a desire to hide some other wrong-doing or a mistaken belief that lying might improve their position.
43. If a lie is proven, then the relevance of the lie to the court's enquiry must always be carefully considered. Some lies, irrespective of how unpalatable they may be, will have absolutely nothing to do with the ultimate facts in issue of the case, save perhaps assisting the court with an analysis of the person's general credibility.
44. Finally, it is also imperative that the court reminds itself that just because a person lies about one issue, it does not automatically follow that they have lied about everything.
45. In terms of the relevant considerations in cases concerning allegations of sexual abuse, both Mr Momtaz KC and Mr Goodwin KC referred me to the decision of MacDonald J in *Re P (Sexual Abuse- Findings of Fact Hearing)* [2019] EWFC 27, and various

points of guidance as to the approach that might be adopted. Mr Momtaz KC relies on in particular:

- a. Cases of alleged child sexual abuse create particularly acute forensic difficulties for the family courts charged with determining whether sexual abuse has occurred and, if so, who has perpetrated that abuse . . . no case of alleged sexual abuse where there is an absence of any probative medical or other direct physical evidence to support a finding can be regarded as straightforward. [3]
- b. Great care should be taken before deciding that an obviously unsatisfactory explanation provided and pursued by a respondent, or the failure to provide and pursue an explanation for a given allegation, is evidence of culpability. [246]
- c. It is important, forensically, in a case of alleged sexual abuse, to examine the first point in time at which a child gives an account or accounts of alleged sexual abuse, the precise circumstances in which the account or accounts arose and how those were treated subsequently by those to whom they were made. [570]
- d. The court can take judicial notice of the following. [577]
- e. Children, and especially young children, are suggestible.
- f. Memory is prone to error and easily influenced by the environment in which recall is invited.
- g. 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.
- h. 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.
- i. The wider circumstances of the child's life may influence, explain or colour what the child is saying.
- j. 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.
- k. Accounts given by children are susceptible to influence by leading or otherwise suggestive questions, repetition, pressure, threats, negative stereotyping and encouragement, reward or praise.
- l. Accounts given by children are susceptible to influence as the result of bias or preconceived ideas on the part of the interlocutor.

- m. Accounts given by children are susceptible to contamination by the statements of others, which contamination may influence a child's responses.
- n. 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.
- o. Delay between an event recounted and the allegation made with respect to that event may influence the accuracy of the account given.
- p. 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.
- q. Those speaking to children who have made allegations of sexual abuse must keep an open mind with respect to the allegations made and must guard against the development of bias or preconceived ideas. A professional who loses their objectivity ceases, by definition, to act professionally. [1245 vii]
- r. Overall, the proper methodology is one that combines listening to the child and taking them seriously with an open-minded approach that takes account of both sides of the story, is open to new evidence that disconfirms original ideas, that reasons dispassionately, that demands that claims be backed by evidence and that deduces and infers conclusions only from available facts. [1245 x]
- s. In cases of alleged sexual abuse, there is a significant forensic tension between the need to provide understanding, support and care for children who may have been sexually abused, where the presence of a supportive non-abusing adult who listens without judgment and takes seriously what the child is saying is essential to that child's current and future wellbeing, and the requirements of the legal process for establishing the truth or otherwise of those allegations in a court of law. [7]

46. In the same case Mr Goodwin KC relies upon:

- a. Notwithstanding the emotive subject matter, the court's task is to take an entirely dispassionate approach to the fact-finding exercise. [240]
- b. The court must always resist the siren call of what has been termed 'the child protection imperative'. As noted by Hughes LJ in *Re B (Allegation of Sexual Abuse: Child's Evidence)* [2006] 2 FLR 1071, "...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" [240]. In the present case we submit that the attribution of excessive weight to unsatisfactory evidence risks elevating a suspicion into proof. The residue of suspicion will remain in very many cases and family judges may have nagging doubts about leaving the child unprotected. This, however, goes with the territory and will be, appropriately, the first casualty of forensic rigour.

- c. The fact that an allegation has been made does not create a rebuttable presumption that the allegations are likely to be true [242]. We add that the corollary of that principle is that there is no burden on the parents here to prove that [DZ]'s retraction is true.
- d. The court's decision to make no findings, or only some findings, is not a failed or unsuccessful outcome. As Baroness Hale noted in Re S-B [2010] 1 FLR 1161, "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". [240].
- e. There is an overarching importance, when determining whether the case is proved to the requisite standard, of the court standing back to consider the whole picture and asking itself the ultimate question of whether that which is alleged is more likely than not to be true. [270]
- f. The court must steer safely clear of capitulating to suspicion and the beguiling adage that there is 'no smoke without fire'. [272]
- g. The existence of confirmation bias is what underpins the oft repeated guidance for those investigating allegations of child sexual abuse to keep an open mind and is, fundamentally, what makes proceeding from a starting point of "the child must be believed" so problematic, indeed dangerous, forensically. [585]

### Retractions

47. Black LJ (as she then was) in Re W (Fact Finding Hearing: Hearsay Evidence) [2013] EWCA Civ 1374, at [28] of her judgment, stated:

*"The retraction of a complaint normally requires careful and specific consideration...the fact that a complaint is subsequently retracted does not prevent a judge from accepting that it is in fact true but it gives rise to questions which must be addressed sufficiently, fully and directly in the judge's reasons so that one can be confident that the fact of the retraction has been given proper weight in the judge's conclusions about the subject matter of the retracted allegation."*

48. In a later case, Black LJ (as she then was) in Re S (Children) [2016] EWCA Civ 83, at [56] of her judgment, stated:

*“ . . . The judge was well aware of K’s retractions of her allegations and properly considered the implications of these and what may have been behind them. She considered the explanations offered for K making up false allegations but was entitled to reject them for the reasons she gave.”*

Medical and expert evidence

49. On 1 November DZ was examined by Dr Porter. Dr Porter concluded that there was a full thickness transection of the hymenal ring at 7 o’clock consistent with pre-menarchal penetration and a history of bleeding which was given. There was also some over healing between 1 and 2 o’clock, these findings were consistent with the history given.
50. Dr Gray was instructed as an expert and reviewed Dr Porter’s evidence and in essence agreed with her views, saying; *“In this case, the forensic examination (1.11.22 at 1230) took place approximately two days after the last reported vaginal rape (30.10.22 at ~0900). Over this time, minor injuries (such as superficial abrasions or lacerations) could have healed without any sign. Furthermore, consensual sexual intercourse and vaginal rape after puberty do not necessarily cause genital injury. Therefore, in this case, acute signs of injury would not necessarily have been expected.”*
51. In answer to specific questions Dr Gray said this:
- “The described finding of a transection in the posterior hymen most likely represents a healed laceration (tear) caused by vaginal (medical definition) penetration. The first incident of vaginal penetration is most likely to tear the hymen, and subsequent incidents are less likely to cause tearing. It is not possible to determine whether there were single or multiple episodes of vaginal penetration. Furthermore, it is not possible to determine whether vaginal penetration was with a penis, finger or object.”*
52. In her original report and in the subsequent questions Dr Gray went somewhat outside her medical expertise, opining on the history of the allegations, the retractions and the story about the sex toy. I have placed no weight on these parts of Dr Gray’s evidence given that I am not confident that they fall within her expertise.
53. Mr Momtaz KC submits that the fact that there was early medical evidence from Dr Porter, which was consistent with sexual penetration and was shared with her parents, may explain some of the nature of DZ’s subsequent retractions and the explanations she gave, in particular the very unlikely story of the sex toy.

The factual evidence

54. Both DZ and TL gave evidence from counsel’s chambers with myself and Ms Buttler in the room, and Ms Buttler asking agreed questions. TL also had an intermediary. Although there were some technical problems, this way of giving evidence was satisfactory.
55. TL was a close friend of DZ. She said that she and DZ had become friends some time after she started at the school, and that DZ trusted her. TL has been in foster care for

some 5 years, on the grounds that she and her mother had suffered abuse by her father, but she did not elaborate as to the nature of the abuse. DZ had told her that her father was quite strict.

56. TL's evidence was that she and DZ had gone to the school toilets on 31 October 2022 and DZ had told her that her father had been abusing her since she was 10 years old. They did not discuss the details and she had not said anything to DZ about how her father might have avoided making her pregnant. DZ had said she told her mother a year before about the abuse. She thought DZ had talked to her because she trusted her, and perhaps because they were in the same situation.
57. TL was completely clear that she did not encourage DZ to make the allegations and did not suggest the abuse story or plan it together. She said that she had encouraged DZ to think carefully about reporting her allegations to the police before making any rash decisions, but DZ had been clear she wanted to speak to the police. She had also said to DZ to stay at home because it was her own family.
58. She denied having seen a boy who sold vapes outside school and seemed to be genuinely confused about the question. She was asked about whether DZ had a boyfriend at the time of the allegations, and she said not as far as she was aware. She did say that DZ now had a boyfriend.
59. She said that she and DZ were no longer close friends. She was very unwilling to explain why but said it had nothing to do with the case and was not related to boys.
60. I agree with Mr Momtaz KC that TL came across as an honest and concerned friend, and that there was nothing in her evidence to suggest that she had been responsible, whether directly or indirectly, for DZ making up the allegations. There was nothing in her evidence which led me to believe she was lying to the Court.
61. DZ gave evidence for about 2½ hours over one afternoon. She denied that her father had abused her, either sexually or physically. She said that her father had been sometimes strict and would not let her go out on her own. It was because she wanted her "freedom" (a word she used frequently), that she had made up the allegations. Although her repeated denials of abuse were themselves reasonably credible, her explanations for making up the allegations and what she said in the retractions were not.
62. She said that she had met a boy outside school, who sold vapes on a Monday, and when she told him that her father was strict and would not let her go out, he suggested she make up the allegations. She initially said orally that she had only met this boy once face to face. However, when she was then asked about the alleged sex toy and when this boy had given it to her, she said she had met him on another occasion near her home and he had given it to her and told her to use it. She said that she and the boy had communicated via Snapchat. However, she said she could not remember his Snapchat username. She said the day after he gave her the sex toy he had blocked her on Snapchat, but she didn't know why. She had not told her social worker about this boy because she said she was afraid she would be sent to prison.
63. I found her evidence in respect of this boy impossible to believe. The suggestion that she would have started talking about the detail of her family life to a strange boy outside

school, who neither TL nor apparently anyone GX contacted had seen, seems unlikely. But the idea that this boy would have given her a sex toy the second time they met is not believable. This is even more the case given how heavily supervised DZ was. The Father said he called school if she, or the boys, were late home and often he either collected her from school or FX walked with her. The whole story seems exceedingly unusual.

64. In her retraction letter of 4 January 2023 she did refer to this boy but said she had met him many times, nearly every day. I can see no sensible reason why, if this story was true, she would have varied between saying in January that she had met him many times, and now saying that she had only met him twice.
65. She said she went to the toilet with TL on 31 October because they would be alone and could make up the story. She said she had spoken to TL over Snapchat the night before to start making up the story. She said it was TL who told her to say that her father withdrew his penis to stop making her pregnant.
66. She said she had made up allegations of physical abuse against her father because she did not think the allegations in relation to sexual abuse were sufficient for her to be kept in foster care.
67. On 18 November 2022 she is recorded as telling the school that she had been told her father had tried to commit suicide. She denied that she had been told this by anyone. She initially suggested it was a dream, but when asked about the specifics of what she had said, she simply said that she did not remember.
68. On 22 March 2023 she told her foster carer that her father had “fucked her every night”. She said she was angry and didn’t know what she was saying. It was however very difficult to establish what she was at this point angry about. She said she did not want to go back home and still wanted her “freedom”. But that earlier, in January, she had wanted to go back home.
69. She was very confusing about the mobile phone but did not give an explanation that I could understand about how she had ended up with the phone that the foster carer found.
70. In respect of the letter which the foster carer found in her room after she had left, she said that she did not know when this was given to her, but she had never read it. She thought it had been given to her in about November 2022, but it was very unclear how she knew this if she had never opened it. She said she had forgotten about it. I found her evidence in this regard not believable. If she had been given a letter from her mother, as it purported to be, there is no sensible explanation as to why she would not have read it.
71. She said she had enjoyed seeing her father at contact in March and had wanted to see him again. However, when she went back to the foster carer, the foster carer persuaded her that it would be a bad idea to see him again because he might pressurise her to go home and that “he would scare me”. It was very difficult to understand what he would scare her about if the allegations were untrue.
72. She said that she had decided to go home last week because she was very stressed about the court hearing, and she wanted to be with her mother.

73. The fact that some parts of her oral evidence was not believable does not lead to a conclusion that her original allegations were true. There are really two key issues about them – the level of detail and consistency within them; and whether there was the opportunity for the Father to have abused her in the way alleged.
74. There is a quite high degree of consistency and plausibility about her 999 call, the initial interview on the body worn video and the ABE interview. This includes, but is not limited to, the following (I take this list from Mr Momtaz KC's closing, but in my view it is a fair summary):
- a. Being raped since the age of 10.
  - b. The first time it happened her mother was at work and her older brother was out and her younger brother was in the toilet.
  - c. When it happened, the Mother was probably at work or she would be sleeping at night because she had to sleep early.
  - d. DZ's brothers would go upstairs in their rooms.
  - e. The last time it happened on Sunday morning the Mother was at work and her brothers were sleeping.
  - f. The sexual abuse happened 3-4 times a week.
  - g. It stopped for a quite a long time but started again.
  - h. It stopped because her baby brother would cry at night and her father was scared that he would be caught by her mother.
  - i. Once it re-started it would happen about once a week.
  - j. The Father would take DZ to his room downstairs and lock the door.
  - k. The Father would lock the door every single time.
  - l. The Father would touch DZ's breast.
  - m. The Father would insert his penis in DZ's vagina.
  - n. The Father would force DZ's legs open telling her to be quiet as her brother was next door.
  - o. The Father would tell DZ to shush, lower her voice and be quiet.
  - p. On one occasion DZ shouted at the Father and he was scared the Mother would wake up.
  - q. The sexual abuse occurred on a mattress on the floor.
  - r. DZ would try to push the Father away but he was bigger and stronger than her.



- s. The Father would push DZ's hands down and hold them.
  - t. The Father would take out his penis before ejaculating and then go to the toilet.
  - u. The Father told DZ to close her eyes and DZ felt so much pain in her vagina.
  - v. DZ started to bleed.
  - w. The Father only stopped when DZ started crying.
  - x. The Father always made DZ shower.
  - y. The Father would tell DZ to wash and her clean clothes.
  - z. When DZ asked the Father to stop he threatened her with deporting her back to India.
  - aa. DZ told the Mother about the sexual abuse 2-3 times, first when she was 12-13 and lastly on the Sunday before she made the allegations to the police.
75. There were some elements which seemed to be exaggerated to a degree of implausibility. As Mr Goodwin KC points out, the number of alleged rapes, running into 100s, seems fairly unlikely. There was also a lack of detail, for example about the physical act that might cast doubt on her story. However, because DZ withdrew her allegations it has in practice been impossible to test out the plausibility of the scale of her allegations and some of the details.

GX

76. GX is DZ's older brother. His evidence was that he had never seen anything at home which gave any suspicion that his father was sexually abusing DZ. He knew nothing about the allegations before they were made and was confused as to why DZ had made them up. He suggested it would have been impossible for them to be true given that his father's room was on the ground floor and the rest of the family regularly used it.
77. He said that he loved his father and his sister and had not known who to believe. However, he then said he carried out some investigations of his own and spoke to some of DZ's friends at school. He thought she had been "influenced" by people. It became apparent that he thought she had been influenced by TL.
78. He said neither he nor his siblings had ever been physically abused by the Father. He said that his father had once slapped his face, but that was part of his martial arts training. In his initial statement he had said that the Father had hit both FX and him on the face but had made no reference to martial arts.
79. He referred to an incident with DZ having a mobile phone before the allegations were made but didn't appear to know the details of it.

80. He denied the Father was “strict”, but then said only about “discipline”. I thought at this stage his evidence became very difficult to follow. He denied that the Father was controlling but said that he did make the children do tasks, set their wake up times and daily programmes. When asked about saying to DZ that she should come home because the Father had “changed”, he said that he only meant that the Father had changed “a bit” and was less strict.
81. There was an equally confusing set of answers about GX’s monitoring of the family’s mobile phones. He said he checked DZ, FX and his mother’s phones regularly. He said he went through everyone’s mobile phones, “It’s a habit”. He said DZ had allowed him to do this, and she was “really open with me”. He said he was “keeping an eye on her” because she’s young and he wanted to make sure that the rules applied to her and FX.
82. He said he had found nothing inappropriate on her phone. He also said the Father checked her phone, and DZ was happy for him to do that. When I asked him whether he had seen any messages from the boy at school or from TL he said no, but then suggested that DZ might have deleted Snapchat regularly so that the messages wouldn’t show up.
83. He initially said that he had not heard of the boy outside school. I asked him about this boy, and at that point he said that DZ had told him that a boy “kept approaching” her outside school. He had asked two of his friends at school, but they had said that they didn’t know him. Oddly, GX said he had not mentioned this to his father or mother.
84. He said that the family went out every evening and after that he and FX would go and play football. He then quickly said that the Father and DZ would go for a walk at this time.
85. I do not think that GX was an open and honest witness, however I find it extremely difficult to be confident about where the truth lay. He plainly considered himself to be a protector, and perhaps an enforcer, in relation to his younger siblings. This was particularly the case in the absence of his father. He said that his loyalty lay with “his family” and that was the way his evidence came across. I do not find it believable that if DZ told him about the boy outside school, he did not mention this to his parents. Equally I find it not credible that if he knew that DZ was having a relationship with a boy, he didn’t tell his parents and was only “a bit uncomfortable about it”.
86. I think he was minimising the level of conflict in the household and the degree to which DZ was controlled and monitored, presumably both by the Father and by GX himself.
87. However, none of this means, or even supports a finding, that the Father sexually abused DZ.

PIM

88. PIM has worked as a family support worker and in various roles helping families in a social care context.
89. She had not known the Mother, save by sight and the occasional passing greeting, before being asked to help in November 2022. She went to the family home, spoke to the Mother and then attended meetings with her, including at her solicitor’s office. She

said that she sometimes had to act as both interpreter and advocate/supporter. In the ICPC meeting the interpreter spoke Urdu, which was somewhat different from the Punjabi the Mother spoke. At the solicitor's office meeting there was no interpreter.

90. PIM was clear that she had always said to the Mother that she should be honest with the professionals. She had never said that if the Mother simply agreed with DZ's allegations then the children would be allowed to live at home.
91. She was asked about the meeting at the solicitors and she said that she recalled the Mother saying that DZ had made her aware that she had been raped by the Father in response to questioning by the solicitor.
92. PIM accepted that the Mother had often struggled to understand what was going on in the proceedings and became confused. The Mother did not know who to believe and became very emotional and upset.
93. I thought PIM was a completely honest witness and I have no doubt that she told the Mother to tell the truth and neither expressly nor impliedly suggested to the Mother that she should simply go along with DZ's allegations.

#### The Mother

94. The Mother gave evidence for most of a day with a Punjabi interpreter. Even with an interpreter she often seemed to struggle to understand the questions and was less than forthcoming in her answers. I do not think she was frank and honest in her answers, but there may have been a number of reasons for that. The whole period since DZ made the allegations has undoubtedly been extraordinarily stressful for her, being separated both from her daughter and her husband. The strong impression I had was that the Father controlled, and probably continues to control, all aspects of the family's life, including that of the Mother.
95. I also accept that she loves and misses DZ and was desperate for her to come home whether or not the allegations were true. The Mother's love and care for her children certainly rang true.
96. The Mother's position in relation to the allegations has, on the face of the documents, changed, see the chronology above. She said that in the time between 31 October and DZ's retractions of the allegations, she was confused about what was happening, did not understand much of what was said to her, and was depressed. She effectively said she was not in control of what she said.
97. She denied that she had ever accepted the Father had sexually abused DZ, and when she appeared to have accepted that in her Response document, she just said that because she believed that if she agreed with DZ's allegations her daughter would come home. She said that PIM and Mr N had advised her to that effect. She said this was the same in the first child protection conference on 16 November 2022 when she had said she believed her daughter had been sexually abused.
98. Although I certainly do not believe that PIM gave her that advice, it is not unbelievable that the Mother thought this was a good strategy.

99. The Samsung mobile phone was found in DZ's room at the foster carer's house. DZ said her mother had given her the phone and that she regularly rang DZ. She also said her father had tried to contact her on the phone. The Mother denied giving DZ the phone but had no other explanation as to how she had got it.
100. She was asked at length, both by Mr Momtaz KC and Ms Buttler about the incident a few days before 31 October when there had been an argument between DZ and her father, and DZ had said to the Mother that the Father had not "behaved properly" to her. The Mother said she had asked three or four times what DZ meant and the Mother had then asked the Father if he sexually abused DZ and he had become angry and denied it. She was extremely unconvincing as to why she had wondered if the Father sexually abused DZ if DZ had not made this direct allegation and the Mother had no reason to believe it was true. I do not think she was being truthful about the content of his conversation.
101. She was also asked about the letter that was found in DZ's room. She could not remember when she wrote this. She suggested at one point it was after DZ retracted the allegations, although that seemed very unlikely on the face of the letter. She denied that the Father had attempted suicide but said she had made this up to persuade DZ to come home. She denied that anyone had helped her to write the letter.
102. She said that the issue between DZ and the Father was about discipline and DZ not being allowed more "freedom". She said that was what the letter was referring to DZ "forgiving" the Father and him making "a mistake".
103. I do not believe the Mother in respect of this letter. In my assessment, the language of the letter (e.g. referring to the Father being in prison for 19 years), the grammar and the pressure of the alleged suicide attempt, do not fit at all well with the Mother's explanations. I think it much more likely that either the Father wrote the letter or at the very least contributed to it, at a date before DZ withdrew the allegations, so before 21 November.
104. The Mother said that now that DZ is home and over the age of 16 things will be different. She explained that once GX was 17 he was allowed social media and to go out with friends. Again, I do not think that she was being open and honest with the Court. She accepted that DZ had not been allowed to go out with friends or go to friends' houses. It is not credible that once she reaches 16 the level of discipline and control over her life will suddenly change.
105. She denied that the Father ever hit the children, save a game around martial arts. She accepted that he sometimes got angry but said he would just talk and then walk away. She denied that the Father was abusive of her, or that she had told DZ he had abused her in India.
106. She very much sought to minimize the impact the allegations have had on the family.
107. There were a number of instances where the Mother sought to explain away things that she is recorded as saying by saying either that she had been misunderstood, or she did not understand what was being asked. So she had told the social worker Ms Rich during the parenting assessment that she saw the Father alone, but said in evidence that this was a misunderstanding and it was only when the Father came to collect clothes.

108. There was much of the Mother's evidence I did not believe, most importantly that DZ had not made a direct allegation of sexual abuse by the Father a few days before 31 October. I think the Mother would have said anything in evidence that she thought would help DZ come home and end the proceedings. By the end of her evidence, I felt I could place virtually no reliance on anything she said.

The Father

109. The Father gave evidence for a day, with the assistance of an interpreter, although at points he gave evidence in English. There were a number of points when I did not think he was telling the truth, but these varied from instances where he seemed to be trying to minimize issues that had arisen in the family, and others where he was actively seeking to mislead. I reached the ultimate conclusion that he was a calculating and dishonest witness. He seemed to obfuscate and become confusing when he did not want to answer a question. When he was caught out changing his evidence he would blame the interpretation or become so confusing that the interpreter in court could not understand what he was saying.
110. He denied having abused DZ, either sexually or physically, and denied ever having hit or physically abused the other children or the Mother. In some documents he referred to "tapping" the children., but this was not a punishment but a "motivational thing". In oral evidence, he (and the Mother) referred to his sometimes practicing martial arts moves on the children. I note this had never been mentioned in any statement and seems to have followed from the Father hearing what GX said.
111. He denied having an angry temper, and said that Mr Z, who had said that to the police, had said it because he had a poor relationship with the Father and his family.
112. He emphasised how much he loved his children and wanted the best for them. He denied getting angry with them or being excessively strict with them, although he accepted that he did want to impose clear values on them and wanted to ensure that they worked hard at school and did well.
113. He avoided answering a question about whether he was stricter than other families. He denied that DZ had ever said anything to him about the level of discipline, but this was plainly not true.
114. He described the incident about a month before 31 October 2022 when he said DZ came home with another child's iPhone. He removed it from her and said he was going to return it to the other child. However, about 10 days later he saw DZ again with the same phone. He said he "explained nicely" that it was someone else's phone. He said he became upset, started crying and then threw it on the floor in anger, before going upstairs.
115. He said about a week before 31 October the Mother approach him and said that DZ had said he was not "behaving properly to her" and the Mother asked if he had sexually abused DZ. There was extensive questioning in relation to this conversation. He denied that the Mother had said to him that DZ had said he had sexually abused her. He had numerous different versions of the conversation but kept saying in oral evidence that DZ had not directly accused him to the Mother. He said that DZ had come into the room and said she was sorry and she had been "joking" and had hugged him.

116. However, in his police interview on 1 November he had said:

*“[BX]: She said, er, [DZ], erm, asking about these thing, why are you doing this to her? And I mention I didn't do anything. Then she was angry with me and she was, er, just blaming and just, er, giving me some threatening, “I will go to the, er, police and I will do this and do...””*

*DC4496: Is that your wife said that?*

*[BX]: Yes. Then I explained then after some time, we asked [DZ], she came out and we ask her and she was totally silent, she didn't mention. I told her, “Mention anything if you (inaudible),” then she didn't mention, she said, “Sorry, Papa.” She came to me and, er, hugged me and, “Sorry,” when mum left the lobby, she enter the room then she came to me, she wants (inaudible) then she, like, went like this... (believed to demonstrate) ...Mum went to the room, she's in the lobby, I'm on the sofa, she came to me, in front of me she stood and her mum was in the room, she was looking at the room and, er, taking her (inaudible).*

...

*HH: So that means sorry?*

*[BX]: Yeah.*

*HH: And you said your wife's told you, what did... What were her words?*

*[BX]: Words [DZ] said.*

*HH: And what were they?*

*[BX]: “You are doing sex with her, [DZ] said.”*

*HH: So having sex with [DZ]. And how did you feel about that then at the time?*

*[BX]: Then I feel very, er, uncomfortable, then I mention, “[DZ], you will never lay out again with me.”*

117. Further, Ms Buttler pointed out in cross examination that on two occasions (9 January and 30 March 2023) in Court documents he had denied that the Mother had questioned him about sexual abuse of DZ. In my view he deliberately lied in these documents.

118. His explanations for these different versions were not credible. I have no doubt that what he said in the police interview was the truth. It was the most proximate evidence to the event, which had only been a few days before. Although I accept that he may have been tired and very stressed, the conversation with the Mother must have been an extraordinarily memorable one, being accused by his daughter (and challenged by his wife) about sexual abuse. He denied in the court documents that the Mother challenged him about abuse because he had forgotten that he had told the police the truth on this point. It seems likely, although I do not need to find, that once he remembered or was reminded of what he had said to the police he changed his position again.

119. His only explanation for DZ's allegations was that she had been upset over the mobile phone incident, and not being allowed to use social media. He thought that TL had influenced her into making the allegations.
120. He denied any knowledge or involvement in the writing of the letter found in DZ's room. He said he had had no contact with the Mother from 31 October, whether in person or electronically. For the reasons set out in my conclusions, I do not accept this evidence. Further, he denied having tried to contact DZ in foster care, but DZ had told the foster carer that he kept calling her.

#### The Parties' Cases

121. I do not need to set out the LA's case given that I have largely accepted it, and it follows from the evidence and conclusions.
122. The Mother's case is primarily focused on the findings directly related to her. She does not accept DZ's original allegations. She denies that the Father ever abused her, or the children, within her knowledge. She denies any suggestion of "failure to protect".
123. Ms McGrath KC stresses that all the social work evidence suggests that the Mother is a good and caring parent. She has been placed in an incredibly difficult situation by DZ's allegations. In the initial stages, a combination of the social worker and poor interpretation led her to accept things that were not true. She got the message from the social worker that she should accept DZ's allegations, which she then did.
124. The Mother did not fail to protect DZ from sexual abuse. She could not have known whether DZ's allegations were true or not and the Court should be very careful not to accept the allegations as a "bolt-on", see *Re LW* [2019] 2 FLR 278.
125. The Father's case is also obvious from the evidence recorded above. Mr Goodwin KC emphasises the fundamental unlikelihood of DZ's allegations given the frequency of alleged assaults; the small house and limited opportunity; DZ's suggestion that she had a shower after every assault, which surely would have been noticed; and the very limited detail of the allegations.
126. He submits that very little weight can be given to the original allegations given the subsequent retractions and inconsistencies.
127. He says that DZ's allegations are understandable in the context of the cultural tensions in her situation and the very strict regime she was living under, whereas her peers had far more freedom.
128. He also places considerable reliance on the principle articulated in *Lucas* and the subsequent cases. Whatever lies the Father may have told, not that Mr Goodwin KC accepts he has told any, do not give weight or support to DZ's original allegations. This is a case where there are many reasons the Father may not be prepared to be honest with the Court.
129. DZ was represented by Ms Hodges. She submits that DZ wants to live at home with her parents. She stands by the retractions and submits Threshold is not made out.

130. FX also wishes to live at home and has taken a limited role in the proceedings. Mr Hazelwood reminds me that FX has said he is not aware of any abuse by the Father against any member of the family.
131. The Guardian, represented by Ms Buttler, set out in Closing a very fair list of factors in favour and against the findings of fact.

### Conclusions

132. This is an extremely difficult case to determine, in large part because I do not think any of the family members are being truthful and it is very hard to be confident as to what was happening within the family home. The Threshold findings are now based on allegations that have been retracted, and there is virtually no corroborative evidence pointing in either direction.
133. I bear closely in mind that the burden of proving the findings sought rests on the LA, albeit only on the balance of probabilities, and the parents have to prove nothing. I also bear closely in mind *Lucas*, and the fact that there are many reasons that the family may not be being truthful, and I have to be very careful as to the degree any of those lies supports the Threshold findings sought.
134. However, having considered all the evidence; determined the weight I can attach to each piece of evidence and then considering it holistically, I have reached the conclusion that DZ's original allegations were true, and the threshold findings are made out.
135. Firstly, DZ gave a fairly detailed, credible and consistent account of the sexual abuse, both in her original interview, her letter and then the ABE interview. There are details that were missing, and some elements that might be considered surprising. But because she withdrew the allegations and the ABE interviewer did not press her on some points, those gaps are not determinative. So although I accept that she did not give a description of her father's penis, or a detailed description of the sex, I do not find that a weighty factor against the allegations. There are aspects such as the frequency and the shower which might be considered surprising, but not incredible.
136. In my view, the opportunity did exist, in that there were significant periods when the Mother was out of the house or asleep and the boys were upstairs. The house is small and crowded, but with the Mother out of the house and the boys doubtless preoccupied with their own lives, it is perfectly possible that abuse could occur.
137. There are factors such as the abuse allegedly starting when the Mother started work; the abuse stopping when CX was a baby and the Mother was at home; and the Father telling DZ to "shush" which seem to fit with the allegations. There are also details such as the Father holding down DZ's arms and the pain she suffered, which ring true and which it would not be easy for a 16 year old, who probably had no sexual experience, to make up.
138. Secondly, in my view her ABE interview was credible. She did not appear to exaggerate or to be recounting for effect. It is of course incredibly difficult, and forensically risky, to rely on demeanour. But I did not find DZ's demeanour, being calm and self



controlled, in the ABE interview unlikely. A child who has been victim of abuse might react in a number of different ways.

139. Thirdly, I consider the process and content of DZ's retractions to be extremely odd and in many aspects not credible. The story about the boy outside school and the sex toy was highly inconsistent and at times not believable. If the story had been true, it is hard to see why it would have changed so much. It is noteworthy that TL said she had not seen or heard of this boy. There is no reason she would lie on this point. I find it inconceivable that if DZ had been being approached by a boy outside school, and GX knew about this, he would not have raised it with the Father.
140. The suggestion that this boy would have given DZ a sex toy verges on the ridiculous. The obvious explanation for this lie is that the parents knew about Dr Porter's evidence and realized that they or DZ had to work out an explanation for the evidence that she had either had sex or used a sex toy.
141. Fourthly, there is obvious and overwhelming evidence of DZ being placed under enormous pressure by her family to retract the allegations. I have very little doubt that the Father either wrote or helped to write the letter found by the foster carer, for the reasons set out above. The letter was probably written before DZ started the process of retraction, given the mention of the Father's alleged suicide, and DZ said she had nightmares about suicide before she started to retract.
142. I am also confident that the Mother put the Samsung phone into DZ's bag. Although this may in part have been because she was missing DZ and wanted to be able to speak to her without supervision. It also provided a method by which she and the Father could seek to further pressurise DZ. DZ told the foster carer that her mother and father were putting pressure on her to go back home. Interestingly, in late July DZ told the Social Worker that the Mother and brothers had told her that the Father had changed, but the parents say they had no contact, including no electronic contact, since the allegations were made.
143. The fact that they pressurized her to retract does not mean the allegations are true. They might well have been pressurizing her if the allegations were untrue. But the form of the letter is not saying – take back your lies, why are you making all this up about your loving father? The form of the letter is about asking for forgiveness of the Father, and not undermining his respect in the community. If DZ had been making up horrible lies about her father, then the letter is in very strange terms.
144. Fifthly, in March and April 2023, DZ twice told her foster carer that she had not lied and the allegations were true. DZ said in her oral evidence that she had said this because she was angry and confused. But she could not explain why she was angry. By that stage DZ knew the consequences of the allegations. She knew it had led to the family being split up and knew her father had been subject to a criminal investigation. DZ did not strike me as being either stupid or irresponsible. I am confident that she understood the potential consequences of the allegations. Although it is just about possible that she had not thought through the consequences of the allegation in October, by the following March I am sure she understood them. But still in March she was telling her foster carer, who she likes and trusts, that she had been very seriously abused by the Father.

145. Sixthly, I am confident that neither parent has been truthful. I fully appreciate that the fact someone lies about one thing does not prove they have lied about something else. There may be obvious reasons why the parents would lie – out of shame, embarrassment, concern about their position in the community, confusion and misunderstanding about the process, a lack of trust that the court will understand a more nuanced position. People get trapped into lies, which they then feel they have to continue.
146. I accept that the Mother may be someone who does not think through what she is saying and simply says at any point whatever seems the easiest way out of a situation. She speaks limited English, and often seemed “at sea” during her evidence. But the Father appeared to be a more acute and in control person, I think he deliberately lied about the conversation with the Mother about DZ’s allegations; the letter and the level of anger and control he exercised. He was given every opportunity by the Court, and I assume by his legal team, to tell the truth about these things, but he did not do so.
147. Seventhly, GX’s evidence about checking DZ’s phone suggested a level of control and discipline within the household that the Father was not prepared to be honest about. GX’s evidence suggested an unhappy household with DZ’s communications and behaviour heavily monitored. This again does not prove the sexual abuse, but it does reinforce my view that the parents were not being truthful.
148. Eighthly, there is some corroborative evidence of the Father’s temper and getting angry. He, to some degree, admitted the incident of the phone, although he said that after he threw the phone on the ground he got upset and went upstairs. FX in a school CPOMS note, just before DZ’s allegations refers to the Father getting angry. In early statements, both boys referred to the Father getting angry and hitting them. Again, this doesn’t prove the allegations, but it is another indicator that the household was not as the parents are now trying to present it.
149. The medical evidence in this case is not determinative. The evidence on the older hymenal defect, and whether it is indicative of an older injury may be consistent with normal variation. I feel it would be unsafe to rely on this. In respect of the healed laceration at 7 o’clock, that does seem to indicate that something occurred. Given that I have found the story about the sex toy impossible to believe, there is some evidence of sexual penetration, which fits with the allegation of abuse. However, given the lack of clarity over the medical evidence, I put very limited weight on this evidence.
150. There are undoubtedly factors that point the other way, in particular DZ’s retractions and the basic unlikelihood of the scale of the abuse, both of which I have dealt with above. I also note that there are no “red flags” in this case, including the fact that no one at school, or in the community apparently ever noticed anything wrong with DZ or voiced any concerns.
151. I do take into account the evidence of DZ’s contact session with the Father on 1 March 2023. This was very positive and DZ showed no sign of being frightened or even wary of her father. She seemed genuinely pleased to see him. However, there are so many complicated emotions that may, or may not, have been going on at this point I think it would be wrong to place very much weight on this occasion. I also note that despite the apparently positive contact, DZ was adamant that she did not wish to have another contact with her father.

152. Overall, having balanced all these factors, and applying the law I have referred to above, I conclude that DZ's original allegations were true and the findings in respect of sexual abuse and physical abuse are true.
153. In some ways it is even harder to be confident about the allegations of domestic abuse given that the Mother has never made any allegations and DZ was never asked about them in any detail. However, it must follow from my findings above that the Father is highly controlling of the entire family. Given my confidence that he was instrumental in the letter that falsely told DZ he had tried to commit suicide, it is not difficult to find that he has been exercising coercive control over the Mother.
154. However, I do not find that the Mother failed to protect DZ. I feel this would be an unsafe and unfair finding on the facts. I do not think that the Mother can stand up to pressure from the Father. However, the degree to which the Mother knew about the allegations some years ago and whether she thought they had stopped is impossible to know. Rather than make a finding that may haunt the Mother and her relationship with the children for years to come, when the factual position on this specific issue, is unclear, I think it would be safer to make no finding. This is in the hope and expectation that what will follow this judgment is detailed work with the Mother to try to help her to understand better her parenting role in protecting the children.
155. I do not make findings in respect of abuse of FX. Although I have accepted DZ's original allegations, on balance I think the lack of specificity and of supporting evidence in respect of FX means that it would not be proportionate to make those findings in paragraph 3 of the Final Threshold.
156. I find that the Father does exercise coercive control over both the Mother and DZ. But I do not think it necessary or proportionate to go further into the specifics, save as set out above. I make no further findings on paragraphs 4 and 5 of the Threshold.
157. It has not proved possible to make final determinations on welfare issues. But for the purposes of clarity, and perhaps saving time, I consider the children are likely to be safe at home with the Mother, with the Father excluded from the household, until further assessment work can be undertaken. I note that the Mother is in herself a good care giver; both FX and DZ wish to be at home, and I do not consider CX to be at any immediate risk which would justify separation at this time.
158. I am concerned about DZ's safety. However, she is 16 years old and has made it entirely clear, for whatever reason, that she wishes to be at home. It is simply not practicable to require her to live elsewhere. I am somewhat reassured by the fact that she has been provided with a mobile phone, has numerous professionals at hand to give help, and that the foster carer, with whom she is close, lives nearby. There is therefore in practice no choice but to allow her to continue to live at home.
159. For these reasons I make the findings set out above. There will need to be a further hearing, but I leave it to the professionals to let me know when they think that should be.