



Neutral Citation Number: [2022] EWFC 1

Case No: NE20C00617

IN THE FAMILY COURT AT NEWCASTLE-UPON-TYNE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14 January 2022

Before:

MR JUSTICE POOLE

Between:

**TOGETHER FOR CHILDREN SUNDERLAND ON BEHALF OF
SUNDERLAND COUNCIL**

- and -

A MOTHER (1)

A FATHER (2)

S AND E

(THROUGH THEIR CHILDREN'S GUARDIAN) (3) and (4)

Stephen Ainsley (instructed by TFCS) for the Applicants

Ruth Phillips (instructed by Richard Reed Solicitors) for the First Respondent

Claire Middleton (instructed by Mortons Solicitors) for the Second Respondent

Henry Percy-Raine (instructed by Prism Family Law) for the Third and Fourth Respondents

Hearing dates: 6 - 10 December 2021

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, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court

Mr Justice Poole:

Introduction

1.

This judgment follows a finding of fact hearing in public law proceedings concerning two children, S and E, aged 10 and 8 respectively at the time of the hearing. Their mother and father are the first and second respondents. The children, represented by their guardian, are the third and fourth respondents. The applicant is Sunderland City Council through its agent Together for Children Sunderland. Following a previous application which concluded on 4 September 2019 a six month supervision order was made with the children remaining with both parents. Shortly after that order was made an incident occurred overnight on the 19-20 September 2019 which led to the mother being taken by ambulance to hospital and the father being arrested. The parents separated and have remained apart since that night. The father brought private law proceedings for a child arrangements order. As a result of a series of events which are set out in detail below, this application was issued on 13 September 2020. The Local Authority has applied for a Special Guardianship Order in favour of the maternal grandmother in respect of both children but, following interim supervision orders within these proceedings, the children currently live with the mother.

2.

The applicant relies on an Amended Schedule of Threshold Findings which includes allegations of parental domestic abuse and conflict and neglectful parenting, many of which are not substantially disputed. However, there are further allegations, including additional allegations made after the Amended Schedule, which are very much in dispute and which are the subject of this judgment. They are:

i)

E has alleged that the father has placed his penis in her mouth and also in her brother's mouth.

ii)

S has alleged that his father has touched and squeezed his penis on multiple occasions over the top of his clothing.

iii)

S has alleged that his father has placed his penis in his "bum" on more than one occasion and that the father has done the same to E.

The applicant notes that the father disputes these allegations and invites the court to determine whether:

Either:

a. The allegations are true:

i. The father has sexually abused S and E; and

ii. the mother failed to protect S and E from such abuse

or

b. The mother has deliberately fabricated false allegations of sexual abuse and induced E and S to make false allegations of sexual abuse against the father.

3.

The mother has made separate allegations that the father was physically abusive towards her "on occasions" during the relationship. The father denies that allegation and counters it with his own

allegation that the mother's allegations of physical abuse against her and sexual abuse against the children, are malicious.

4.

I heard evidence from the parents, from social workers to whom allegations were made and who have been involved with the family at various times, from police officers, from a therapist who worked with E and the mother whilst they were at a refuge, Ms SP, from S's class teacher, Mr T, and from the father's sister, SR. In addition I have been provided with a large number of written documents including evidence from previous proceedings, social worker notes, parenting assessments, and transcripts of police interviews. I have also viewed film of the Achieving Best Evidence (ABE) police interview with S, body worn camera footage from emergency services' attendances on 19 to 20 September 2019, and I have listened to an audio recording made by the mother of her talking to E on or about 18 October 2019, and a recording of the police interviews with the father on 20 September 2019 and 16 September 2021. The mother and father were present with legal representatives in the courtroom throughout the hearing. At the mother's request she was separated from the father by a screen, including when she gave her evidence. Provision was made for separated waiting areas and conference facilities outside the courtroom. All counsel except for Miss Phillips for the mother, attended the hearing remotely. All witnesses other than the mother and father gave evidence remotely.

History of Events

5.

The mother and father began their relationship when they were both in their mid-teens. S was born in February 2011 and E in December 2012. The parents share parental responsibility for both children. The family lived together in Sunderland in single level, ground floor, two bedroom accommodation. The father did occasional work. The mother did not work. The family had frequent contact with the maternal and paternal siblings and grandmothers.

6.

Expert cognitive assessment of the mother in June 2019 revealed that her overall intellectual functioning placed her in the borderline learning disability range, considered her to have been adversely affected by her limited education and attendance at school and ongoing anxiety in certain situations where she feels judged and anxious not to make mistakes.

7.

The children have been subject to Child Protection Plans for neglect since February 2017. In July 2017 they were subject to the Public Law Outline for two months, and again for a period in July 2018. On 4 September 2019 public law proceedings were concluded with a Supervision Order for six months. The agreed threshold included that:

i)

The state of the home had, at times, been very poor over a number of years, being dirty, cluttered, untidy, cold, unsanitary and unsafe.

ii)

The children had poor school attendance and punctuality.

iii)

The children's presentation was poor, often dirty and unkempt. S was significantly overweight and wore jogging bottoms to school because the mother said that his trousers rubbed him.

iv)

The parents' relationship was volatile with a number of police call-outs to the home from July 2016 to December 2018, the children being present on those occasions.

v)

The children's diet was poor, with limited food in the house on occasions.

vi)

The parents failed to meet the children's health needs, delaying seeking assistance when clearly required. S suffered from vitamin D deficiency which worsened even after medication had been prescribed.

vii)

The parents lacked insight into the concerns of the Local Authority and showed limited engagement with professionals. They were unable to make and sustain necessary changes to provide appropriate care to the children.

8.

On the night of 19 to 20 September 2019, only a fortnight or so after the Supervision Order had been made, the mother made a 999 call for an ambulance to attend the family home. The circumstances of the evening are in dispute and were the subject of much scrutiny at the hearing. The following facts and matters can be stated with confidence:

i)

The mother and father argued during the day and were still antagonistic to each other during the evening of 19 September 2019.

ii)

At some point in the evening the father made the mother a pot noodle but she did not want it and he kicked it over. The spilled contents are visible on photographs taken by the police.

iii)

E went to bed at between 8pm and 9pm.

iv)

The mother went to a next door neighbour, taking E with her, and called for an ambulance at 23.56 pm on 19 September 2019. She reported, "I feel like I'm going to pass out and I'm shaking..." She reported that she had been bleeding from her vagina. She denied having been injured. It was noted that a child (E) could be heard sounding very distressed in the background.

v)

At six minutes past midnight on 20 September 2019 the mother called 999 again, asking for them to "come quick". She said, "me partner's drugs. I didn't realise, he didn't tell me about it.... He gave me loads of drugs in me cup." When asked whether she had taken the drugs, the mother replied "No, I didn't know about them," but repeats that the father had put drugs "in me drink". The neighbour came on the call and said that the mother was confused and "cannot understand properly nor nowt."

vi)

At 31 minutes past midnight on 20 September 2019 a third 999 call was made by the mother but the neighbour takes over the call and reports that “she’s been spiked by her partner and she’s hallucinating and everything ... her situation is just getting worse”.

vii)

The ambulance arrived at the family home at 38 minutes past midnight on 20 September 2019. It was recorded that the mother “states she has been punched and kicked several times by her partner this morning causing contusions to face, arms and legs. Contusions old and new present ... patient alleges that tonight her partner has put unknown substance in her drink and after she had finished her drink partner told her what he had done. On crew arrival patient agitated saying that she feels unwell and complaining of stomach pains. States she has a heavy pv bleed caused after intercourse with her partner yesterday.” The mother had a rapid pulse rate. Two bruises to her face, and several bruises to her body were recorded.

viii)

The body worn cameral footage shows the mother in the ambulance with E who is clearly distressed at the prospect of being taken to her maternal grandmothers’ and being separated from her mother whilst she was being treated. The police entered the family home. S was in his unlit bedroom in his underpants. The police spoke to the father who was anxious about arrangements for the children to be cared for and to attend school. At one point he is heard to say that “I’ve had social on my back.” He is handcuffed. S is extremely distressed at the prospect of his father being taken away by the police. He pleads with them, “Let him go”, and wails, “Why?” and “I want to stay with you.”. At one point he says, “It’s not my dad. Why does Dad get arrested?” At another, he says “One more chance. I mean it. This won’t happen again.”

ix)

The hospital record notes on arrival the mother was “very agitated and hyperactive” but when seen at 4.57 am she was more settled. It was recorded that, “Patient was suspecting partner of STI and went for a health check. Apparently partner was not happy with this and patient was assaulted by him. Patient suspects that some substance was put in her drink. She was able to get out fast to the neighbour for help.” No abnormalities were found on examination or on biochemical or haematological tests save that her white cell count was high. The mother was released from hospital to travel to her mother’s house to see the children but it was noted that the police were wanting her to return for “statement and for toxicology”.

9.

The children were taken by social workers from the paternal grandmother’s home to their own home in order to get ready for school on the morning of 20 September 2019. The mother had caught up with the children and the social worker after leaving hospital. When one of the social workers, Ms I, was asking questions of the children on their way to school, and E was responding, S told her to be quiet.

10.

At 10.15 am on 20 September Ms I and her colleague Ms D, visited the mother at home. They noted that she was “agitated and overwhelmed... unable to sit still, she constantly played with her hair and fidgeted in the chair.... The way [in which] the mother spoke was not very coherent and she seemed to jump between incidents and events and concerns which she has for the children and the father.” The mother reported that E had said to her, “When the father tells them they are naughty that’s when it happens.” She felt that the father was turning the children, particularly S, against her. Then the mother reported that she thought that S was being groomed by the father. She became upset and said

that it is “sick” and “disgusting” before stating that “he is sexually abusing them”. She said that she had been asking questions of E and S recently since she had had concerns. S was saying nothing but E talked about her “throat hurting and belly hurting and not liking to be alone.” The mother was very upset when making these assertions.

11.

A little later that morning, at school, Ms I spoke to E who told her that “sometimes they keep on fighting, me and S fall asleep and I keep on trying to fall asleep but they keep on shouting.” She said that “She did not like being in the house with my dad. I don’t like leaving Mam by herself and I keep on worrying about her because she’s been in hospital.” E confirmed that her throat keeps “getting hurty” and she keeps on feeling sick “on Monday and Tuesday.” She said that she did not have any “bad secrets”.

12.

The father was interviewed under caution by the police at 1.02 pm on 20 September 2019. He said that whilst usually they got on well, the mother had been acting strangely in the past two weeks or so. He said that she had been saying horrible things about him but he refused to disclose what they were. He said that he has been able to control the situation but things “got out of control” the night before. He denied putting drugs in the mother’s food or drink – “I never touch drugs.” He denied having hit the mother, saying that when agitated she would hit herself repeatedly with her e-cigarette.

13.

The mother went to live in a refuge with the children. Since the night of the 19 to 20 September 2019 the mother and father have lived apart and have not spoken, save for a few words.

14.

The mother’s vital signs were normal on arrival at hospital. Blood tests did not show signs of her being drugged. She left after a short time and with no treatment save for some paracetamol. The police did not manage to speak to the mother or to secure her assistance with toxicology tests. At a further social work visit to the school on 3 October 2019 both children raised concerns about their father’s wellbeing. On 4 October the school safeguarding lead noted that S was happier having spoken to his father and E felt sad as she missed her father.

15.

On 14 October 2019 Ms HS, social worker, attended the refuge where the mother and children were residing. At 3.27 pm it was recorded by a staff member at the refuge that the mother had come to her to show her a picture that E had drawn the previous night. The mother said that she had been in the communal area with the other women when E gave her the picture, pointed to it and said, “that’s my head and that’s what dad puts in my mouth.” On Ms HS’s arrival two hours later, the mother indicated that E had a picture that she wanted to show her, located on the top of a wardrobe. The mother left the room. Ms HS noted that the children looked apprehensive. E took down a torn piece of tea-stained paper on which was drawn what appears to be an outline of a fish with a circle connected to its head. E said that the picture was of her and the circle was her father putting swear words into her mouth. It is important to note that she did not say that the circle was her mouth, but that it represented what was put in her mouth when she was naughty. Ms HS pressed E to tell her what the swear words were and eventually E wrote down on the back of the paper, “Pis off”. Staff at the refuge told Ms HS that earlier the children at the refuge had been talking about a whale or dolphin that had been stranded on a beach and that the staff felt the picture may have been of. It certainly appears to have a tail like a dolphin or whale. Ms HS told the court that she had passed on E’s explanation to the mother who had

“accepted that her explanation seemed plausible” and did not push the possibility of sexual abuse any further. The mother agreed that the children should have supervised contact with their father.

16.

On 17 October 2019 the children saw their father for the first time since the 20 September 2019. Ms HS, social worker, noted that they interacted well with their father but E was very direct, telling him that “Mam said she hates you.” At times E was very affectionate with her father, giving him kisses and cuddles. S too was noted to be very happy and comfortable around his father.

17.

During the morning of 18 October 2019, the mother sent an audio recording to the police. The recording was made at the refuge. The mother can be heard talking to E who says that her father “hates us” and “puts swear words in my mouth.” The mother asks what else and when E replies encourages her to “say it louder”. E can be heard saying “tail”. The mother asks why E has not told her this before and E says that she had done. Again the mother asks her to talk louder. The police shared their concerns with Ms HS that the mother could be heard coaxing E to say what the father had done with her. A joint visit of the police and a social worker was made during the afternoon on the same day, during which E made no disclosure and said that her father had put nothing in her mouth other than swear words. She said that if she was naughty her mother would shout and her father would send her to bed. When asked if her Daddy did or said anything she did not like she answered that “he puts swear words in my mouth.” When asked what he said she replied that she could not remember. She was asked if he put anything else in her mouth and she said “no”. When asked if anyone had done anything she did not like, she replied, “no”. The police decided to take no further action.

18.

On 1 November 2019 the mother contacted Ms HS to say that S had said something similar to E in relation to the father having sexually abused her. Ms HS cautioned the mother that E had not in fact alleged sexual abuse to the police or to her as a social worker but agreed to speak directly to the children. She visited the children on 4 November 2019. S would not speak initially but when told that his mother has said that what had happened to him was similar to what E had said he nodded his head. Ms HS told the court that this was merely an acknowledgement of what the mother had said. When asked about whether it was true he neither confirmed nor denied the allegation. Ms HS spoke to E who was unable to share any further information. The mother told Ms HS that S had spoken to the mother about suffering the same abuse as E because he “doesn’t understand why people don’t believe her.” Records from the refuge were obtained during the hearing. They include a record for 31 October 2019 when the mother reported to staff that S had said, “Mummy, why does nobody believe us about dad”, to which the mother had replied, “because E hasn’t told people.” She then said that S had commented, “well I know E is right because daddy has been doing the same thing to me. I am going to start talking.” The refuge staff then spoke to E who said she was worried that her mother would go to her father and they would start fighting again.

19.

Several months then passed before the allegations of sexual abuse against the father emerged again. On 30 July 2020 E and the mother were taking part in a group Domestic Abuse Resistance Team (DART) session under the guidance of Ms SP, a Child and Young Family Service Worker. There were four mothers with children, each pair sitting around a table going through “OK/not OK” cards. The idea was to decide whether the statement or idea depicted on the card was OK or not OK. After a while Ms SP noticed that E was upset and asked her and the mother to speak to her in private away

from the other participants. The mother informed her that E had become upset dealing with a card that said, "adults to touch kids where they don't like". The mother was also upset. Ms SP asked E if anyone had done this. E indicated that it was someone in the family, and then that it was her father. When asked where he had touched her that she did not like, E shook her head and backed up on the chair putting her hands between her legs. Ms SP clarified that this was not an indication that the father had touched E between her legs, but rather a message that she did not want to engage any further with the discussion. Ms SP told E that she had been brave and asked if she had told anyone else. E replied, "just Mam." E then told her that it had happened "just once when I was asleep" at a time when the family all lived together. The police were informed and attended. A record of the visit notes that upon speaking to the police E "clammed up saying she had "it " on her tablet - this was in fact a recording (not dated) between her mother and E whereby the mother was asking E questions about what her father [had done]." E told the police that she did not know what a "tail" was.

20.

On 7 August 2020 Ms R, social worker, visited the children as a follow up. E told Ms R that her father had put his tail in her and S's mouths whilst they were sleeping in bed. Asked how she knew this if she had been asleep, she said that her mother had told her and S in the morning. S did not want to talk about the matter and left the room - "he appeared not willing to confirm what his mother had said or not said to them."

21.

On 22 October 2020 the police and Ms R visited E at school. She said that she could not remember what her mother had told her about her father and denied having any worries about him, except that he would not play with her and lies in bed. She was asked to write down if her father had done anything to frighten her. She said "yes" but did not want to say anything more. She was asked if there was anything else she wanted to say and she wrote that the father had put his tail in her brother's mouth and her mouth. She stated that it had happened when she had been in bed and that the police had come and had told her and the mother what had happened and had seen it through the window. The police recorded, "E cannot provide any detail to the allegation and told the Social Worker that she only knew about this because her mother had told her ... The Social Worker strongly believes that E's mother has told E what to say."

22.

On 29 December 2020 when an unannounced visit was made by social workers Ms T and Ms R to the maternal grandmother's home where the children and mother were present. Along with S and the social workers, E began to write down, "I can remember what he done to mam, I do not want to see him anymore. I don't like him anymore and he pulled my mam's hair and he pinched my mam's money and we had to go to nana's house so he could sort himself out." She then began to dictate what the social worker should write down for her, "In the very old house, dad thought that mam had a boyfriend but mam never and they fought. Mam never, it was actually him." At this point E asked that S should leave the room, which he did. She then said, "When me and S were asleep he put his tail in both our mouths. I was crying." When asked how she knew this had happened to her, E said that when she woke up her dad was in the room. She said that she was sick after it happened and that she was sick every time that her mother and father had a fight. E said that she had not told her mother what had happened to her and S because she did not want to upset her mother. She was noted to have become extremely distressed and was visibly shaking. She said that when they lived in the refuge she was scared that the father would come there in the night. E wanted her mother to be told what she

had said. In the presence of the mother she said again, "Dad put his tail in my mouth." The mother was very upset on hearing this and E appeared to be very worried about her mother's condition.

23.

The following year, on 25 May 2021 Ms R, social worker, made a pre-arranged visit to the home where the mother and children were living. S appeared anxious to show her something on his mobile phone. He showed her a snapchat exchange with his paternal aunt, Aunt S. It read:

S: "E said I just want to see you. E has told everyone".

Aunt S: "Told everyone what"

S: "What dad did"

Aunt S: "What did he do"

S: " I don't want to talk about I just cry. How did L do that her arm I see her on TikTok"

Aunt S: "Well I believe ya dad he loves yas to bits and hes trying everything to try n see yas. Anyway L fell over in school a love yous to bits xxx"

When asked by Ms R what S had meant by what "dad did" he looked at the floor before replying, "shouted at her and punched her in the face over and over." He then said that the father had shouted at him "with swear words". When asked if his father had done anything else he did not like he looked at the floor. When asked if his father had touched him anywhere he did not like, he pointed to his penis. He said that his father had touched him there over his trousers and that when S has asked him what he was doing his father had walked away. This had happened, he said, when the family lived together when S had been in his bedroom and was playing on his computer game. It had happened "multiple times". Sometimes his mother had been at the shops, sometimes she had been in the living room watching television. When Ms R asked what had happened to make him tell her he said, "because she doesn't believe me" and made it clear he was referring to his Aunt S's message on snapchat.

24.

Following these allegations by S, Ms R informed the police but there was some delay in the police visiting S with her until an arrangement was made to do so on 28 May 2021. Earlier on 28 May 2021 S approached his class teacher, Mr T. S revealed that he was worried about what the police were going to ask him. He said that he thought he knew what some of the questions may be but not all of them. He told Mr T that he would be woken by his sister saying that his mother and father were arguing. His father would hit his mother - he saw this "lots of times" and it made him feel scared. He saw his father kick and punch his mother. S then said that his father would come into his room when he was asleep and when his mother was out at the shops or asleep. His dad would get under the covers with him and this would wake him up. S appeared very sad when saying this and was "struggling to get his words out". Mr T asked if he had told anyone else about this and S said he had told his social worker. Mr T asked if he had managed to tell them everything about it and he nodded. He said it made him feel scared, "I'm not sure how it works or if it's supposed to hurt." S did not want to talk about it further but did say that it was to do with his "Dad's private parts but he was unsure what he did with it". He then stopped talking.

25.

S was visited by a probationary officer and a special constable, along with Ms R on 28 May 2021. Regrettably there are no records of that visit. I heard from D.C. S who was allocated the case after 28 May 2021 and who visited S on 22 June 2021 for completion of a record of S's allegations. S alleged that his father "touches my privates ... I don't like it. He shouldn't do it." When asked how many times he had done it he said, "Loads at our old house".

26.

On 26 August 2021 social worker Ms L made a home visit to see E, S and the mother. Unusually the mother had called her during the day to confirm the time of her visit. Again unusually, S was downstairs on Ms L's arrival and appeared to have been waiting for her. The mother told Ms L that she had found out more about what had happened to S and she became upset. At this point S was walking up the stairs which were open to the living room where the mother was talking. He was asked to come down. The mother went up the stairs but was noted to be hovering at the top. S talked to Ms L and occasionally nodded his head at her as he spoke. S said to Ms L, pointing down below, "well you know that my Dad put it up my bum." Ms L was taken aback and asked if this was the first time he had said this to anyone and S nodded. She asked how many times this had happened and he said, "quite a lot." It was in the family's old house and the mother had been asleep or at the shops when it happened. The mother came down and sat next to S. She was very upset and E came to comfort her.

27.

On 2 September 2021 S was interviewed by DC H at an ABE interview in the presence of a registered intermediary, SS. She had carried out an assessment of S prior to the interview. I have read the transcript and viewed the video of the interview. S was unemotional during the interview although he appeared initially hesitant, looking to the intermediary for reassurance. He told DC H that he did not live with his father because "he done some nasty stuff to me and mum... and my sister." He said this had happened about three years ago. DC H then said, "What I would like you to do is to tell me what your dad did to you." S replied, "He stuck his tail up me bum". DCI S was listening and watching from another room. He told the court that he had been taken by surprise by this allegation because S had not made it to him when he visited him in June 2021, and he had not been told that S had made such an allegation previously. S then said that the father "used to do it to my sister too ... the same as me" and he confirmed by nodding that he meant "sticking his tail up her bum." The officer later confirmed that by "tail" S meant penis.

28.

S was asked again about his age when this had started. He revised his initial evidence that it had been three years ago (when he would have been seven), saying that it had happened since he was four. A little while later he then said, "It might have been [when he was] six." He could not say whether it had happened to him "a few times" or "lots of times". It happened at night-time but sometimes in the morning when S had just woken up. The remaining salient parts of the interview need not be set out in his judgment.

The Law

29.

The following principles apply to this finding of fact hearing:

i)

The burden of proof lies on the party that makes an allegation of fact and identifies the findings they invite the court to make.

ii)

The standard of proof is the balance of probabilities. A finding that an alleged fact has not been proved is not a finding that the party making the allegation has lied or is unreliable, merely that the evidence has not established the fact to the requisite standard.

iii)

Findings must be based on evidence not suspicion or speculation - Lord Justice Munby in *Re A (A child)* (Fact Finding Hearing: Speculation) [\[2011\] EWCA Civ. 12](#).

iv)

The court must take into account all the evidence and consider each piece of evidence in the context of all the other evidence - see Dame Elizabeth Butler-Sloss, President, in *Re T* [\[2004\] EWCA Civ. 558](#), [2004] 2 FLR 838.

v)

It is not uncommon for witnesses to tell lies in the course of an investigation and the hearing. The court must be careful to bear in mind that a witness may lie for various reasons, such as shame, misplaced loyalty, panic, fear, or distress. The fact that a witness may have lied does not necessarily mean they are guilty of the matter alleged against them and the fact that the witness has lied about some matters does not mean that he or she has lied about everything: see *R v Lucas* [1981] QB 720. In this case the mother alleges that the father is lying to cover up his sexual abuse of the children. The father says that the mother is lying to cover up her malicious manipulation of the children to make allegations against him. In *Re H-C (Children)* [\[2016\] 4 WLR 85](#) McFarlane LJ applied the Lucas principle to family cases:

"[100] One highly important aspect of the Lucas decision, and indeed the approach to lies generally in the criminal jurisdiction, needs to be borne fully in mind by family judges. It is this: in the criminal jurisdiction the 'lie' is never taken, of itself, as direct proof of guilt. As is plain from the passage quoted from Lord Lane's judgment in Lucas, where the relevant conditions are satisfied the lie is "capable of amounting to a corroboration". In recent times the point has been most clearly made in the Court of Appeal Criminal Division in the case of *R v Middleton* [2001] Crim.L.R. 251. 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."

I remind myself to question whether a lie told by a witness in this case was deliberate, relevant to a material issue, and whether the motive for the lie was a realisation of guilt and a fear of the truth.

vi)

The family court may admit hearsay evidence but the weight to be given to such evidence requires careful scrutiny. In this case I have not heard directly from the children. Some of their out of court statements were made to professionals, some were made in controlled circumstances with notes being taken. At other times the children's statements were made to their mother in circumstances that require my attention. I must consider not only what the child is reported or recorded to have said, but also the circumstances in which it was said - *R v B County Council, ex parte P* [1991] 1 FLR 470. The children's hearsay evidence must also be considered alongside all the other evidence and not be the exclusive focus of attention.

vii)

In *Lillie and others v Newcastle CC* [2002] EWHC 1600 (QB) at [363], a libel case involving allegations of sexual abuse made by multiple children, Eady J noted that where there is credible evidence of abuse with respect to one child, the court can look to any comparably credible evidence relating to another child for corroboration of the former. However, Eady J was also careful to make clear at [367] that with respect to the question of corroboration:

“I must focus upon the essential principle. Evidence about what A has done to B may be admissible and probative of what A has done to C. The value of such evidence, however, depends upon its independence. If there is a significant risk of contamination undermining that independence, the relevance and value may be correspondingly diminished. It is necessary to be wary in cases where a risk of contamination arises (which is real, as opposed to fanciful) because of the investigation process itself.”

30.

In *Re P (Sexual Abuse: Finding of Fact Hearing)* [2019] EWFC 27 MacDonal J alluded to the care that needs to be taken when children allege sexual abuse at [573]:

The courts have long stipulated, and continue to demand, that very great care is taken when dealing with allegations of sexual abuse made by children, both in the initial phases and at the ABE interview stage (see for example *Re E* [2017] 1 FLR 1675 at [45]). This conclusion has been drawn from long experience and having regard to the results of a body of research into the way a child registers, processes and recalls memories, and the way in which a child may respond to figures perceived by the child to be in authority when questioned about such memories. In *Lillie and others v Newcastle CC*, Eady J observed as follows at [407]:

“It is of course elementary that one should put to one side any notion that an unwillingness to place reliance on a child’s evidence of sexual abuse necessarily imputes bad faith to the child, its parents or any other interrogator. What the research has thrown into stark relief is quite simply that very young children do not appear to have the same clear boundaries between fact and fantasy as that which adults have learned to draw”

In *Re B (Allegation of Sexual Abuse: Child’s evidence)* Hughes LJ (as he then was), alluding to past public enquiries that have demonstrated the point both starkly and repeatedly, stated at [34] that:

“...Painful past experience has taught that the greatest care needs to be taken if the risk of obtaining unreliable evidence is to be minimised. Children are often poor historians. They are likely to view interviewers as authority figures. Many are suggestible. Many more wish to please. They do not express themselves clearly or in adult terms, so that what they say can easily be misinterpreted if the listeners are not scrupulous to avoid jumping to conclusions. They may not have understood what was said or done to them or in their presence.

And at [577], having reviewed the authorities, the Cleveland 1987 Cm 412 report, and Report of the Inquiry into the Removal of Children from Orkney in February 1991 among others and the contents of the current ABE Guidance, MacDonal said that he took judicial notice of the following matters:

- 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.

I find that analysis of considerable assistance when approaching the evidence in this case.

Evidence

31.

Both parents were given warnings pursuant to s. 98 of the Children Act 1989 before they gave their oral evidence. As noted, measures were taken to ensure that the mother was able to give her best evidence without feeling intimidated by seeing the father. He could not see the mother whilst he was giving his evidence.

32.

The mother was adamant that the father had sexually abused S and E as they had reported. She was unswayed by inconsistencies in the reporting, for example that E had said that the father put his penis in S's mouth, an allegation he has never made, and that S had said that the father put his penis in E's "bum", an allegation that she has never made. She denied any responsibility for putting ideas of sexual abuse into the minds of the children and encouraging them to make the allegations. She defended her position of suspecting sexual abuse against both children in September 2019 when the evidence was, to say the least, slim, by referring to what the children had later alleged. She regarded the suggestion that she might have discussed her suspicions with the children and thereby influenced them to believe that they had been abused, as "disgusting" and something she would never do. On a number of occasions when her recollections of events or conversations differed from those recorded by social workers, she said that the records or recollections of the social workers were simply wrong. She had a very flat demeanour when giving her evidence. At times she appeared to be confused and she accepted that her memory was unreliable. She also accepted that when she lived with the father

they had not always been honest with social workers. There was, she now claims, domestic abuse by the father who assaulted her many times. She had kept that from social workers because she wanted to keep the children. When assessing the mother's evidence I take into account the cognitive assessment of her to which I have already referred.

33.

The mother's recollection was that during the morning of 19 September 2019 she and the father had had "niggling" arguments. He had accused her of sleeping around and said that she had a sexually transmitted disease and should get it checked out. She did visit a clinic for a test. The father spent much of the afternoon out of the house. She told the court that as she was putting E to bed, E was coming out with "random stuff". E told her that when she was naughty the father put something in her mouth and she was sick. The mother went to the father and reported what E had said. She was all the more concerned because E had said she did not like being left in the house with the father and she had recently been complaining of a sore throat and sore belly. The father avoided discussion of what she had said, instead accusing the mother of cracking up and needing to see a doctor. The mother's belief, as a result of what E had said, her recent complaints of a sore throat, and the father's response when spoken to, was that the father had sexually abused E.

34.

The mother also said that S had been very clingy to his father in the weeks before the events of the 19 to 20 September 2019 and that this led her to suspect that the father was sexually abusing him also.

35.

The mother alleged that on 14 October 2019 at the refuge, E had been drawing alongside other children in a sitting room where she was talking to other mothers. She said that E showed her the picture she had drawn and said that it showed the father putting his "tail" in E's mouth. The mother showed it to refuge staff who told her to speak to HS about it. She felt shocked but E was not upset and just carried on "like nowt happened." She made the recording on 18 October 2019 whilst brushing E's hair in their bedroom at the refuge. The other women had suggested that she recorded E talking about what the father had done. E knew that the conversation was being recorded. When the mother was asked why on the recording she had asked E why she had not previously told the mother that the father had put his tail in her mouth, when the mother's evidence was that E had told her that on 14 October 2019, the mother replied, "I haven't got a clue."

36.

The mother said that she regretted making the recording only because nothing was done about it. She admitted to feeling frustration that when social workers or the police spoke to E they reported that she had not said anything about the father putting his penis in her mouth. The mother said that on 1 November 2019 she contacted Ms HS to report that S had told her that what had happened to E had happened to him. When cross-examined she said that there had been a conversation about E during which S was nodding and had said that it had happened to him: the mother "thought he was referring" to sexual abuse. She asked S what he meant but he "just went quiet". She therefore assumed that he was telling her that the father had put his penis in S's mouth but she accepted that S has never actually alleged that the father committed oral sexual abuse against him.

37.

The mother accepted that she was required to leave the refuge in or about July 2020 because of the condition of her room. She accepted that she had no motivation at that time. The DART work with E began and when E became upset about the OK/not OK card about being touched (30 July 2020), the

mother recalled that E had said this had happened to her (being touched by her Dad) when she was asleep. The mother said that she thought this was weird but she put it down to the father having told E on contact visits that E had been dreaming things - she thought this was an example of the father manipulating E to believe that what had actually happened had only been a dream. On 7 August 2020 it was recorded that E said to a social worker that her mother had told her upon her waking what had happened to her (perpetrated by the father) when she was asleep. The mother denied that she had done so.

38.

The mother accepted that the expression used by S on 25 May 2021 when he said that his father had touched his tail over his clothing "multiple times" was not an expression S would ordinarily use - he would say "loads" of times.

39.

The mother was asked about an incident in early June 2020 when a message from the mother that she was at her own mother's house with the children was relayed to the father as an invitation to go to see them. By the time he arrived the mother's family were out on the street and he was turned away. On 3 June 2020 the mother reported this to the police alleging that the father had tracked down her whereabouts through Facebook. She admitted in cross-examination that she had lied about that to the police because she wanted a "restraining order" to be made against the father.

40.

The father was a more articulate witness than the mother. He strongly denied the allegations of sexual abuse made against him. He accused the mother of being entirely responsible for deliberately coaching the children to make the allegations of sexual abuse against him. He also denied having struck the mother at any time. He accounted for the bruise beneath her eye, noted in the clinical records for 20 September 2019, as being caused by the mother accidentally colliding with a kitchen worktop. He said that the "horrible" things that the mother had accused him of, to which he referred in his police interview but which he had not been willing at that time to specify, were not allegations of sexual abuse of the children, but of him sleeping with his own sister, and with the mother's sister. He denied that he had slept with either of them (the maternal aunt denied the reported allegation also - the paternal aunt did not give evidence). The father's account of events on 19 to 20 September 2019 were, like the mother's, somewhat confused and difficult to follow.

41.

The father alleged that the mother was a gambling addict and so, in September 2019, she did not have her own mobile phone. The couple had argued during the day of 19 September 2019 and he had been worried for a while that the mother was becoming more agitated, confused and erratic in how she behaved and what she said. There is an exchange of messages between the father and the maternal grandmother dated 23 August 2019 in which, in frank terms, the maternal grandmother says, "she has me demented a dinner wtf am meant to do it's like talking to a fucking wall she makes no sense xxx" and later, "av got to get her to doctors like it's fkn scary shit this she's getting worse." He said that on the evening of 19 September the mother came to him to ask to use his mobile phone to call for an ambulance. She had been suffering flu-like symptoms and the father said that she should not call for an ambulance for flu. An argument ensued. He made her a pot noodle for her dinner but she would not touch it and called it "shit". He kicked it over in temper. He had walked away from the mother hoping she would come round from her own temper but in fact she went next door to use their telephone to call for an ambulance. The doors of the two houses are directly adjacent and the father stood in the doorway and could hear something of what was being said on the 999 calls. He denied

having hit the mother on that occasion or previously. He said that sometimes in arguments she would go for him and he would hold her and may have caused bruising to her in those struggles.

42.

The father recalled that on 18 July 2021 he had come across the children waiting outside a shop. He went to cuddle S but the mother came out. At this point in his evidence the father, who was otherwise relatively calm at court, became angry, asking why he should not cuddle his son and why had S changed from being so close to his father, to now not wanting even to see him.

43.

Ms T told the court that when she visited the mother and children on 29 December 2020 – an unannounced visit – E alleged that when she and S were asleep the father had put his tail in “both our mouths”. She knew this because when she woke up the father was in the room. Ms T told me that E had seemed “almost desperate to talk to us about this.” She became extremely distressed and was shaking when talking to the social workers. She said that she was scared that her father would visit them in the refuge, something he had not done, or threatened to do, to that point and did not do later. E said that she would be sick when she woke up after it had happened, and that she was sick every time her parents had a fight. Later the parents confirmed that E would come to them when they were arguing and would be sick. E asked Ms T to read to the mother what she had told them. E appeared worried about her Mother more than herself.

44.

In her work with S, Ms T has observed that he is very reluctant to speak openly. However in October 2020 he reported that his father had told him that he wished he had never lived. The father denied saying any such thing.

45.

Ms R has worked with the family over a long period. She has developed a good relationship with S. On 31 July 2020 following the DART session, the police were informed of what E had alleged. She did not repeat the allegation to police. Ms R did not accept that she had told the police on 22 October 2020 that she strongly believed that the mother had told E what to say (about the father putting his tail in her and S’s mouths). However, she did say that the children were very confused, they were very aware of the mother’s feelings, and they were protective of her. For example, S told her that they had a bath every night whereas inspection of the bath manifestly showed that not to be the case.

46.

Ms L told the court that on 25 May 2021 the mother had called her during the day to confirm her arrival for a pre-arranged visit. This was most unusual. Equally unusually, S was waiting downstairs for her rather than being in his bedroom playing a computer game. The mother told Ms L that S had given her more information and suggested that S should tell Ms L. The mother went up the stairs which were integral to the living room where S was sitting. As S began to talk he was looking at his mother and nodding. Ms L told the court that something felt not quite right about this, “I just felt it was strange”.

47.

Ms HS said that when she visited the refuge on 14 October 2019 and was shown E’s drawing, the mother did not tell her that E had said it was of her father’s penis or “tail”. Ms HS was very sceptical about the mother’s interpretations of E’s drawing. She told the mother that her conclusion was that E had said that the father had put swear words in her mouth. E even wrote down what the swear words were, “piss off” spelled as “pis of”. She told the court that the mother remained anxious about the

father having contact with the children throughout her involvement in the case. Her sense was that the mother's anxiety was genuine but that she was also annoyed with the father. She cautioned the mother not to press E further, but to let her take her own time to say anything she had to say. Instead the mother decided to record a conversation with E in which she can be heard encouraging her to talk louder.

48.

Ms SP was leading the DART group session on 30 July 2020 when E became upset and then made the allegations set out above. She told the court that E had said that what the father had done to her happened when she was asleep. She then told both her and the mother to "just stop talking about this".

49.

Mr T, S's teacher told the court that S was "not one for over-sharing" but he had clearly wanted to talk to Mr T on 28 May 2021. He had told Mr T, when referring to his father's "private parts" that he was unsure what he did with it. He seemed to be very distressed. Mr T was put in a very difficult position when S approached him. Whilst he might have sought to curtail the conversation in order to protect the integrity of a forthcoming police interview, he did not want to cause distress to S by failing to respond to his approach. As it happens there was initial contact with S by the police on 28 May 2021 but no interview until over three months later. Mr T was rightly anxious not to ask questions that would lead S and I commend him for the sensitive way in which he dealt with a difficult situation.

50.

DCI S was the officer in charge of the investigation once S had made his allegations in 2021. He became involved after the initial contact visit by the probationary officer and special constable on 28 May 2021 but he had not been aware of that visit when he himself visited in June 2021. Accordingly there were two "initial contacts" nearly one month apart and there are notes only of the second one. The ABE interview did not take place until several weeks after DCI S's initial contact. At the time of the ABE interview with S on 2 September 2021 he was monitoring from a separate room. S had made an allegation that his father had put his "tail" up his "bum" to Ms L on 26 August 2021 but neither DCI S, nor the interviewing officer, had been aware of that allegation. When S made that allegation in the ABE interview it came as a surprise to them.

51.

I should note that some of the social workers involved in this case had little to no experience or training in dealing with children making allegations of sexual abuse. Likewise the probationary officer and special constable who spoke to S on 28 May 2021 cannot have had significant experience of dealing with such allegations. DC H, who conducted the ABE interview with S, will have had training and experience in conducting such interviews, but there are some concerning aspects of the interview which I must address.

52.

In this case I have not heard from these young children directly. I have to rely on what they have said to others, as recorded and reported. There were concerns amongst professionals at a very early stage that the children might be influenced by the mother, either consciously or unconsciously, to make allegations of sexual abuse which did not have a truthful foundation. The first reports of sexual abuse allegations by the children were made through the mother. The importance of dealing sensitively and carefully with allegations of sexual abuse when they were made by the children directly to

professionals was therefore of the utmost importance. There are a number of concerns about how allegations of sexual abuse made by the children to professionals were dealt with:

i)

On 25 May 2021 S told the social worker that the father had shouted at the mother and punched her in the face. He alleged that the father had shouted swear words at him. The social worker then asked if the father had done anything else that he did not like or want to happen and S did not reply but looked to the floor. The social worker then asked if "dad had touched him anywhere he didn't like and at this point S pointed to his tail." Therefore it was the social worker not S who had introduced the subject of inappropriate touching.

ii)

I commend the teacher, Mr T, for his sensitive response to S on 28 May 2021, but the fact is that S was exploring what he might be asked by, and perhaps what he might say, to the police officers who were due to visit him.

iii)

There is no record of the questioning of S by police officers on 28 May 2021 when they made initial contact with him. This was a very important contact and it was important to make a clear record of the nature of his allegations prior to an ABE interview (if it was determined that an ABE interview should take place).

iv)

On 26 August 2021, when S first alleged to a professional that his father had put his penis up his "bum", his mother was at the top of the stairs effectively in the room. He was reportedly looking up at her when he spoke.

v)

There is no record of any follow up to S's allegations made on 26 August 2021. The interviewing police officer, and the supervising officer, were not aware of S's allegations when they conducted his ABE interview on 2 September 2021.

vi)

More than three months passed between S's first allegation of sexual abuse by his father (on 25 May 2021) and his ABE interview.

vii)

There has been no enquiry or discussion about whether S and E have spoken to each other about the allegations, let alone what they may have told each other.

viii)

During S's ABE interview:

a)

there were occasions when the question suggested the answer. For example, the interviewing officer asks, "Does he take your pants down?" to which S said "Yeah". The officer later asked, "Do you put your pants back on yourself?" S said, "When I wake up. I mean, yeah." So, S's evidence about undressing and re-dressing when his father allegedly abused him, was suggested by the questioning.

b)

S was asked whether the bed was different after the abuse. He answered that it was moved a little bit. Then the officer asked, "Is the bed wet or is the bed dry?" S said it was wet. He then said it was wet all over the bed. Notwithstanding that answer he was then asked, with the use of dolls, to say whether the patch was at his head or his feet or somewhere else. He said, "by my feet". Again, notwithstanding that answer he is then asked whether it would be "by his knees or above your bum?" S answered, "Above me bum". Therefore S has answered that the wetness was all over the bed, but it was a patch, that the patch was by his feet, but that it was above his bottom. The options for answering were given by the officer. The options he offered did not always follow on from S's previous answers. DCI S commented in his oral evidence that this questioning was "not great".

c)

Later in the interview S demonstrates how his father touched him, over his clothes, by placing his hand over his groin area. The officer then asks, "And then he just squeezes?" and S nods. In fact S had not demonstrated a squeezing motion. The officer then asks more detailed questions about how the father squeezed, offering the alternatives of one squeeze of "a couple of squeezes". S opts for "a couple".

Conclusions

53.

I cannot know what discussions E and S have had with each other about the sexual abuse allegations now made against their father. Their interactions with each other have not been explored by any of the professionals in this case. I cannot know to what extent they have influenced each other. I intend to examine E's allegations first because hers were the first in time (at least as reported by the mother). However, I shall take into account all the evidence as it relates to both children before reaching any conclusions.

54.

The nature of the relationship between the mother and father, and the dynamics within the family are an important context in which to consider the allegations of sexual abuse. The parents have admitted a history of neglect of the children, poor hygiene, poor presentation of the children including at school, and that they would argue in front of the children. Those arguments, I am sure, frequently involved swearing and verbal abuse of each other. In their single level home the children were woken by the arguments. They were worried for their parents. I have no doubt that the arguments sometimes escalated into violence. On 20 September 2019 there are clinical records of bruising around the mother's face and body. I do not accept the father's account that these were all self-inflicted or accidental. He spoke to the police in September 2019 of having been able to "control" things during the relationship - I am sure that he would sometimes use physical force to exert control. I accept the mother's case that the father would sometimes hit her. The children have consistently and with feeling spoken of their parents fighting each other. I also accept that the mother kept quiet about the physical abuse of her by the father whilst they were together. I accept the father's account that the mother would sometimes physically attack him, but he would be able to hold her and he has not complained of suffering any injuries at her hands. E, it was accepted by the parents, would sometimes be sick in front of them whilst they argued. Neither parent seemed to be disturbed that their young daughter was so distressed by their conduct as to be sick. Not only was the parents' relationship volatile in this way, but it had a detrimental impact on the children who had to witness and suffer the mutual verbal abuse which would sometimes become violent.

55.

Another important aspect of the family dynamics during the parents' relationship, was that, as they both now admit, they lied to authority figures about what was happening within the family, and they encouraged the children also to lie to social workers. The purpose of being dishonest to social workers was to cover up deficiencies in their parenting. There was a culture of dishonesty in dealings with authority figures, as well as neglect and conflict, within this family during the young lives of the children.

56.

The first suggestion of any sexual abuse by the father, came from the mother. She has referred to a "gut feeling" that he had sexually abused the children. This "gut feeling" appears to have struck her on 19 September 2019. The basis for her feeling, which quickly became a firm belief, was extremely thin. E had told her that the father had put things in her mouth when she was naughty. It had made her sick. She did not like being with him on her own. All of those matters were explicable: she told professionals that what he put in her mouth were swear words. As noted, E would sometimes be sick when her parents argued (typically using swear words). E told professionals that she wanted to go out with her mother, not to be left with her father. She complained later that he did not play with her. There was no rational basis for the mother's "gut feeling" that the father had sexually abused E by putting his penis in her mouth or otherwise. The grounds for believing that S had been sexually abused by the father were weaker still: the mother was distrustful that S was so clingy to his father.

57.

The mother's "gut feeling" quickly developed into an unshakable conviction. I do not have any expert psychological evidence about the mother's thinking at this time, but I note that she was under considerable stress. Her relationship with the father, always volatile, was particularly strained. Public law proceedings had only very recently concluded with a Supervision Order. As the father put it to police, they had "social on their backs". In the weeks prior to 19 September 2019, the mother was becoming more distressed and erratic in her behaviour and her allegations. This was clearly noticed by her own mother as demonstrated by her messaging to the father in August 2019.

58.

The mother's 999 calls for an ambulance, and her changing allegations against the father, including that she had been drugged by him, show her state of distress and confusion. The body worn camera footage shows her to be in a distressed mental state. Her heart rate was racing. She was mumbling and difficult to understand. There is no evidence at all that the mother or the father were drug users. There is no evidence at all that the father had drugged her drink or food that night but she apparently believed that he had done so. The mother's vital signs were normal by the time she arrived at hospital and she required no treatment for having been drugged by the father. I am sure that she was not drugged by the father. Her belief that she had been drugged was not a hallucination but it was an example of distorted thinking in a highly aroused and distressed state.

59.

The distress of the children that night, as captured on the body worn camera footage, is hard to watch. They had been used to being woken by their parents' arguments which were sometimes violent. This was disturbing to these two children but it did not then turn them against their parents, rather they became very loyal to and protective of them. At that time S was particularly close to his father. When he told the police that he wanted them to "give 'em one more chance... this won't happen again", it is not clear to me whether he was referring specifically to his father or to both parents, but I am sure that he is talking about the argument or "fight" between his parents. He did not want the police to take his father away. He wanted the family to stay together. Similarly, E is seen

to be understandably worried about her mother in the ambulance. It is as if the children are having to take responsibility for their parents' behaviour.

60.

I do not doubt that at this stage, in September 2019 the mother, in her distressed state, believed that the father had sexually abused the children but the evolution from the mother's irrational and distorted beliefs in September 2019, to her ten year old son making allegations of anal sexual abuse in a police interview two years later, is even more troubling.

61.

The mother's irrational conviction was that the father had committed oral sexual abuse of the children. She has interpreted everything that has happened since then as confirming her conviction. Hence she has interpreted E's rough line drawing of 14 October as a crude picture of testicles and a penis. When E mentioned again at that time that something had been put into her mouth, the mother concluded that the circle shape attached to the "penis" was E's mouth. Had she listened to her daughter rather than her own irrational thoughts, she would have understood that E was pointing to the longer shape as being her (E), with a tail, and the circle as being what the father put in her mouth. E explained this quite clearly to the social worker Ms HS the following day: the circle had been a speech bubble for the swear words. She even wrote down the swear words for Ms HS. The "fish" shape was her. What the mother had interpreted as a crude drawing of testicles, was a fish tail - it does indeed look like a fish tail, or the tail of a whale or dolphin. I do not accept the mother's evidence at court that E told her that the picture was of her father putting his tail in her mouth. The mother did not report that to Ms HS and E did not interpret the picture that way to Ms HS. This is something the mother has said after the event as a self-justification for her own, distorted interpretation of what E had drawn.

62.

The mother admitted to the court that she had felt frustrated that her conviction was not shared by Ms HS. In her frustration, the mother recorded a conversation with E and sent it to the police. The court does not know what the mother had said to E before the recording started. However, the recorded conversation proceeds as though the mother knows exactly what E will say if she continues to ask her questions directed to the subject. She then encourages E to speak more loudly so that she can be heard (and recorded). When she asks E why she has not told her this before, E says that she has. The mother's question was a disingenuous and unsuccessful attempt to make it appear that E's recorded allegations were spontaneous. E's reply suggests that they had talked about the allegation at some time prior to the recording. Therefore the recording is not reliable evidence of a genuine, spontaneous revelation by E, but rather of the mother having spoken to E about sexual abuse by the father and then asking her to say something about it on a recording. The following year, in conversations with professionals, E mentions having the recording on an i-pad. The recording was clearly something that continued to be talked about between her and her mother. On the day that the mother sent this recording to the police, officers and a social worker visited E at school. She gave the same account of her father putting swear words in her mouth that she had given to Ms HS four days earlier. E has been consistent and clear, but her mother would not accept what her daughter was saying.

63.

I am sure that the mother spoke to E about what she thought had really happened and then asked E to repeat that for the benefit of the recording and, she hoped, when talking to social workers. I am equally sure that the mother has talked to E on many other occasions about what she believes really

happened, so that E has adopted the story as part of her history. She “knows” that the father put his penis in her mouth because this is what she has been taught had happened by the person she trusts the most – her mother. The mother has not at any point said that she witnessed any sexual abuse by the father. She relies, and invites the court to rely, entirely on what E has told her, and later told professionals. The difficulty with relying on E’s own allegations is:

i)

The genesis of them, as set out above, is tainted by the mother’s irrational convictions and her interactions with E.

ii)

E has later, and variously, told professionals that the father put his “tail” in her mouth when she was asleep but that she knows that is what he did because:

a)

Her mother told her what he had done;

b)

The father was present in her bedroom when she woke up;

c)

The police saw him do it and told her and her mother what he had done.

The first explanation is denied by the mother but if true would mean that the source of the allegation was indeed the mother not E. The second would be no basis for believing that the father had put his penis in E’s mouth – for her to believe that on the basis simply that he was in her room, would imply that someone else has put the idea in her head. The third is untrue and is either a product of her imagination or misinformation from another person.

iii)

On 30 July 2020, when E became distressed during the DART group session, I note that she became upset when discussing the relevant OK/not OK card with her mother. The card would have triggered thoughts about the alleged sexual abuse in the mother. E herself seemed reluctant to talk about it, telling Ms SP and her mother to “just stop talking about this”. I am satisfied that the mother had been talking to E about the alleged sexual abuse by her father and that is why E became upset.

iv)

E’s repeated allegations that her father put his “tail in her mouth” and in S’s mouth, on 7 August and 22 October 2020, were made without emotion or distress, and in a very matter of fact manner (as recorded and described by the relevant social workers). The sense is that she had learned this story by rote. As has been observed during the evidence and submissions, the story has been consistent but it has had no context or detail. The added information that the father also put his penis in S’s mouth does not appear to come from E having witnessed that happening. S has never made that allegation and no-one else has said they have witnessed it. E must have been told that it happened, or she has imagined that this is what happened, or she has understood that this is what she is expected to say to professionals.

v)

On 29 December 2020, the manner in which E makes the repeated allegations, and her interaction with the social workers, is of a different character. The allegations do not significantly differ but her level of distress is much higher than previously. It seemed to Ms R as if E was desperate to tell her of

the allegation and was very concerned about her mother's reaction. I note that there was due to be a hearing in the private law proceedings in January 2021 and that the mother remained very anxious about the father's contact with the children. I have little doubt that the mother was once again determined that the allegations of sexual abuse should be on record and that she had pressured E into telling her story. That is why E was distressed on this occasion. She worried that she would get into trouble with her mother if she did not say the "right things" to the social workers.

vi)

There is no corroboration of E's allegations. S has never said that he witnessed the father putting his penis in E's mouth. He has never said that E has told him that happened. They shared a bedroom at all relevant times and it is striking that he does not corroborate her allegations, particularly since she has said that her father abused her in the bedroom when she was asleep.

vii)

There is no medical or other physical evidence to support E's allegations.

viii)

E has not described any circumstantial details - she has just stated that the father put his "tail" in his mouth. She has not given any telling details about what happened that would give the allegations authenticity.

ix)

E happily chooses to have regular weekly contact with her father and has been consistently observed to be comfortable and affectionate in his presence.

x)

There has been no ABE interview with E. There has been no psychological or other expert assessment of her. Her evidence has come through her mother and then, later, through what she has told social workers and police officers when visited.

xi)

There are no reports of E showing disturbed or sexualised behaviour or using sexualised language in or out of school.

64.

Turning to S's allegations, the first matter to note is that he did not report sexual abuse to professionals himself until 25 May 2021, which was 20 months after the last time when he and his father had shared a home together. I take into account that S is reportedly reticent to share his feelings and that anyone who has been affected by such disturbing experiences may well take time to reveal them to others. Nevertheless, during those 20 months S knew that E was making allegations of sexual abuse because it was talked about in front of him by adults, even if E did not say anything to him herself (which she may have done). During those 20 months he changed from being fiercely loyal and protective of his father, to not wanting to see him, and believing that his father hated him. There is no evidence that the father did anything in those 20 months to justify that change in S. In my judgement, either S's dramatic change in allegiance arose because deep feelings of fear, resentment or repulsion developed as he reflected on his past sexual abuse by the father, or because he was subjected to other influences, namely from his mother, to cause his new antagonism.

65.

The determination of whether, on the balance of probabilities, S has been sexually abused by the father (there being no allegation and no suggestion that he has suffered sexual abuse by any other person) has been a matter of very anxious consideration. Having weighed all the evidence I am not satisfied that on the balance of probabilities S has been sexually abused by the father. My reasons are as follows:

i)

The route by which allegations of sexual abuse of S were first reported was via the mother. She told social workers on 1 November 2019 that "S had said similar to E in relation to her disclosure about her dad having sexually abused her." As the mother accepted in cross-examination, S did not in fact disclose sexual abuse either by oral sex or otherwise at that time. The mother assumed that his nodding whilst she was speaking was a confirmation that he too had suffered his father putting his penis in his mouth. I have already drawn conclusions about the reliability of the mother's interpretations of what her children were saying or indicating to her at that time. Her interpretation of what S was indicating to her by nodding is not reliable evidence that he wished to communicate that his father had put his penis in his mouth. S has never said that this happened to him. When seen by the social worker on 4 November 2019 S did not make any such allegation.

ii)

The first occasion on which S made allegations of sexual abuse against his father to a professional was on 25 May 2021, to Ms R. As it happens the question of being touched inappropriately was raised by Ms R not by S, although she reports that S quickly assented and pointed to his groin. On that occasion S did not say anything about his father's penis being inserted in his mouth or his bottom, only that the father had touched S's penis over his clothing. He said that this had happened "multiple times". His motivation for speaking out on that occasion appears to have been a message interchange with his paternal aunt in which she had indicated, as she accepted in evidence had been her intention, that she was aware of allegations by E about the father's sexual abuse, and she did not believe them. I have already noted S's proud loyalty to his family. By May 2021 that was entirely focused on E and his mother, due to the separation from his father and due to matters that I shall address in more detail below. The evidence strongly suggests to me that the mother had spoken to S about the paternal aunt's message and had portrayed it as being that S, E and the mother were not being believed. S may well have been motivated by his sense of loyalty to make the allegations which previously he had not made.

iii)

I have seen the mother give evidence. I have taken into consideration all the evidence about the parenting of the mother and father, including everything the children have said. Over a prolonged period the parents argued, swore at each other and sometimes fought each other physically in front of, or within earshot of the children. They appear to have given little thought to the impact of the behaviour on the children. The evidence is quite clear that the mother knows no boundaries when it comes to sharing with her young children matters that should be kept to adults, including the disputes between her and the father, detailed aspects of the court proceedings, other adults' views of her and the children, and her own beliefs about what the father had done to the children. E has reported beliefs about the father stealing money from the mother, and accusations and counter accusations about each parent having affairs, that would be beyond her understanding or knowledge had an adult not talked to her about them. I conclude that the mother is the only adult who would have talked to E about those matters, and that she is the adult who has influenced E to recount those beliefs to social workers. I have no doubt at all that the mother has also told both the children that their father has

sexually abused them. No-one listening to the evidence in this case could reasonably have concluded that the mother has kept her beliefs to herself and has not shared them with the children. She has convinced herself that they have been sexually abused by the father. She brooks no disagreement about that conviction - in court she flatly refused to contemplate that there was any doubt about the matter. She is extremely anxious about them seeing their father unsupervised. She becomes agitated thinking about what she believes he has done to the children. She has lived closely with them in difficult circumstances since September 2019. I am sure that during that period she has spoken to S repeatedly about what E has alleged, about what she "knows" happened to him in his bedroom, and about his father's culpability.

iv)

S was once very loyal to his father. He now refuses to see him. There is no evidence that his father has had any contact with S during which he has given S cause to distrust or dislike him. S had witnessed his mother and father rowing and fighting but that had not turned him against his father, as the evidence on 19 to 20 September 2019 shows. I am quite satisfied that it is the mother's conduct and discussions with S that have turned him against the father. He is aware of his mother's anxieties and he now wants to protect her. As Ms R told the court S and E are very confused children. S now seeks to protect his mother. Rejection of his father is one means of protecting her against her manifest anxieties. Endorsing her fears and beliefs also demonstrates his desire to support and protect her. This provides the context within which he has made the allegations against his father.

v)

On 25 May 2021 S used the expression "multiple times" when alleging that his father had touched his "tail". All agree that this is an expression that S would not naturally have used. It suggests that he used that expression because he had heard someone else use it. Its use adds to the concern that he was prompted to make these allegations and had discussed them with an adult before he made them to Ms R.

vi)

When S was anxious about a forthcoming visit by the police he spoke to his teacher on 28 May 2021. His concerns are illuminating. He was worried about what questions might be asked - he did not know "how it works or whether it is supposed to hurt." He appeared to be concerned to be able to give the "right" answers, not necessarily to say only what he could remember.

vii)

When S first made an allegation of anal sexual abuse, on 26 August 2021, nearly two years after the family had been separated, it struck the social worker, Ms L, that he was waiting for her arrival in order to tell her, and that the mother was also anxious that S should tell his story to her. I conclude that prior to the visit, the mother and S had talked about what he was going to say to Ms L. The manner in which S looked to his mother and nodded as he made his allegations seemed to Ms L to be "strange". Again, this evidence raises concerns that S's allegations were prepared or stage-managed. I have to bear in mind that there would be some anxiety in the family had he spontaneously made the allegation to his mother who then knew that he would be speaking about it to the social worker. But, given the history of the case, the greater concern is that the mother had been involved in discussions with S which led to the revelations he made on this day. When S first alleged anal sexual abuse he did so without any "run up" to the assertion: he blurted it out. He has repeatedly said that his father "put his tail up my bum." He has hardly varied that expression at all. S has been quite matter of fact when talking about the abuse. He has been distressed when anticipating talking about it, but rather flat when actually describing what occurred. Perhaps this is a defence mechanism, but it might also be

that he was anxious about saying the “right things” and his lack of emotion when talking about the abuse itself is because he does not have any emotions or feelings connected with real events. I accept that he is a generally reticent child and that his demeanour and use of language could be interpreted in different ways but the way he has talked about the abuse calls into question whether he has been recalling genuine incidents or repeating what he has been told had happened.

viii)

Very unfortunately the handling of S’s allegations in May 2021 and then in August 2021 has not assisted as it might in assessing their credibility. There were delays between the initial allegations and their being explored and recorded at an ABE interview. The first initial contact with police was not recorded by the police. The officer making the second initial contact did not know about the first contact. I have commented also on the questioning technique during part of the formal ABE interview. What might otherwise be regarded as telling details, which demonstrate that his story is of real events not a learned account, such as the wetness of the bed, are somewhat undermined by the questioning that led to their being given.

ix)

There is no corroboration of the evidence that the father touched S’s penis over his clothing or inserted his penis into his bottom. E shared a room with S where this abuse is said to have occurred and she has said nothing about it. The mother would have been present in the house at night times when S said some of this abuse occurred, but she has not witnessed anything. Indeed she gives no evidence of S or his father behaving oddly, of S being unaccountably upset or disturbed, of wet sheets or clothing, stains, or any other potentially circumstantial or corroborative evidence.

x)

There is no corroborative medical evidence.

xi)

S has no recollection of it hurting him when his father inserted his penis in his bottom. It is right to record that he has not been asked any specific questions about penile penetration of his anus, but his use of the phrase “put his tail up my bum” suggests penetration by an adult penis when he was aged six to seven through to age ten. He could not say whether that hurt and did not describe any other feeling other than that he was worried. When asked to describe a specific incident he was unable to do so freely. Again, I take into account S’s natural reticence, and the difficulty for any child being asked to describe such an event, but he has not provided any spontaneous detail about the allegations of the kind that would give the allegations authenticity.

xii)

As with E, there is no evidence of S exhibiting disturbed or sexualised behaviour or using sexualised language. There is no expert or other evidence that his behaviour is suggestive of a history of sexual abuse.

66.

Having reviewed all the evidence in the case I find that on the balance of probabilities the father did not sexually abuse either E or S as alleged.

67.

E appears to be a lively and engaging but suggestible young girl. I am quite satisfied that her mother’s own conviction that E was sexually abused by the father - a conviction built on irrational assumptions - has influenced E to tell professionals what her mother has told her she believes the

father did to her. Whenever evidence to the contrary has come to the mother's attention – such as E saying that what the father put in her mouth were swear words – the mother has explained it away so as to maintain her rigid belief in the father's abuse. The evidence shows that E has come to believe that her father put his penis in her mouth when she was asleep. There is no corroboration at all for E's allegations and they cannot be relied upon. They clearly come from what she has been told by the mother, not from her own experiences.

68.

S is a quiet boy who is very loyal to his mother, just as he was previously loyal to his father. It is not an easy decision to find that this ten year old boy's allegations of sexual abuse, including those made to police in an ABE interview, are not credible - there are no obvious signs during the interview that S is lying - but the genesis and evolution of the allegations in this case, the involvement and conduct of his mother, the inconsistencies, the lack of any corroboration, the circumstances in which S first voiced the allegations, the absence of reliable detail about the abuse, and the other matters set out above, mean that I am unable to rely on what he told the police as statements of truth. Indeed, I am sure that S has relayed to the police, and to social workers, what he has been persuaded by his mother to believe had been done to him.

69.

Although I have found that the evidence does not prove that the father sexually abused the children as alleged, it does not follow necessarily that the mother both concocted the allegations of sexual abuse and coached the children to make those allegations when she knew they were not true. In this respect I need to consider both the allegations made by E, and those made by S.

70.

As may already be clear from the earlier parts of this judgment, I conclude that the evidence establishes that in or about September 2019 the mother became irrationally but genuinely convinced that the father had sexually abused the children. Nothing that has happened since has dissuaded her. Whether due to low intelligence, stubbornness, hostility towards the father, anxiety and stress, or fear of losing her children, she has held fast to her conviction even in the face of evidence to the contrary. Moreover, the evidence shows that she is very likely to have shared her beliefs with the children. She has clearly talked to them about what the father has done to them based on her own strongly held beliefs. When professionals did not accept that the children had been sexually abused, she has become frustrated and has tried to enlist the children to convince the professionals otherwise. Sometimes, such as with the recorded conversation with E on 18 October 2019, those attempts have been brazen and unconvincing. Social workers at the time voiced concerns that the accusations came from the mother rather than from the children. At other times her influence has not been immediately obvious to the professionals dealing with the family, but I am sure that it has nevertheless been powerful. For example, I am sure that she had discussed the paternal aunt's messaging with S and persuaded him that he, E and the mother were being challenged and that it was important that he spoke out.

71.

I have no doubt that E's allegations of sexual abuse are entirely the product of the mother having talked to E about her own beliefs about what the father had done to her. However, I am also sure that, however irrational her beliefs, the mother did sincerely believe that the father had sexually abused E. The mother genuinely believed that he had put his penis in E's mouth. The mother then discussed her belief with E and persuaded E to report to social workers what she, the mother, was convinced had

occurred. I do not doubt that E has accepted what her mother has told her and so has repeated it to social workers in good faith.

72.

The picture is less clear in relation to S because there is no evidence of the mother having reported any concerns about anal sexual abuse and the touching of S's genitals over his clothing, prior to S himself making such allegations. Any conversations between the mother and S about what had happened to him, including her own interpretation of past incidents, are unreported and unrecorded. The mother certainly believed in September 2019 that the father had sexually abused S, but she has never been recorded as alleging that there was any anal sexual abuse. The genesis of S's allegations, which I have found are untrue, is therefore unclear. Nevertheless, having considered all the evidence in the case, I am satisfied that on the balance of probabilities, S's allegations of sexual abuse by his father do not reflect what actually happened to him, but are instead the product of his mother's distorted beliefs and her influence on him. The mother clearly influenced E wrongly to believe that she had been sexually abused and I am satisfied that, by a similar process, S has been induced to believe wrongly that he also has been sexually abused.

73.

Having carefully viewed the ABE interview and taken into account all the other evidence in the case, I am sure that S has come to believe that his father touched his groin over his clothing and put his penis up his bottom when he was in bed. I do not believe that S experienced this abuse but he has come to believe that it happened. S has no memory of such abuse and was telling the police what he believes happened. Hence, he stuck to a fixed form of words when talking about the abuse. He did not give any free answers beyond the basic assertion that he was touched and that his father "put his tail up my bum". His answers about surrounding details were unconvincing. If he was not sexually abused but believes that he was sexually abused, then the question arises how he has come to believe he was sexually abused in the manner he has alleged. It is possible that the mother dishonestly fabricated allegations of sexual abuse in relation to S and then deliberately persuaded S to believe them. His allegations about anal sexual abuse have arisen long after the mother's initial accusations of oral sexual abuse. The mother has had the opportunity to plant the belief of the alleged abuse in S's mind. However, I have concluded that there is insufficient evidence that the mother has dishonestly concocted the allegations of abuse perpetrated against S and then persuaded him to report those allegations when she knew them to be untrue. On the balance of probabilities I find that the mother has herself interpreted things S has said and her own unreliable memories of past events, in such a way that she has formed the belief that the father has committed this sexual abuse against S. She has then discussed her beliefs with S and has induced him to believe that the abuse occurred. The absence of evidence of the abuse has not dissuaded her from holding on to the belief that he was abused. Nor has it dissuaded her from discussing it with S, inducing him to believe it happened, and encouraging him to report it.

74.

The evidence does not allow the court to know precisely how the mother has induced S to believe that his father touched him in a sexualised manner and put his penis up his bottom, but I am sure that she has done so. Having rejected the allegation that the abuse actually occurred, I can identify no other means by which S could have come to hold these beliefs. Furthermore, the mother's conduct and evidence are entirely consistent with her having induced these beliefs in S as I have found she did with E. It is certainly possible that he has mentioned some things to his mother about relations with his father that were in reality quite innocent, and she has interpreted them in a distorted manner and

then convinced S that what happened was abusive - that a father cuddling his child in bed was "putting his tail up your bum" for example. However, the detail of discussions between the mother and S are not known.

75.

On the balance of probabilities the mother has not dishonestly concocted allegations of sexual abuse out of thin air and persuaded the children to repeat them to social workers and the police knowing them to be dishonest. I accept that although her beliefs that the children were abused are irrational and without evidential basis, they are nevertheless sincerely held. Rather than maliciously fabricating accounts of sexual abuse, the mother has, by her conduct and dealings with the children, induced them to adopt her own distorted beliefs that the father sexually abused them. That does not absolve her of responsibility: she has manipulated the children to adopt her beliefs when those beliefs were without any rational basis and without care for the impact on the children of sharing with them her suspicions and convictions. She has encouraged them to report the allegations even when the children, particularly S, was uncomfortable in doing so. Although her manipulation of the children has not been dishonest it has been damaging to them. Firstly, they have each come to believe that their father has sexually abused them. This has already damaged S's relationship with his father. It is likely to have long-term consequences for E's relationship with her father also. Secondly, the children wrongly believe they are victims of sexual abuse, with all the consequences of that for their mental wellbeing and development. Remedying the damage already done to the children will be a complex and long-term challenge. It may be harsh to criticise a person of very low intelligence for holding fast to irrational beliefs, but the fact is that her determination to share them with the children was not in their best interests, and the mother could and should have avoided this damage by taking the clear advice given to her at an early stage not to discuss her "gut feelings" with the children. The mother has not acted in a way that has protected the children. Instead, by openly expressing her anxieties and speculations to the children and by cajoling them to take her side in disputes with the father, she has called on their loyalty, trust, and protective impulses to induce them to believe their father has sexually abused them. She struck me as child-like herself when she was giving evidence. She is unable to put events into perspective or to process information about the father and the children rationally but instead speculates, exaggerates, and gives significance to things said or done which goes far beyond reason. She lacks the sophistication to devise and implement a strategy to manipulate the children - it is something she has done because she has been unable to control herself or to draw boundaries to protect them.

76.

In summary, I find on the balance of probabilities that:

i)

E has not been sexually abused by the father.

ii)

S has not been sexually abused by the father.

iii)

The mother has not dishonestly concocted allegations of sexual abuse by the father or coached the children to make allegations of sexual abuse which she knows to be untrue. The mother has come to believe, wrongly and without any rational basis, that the father has sexually abused each child, she has induced the children to adopt the same distorted beliefs, and she has encouraged them to report those beliefs to social workers and the police.

iv)

The father was occasionally physically abusive towards the mother when they lived together, in the context of a volatile, mutually verbally abusive relationship, in which the mother would also attack but not harm him. The father has caused some bruising to the mother on occasions of physical abuse. The evidence does not allow the court to make findings of any specific incidents of physical abuse.