

Neutral Citation Number: [2023] EWFC 30

Case No: PR22C50202

IN THE FAMILY COURT
SITTING IN LANCASTER

Date: 13/03/2023

Before:

THE HONOURABLE MR JUSTICE HAYDEN

Between:

Lancashire County Council

- and -

M

-and-

F

-and-

R

(through his Children's Guardian)

-and-

MGM

Miss Sarah Probert (instructed by Agent Solicitors Stephenson) for the **Applicant**

Miss Marie-Claire Gane (instructed by Farleys) for the **First Respondent**

Miss Vanessa Lau (instructed by Forbes) for the **Second Respondent**

Mr Alex Walker (instructed by Waddington & Sons) for the **Third Respondent**

Mrs Clare Charnley, Solicitor Advocate (instructed by TW Law) for the **Intervener**

Hearing dates: 20th – 22nd February 2023

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

THE HONOURABLE MR JUSTICE HAYDEN

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 HAYDEN:

1.

This case comes before me as a fact-finding hearing, in the context of public law care proceedings. I am concerned with R, who was born in May 2022. The mother (M) is CW, the father (F), CC. Proceedings were issued on the 17th May 2022. The fact-finding hearing was listed for 5 days, commencing on the 13th February 2023. Though the case does not present issues which would ordinarily require it to be transferred to the High Court, I agreed to hear it to assist the local court and because there was, manifestly, a need for the allegations to be determined.

2.

The case papers characterise the case as “a single-issue case”. If such cases do exist, in the context of public law care proceedings, they are extremely rare. I do not consider this to be one of them. The index allegation is that F had sexually assaulted M’s 12-year-old sister (Z), on 21st February 2022. The allegations arise against a backdrop of significant welfare concerns in both maternal and paternal families. In the maternal family, the grandmother (MGM) with whom both Z and M were living at the time, has a history of pervasive mental health issues and alcohol abuse. In respect of the paternal grandfather (PGF), I have been told, that the Local Authority and police records include domestic abuse incidents between the PGF and his partner. Furthermore, the couple was deregistered as foster carers due to safeguarding concerns arising from an incident in which they were said to have permitted a foster child and their own children to have contact with a male who was deemed a risk to children. F is also said to have been sexually abused as a minor (which he denies). Additionally, there are allegations of drug abuse and supply of drugs. The evidence relating to these background issues is sparse, I suspect, in part, because the focus of the investigation has been on the one issue. Despite the obvious concerns in the paternal family, R presently lives there with M. M is now expecting the couple’s second child. It is clear that there is a strong belief in the paternal family that F has been falsely accused. Unusually, it is alleged that M was present and in the same bed as Z when the abuse took place. Inevitably, these background circumstances are relevant when evaluating her as a witness and in respect of her credibility generally.

3.

Though the Local Authority had initially sought a Supervision Order, this was opposed by R’s Guardian and R now lives with his mother under a Child Arrangements Order.

The allegation

4.

Z was interviewed, pursuant to Achieving Best Evidence guidelines, on 23rd February 2022. Following the prescribed introductions, Z was invited to give her own “free flow” and uninterrupted account. I have concluded that this should be set out in full in this case because it is the most cogent of the accounts before me. The interviewing officer, DC Benson, properly asked no further questions, at this stage in the interview, but made a number of neutral comments, variously transcribed as “yeah” and “mmm-hmm”. It is not necessary to include them in this summary. Z’s account is as follows:

DC4332: So what are we, erm, speaking about today?

Z: Erm, when I... When I was in bed, erm, F, were touching

me and then he made me touch him.

DC4332 Okay. So starting from the beginning, tell me everything that happened.

Z: Erm, so me and my sister, [O], M and F was all in the bed.

DC4332: Yeah.

Z: And, erm, it was... In the position we was it was, [O], me, F and M. And, erm, we was waiting for milkshakes and, like, erm, milkshakes and stuff.

DC4332: Mmm-hmm.

Z: And then he started moving his foot up my leg.

Z: Erm, and that every time M talk, like, M talked or moved or if I moved, he'd move his foot up my, erm, leg more. And then the milkshakes came and then, erm, M went down to get the milkshake.

Z: And he still didn't move his leg. And then we were watching, 'Fantastic...' Then after we had the milkshakes and everything we wanted to watch a movie.

Z: So we started watching, 'Fantastic Mr Fox.'

Z: But we didn't have enough room, so we moved to the opposite side of the bed.

Z: So that we're, erm... And then, erm, he started, like, ten minutes in he started touching my private area with his hands this time.

Z: But he, he didn't go under my knickers, it were just on top of my knickers.

Z: And if I turned around he'd touch my bum.

Z: Or if I was the other way he'd touch my private area. So, and then, erm, we were like... Then when the movie... That was going on all while t'movie was on.

Z: And then when the movie finished, erm, we was all falling

asleep, but I was too scared to actually fall asleep in case anything else happened.

Z: So I just faked it. And then when I was going to sleep my hand was on his shoulder here, cos M said he could tickle my back. And while he were tickling my back, erm, I, like, drifted off but I weren't fully asleep. (indicates)

Z: So I were still aware of what's happening. And then he started moving my hand, like, across his body to here, at the time. (indicates)

Z: And I thought that was a bit strange. But I stayed awake in case he did anything else. He, like, every, like, minute or so he'd move it further down his body.

Z: Further down, further down. And then I reached, like, under his belly button. (gestures)

Z: And then he'd, like, move me down. At that point I think his boxers weren't all the way up, neither was his pants cos I felt the top of it. (gestures)

Z: So he, like, proper scared me. So I, like, just, I don't know, I just still faked sleep. Fake slept.

Z: And then he moved it down more and then he lifted his boxers up and put my hand there.

Z: And then, erm, he closed my hand up and, like, moved it back.

Z: And then, erm, moved it forwards and then that's basically all I can remember with that. So I turned around and then, like,

Z: So and at the time a sad song was on cos it was my grandad's and my uncle's anniversary because my uncle killed himself on my grandad's, erm, anniversary. So, erm, there were music on downstairs cos my mum was having a few drinks.

Z: So, erm, 'Dancing in the Sky' was on and M were crying.

So when I got up crying she thought I were crying to that song.

So I went into the bathroom, and she sent F to come and get me. And, like, I were proper scared when he came because I thought he were gonna, like, do something to me.

Z: So I told him, "I don't want you, I want M." So I walked past him into my room.

Z: And he came in, he followed me. And I said, "Go away, I want, M, and I don't want you." And then, F, went and got, M, and, M, came in. Every time I, like, tried to speak to, M, he'd move back to the door.

Z: And then, erm, move away. So then, if I went to say something he'd move back.

Z: So then I said to M, I just kept looking at him and then looking at M, and I said to M, "I don't want him, I want you. Can I speak to you in private?" And then, M, told him to go away. So, F, went away into the bedroom so I told her what happened and then she started speaking to me.

Z: Then speaking to him. Speaking to me and then speaking to him just to see, like, see both sides of the story and see what's going on. And then she took... Then, [O], my little sister, she didn't know what happened, nothing.

Z: So, like, she were, like, proper curious cos I were crying loads.

Z: And then, erm, M's, like, "[O], you need to go," but then I was in her room too, so we realised so went into [my other sister's] room.

Z: And then I told, erm, M everything. And then, erm, we were just talking about it and how it... Could it have been her hand and I said, "No, it definitely was my hand." And, erm, he knew it was my hand because before that he were touching me.

As Ms Probert has emphasised, what is striking about this account and which is both clarified and amplified in the remainder of the interview, is that so many of the surrounding facts asserted by Z are agreed. It is helpful to list them:

i.

M, F, Z and her sister O, were all in bed together;

ii.

F was naked from the waist up, wearing boxers and joggers below;

iii.

F had arranged for waffles, cookie dough and milkshakes to be delivered;

iv.

Z was wearing a Mickey Mouse nighty and pink knickers;

v.

After the milkshakes and food were delivered, the group lay in bed together to watch the film (Fantastic Mr Fox);

vi.

The central ceiling light was not working. There was a lamp in the room that was switched off and the film was watched in the dark;

vii.

MGM was downstairs with an uncle and the two had been drinking heavily;

viii.

The date was a particularly sad anniversary, commemorating the death of Z and M's grandfather and the suicide of their uncle in a later year, but on the same date. A song was being played in the living room, late at night, which had emotional resonance for the family;

ix.

Z became very distressed (described as 'distraught' by F, in his police interview), and insisted on speaking with M alone. This occurred a little while after the film had ended;

x.

Z told M that F had been touching her (in very similar terms to those set out above);

xi.

It is agreed that F tickled the bottom of Z's back to help her to sleep.

6.

There are a number of other key areas of agreement:

i.

M's immediate reaction was to believe her sister's account;

ii.

M and F stayed up all night talking. Whilst there is some dispute as to what the conversation was about, it centred upon the allegations made and their likely impact;

iii.

In the morning, MGM was told of the allegations and, similarly, accepted the truth of them;

iv.

F telephoned his father, who advised him to leave the house, which he did;

v.

F telephoned the police and a while later, made a follow-up call to see what had been happening.

7.

Though F has hypothesised that Z's account has been maliciously manufactured by MGM, who has prevailed upon Z to deliver it, it is a theory that is entirely without supportive evidence. When pressed by Ms Probert in cross examination, even F recognised that the circumstances of the complaint really permitted no influence by MGM. The allegations are entirely rooted in the particulars of what happened in the bedroom that night. F has constructed an account of himself as the object of MGM's intense sexual and emotional obsession. This is, according to him, driven by a mixture of lust and jealousy about her daughter. There is no evidence at all of any jealousy on MGM's part to her daughter. On the contrary, there is much evidence the two are very close and each suffering considerable emotional pain in consequence of their present estrangement. In his energetic attempts to denounce MGM's character, F alighted upon her suggestion, on the day of Z's complaint, that there might be some confusion on Z's part arising from what has been termed "morning glory" i.e., an involuntary erection whilst he was sleeping. F was suggesting this somehow supported his theory that MGM had schooled Z in a false sexual complaint. However, as he was confronted with it, he was driven to accept that MGM was casting around for what she hoped might be an innocent explanation. In other words, it was the exact opposite of what F was contending.

8.

Inevitably, there has been much focus on the question of why, if this is a false allegation, Z would have made it. There is, of course, no burden upon F to answer this question. It is, however, an entirely appropriate line of enquiry. In this context, it strikes me that two significant pieces of evidence need to be identified. At the end of her interview, Z made the following remark:

Z: And then my mum were, like, crying.

DC4332: Mmm-hmm.

Z: And thinking, "We didn't expect it, how could he do it."

DC4332: Yeah.

Z: Erm, erm, cos we all loved him. Erm, and then, erm, yeah.

9.

Once again, this resonates very closely with F's own evidence. He told me how he had tried to help the family. This not only extended to assisting with the household chores but also, in maintaining the property and general household repairs. The milkshakes and treats delivered that night were paid for by F. I record that there is some ambivalence in the evidence as to who suggested they be delivered. Nothing, to my mind, turns on this point. I find Z's comment that "we all loved him", genuinely reflects the response of this family to the presence of a man who seemed to make life much easier for them and more fun. The family had experienced some dark times in the past and, I find, F's presence was regarded as very welcome.

10.

Everybody has described Z and her sister's adult boyfriend (F) as like "brother and sister". Nobody, it appears, has queried whether this was an appropriate dynamic. Z was only 10 years of age when F appeared upon the scene. There had always been a great deal of physicality between the two but, as Z grew into adolescence, it clearly began to strike MGM as inappropriate. On one occasion, she relates how she came across Z and F together on the sofa:

"Also my concerns grew about the way [F] was acting with [Z]. I had always thought they had a sort of big brother and little sister type relationship, but I recall one day I walked in, and they had their legs wrapped round each other. It was completely inappropriate, and I had words with him about this. I would ask [M] to speak to him about it which she did but even then he would storm out of the house."

11.

F's response to this was telling. He denied that any such incident had taken place and that MGM had ever confronted him about the inappropriateness of his behaviour. Nonetheless, he described an incident in which he and Z were on the sofa together and sought to explain how their closeness was not inappropriate. The situation F was describing seemed remarkably similar to that being described by MGM. I formed the clear impression that despite F's denial, both were referring to the same incident. Indeed, F's response made no coherent sense otherwise. Z has made no reference to this or any other physical contact between her and F. I have formed the clear view, both from her own evidence, and indeed from all the parties that Z basked in the enjoyment of F's company and attention. She had no sense that it was inappropriate or in any way sinister.

12.

A second piece of evidence emerges in the statement of the social worker:

[Z] said that she froze at the time and wasn't sure how to act or what to do. She got up and went to the bathroom and then [F] followed her to the bathroom and asked her if she had a bad dream. [Z] said that she was crying, and that [F] was also crying. She said she was confused as to why he was crying as he had done something wrong. [Z] said that she then called [M] and told her what had happened, [Z] said she then went to her bedroom and was crying during the night. [M] kept checking on her.

13.

Z's confusion, recorded in the above passage, as to why F was crying "as he had done something wrong", is, in my judgement, entirely consonant with the age and understanding of this young girl. It is indicative of her obvious perplexity and confusion. What emerges most of all from her account is a powerful sense of her trust having been betrayed. This, I find, to be entirely authentic.

14.

Before I consider the broader canvas of the evidence, it is necessary to identify the core principles illuminating any interview of an alleged victim of abuse. In *Re SR* [2018] EWCA Civ 2738, the Court of Appeal emphasised the principles set out in the statutory guidance: *Achieving Best Evidence in Criminal Proceedings* (March 2011) (the ABE Guidelines). This guidance is to be regarded as applicable to all investigations of alleged victims of abuse, whether or not they are formally conducted under the guidance. Thus, the ABE guidance is apt to cover all interactions between the child and the professionals prior to any ABE interview. At 2.5, the guidelines state as follows:

"Any initial questioning should be intended to elicit a brief account of what is alleged to have taken place; a more detailed account should not be pursued at this stage but should be left until the formal

interview takes place. Such a brief account should include where and when the alleged incident took place and who was involved or otherwise present.”

15.

At 2.6 of the guidance: 'Initial Contact with Victims and Witnesses', the following is emphasised, in respect of a person engaged in early discussions with either an alleged victim or witness: listen; do not stop a free recall of events; where it is necessary to ask questions, ask open-ended or specific closed questions rather than forced-choice, leading or multiple questions; ask no more questions than are necessary to take immediate action. In *Re S (A Child)* [2013] EWCA Civ 1254 at [16] the Court of Appeal amplified this and emphasised that the preliminary discussions, regarding factual allegations, should be rare and certainly not regarded as standard practice. The objective, at this stage, is to establish whether an allegation is being made, what the nature of that allegation is and against whom it is being made. In *Re S* (supra), Ryder LJ made the following observations:

15.

The guidance sets out for investigators at paragraph 2.4 the recommended initial contact with victims and witnesses. A 'pre-ABE interview' is not referred to. The guidance contains the suggestion that there may be 'initial questioning' and that initial questioning may be necessary. Three non-exclusive examples are given: where the need for a video interview is not immediately apparent, where there is a need to take immediate action in terms of securing medical attention or in making initial decisions about the criminal investigation plan. At paragraph 2.5 the authors of the guidance recommend that "any initial questioning should be intended to elicit a brief account of what is alleged to have taken place". At paragraphs 2.5 and 2.6 the guidance sets out suggested limits to the content of initial questioning and the essential precautions to ensure that due process including accurate recording are preserved and inappropriate influence is avoided.

The submission which is made to this court is that such questioning is not intended to obtain an account from the child. Put in that absolute form the submission cannot be right in all circumstances. Furthermore, initial questioning need not be limited to the three examples given provided that due process and the precautions of good practice are maintained. This is not the place for an analysis of the guidance and the research from which it is drawn. There is nothing inherently wrong with the discussion which took place in this case although with the benefit of experience of many similar cases I would suggest that discussions about the facts in issue in respect of an allegation as distinct from whether and what allegation is being made against whom, should be rare and should not be a standard practice which avoids the purpose of a full ABE interview where the recording can pick up the nuances of suggestion and demeanour. This court's guidance in *Re B [Allegation of Sexual Abuse: Child's Evidence]* [2006] EWCA Civ 773, [2006] 2 FLR 1071 and *TW v A City Council* [2011] EWCA Civ 17, [2011] 1 FLR 1597 and the Cleveland Report recommendations at paragraph 12.34 remain good practice.

16.

Self-evidently, interviewing of child witnesses who are, or may be, making allegations of sexual abuse, is extremely difficult. It is often quite easy to see that the interviewing officers themselves sometimes find the process stressful and not unreasonable to infer that, occasionally, some of that stress may communicate itself to the child. The issues in focus are immensely sensitive and the language, experience and understanding of the child may present an obstacle to easy communication. Whilst careful planning and compliance with the guidance is indispensable, there requires to be a recognition that children do not always respond as anticipated and plans can easily go awry. Experience shows that such interviews not infrequently fall short of the principles set out in the

guidance. Whilst such departures from the guidance may (and I emphasise 'may') diminish the evidential weight that can be afforded to the interview, it must always be borne in mind that this is guidance and not prescriptive. To coin the phrase, these are guidelines and not tramlines! The ABE interview may be buttressed, corroborated or, alternatively, weakened and undermined by the wider panoply of the available evidence.

17.

I have surveyed the applicable law and made the above observations, not because they are intended in any way directly to foreshadow the circumstances of this particular case, but to place in context how the initial contact with the complainant here (see below), departed so significantly from the guidance and to analyse the evidential consequences.

18.

On the 21st February 2022, the investigating police officer responded to a complaint and attended the home of MGM. The officer was wearing "a bodycam" and spoke with MGM (who it should be remembered is Z's mother), Z and M. The purpose of this conversation ought to have been constrained to the limited ambit that I have described above. In fact, it was a detailed conversation, traversing the whole of Z's account and it lasted for 47 minutes. The full ABE interview, which subsequently followed, lasted for 50 minutes. The investigation has been made available for me to watch (recorded via bodycam) and a transcript of what was said has been filed within the bundle.

19.

This conversation took place on the day following the alleged sexual assault. In evidence and in response to questions by Miss Lau, on behalf of F, the officer did not seek to justify her approach to this investigation. She readily and unhesitatingly accepted that her approach was not reconcilable with the guidelines. She told me that she was on duty, went out to see the complainant and, in effect, conducted her investigations in the way that she would in any reported criminal offence. She told me that she had not, at this point, been given the necessary ABE training. She readily volunteered to Miss Lau that she would do things very differently now. To be specific, the conversation would have been very short, and M would not have been present. Additionally, the officer told me that she would not have worn her bodycam. There is no national guidance as to whether bodycam should be used in these circumstances. I was told that in Lancashire (the Constabulary involved here), use of the bodycam is not regarded as appropriate for investigations of this kind.

20.

Before I analyse the impact of all this on the reliability of the allegations, it is necessary to highlight a further evidential failing. Prior to the police officer attending, a social worker came out to visit the family, triggered by F's telephone call to the police. The social worker had left by the time the police arrived. She had made her case notes on her mobile phone. Later, she transferred them to a standard case note. For reasons which have not been made clear to me, this was not undertaken until April 2022 i.e., over 6 weeks later.

21.

The social worker told me that she did not transfer everything to the case note. However, she later deleted the notes stored on her mobile phone. The deletion of notes on mobile phones, Ms Probert suggested, might be in consequence of perceived compliance with GDPR regulations. In her statement, prepared for these proceedings, dated 16th January 2023, the social worker related Z's remarks, which I have set out above (para 12). Though these comments were not recorded in the case note, the social worker clearly recollected that they had been said. They do not record any particular

allegation. They are slightly tangential remarks. There would be no obvious evidential need to narrate them, had they not been said. However, I formed the impression from the evidence, that the social worker had been genuinely struck by the force of the comments. They seem to me to reflect an adolescent trying to understand why somebody who has acted sexually inappropriately should himself be crying. I consider them to be entirely authentic and accurately recollected. It does, however, require me to state that which now ought to be unnecessary in contemporary social work, namely, that notes taken at a visit to a complainant in these circumstances must be transferred to the case note file in full.

22.

The investigation of Z's complaint did not lead to a referral to the CPS and no charges were ever made. For reasons which will become clear below, I am left with the impression that the decision not to refer to the CPS may have been in consequence of a recognition that the police officer had failed to follow the guidance (as set out above) and an assumption that this would scupper the chances of a successful prosecution. I emphasise that is my speculation only, I have not investigated it. I record it because I have a clear impression that there are those within both families who have drawn the conclusion that a decision not to prosecute is to be equated with Z having been disbelieved. That is, for reasons which will become apparent below, entirely wrong.

23.

I have little difficulty in concluding that Z's allegations are both reliable and truthful. I come to this clear conclusion for a number of reasons. Most striking, is the fact that Z's complaint was made immediately, and to her sister (M), whom she believed she could trust. The substance of that complaint is replicated, both in the preliminary police interview and in the ABE interview. There is clear consistency of account throughout. By parity of analysis, it is helpful to reflect that the evidential significance of a 'recent complaint' has long been recognised in the criminal law, formally as an exception to the rule against hearsay, capable of corroborating the truth of an allegation. The modern criminal law, on this point, is governed by Section 120 of the Criminal Justice Act 2003. Though, in the non-adversarial, investigative (sui generis) framework of family law, the concepts of criminal law are not always transferable, reference to them can, as here, illuminate the approach to the weight to be afforded to particular aspects of the evidence:

120 Other previous statements of witnesses

(1)

This section applies where a person (the witness) is called to give evidence in criminal proceedings.

(2)

If a previous statement by the witness is admitted as evidence to rebut a suggestion that his oral evidence has been fabricated, that statement is admissible as evidence of any matter stated of which oral evidence by the witness would be admissible.

(3)

A statement made by the witness in a document—

(a)

which is used by him to refresh his memory while giving evidence,

(b)

on which he is cross-examined, and

(c)

which as a consequence is received in evidence in the proceedings,

is admissible as evidence of any matter stated of which oral evidence by him would be admissible.

(4)

A previous statement by the witness is admissible as evidence of any matter stated of which oral evidence by him would be admissible, if—

(a)

any of the following three conditions is satisfied, and

(b)

while giving evidence the witness indicates that to the best of his belief he made the statement, and that to the best of his belief it states the truth.

(5)

The first condition is that the statement identifies or describes a person, object or place.

(6)

The second condition is that the statement was made by the witness when the matters stated were fresh in his memory but he does not remember them, and cannot reasonably be expected to remember them, well enough to give oral evidence of them in the proceedings.

(7)

The third condition is that—

(a)

the witness claims to be a person against whom an offence has been committed,

(b)

the offence is one to which the proceedings relate,

(c)

the statement consists of a complaint made by the witness (whether to a person in authority or not) about conduct which would, if proved, constitute the offence or part of the offence,

(d)

F1.

(e)

the complaint was not made as a result of a threat or a promise, and

(f)

before the statement is adduced the witness gives oral evidence in connection with its subject matter.

(8)

For the purposes of subsection (7) the fact that the complaint was elicited (for example, by a leading question) is irrelevant unless a threat or a promise was involved.

24.

Thus, I regard the immediate nature of Z's complaint as a significant factor pointing towards its reliability. First allegations by a victim are always particularly important. Here, as is clear from Z's

initial account and the subsequent bodycam footage, the complaint is characterised, not merely by spontaneity but consistency. There is nothing at all to suggest any coaching or rehearsal. On the contrary, the immediacy of the complaint; Z's obvious distress whilst telling her sister and the quality and extent of the detail that she recounts, all reinforce its validity.

25.

At paragraph 4 (above), I have set out Z's account in detail. It is obvious from the reading of that extract that the complaint has a logical structure to it, in which Z relates how she is gradually compelled to move her hand down F's body to his genital area. Not only is that account compelling, but it is maintained consistently. The one area in which Z's account has been less clear and consistent is her attempt at describing F's penis as "wet". There is no dispute that Z related this to her sister. She did not repeat it in her ABE interview. Paradoxically, I find that this serves to reinforce the reliability of this particular facet of the allegation. At the time of the interview, Z was 12-years of age. It is entirely clear that she is struggling to describe something which she does not fully comprehend and was outside her own sexual knowledge.

26.

It was concluded that Z should give oral evidence, by way of video link. Questions had been prepared in advance. Z responded to these questions, which sought to undermine the veracity of her account, by clearly and patiently rejecting them. It is important that I record that what is most striking is not Z's sense of any personal physical violation but a profound sense that her trust has been breached. As I have said above, I find this also adds to the reliability of these allegations. It serves comprehensively to rebut any suggestion that Z is motivated to make a false complaint against F in consequence of some hostile animus. There is none. It is perfectly obvious that Z has greatly enjoyed F's company. As she told the interviewer, "Everybody loved [F]".

27.

When Z describes the affection with which the entire family regarded F, it is notable that it is reflected in his own evidence. F told me how valuable his role had become in this household, where he had been living for two years. He told me he undertook a great number of the household chores. He insinuated that without him, the house would not have run as comfortably or efficiently. He made sure that he was attentive to cleaning the house, doing the washing up and generally tidying. It is not difficult to see why this family, rendered vulnerable by recent tragedies and MGM's longstanding mental health issues and addiction, would be receptive to and appreciative of this support. The 'brother/sister' intimacy, observed and commented upon, between F (an adult male) and Z (a child between 10-12 years of age) must be viewed through the broader lens of all that has subsequently happened.

28.

The providing of treats, by F, on the night of what I find to be his sexual assault of Z; putting out the light; all getting into bed together with F topless; F's tickling of Z's lower back (as he agreed he did); the general inappropriateness of the situation altogether, reveal classic features of "grooming" behaviour. There is a clear pattern of gradual sexualisation of normal intimacy which would immediately be recognisable to professionals in this sphere, though not necessarily to the wider public. It is quite obvious that Z has no sense of the pattern of behaviour that she describes and does so entirely inadvertently. Once again, I find this reinforces the reliability of her account.

29.

I would add one final matter, which I attribute some but limited weight. Z is asked at the ABE interview to draw diagrams of where everybody is in the bed. She does this spontaneously, clearly and in a way which reinforces the logical structure of her verbal account. This, “internal consistency” i.e., the same detail revealed through more than one medium is commonly thought to reinforce the truth of a complaint. This is why children in ABE interviews are often asked to draw diagrams of some sort and no doubt why Z was here.

30.

I record that I find Z’s account to be a compelling disclosure of F’s sexually abusive behaviour and breach of her trust.

31.

The recorded ABE interview, in the police video suite, also fell short of the guidelines. As I indicated in the prefacing paragraphs to this analysis, the behaviour of children in these stressful and inevitably artificial circumstances, can not always be predicted and may quickly dislodge a plan. Towards the very end of the interview, the interviewing officer told Z that he was leaving the room to check details with a colleague. This occurs very frequently. On this occasion, Z asked if she might pop out to see a family member who had accompanied her to the interview. It was an entirely natural request and the officer responded in a kindly but ill-considered way, by permitting her to do so. The obvious danger of such a course is that it risks contaminating the evidence. It is very bad practice and requires to be highlighted as such. In the event, the questions that followed were perfunctory and probably unnecessary. The breach of the guidelines did not, in any way, compromise the integrity of the process. This was fortunate, in another case, it might have had catastrophic effect.

32.

The guidelines, both in the conduct of the substantive ABE interview and the preliminary investigations have been forged over three decades of experience of these very challenging interviews. They reflect experience, earlier mistakes and wider, evolving, professional knowledge. I repeat, they remain guidelines. They are not prescriptive rules. Thus, an interview which fastidiously complies with the guidance may, logically, reveal an account which is ultimately unreliable. Equally, an interview which falls short of the good practice which the ABE guidance provides, may, nonetheless, generate a disclosure which, as here, is compelling.

33.

Regrettably, the litigation in this case has also presented difficulties. In particular, there has been a striking absence of judicial continuity. This was partly due to circumstances beyond anybody’s control. However, in my judgment when a Court conducts a Re W, [2010] UKSC 12, hearing i.e., determining whether a child or young person should give evidence, it is highly desirable that it is conducted by the Judge who will hear the substantive case. I would go further; it should be viewed as the Court’s obligation to the complainant child. It is also necessary to emphasise that where a decision is made, in a Re W (supra) hearing, it will always require a transcribed judgment. This should be regarded as necessary, even where the child is acquiescing to giving evidence. The wishes of a child or young person who indicates a preparedness to give evidence will always be afforded significant account. They will rarely, however, be regarded as determinative. Witnesses in such circumstances may have little true appreciation of what the process might involve. The resolve to give evidence may be met by countervailing views, from professionals, as to the witnesses’ resilience to navigate what will inevitably be an ordeal, no matter how sensitively conducted. The Recorder was not asked to provide a written judgment in this case, she ought to have been, particularly as she was not conducting the substantive hearing.

34.

Z was cross-examined away from the Court. Questions were agreed and were put to her by F's counsel, Miss Lau. The questions had not been approved by a Judge in advance. In my view, they ought to have been. The questions put to Z were an exploration of her sexual knowledge and experience. Z responded to them with candour. However, I consider that such questions require to be seen by the Judge, well in advance of the hearing and should be perceived as requiring judicial approval.

35.

The final point that I feel obliged to highlight, in a judgment which I am conscious may provide uncomfortable reading, is the role of the child's Guardian at a fact-finding hearing. Mr Walker, acting on behalf of the subject child, conducted a probing and forensically focused cross-examination of F. It must be said that the preponderant weight of those questions was inculpatory. It is plainly in R's best interests for findings to be made, where the evidence is established. It is fundamental to any future plans or risk assessment. Indeed, that is the basis upon which fact-finding hearings are predicated. I was surprised, therefore, when at the conclusion of a hearing in which the truth of the allegations struck me as compelling, Mr Walker indicated, in his submissions, that the Guardian took a neutral position. It has not been possible, for reasons entirely beyond her control, for the Guardian to attend the fact-finding hearing. This neutrality, I regard, not merely as unhelpful to the forensic investigation, but, ultimately, a dereliction of responsibility to the child. Here, the police did not refer the case to the CPS. I signal that I intend to do so myself. I have already indicated that F and his family plainly regard that as a vindication of his innocence. It may well have contributed to M's recantation of her volubly expressed belief in the truth of her sister's allegations. In this context, I find myself wondering how they might construe the Guardian's neutrality.

36.

It is sometimes said by Guardian's advocates that they do not wish to "express a view" at a fact-finding hearing in order to preserve the appearance of independence. This is advanced as desirable, to keep open the prospect of a working relationship with the family at the welfare stage of investigation. I am prepared to accept that, in some cases, that may have a benefit for the child. However, it is difficult to see how, in a case such as this, such a consideration could eclipse the, to my mind, overwhelming need for the child to have the facts resolved fairly and in a way in which his own rights and interests are not merely promoted but recognised as central to the process.

37.

I should like to record my thanks to all Counsel for their assistance, particularly in their helpful written submissions, addressing the practice issues that have arisen.