Neutral Citation Number: [2020] EWFC 108

Case No: ZC18C00400

IN THE FAMILY COURT
Sitting at the Royal Courts of Justice

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/01/2020

Before:

MRS JUSTICE THEIS

- -

Between:

	A Local Authority	**Applicant**
	- and -	
	Mother	**1st Respondent**
	- and -	
	Father	**2nd Respondent**
	- and -	
	A, B, C and D (through their children's Guardian Ms M)	**3rd – 6th Respondents**
	- and -	
	XA	**Intervenor**

- -

Ms Sally Bradley (instructed by **LA**) for the **Applicant**
Ms Saiqa Chaudhry & Ms Laura Harrington (instructed by **Edwards Duthie Shamash**) for the **1st Respondent**
Mr Chris Stevenson & Ms Madeleine Whelan (instructed by **Avadis & Co**) for the **2nd Respondent**
Ms Caroline Budden (instructed by **TV Edwards**) for the **3rd – 6th Respondents**
Miss Alicia Collinson (instructed by **Signature Law)** for the **Intervenor**

Hearing dates: 10th – 20th December 2019, 21st - 24th and 30th January 2020

- -

Approved Judgment

MRS JUSTICE THEIS

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published. 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.

Mrs Justice Theis DBE:

Introduction

1. This matter concerns a fact-finding hearing relating to 4 children A a boy, 13 years, B a girl 11 years, C a girl 9 years and D a girl 5 years. The children have been in the care of the applicant local authority since June 2018. The other parties are the children's parents, the children themselves (through their Children's Guardian) and the intervenor, XA, against whom the local authority seek findings.

2. The parties have been able to agree a significant number of matters that the local authority rely on to establish that the children were suffering or are likely to suffer significant harm. They are set out in a schedule agreed between the parties dated 25 July 2019. They largely relate to neglect of the children's physical, emotional and education needs and include matters such as failure to ensure the children attended school, medical appointments and general failure to meet their basic care needs (such as dental hygiene).

3. The event that caused the local authority to issue these proceedings was the discovery that the three younger children had Neisseria gonorrhoea at multiple sites. The fact of the infection is not in dispute, what is in issue is how the children came to be infected with gonorrhoea, and whether the parents failed to protect the children from harm. In addition, there is a separate issue regarding recent allegations made by A that his father had hit him on the hand with a wooden spoon and made A face the wall and the mother failed to protect A from such harm. The findings sought are set out in a composite schedule of findings dated 13 December 2019.

4. The three main reasons why these proceedings have taken so long (over 18 months) to be determined are

   (1) A previous fact-finding hearing in October 2018 was the subject of a successful appeal in March 2019 resulting in a direction from the Court of Appeal for a rehearing. *Re B (Children: Uncertain Perpetrator) [2019] EWCA Civ 575.*
   (2) Enquiries made since March 2019 revealed that another person, XA, living in the same house as the mother and children at the relevant time had the gonorrhoea infection with the result that XA intervened in these proceedings as the local authority sought a finding that the children contracted gonorrhoea as a result of sexual abuse by XA.
   (3) The final hearing was adjourned twice (August and October 2019 due to disclosure issues) and was scheduled to conclude on 20 December 2019. It had to be adjourned part heard as XA was initially not available, and then was not able to give oral evidence in the December hearing.

5. A welfare hearing was listed in February 2020 to determine what orders will meet the future welfare needs of these four children. As a result of the delay caused by XA's unavailability that hearing has been adjourned from February until May.

6. The unavoidable delay in dealing with these proceedings has placed unimaginable pressure on the adults involved and had a detrimental impact on these children. It is fortunate they have been able to have continuity of foster placement.

7. One matter that has been of concern to this court (highlighted in the judgment in the Court of Appeal at paragraph 56) has been the delay in essential enquiries being made about who was living in the property where the children were staying at during the relevant time. Although it has not been a matter of specific investigation during this already complex hearing, it was not until directions were made by this court in April 2019 that any effective steps were made to contact and then seek statements from those living in the property. That was ten months after the proceedings had been started. The application is made by the local authority, the burden of proof is on them. It is for the local authority to secure the primary evidence (either itself or through other agencies) they rely upon and for them to undertake the necessary steps to obtain that evidence without delay.

Relevant background

8. The parents have been together for a number of years. From the matters that have been agreed between the parties it is clear they have lived a transient lifestyle for some time, in particular following their eviction from their home in August 2017.

9. Prior to that there had been previous referrals to the local authority around such matters as the lack of consistent attendance at appointments for speech and language therapy, the children's poor school attendance and concern about their low weights.

10. An initial child protection conference took place in 2011 on the grounds of neglect. Social work support continued in 2012 and the category in the child protection plan was extended to include emotional abuse. In late 2012 the family moved and the child protection plan was transferred to the receiving local authority, which concluded the children should remain under a child protection plan under the category of neglect.

11. This was continued in 2013, with concerns being raised about allegations by A about the parents' behaviour towards him (including taping his mouth), which the parents denied. In January 2014 despite continuing concern about the children's school attendance and at appointments with professionals the decision was taken to change the structure to a child in need plan, with the parents agreeing to work with professionals.

12. In July 2016 there was a referral to the Family Service with home visits being undertaken by a family support worker in July and August. After that there was no engagement by the family with the Service and they closed the case in October 2016.

13. During 2017 there were several referrals to the local authority raising concerns regarding the welfare of the children. These referrals did not result in any further action being taken by the local authority. During a visit by the health visitor in June 2017 the parents said they did not need support.

14. In August 2017 the mother and children were evicted from their property with rent arrears of over £6,700. The family were placed in temporary accommodation in another area by the local authority, whilst further investigations were completed. In November 2017 the mother was informed that she had made herself intentionally homeless and that she would need to vacate the temporary accommodation by November 2017. In fact, they didn't leave that property until February 2018. During

this period the children's school attendance was erratic, in part caused by the long journey from the temporary accommodation although the school sought to liaise with the parents.

15. In early March 2018 the mother and children moved to another property in another area. This was the family property of a friend of the mother's, G. She lived there with her sister, F, and their two children, XA and E respectively. The property was owned by G's parents, who also lived there. The parents each had significant health and care needs, which were provided by G and F, and the wider family. The mother had known G for a number of years as they had previously worked together and had remained in touch. G had initially agreed for just the mother and the three girls to stay there but in fact did not prevent A staying as well. G thought it was only for a few days, in fact they stayed about three months until early June. The mother and children slept in E's bedroom on the second floor of the property, where they shared two single beds

16. F and G had bedrooms in the basement, on the ground floor there was a sitting room, bathroom, separate toilet and G's father's bedroom. On the first-floor landing there is a kitchen and on the first floor a dining room and two bedrooms occupied by XA and G's mother respectively.

17. The father stayed in another area; between two addresses he was able to stay at. Initially there was some uncertainty (due to the inconsistent accounts given by the parents) about whether the father stayed over at the address where the mother and children were living and/or whether the children divided their time between this address and the father's addresses. As the evidence unfolded it became clear that between March and June the children were based with their mother at G's home, with the father visiting regularly, either to take them to school or to spend time at the home. According to G at the start he would move around the home until she asked him to limit himself to remaining in the sitting room, which he did. Also, the evidence points towards the visits becoming less frequent over time. During this time inconsistent information is recorded as being given by the parents to the professionals, for example to the school on 28 March the parents state they are staying at a friends' address in the same area as where the father is residing. There remained concern about the children's poor school attendance and in April 2018 the family were allocated a family support worker, Ms W.

18. At a meeting with the school on 9 May 2018 the father is recorded as informing the school that he will need to ask the mother for the details of the address where the children are living. The following day he is recorded as informing the school that his friend's address should be used on any referral to social services.

19. On 11 May 2018 there is a record of the father informing Ms W that the children were living between two addresses, his and with the mother. In his oral evidence the father sought to explain away these accounts by saying that he was describing what arrangements the parents were hoping to make for the children.

20. On 15 May 2018 the mother noticed a discharge in D's underwear and described her as itching and being uncomfortable. She said she told the father on the same day. When he visited later, he looked at D and said the position should be monitored. It did not improve, and the parents agreed the father would take D to the GP.

21. On 17 May 2018 the father took D to the GP they were registered with. He said he arranged to meet the mother after the GP visit so she could take D home to G's address and informed her of the need to arrange a follow up appointment. Vulval swab and urine tests were taken. The urine sample was, in fact, insufficient for testing. The father is recorded as informing the GP that the family are living with friends in another area as they have been evicted from their home.

22. Gonorrhoea was grown on the vulval swab and the GP contacted on 21 May 2018. This resulted in a referral being made to Dr P, Safeguarding Lead at the local Hospital and Children's Services, who in turn referred the matter to the police to try and establish where the children were living. On 21 May the mother failed to attend a pre-arranged appointment with Ms W and there was no record of the father having informed Ms W of the trip to see the GP.

23. On 23 May 2018 DS T contacted Dr L at the Sexual Assault Referral Clinic to ascertain the likely causes of transmission of gonorrhoea including non-sexual. In an email exchange she stated that whilst sexual transmission was the most common route, there had been an increasing number of cases resulting from overcrowded and unhygienic living conditions.

24. On 25 May 2018 the mother and D attended the GP when the mother was informed of the results of the test and that repeat swabs were required. The mother was recorded as responding that whilst she knew gonorrhoea was an STI she stated the children were living in shared accommodation with shared toilets with four other adults and on one occasion D used the seat before the mother had wiped it. Repeat urine, vulval, low vaginal rectal and throat swabs were taken from D by the GP, which were shown to be positive for gonorrhoea (save for the urine test which was insufficient). The physical examination of D showed some redness of the vulva and minor discharge. The mother was not willing to disclose the address where she and the children were staying, saying it is her friend's home and she doesn't wish to disclose it. The mother gave an address in the area where the father was residing for correspondence. Urine testing of the mother was negative for gonorrhoea. The oral evidence was unclear as to what, if anything, the father knew of this appointment, although the school records indicate the father had taken the older children to and from school that week, so he would have collected the children from and returned them to G's address where they were staying and seen the mother.

25. On 31 May 2018 the records show Dr P, safeguarding lead, contacted the father by telephone to inform him of the positive second tests for D and arrange for the other children to attend to be tested on 4 June. This step followed decisions made at a strategy meeting on the same day.

26. In her oral evidence the mother said she did not inform the father of the tests being positive for gonorrhoea prior to the father being informed of them by Dr P on 31 May 2018. Her reason for not doing so was that further testing was required. The father in his oral evidence said he had spoken to the mother after his telephone call from Dr P, although this was not referred to in his written statements. In his subsequent police interview in early June he stated he did not know about the children being infected with gonorrhoea until after their arrest on 4 June.

27. On 4 June 2018 the mother attended the GP surgery with all four children. Dr P was present. In her evidence she described the mother being about an hour and a half late for the appointment and the steps she took in speaking to the mother away from the children, speaking to the children on their own and informing the mother of the steps taken to inform the local authority. Throat and vulval swabs were taken from B and C, as well as urine tests. A gave a urine test and throat swab but refused genital swabs. B and C were examined, both had some redness to the vulval area and B had a white discharge in the vulva. According to the mother in her oral evidence she noticed a discharge from B and C on 3 June and informed the father. This was not mentioned in written statements by the parents. The mother and children returned back very late that evening to the address where they were staying, when the mother was arrested on suspicion of sexual assault. The police established the address through surveillance. The father was also arrested on the same grounds and both parents were bailed to their respective addresses. The children were placed with foster carers, where they remain living. Both parents denied sexual assault and were interviewed by the police, each gave a prepared statement and thereafter gave no comment interviews. The mother returned back to G's address where she had been staying with the children for the next two weeks, then joined the father at the accommodation they now both reside at.

28. On 6 June 2018 the father was tested for gonorrhoea, the results on 8 June were negative.

29. The results of the tests from the three girls confirmed the presence of gonorrhoea on all sites tested. The tests for A were both negative.

30. The local authority issued care proceedings on 5 June 2018 and following the making of an emergency protection order on 7 June 2018, the children were made the subject of interim care orders on 13 June 2018.

31. On 13 June 2018 permission was given to instruct Dr Ghaly and on 30 August 2018 permission was given for a psychological assessment of the mother.

32. B, C and D were ABE interviewed on 25 July 2018 and A on 12 September, no allegation of sexual abuse was made by any of the children.

33. On 17 September 2018 the local authority contacted the police to ask what further investigations were being undertaken in respect of the residents at the property where the mother and children had been staying and to raise the unsatisfactory nature of the ABE interviews.

34. Two days later, on 19 September 2018, PC N attended the address where the mother and children had been staying and spoke to D. From the description she gave, PC N formed the view that there was little opportunity for someone to be alone with B, C and D as they were always either with their mother or playing with the neighbour's cat in the front garden. No police statements were taken from the occupants at that stage.

35. On 22 September 2018 contact was reinstated for the children with their parents, once every two weeks supervised.

36. A three-day fact finding took place before HHJ Meston Q.C. from 1 – 3 October 2018, with the judgment being given on 24 October. Findings were made that B, C and D had been sexually abused, and the father was placed in the pool of perpetrators. The judge concluded the mother did not fail to protect them.

37. On 14 December 2018 B, C and D underwent repeat urine testing to ensure treatment had been effective; all tests were negative.

38. On 28 February 2019 the father was granted leave to appeal. On the same day the police took a statement from F.

39. On 26 March 2019 the Court of Appeal allowed the appeal and remitted the matter for re-hearing.

40. Following that hearing the local authority sent a letter to each occupant of G's property where the mother and children had stayed to see if they could be a source of information.

41. The matter was listed before me on 4 April 2019 and I have dealt with the 16 direction hearings since then. I gave permission to the father to instruct a microbiologist, Dr Rothburn, and the mother to instruct Dr Castle as to whether the mother required an intermediary and fixed the fact-finding hearing in August.

42. On 17 April 2019 the mother issued an application to terminate the instruction of the Children's Guardian, which was refused on 10 May 2019.

43. On 10 May 2019 the court granted the application for an assessment by an independent social worker, Julia Hughes, and Dr Butler, child and adolescent psychiatrist. Dr Butler was replaced by Dr Helps, consultant psychologist, on 9 October 2019 to assess the parents and the children.

44. On 19 June 2019 an experts meeting took place between Dr Ghaly and Dr Rothburn, chaired by the children's solicitor. A Schedule of Agreement was signed by them on 4 September 2019.

45. XA attended court on 5 July 2019 and the court was informed he had had gonorrhoea last in 2017 in accordance with an email from the sexual health centre where he was being treated. He was directed to file a statement answering specific questions set out in the 5 July order.

46. On 23 July 2019 the local authority informed XA of their intention to seek findings against him and he was invited to intervene in the proceedings. The order dated 25 July directed him to be an intervenor with the result that the hearing in August had to be adjourned until October.

47. On 26 July 2019 XA was arrested and interviewed by the police in respect of a recently made historical allegation made S, son of Y, to a social worker. XA was interviewed by the police; he gave a no comment interview.

48. On 7 August 2019 an agreed list of documents was disclosed to the area's Police Service from the family proceedings to assist them in their investigation of how the children became infected by gonorrhoea. The local authority was granted disclosure of information from another local authority and the police in relation to the recent historical allegation of sexual abuse against XA.

49. On 14 August 2019 at the LAC review A is reported to have informed the IRO, Ms J, that he wants his parents to divorce and for him and his sisters to live with his mother. When asked why, he said as his father used to 'whip' him with a wooden spoon on the palm of his hand and make him face the wall for a long time. The parties in these proceedings were sent the statement from Ms J on 29 August.

50. On 16 August 2019 the complainant, S was video interviewed by the police, during which he alleged XA sexually abused him and that they would watch indecent material on XA's computer.

51. The complainant's mother, Y provided a police statement on 5 September 2019 where she described an occasion when she visited G's home, met the mother and asked her where the children were, and was informed they were in XA's room. She went in the room and saw B and C there. As a result of continuing disclosure delays and the likelihood that the girls were going to be further ABE interviewed the order dated 4 September adjourned the October hearing to December.

52. On 7 November 2019 a report by Ms O, intermediary, concluded XA required the assistance of an intermediary and a ground rules hearing took place on 14 November.

53. On 23 November 2019 B, C and A were ABE interviewed. An interview with D was planned but did not take place. None of the children said anything of significance although they referred to visiting XA's room and C referred to being scared by XA.

54. Although permission was given for a consultant paediatrician to report on three discrete matters, it transpired that was not possible in time for the hearing and the parties agreed the order could be discharged and the issues dealt with by evidence already available.

55. The hearing started on 10th December 2019 and was timetabled to conclude on 20 December. XA was due to give oral evidence on 16 December; he did not attend court that day. He attended the following day. The court was informed that XA had taken drugs over the weekend and his counsel and the intermediary did not consider he was in a condition where they could get instructions they could rely upon and he was not in a position to give oral evidence. That position remained the following day (18 December) and they raised concerns as to whether XA had capacity and sought an assessment by Dr McClintock. After evidence was given by the social worker and foster carer (about matters that did not impact on XA), it became clear the hearing could not proceed and directions were made to complete the evidence in the four days from 21 January 2020.

56. Dr McClintock provided a certificate stating he considered XA had capacity and provided a fuller assessment in his subsequent report.

57. XA gave evidence on 21 and 22 January 2020, followed by the parents. The evidence concluded on 24 January. Directions were made for written closing submissions and the judgment hand down was fixed for 30 January. Further disclosure was sought from the sexual health clinic on the 24th January 2020 to clarify an outstanding issue and a further hearing was reserved on the 28th January 2020 if any party wished to ask further questions of the Intervenor, but in the event the other parties indicated on the morning of the 28th January 2020 that such a further hearing was not needed.

58. The court is extremely grateful to all counsel for their detailed and focussed written submissions.

The evidence

59. In addition to the written statements and other material in the trial bundle (including the transcripts and DVDs of the ABE interviews of the children, which the court has viewed) the court heard oral evidence from the following:

1. Dr L (Consultant in sexual health and joint clinical lead since 2016)
2. Dr Rothburn (non-clinical consultant medical microbiologist)
3. Dr Ghaly (Consultant Physician in Genito Urinary medicine)
4. Ms W (family support worker)
5. Dr P (consultant paediatrician)
6. F (XA's aunt)
7. G (XA's mother)
8. Y (XA's aunt)
9. Ms J (independent reviewing officer)
10. Ms K (social worker)
11. Ms U (foster carer)
12. XA (intervenor)
13. Mother
14. Father

Medical evidence

60. There is no issue between the various medical witnesses that gonorrhoea is a sexually transmitted disease and it must have been introduced through an infected party. There has to be a mechanism of transfer into the cavities. The guidance issued by the Royal College of Paediatrics and Child Health (RCPCH) 'Physical Signs of Sexual Abuse' in 2015 confirms sexual contact is the *'most likely mode of transmission in pubertal or prepubertal children with gonorrhoea. The evidence does not help to establish the age at which the possibility of vertical transmission can be excluded.'*

61. It is possible that one child can be infected sexually and transmission to others took place through the infected child, if they were in intimate sexual contact which does not require penile penetration beyond the hymen. Other routes, such as through sharing infected towels, under wear and toilet seats have not been established, in part due to the organism being very susceptible to dryness. The infection of the vulva requires exposure of the gonorrhoea bacteria to the susceptible mucosal cells of the vagina (or the mucosal sites) which would not necessarily require penile penetration.

62. The incubation period ranges from 3 to 14 days (Dr Ghaly), Dr Rothburn says 2 – 14 days with most symptoms appearing between 4 – 16 days. The infection is usually asymptomatic in oral and rectal infection and can remain so in vaginal infection. Most common symptoms are pus/muco purulent discharge from the infected site. Treatment is by antibiotic, often by injection followed by oral prescription. It is not possible to say which of the three children became infected first and the infection in both the vulva and rectum is common in pre-pubescent girls in the absence of direct sexual transmission due to the anatomical proximity of these sites. The infection in the throat is usually caused by oral sexual exposure, there is no clear evidence it can be caused by kissing with tongues.

63. D was the first child to test positive for gonorrhoea, which was confirmed in the follow up tests. Both B and C subsequently tested positive for gonorrhoea. Both parents tested negative for gonorrhoea and had no previous history of it in their medical records.

64. In relation to XA the evidence establishes that the samples taken from him on 20 March 2018 had tested positive for rectal and urethral gonorrhoea on 10 April 2018 (although the particular strain was not identified) and was scheduled to be treated for the infection on 12 April 2018, he did not attend the appointment and did not attend an appointment for treatment until 29 June 2018. Dr Rothburn considers XA was infectious during the relevant period. Dr Ghaly confirmed in his report dated 24 September 2018 that whilst the strain of gonorrhoea tested in XA was not identified he concludes that in the absence of any other infected adults it is likely XA was the primary source of the infection. Both Dr Ghaly and Dr Rothburn concluded that the strain of gonorrhoea could not be determined by any particular symptoms. Information was obtained from the laboratory which had tested the samples taken on the 20th March 2018 that no samples had been tested for the strain of gonorrhoea involved, and that no samples had been retained which could be subjected to further testing.

65. XA was living in the home with B, C and D during this time when it is likely he would have been infectious at a time when the children could have been infected resulting in the positive tests of them for gonorrhoea. Whilst there is some evidence he was prescribed septrin, Dr Ghaly's evidence is that would not have been sufficient, even if taken, to have removed the infection. He accepted the tests on 29 June 2018 were negative for the presence of gonorrhoea.

66. In her oral evidence Dr L confirmed the Sexual Assault Referral Clinic is a specialist unit for sexual diseases and her clinical experience relating to children with gonorrhoea was about six children over the last 18 months. She said in five of those it was not possible to prove sexual abuse as there was no other forensic evidence. In her opinion pre-pubescent children may be more susceptible to being infected as their anatomy (such as absence of labial flaps and pubic hair) meant the cells in the vagina were more exposed, especially if the child squatted making the child more susceptible to exposure to the virus in the environment. However, she made it clear she did not examine any of these children and did not provide any other evidence to support this opinion. When asked about the research evidence of non-sexual means of transmission she said of the six children she had seen over the last 18 months in only one of those could the conditions through overcrowding be said to contribute to the

source of the infection but it was unproven. As regards the evidence of infection by other than sexual means she referred to the study that confirmed infection being passed via a thermometer in a ward, she confirmed that whilst there is some suggestion in the studies that it could pass by way of secretions in bedding or via humid bathrooms she could offer no evidence of that happening other than what is set out in the studies.

67. Dr Rothburn confirmed his written reports. In his oral evidence Dr Rothburn said the prescribing of septrin on 20 March was as a prophylactic in relation to the HIV, to prevent other complications connected with the previous HIV diagnosis. Whilst he agreed it was possible to pick up the infection from the environment and then for it to be transmitted between children who were in *'close proximity'* he deferred to Dr Ghaly in relation to this. He was pressed on what may have caused the negative result in June and agreed one explanation could be a false negative.

68. Dr Ghaly has provided seven reports. In his oral evidence he confirmed that the septrin prescription on 20 March 2018 was not standard treatment for gonorrhoea on two fronts, the type of antibiotic and the dosage level. He agreed the culture tests in June are not as sensitive as the NAATs tests in March and confirmed the possible reasons for the subsequent negative result could be explained by any of the following: sample defect; false negative as the organism failed to grow; the infection could have been overcome by immunoresponse from XA. He agreed it was not clear from the records the sequence of events and whether the medication was given prior to the test on 29 June 2018. He was pressed about the possibility of a non-sexual transmission which whilst he accepted as a possibility stated it would be very unusual due to the susceptibility of it to dryness, the need for the infection to go into a cavity and lack of reported cases where this occurs. He considered the literature was not robust enough to consider transmission by matters such as a child wiping herself, which he considered to be a '*very, very remote possibility'.* Dr Ghaly was pressed about the studies in the 1970's that stated septrin was used to treat gonorrhoea, he rejected it as being a suitable antibiotic for this infection as it was resistant to it (as confirmed in the lab reports), the age of the study and the reduced dosage given. Miss Collinson pressed him about non-sexual modes of transmission, he responded that if it can be shown there is a plausible non-sexual transmission (such as the thermometer in the study), he said in this case there is nothing to equate with a thermometer and even if it does exist it is, in his view, remote. He was asked about methods of transmission, such as sharing beds, he responded that he did not have any of evidence of intimate contact or sharing of clothes. He was unable to give any reliable earliest time frame from which D could have been infected from prior to the positive test on 17 May 2018 due to the fact it could be asymptomatic throughout or for some of the period.

69. Dr P confirmed the accuracy of the records that record her involvement with the children, in particular for the tests and examinations on 4 June 2018. In her oral evidence she confirmed she had been a consultant paediatrician since 1998 and the named Child Protection doctor for the local authority since 2009. She agreed she saw all the children on 4 June 2018 at the GP surgery. That was not the usual practice, but it was decided at the strategy meeting this was the most appropriate arrangement as the family had a good relationship with the GP there. She said she had an independent recollection of events as it was her day off, they had to make sure sufficient rooms were available for the examinations and testing and the mother was late for the

appointment. She spoke to the mother alone and then the children together separately from the mother. D had been examined previously, she examined B and C. A refused an examination but agreed to throat swabs and urine testing. She agreed the mother was co-operative and understood the position. Her records show she rang and spoke to the father on 31 May 2018 and informed him of the outcome of the tests.

Wider evidence

70. Ms W was the family support worker allocated to this family between April to May 2018. She confirmed the contact she had with the father, as described in her statement. Save for one occasion she only spoke to the father and in fact never met the family as they failed to attend each of the appointments with her. She was asked about a note she had of a conversation with the father when he said that the children lived from Monday to Wednesday in the area where he was living and the rest of the week at G's address. She rejected any suggestion that the father had raised this as only a proposal and that it was not actually happening. She had limited cases at that time and promptly completed her case notes. She accepted the father was polite.

71. Y is the mother of S, the complainant who has recently made an allegation of historical abuse against XA. She was first made aware of the complaint via her mother following her son talking to her mother. She provided a written statement. In her oral evidence she confirmed that she was aware the mother and children in this case had come to stay in the family home, she had only met them once when she visited the home. She confirmed in her oral evidence meeting the mother in the kitchen, asking where the children were and the mother informing her they were in XA's room. When she went to XA's room to see the door was pushed shut but not closed, she knocked and went in. She described seeing the two girls (B and C) sitting on the edge of one end of XA's bed using an electronic device and XA was at the other end facing the television. She said there was nothing about what she saw that concerned her and she described D coming into the room just after her. She said there was nothing that had caused her to be concerned about XA's behaviour prior to her son making his allegations. She was asked about times when XA would be reported to disappear for a few days at a time. This had been reported to her by her daughter when she had spent some time living at G's home

72. G confirmed her written statement with some limited changes. In her oral evidence she described how she had attended some medical appointments with XA, was aware of his HIV status but was not aware he had been diagnosed with gonorrhoea until June 2019, when she asked him about it. She said there were no restrictions on where the children could go in the house, although they were mainly in the dining room. She was not aware D was taken to the GP on 17 May nor why the mother was arrested, other than being informed that something had happened to one or two of the children. She said the first she knew of the allegations made by her nephew against XA was when Y came to see her in August or September 2018, she had not suspected any such behaviour prior to then. She said she didn't ever suggest to the mother that she should not leave the children alone with XA and was not sure how many times the children may have been in XA's room. She stated as far as she was aware the mother and the children spent each night at the address, and the father didn't stay overnight. She had expressed her concerns during the early part of their stay that the father was freely

moving around the home. She asked him to remain in the sitting room on the ground floor when he visited, which as far as she knew he did.

73. F confirmed the accuracy of her written statement and stated she had no concerns about the children spending any time with XA. She could not recall any details about the children wearing pyjamas but didn't think they went to bed naked.

74. Ms J is the independent reviewing officer. She has filed two statements which detail her records of the conversation with the children at the time of the August LAC reviews. The relevance of her evidence concerns what she reports A said to her about the father hitting him with a wooden spoon and making him stand facing the wall. She did not make notes at the time, made some handwritten notes at the time when the LAC review meeting was taking place and then dictated some notes into her telephone later than afternoon, destroying her handwritten notes. Over the next two weeks she completed the minutes of the LAC meeting which are recorded as having been completed on 26 August. Due to her concerns about what A had said to her she spoke to the allocated social worker that day and the children's guardian the following morning. In her oral evidence she was pressed about the inconsistencies in her records of what A said and the way she had asked questions of B.

75. Ms K was the allocated social worker from July 2018. She visits the children once every four weeks and had a good positive relationship with the children. She agreed she visited on 25 April to pick up from the concerns surrounding the recent contact when the children, in particular A, had been distressed. In her statement and case notes she records an occasion when A described his father hitting his hand with the spoon. She accepted A has had behaviour difficulties, that he is frustrated with the circumstances of being in care and can sometimes be difficult to understand. She also recognised that A has on occasion sought and been given comfort by his father and from January 2019 they have had 1:1 contact. Mr Stevenson challenged the circumstances and the way questions were asked that may risk there not being a free flowing narrative, Ms K responded saying it did feel *'natural and genuine'* although recognised some of the criticisms Mr Stevenson made regarding her approach.

76. Ms U has been the foster carer for the children since June 2018. She was called at relatively short notice to be asked about her report describing what A said in the car on the way back from contact on 20 April. She said A used the words "wooden spoon" although she described it in her report as an implement as she said she wanted it to sound professional. She agreed she should have used the child's own words. She said A was clear in what he said and gave examples of when it happened. She agreed the father had provided comfort to A at the contact when he became distressed and he was confused and frustrated. She was present when Ms K visited and confirmed what Ms K reports the children as saying.

77. XA gave evidence with the assistance of his intermediary, Ms O. She had helpfully circulated guidelines to assist the parties, many of which are familiar to counsel and the court, including the need to keep questions short, have no tag questions and introduce any new topic and try and keep the questions chronological.

78. In his oral evidence he agreed there were times when the children had been in his room, it was more than once, he recalled the time Y visited and B and C were in his

room. He said it was not until Y gave her evidence that he remembered that occasion. He also described when the children were in the room the mother did check on them *'quite a lot'* and in response to questions from Mr Stevenson he would close the door if the girls were in his room, he did not like sleeping with the door open, he often slept during the day and he would ask the girls to close the door. His answers became increasingly convoluted, even to relatively simple questions about how often the children came in to his room**.**

79. In relation to the dates when he had gonorrhoea, he was asked why he had not given a full account of the dates first. He said he did not recall giving the first (inaccurate) account, although it was prior to receiving his medical records and the letter he received from the sexual health clinic on his way to court on 5 July 2019 gave the latest date he had the infection as being 2017, as he '*didn't remember'* the time he had the infection in April 2018 and said that if he wanted to hide the fact he had the infection he would not have mentioned gonorrhoea in the first place. He accepted he had been tested for it on 20 March 2018, was notified of the results on 10 April 2018 and did not attend any appointment for treatment until 29 June 2018. He said he had no symptoms when he was tested on 20 March 2018.

80. He said although his mother, G and aunt, F knew of his health issues, the mother and father in this case didn't.

81. When asked why he took crystal meth the weekend before he was due to give evidence in December, he said he was not in a good place and felt low.

82. In answer to questions from Ms Bradley he agreed the children did not always follow what their mother wanted them to do, and he would say to them they should listen to their mother. He described them as being energetic and cheeky. He said Band C were inquisitive, liked to talk to everyone. A would play on the Xbox and D was shy. When asked what he did with the children he responded *'I joke around with them. If a programme on TV, we watched film together in the front room'.* He said B and C would use E's phone when he was not using it and A preferred the Xbox. He agreed the mother was close to his mother and aunt, although closest to his mother.

83. He described his own difficulties at the time the children came to stay in the house with their mother, including spending increasing amounts of time in his room and the periods of time when he would stay away from the home. He described an occasion when he talked with the mother about the issues he was going through, he said it was at a time when he had spent a long time in his room, he had had a falling out with his mother and he didn't want the mother to think it was to do with them. He said the mother just gave general advice.

84. He was asked about how often the children came in his room. He said his descriptions in his statements meant he was not alone in the house with the children. He said they came into his room *'randomly'.* When asked why he didn't mention previously that they came into his room he said *'I don't play with them in my room; they play together in my room. I am saying not alone meant not alone in the house with the children'.* When asked why he didn't mention the bedroom he responded, *'I didn't really think about it'.* When asked if the mother came into his room he said *'Just after they came into the room, she say make sure you knock and ask me if that is okay. I*

then ask them to leave.' He was asked about what C said in her police interview about going into his room and that she described him as naughty and made her cry. He said that was an incident when he joked that he would call the police, which upset her. There was also an occasion when he joked about them wanting to eat some chicken and he said the following week he would cook them. He denied this was referring to him silencing the children.

85. XA agreed he first knew the children had gonorrhoea soon after the police left on 4 June 2018, as his mother told him. He agreed he knew then he had gonorrhoea, but because he thought it was only sexually transmitted, he did not tell. He felt he had nothing to do with it as it was transmitted sexually. He agreed he knew from the beginning what the proceedings were about and that there were concerns about sexual contact. When asked why he did not say the children were regular visitors to his room in his statement he responded it was because *'of the way questions asked – I just answered the questions'.* He said he didn't see it as important information, yet realised the parents were being accused and so it was important. He denied not saying anything because he had something to hide.

86. XA was pressed about his drug taking and risky behaviour. He accepted his drug use was serious by mid 2018 and a problem also when he was under the influence of them he did things he would not otherwise do. In answer to questions from Mr Stevenson he agreed there had been occasions when the subject family were there when he had taken crystal meth but not at the house. He agreed he could still be under the influence when he returned and *'when I am like that my mother could tell, when that happen she would not allow the children to be with me'.*

87. Prior to the police attending he described being aware that the mother said D was scratching her private parts and that he thought the mother had taken D to the GP to get test results.

88. Following his arrest by the police on 28 July 2019 in relation to the allegations made by S the police took his phone. He agreed the police disclosure set out 3 searches he had made. In relation to the search 'can a child get STI' he said he wanted to make sure it was not transmitted any other way than sexually (such as a toilet seat). In relation to the search 'how do you catch gonorrhoea' he wanted to make sure it was not transmitted any other way. He said he made these searches within a couple of weeks after the children were removed. The third search 'if a 9 year old touches a 5 year old' he said was to do with the other investigation involving S, he wanted to find out what the allegations meant. He denied this was anything to do with B and C, who were 9 and 5 years at the time. He thought the touching search was earlier in time than the other two, even before the subject family came to stay. When told the allegation from S was after the subject family left, he maintained that search was in early 2019 as he was then aware though of allegations earlier as Ss sister and mother came to the house and spoke to him and his mother. After they had gone, he said his mother told him they were going to go to the police. It was suggested to him that the age differences between him and S did not match the ages in the search, he responded *'it was more of a rough kind of search'.* When asked why when the police took the phone it was the first search that came up, he said it could have been on more than one occasion. Following XA finishing his oral evidence, the police provided detailed records of their search of his mobile phone which showed that the above specific

searches had been made between the 6th June 2019 and the 28th July 2019. Miss Collinson took instructions and stated that XA agreed he had made those searches in that time period and did not challenge the police report.

89. XA denied he had sexually abused any of the children.

90. In re-examination Miss Collinson took XA through the medical records regarding his appointments which showed he missed three medical appointments on 24 January, 11 April and 15 May 2018 and attended five medical appointments during that year.

91. The mother confirmed her statements with some amendments. She described the circumstances that resulted in her staying with the children at G's property. She said neither G nor F said the children should not be alone with XA. She agreed she had had a discussion with XA when he was low and was experiencing difficulties in his relationship with his mother. She agreed the older two girls, B and C, were a bit more independent. She agreed C went down each day to get the phone charger from XA's room and said she would *'monitor the time she went down'* when asked why, she said because they were going to school.

92. She agrees the children had gonorrhoea and understands the expert evidence is that it is more likely to be caused by sexual abuse. When pressed about what she thought when informed by Dr P on 25 May about D having the infection, she seemed to focus on the fact it was suspected and that she was in shock. Even when it was confirmed on 4 June she seemed unable to focus in her answers to questions by Ms Bradley as to who she thought may be responsible and why she didn't tell G and F what the infection was or suspected to be. She said G didn't know that it was gonorrhoea until the night she was arrested when she overheard the police talking to her giving the reason why she was being arrested. She said any discussion with G after she returned there from the police station was around G being annoyed the police had attended the home. Ms Bradley pressed her about any discussion she had had with G or anyone who lived in the property about how all three children could become infected but the mother seemed unable to give any coherent account, giving somewhat evasive responses such as '*It all happened so quickly'.*

93. The mother accepted that she knew the relevant issue was not whether there was anyone else in the house but that both she and XA said in their statements that XA was mostly in his room and the children were not left alone with him. She accepted in her oral evidence that her eyes could not be on the children all the time. She agreed she had had discussions with G about XA's issues and that he appeared more withdrawn but said she did not ask or was given any further details. She said she didn't accept Y's account that she knew the children were in XA's room saying she was *'shocked and angry'.* She seemed to suggest at one point there was only the occasion Y had witnessed and a time when C was sitting outside XA's room using a mobile phone that she knew about, then saying later she knew C went down daily to get the charger. She said she accepts XA's evidence about the children being in his room saying she *'just didn't know'.* She accepted what she said in her written statements about the children not being left unsupervised was not correct, there were times when she did not know where they were and that it was not *'strictly true'* what she said in her statement that no one spent any time with XA. She said *'they not in his room as much as people saying'.* She denied she suspected XA of anything but chose

not to say anything as she would be asked to leave the house. It was clear from her oral evidence she had great difficulty in considering that the children may have been harmed by XA.

94. As the mother was pressed by Ms Bradley about the timing of when she knew about the infection and what steps she took to ask the children any questions the mother often gave long answers that did not properly address the question. Whilst on one level she knew and understood the seriousness of the infections she seemed unable to articulate any steps she took with that information to protect the children. Information came out in the mother's oral evidence that was not in her statements, such as a discharge she noted in B and C on 3 June 2018, that she had talked to them to ask if everything was okay and had anyone done anything to them to which they responded '*no one had touched them'.*

95. The mother was pressed by Ms Bradley about the timing and sequence of events when she first noticed D's discharge. In her oral evidence she referred to D itching, which is not in her statements and she remained vague about when she told the father and when he came over and saw D. The mother agreed that at the appointment on 25 May she did not give her address but the address of another friend. She agreed that despite the fact that she considered the infection may have been caused by a toilet seat she did not pass on the information to the other residents of the property. The mother agreed she had information (such as the address and who the occupants were in the property) which she chose not to share, with the result that the enquiries into the cause of the infection were hampered and the father had a finding sought against him.

96. She agreed the father's relationship with F and G was not close and that his visits to the property tailed off. The mother was pressed about when she told the father about the infection after 25 May, and whether he knew about the medical appointment on 25 May. Her answers to relatively simple questions became increasingly obtuse.

97. In relation to the allegation that the father had hit A with a wooden spoon, she accepted he had smacked his hand and on one occasion threatened him with a wooden spoon. She maintained she had not seen anything else. When asked if she stopped the father she responded *'It was something to do with homework, not with wooden spoon'.* Another example of the mother simply not being able to engage, for whatever reason, with the question and any responsibility she may have for what took place.

98. Miss Collinson asked the mother about what the children had said in their ABE interviews, in particular matters which they may have got told off for (for example taking biscuits from the kitchen) without any fear. She largely accepted Miss Collinson's suggestions as to the events that XA said lay behind C saying she was scared and joking about cutting them up in the context of the roast chicken. She agreed there was nothing about XA's behaviour to concern her. As regards the times the girls would be in XA's bedroom she agreed with his account suggested by Miss Collinson, she said *'that is how I recollect it as well, they sometimes pop in and say hello'.*

99. Ms Budden asked about the school attendance for the children. From the records in the papers the mother agreed it appeared during the relevant period between early March and early June the children were home for 26 days, plus weekends, and spent

29 days at school. She agreed that when the children were at home they tended not to go out. She described the sleeping arrangements in the two beds in the room they used. A and B shared a bed, initially C was with them then she slept with her mother and younger sister. The children all wore clothes in bed.

100. The father confirmed the content of his 8 statements. He agreed his visits to G's property where the mother and children were staying became less frequent and agreed after the initial period he would remain in the sitting room on the ground floor. He described how much contact he had with XA and described him as being quite *'mannerly'.* He said when he learned of XA's circumstances through the disclosure in this case, he was shocked.

101. He confirmed he accepted the expert evidence that the children are most likely to have been infected with gonorrhoea through sexual contact.

102. Ms Bradley took the father through the evidence about the concerns the professionals had about details of the children's living arrangements not being clear. His response was that he kept in contact with the school and if he gave information that was not correct it reflected the arrangements they hoped to put in place.

103. He was asked about when he knew about D's discharge, what steps were taken and when he knew of the position regarding the positive test results from gonorrhoea. Despite close and careful questioning by Ms Bradley it still remained unclear whether and what he knew about the doctor's appointment with D on 25 May (even though that was a day the children attended school so he would have attended G's property in the morning and afternoon), when he was informed the infection was gonorrhoea and what discussions he had with the mother and steps he took when he was made aware.

104. He was asked about the changing accounts regarding how much time the girls spent with XA, he said it made him feel there should have been more control by the mother. He maintained his position he had no idea the girls spent time in XA's room.

105. In relation to the allegation concerning the wooden spoon he accepted he had slapped the hands of the children, in particular A, as he felt that was the best way to control their behaviour. In relation to the wooden spoon he accepted he had threatened it *'once or twice'.* He said he later changed this to requiring A to stand against the wall for a period of time (he said no longer than 10 minutes) if he misbehaved, as A did not like doing that he more readily became more compliant.

106. He was asked about the relationship between the mother, C and D and agreed with the description that they were like sisters. He was not sure how much contact they have had recently.

107. He was asked about the accounts in his statements that were not truthful. He accepted the account he gave of staying at G's property with the mother and children was not true. He said that due to his fear about previous allegations that he had been neglectful and thought he would be at risk of that again if he was spending no time staying with the family. He agreed he went upstairs once in the property, although in his statement he said he never had. He was asked why his visits to G's property reduced over time

and he explained it related to work he was doing in a property that the family would be able to live in. Although not entirely clear he accepted that the account he gave the police in his prepared statement on 6 June was not correct as it said he had no idea about the infection. He kept saying he was going through some difficulty as a result of the arrest and he felt under pressure. Ms Bradley took the father through the detailed references in the papers where the professionals had repeatedly tried to understand where the children were living and the evasiveness by the father. His only explanation was the mother had asked him not to reveal the address and when he did give inaccurate information about their living circumstances, he sought to justify it by it being what they planned. He felt by saying the children lived with the mother that was sufficient, as he said it gave a *'clue'*. He finally sought to justify his refusal to give information about where the children lived as he, at that time, did not know any of the children had gonorrhoea. He agreed he had been forceful with A at contact as he was uncontrollable, and he was trying to remove him.

Legal framework

108. The parties have helpfully provided an agreed note on the law which I have summarised below.

109. It is not in issue that the burden of proof is on the local authority and the standard is the balance of probabilities.

110. It is necessary for the court to have regard to all the evidence, including that of the parents, to evaluate whether the local authority have established the factual findings they seek to the required standard. Such findings need to be based on evidence and any inferences that can be properly drawn from that evidence, not on suspicion or speculation.

111. The evidence from experts whilst important needs to be considered with the other evidence, always remembering that the judge is the person to make the final decision on all the evidence, including that of the expert and any clinicians.

112. If the court finds that the injuries are inflicted then the court should endeavour to identify a perpetrator however the court will have in mind the observations of the Supreme Court in *Re S-B [2009] UKSC 17* that there is no obligation to do so and the judge should not be tempted to strain to identify a perpetrator.

113. In considering the credibility of the witnesses it is important to consider that it is not uncommon for witnesses in these cases to tell lies in the course of the investigation and the hearing. The court must be alive to the fact that a witness may lie for various reasons, such as shame, misplaced loyalty, panic, fear, distress and the fact that a witness has lied about some matters does not mean that he or she has lied about everything (see *R v Lucas* [1981] QB720).

114. In considering any finding sought about failure to protect care needs to be taken to make sure there is a connection between the facts found and the risk alleged. There must be evidence that the parents knew or ought to have known that the carer presented a risk to his or her child.

Submissions

115. In her carefully crafted written submissions Ms Bradley sets out the basis she seeks to establish all the findings in the schedule dated 13 December. The evidence establishes that it is likely XA had the gonorrhoea infection during the relevant time and it is more likely than not that the children were infected by him through sexual contact. That is supported by the medical evidence. There was the opportunity for XA to do so during the time the family were in the home and the evidence establishes that the girls spent periods of time in his room with the door closed, which was not the position portrayed in the evidence prior to the statement from Y and the oral evidence. She relies on the risk-taking behaviour from XA which she explored in her questioning of him during his oral evidence and the evidence from the children in their ABE interviews to support the finding that XA silenced them. A combination of all these pieces of evidence can lead, she submits, to the court making the findings regarding sexual abuse against XA. She seeks to establish the findings regarding the parents failing to protect by drawing together various strands of evidence, such as XA's behaviour in the home, that should have put the parents on notice. In relation to the findings of physical harm by a wooden spoon against the father and the mother's failure to prevent it reliance is placed on the evidence from a number of different sources of what A is alleged to have said.

116. Mr Stevenson and Ms Whelan, on behalf of the father, join with the local authority in relation to the findings they seek regarding XA having gonorrhoea at the relevant time and the findings in relation to his sexual abuse of the children. Mr Stevenson does not support the findings against the father regarding his failure to protect as the evidence does not establish that he had the necessary knowledge about the arrangements in the address where the mother and children were staying, including the amount of time they spent with XA or had any basis to suspect the children would come to harm. The findings regarding his failure to give consistent accounts about where the children were living are explained by a number of factors including his fear of being considered neglectful. He rejects the findings sought about the wooden spoon and standing facing the wall due to the flaws in the way the information was recorded from the various witnesses, which undermines the reliability of the evidence such that it would not be safe to make such a finding.

117. Ms Chaudhry and Ms Harrington on behalf of the mother support in a low-key way the findings made regarding the allegations of sexual abuse against XA. Due to her relationship with F and the family this has been difficult for the mother. She rejects any findings that she has failed to protect the children relying on the evidence that there was insufficient to alert her to the extent of the risk XA posed. They submit the fact that the mother may have been somewhat slow and deliberate in her evidence is her style of communicating and should not be relied upon in any negative way.

118. Miss Collinson on behalf of the intervenor submits on the evidence the court cannot be sure that XA was infectious during the relevant period, which she submits as being May, due to the time the physical symptoms were seen in the children and he maintained his denial that he had sexually abused the children. She draws the court's attention to the evidence about possible non-sexual ways the infection can be transmitted, referring to the evidence of Dr L, the studies she referred to and slides from a recent lecture Dr L gave. In relation to the finding sought that XA frightened

the children she rejects that relying on the way the children presented themselves at the 4 June appointment and the content of the children's ABE interviews.

119. On behalf of the Children's Guardian Ms Budden's written submissions support findings being made in relation to the existence of the Nesseria gonorrhoea infection in the girls, that they were infected sometime between March and mid May 2018 and the mode of transmission was more likely than not to be sexual (findings 1,2 and 3). In addition, she supports a finding that the father physically chastised A with a wooden spoon and made him face the wall (finding 13). She questions whether the parents' can be found to have failed to protect the children from sexual harm when the timing in relation to details regarding the allegations made by S were after the mother and children had ceased residing at the property (findings 5 and 6). In the light of the parents evidence about the times when the children were not in their care she doesn't support a finding that if the children were only ever in the parents' care they must have known that XA sexually abused at least one of their children (finding 10). In relation to the other findings the written submissions set out the relevant evidence the Children's Guardian considers the court should bear in mind.

Discussion and Decision

120. In this difficult and unusual case in considering the evidence, in particular of the parents, it is important to bear in mind the points very fairly set out by Ms Chaudhry on behalf of the mother that this family had to manage the difficult consequences of being homeless and since June 2018 the uncertainty caused by these proceedings including the complex way the evidence has unfolded with numerous hearings and a developing evidential picture. The continued uncertainty has been extremely difficult for all the parties, the parents and intervenor who face serious findings and each of the children who have had to manage over 18 months of uncertainty awaiting decisions about their future care.

121. In considering the evidence the court needs to keep in mind that the burden of proof is on the local authority, that any findings made should be based on the wide canvas of evidence and any inferences that can properly be drawn but not speculation. In addition to consider if the court does consider a witness has been untruthful the court must be careful to bear in mind that a witness may lie for various reasons and the fact that they have lied about some matters does not mean they have lied about everything.

122. Turning to the findings sought I propose to take them in turn, setting out my reasons for my conclusion in relation to each finding. In doing so I have regard to and have considered and evaluated all the evidence, both written and oral, and have carefully weighed up and considered the points made in the detailed submissions made on behalf of each of the parties.

123. **<u>Finding 1</u> The children, D, Band C were infected with Neisseria gonorrhoea, isolated from the vulva, low vagina and throat.**

124. This is accepted by both parents and the Children's Guardian and not disputed by XA and is supported by the expert evidence form Drs Ghaly and Rothburn. The helpful table in Annex A of the mother's written submissions summarises the position accurately. D tested positive from the vulval swab taken on 17 May and in relation to the rectal and throat swabs taken on 25 May. Both B and C tested positive in relation

to throat, vulval, lower vaginal and urine samples taken on 4 June. A's throat and urine samples taken on 4 June tested negative.

125. **<u>Finding 2</u> D, B and C were infected with Neisseria gonorrhoea at some time from early March 2018 to mid-May 2018 whilst residing at G's home**

126. This is accepted by the parents and the Children's Guardian.

127. Miss Collinson raises the issue as to whether XA was still infectious in the relevant time period. He tested positive following the test taken from him on 20 March 2018, the test result was confirmed on 10 April 2018 and he failed to attend the appointment the following day. When he was next tested on 29 June 2018 it was negative. He was prescribed the antibiotic Co-Trimoxazale (septrin) on 20 March 2018 as a prophylactic in connection with his HIV status. If taken, Dr Ghaly's evidence was clear that septrin was not only not suitable for treating gonorrhoea but in any event it was an insufficient dosage to deal with the infection. He rejected the evidence from earlier studies that this could be sufficient. Dr Rothburn's evidence was different, he considered that septrin could treat the infection. What is not clear is whether XA took the medication, as his history of compliance with prescribed medication is far from certain and he could not recall what he did in his evidence. It is agreed between the medical experts gonorrhoea can be asymptomatic. Dr Ghaly considered the negative test on 29 June 2018 could also be explained by other reasons such as sampling issues, false negative or the passage of time. There was also uncertainty whether the treatment XA was given in June was before or after he was tested.

128. Miss Collinson submits this needs to be looked at in the context of the timing of signs for the infection in the girls, in D it was 15 May and, according to the mother, 3 June with Band C. If incubation is between 3 and 14 days before symptoms occur (according to Dr Ghaly in his evidence in the previous hearing) that would put the infection occurring during the first half of May. Dr Ghaly considered the infection could be asymptomatic for a period before then.

129. I have reached the conclusion that the girls were infected during the time period set out in the finding sought. This is supported by the findings of the tests on 17 and 25 May and 4 June together with the medical evidence relating to the incubation period. Having considered the evidence as a whole it is more likely to have been during the period they were residing at G's home and it was more likely than not XA was infectious during this period. I prefer the evidence of Dr Ghaly as summarised by Mr Stevenson in his closing submissions at paragraph 26 with his expertise in this area and clinical experience, in relation to the lack of effectiveness of the prescription of septrin on 20 March 2018 coupled with the likelihood of XA not being compliant in taking it due to his history, that he failed to attend the follow up appointment in April and the other evidence at that time in relation to his social isolation. Miss Collinson raises the issue of whether there was any other adult in the property with gonorrhoea who may have passed on the infection to the girls. Whilst statements were not taken from the grandparents, the evidence from F and G do not support them having the infection and no one suggested that to them. The evidence also does not support the children spending any significant periods of time with the grandparents during their time at G's property. There is the issue of non-sexual transmission which is dealt with under the next finding.

130. **<u>Finding 3</u> The mode of transmission of D, B and C's infection is more likely than not sexual.**

131 There was some evidence that the state of the toilet at G's home was unhygienic due to the number of people using it and the particular health difficulties experienced by the grandparents that contributed to that.

132 Drs Ghaly and Rothburn in their written and oral evidence support the conclusion that the most likely mode of transmission is sexual. This position is supported by the RPCPH Guidance. Dr L in her email exchanges and oral evidence raises the possibility of non-sexual transmission. She has extensive clinical experience through her role at the Sexual Assault Referral Clinic and stated in her email *'the infection is almost always sexually transmitted but that in some cases in which there is no disclosure, no behaviour change and an absence of hymenal injury, the possibility of non-sexual transmission cannot be completely ruled out. Although unlikely and unproven, a non-sexual mode of transmission is thought most likely in overcrowded homes and humid environments such as bathrooms where the contaminated hands of carers and contaminated towels/linen may transmit the infection when caring for a child. This is based on findings from a small number of studies…''* Dr L's emails also referred to a passage by Patrick Kelly in an article written in 2014: *'The conclusion that STIs in young children are 'almost always' sexually transmitted is the conclusion most consistent with the microbiology, and is supported by international consensus guidelines. However, the 'almost' is a qualifier that acknowledges the possibility of rare or unusual mechanisms which may meet the microbiological criteria yet not involve sexual abuse. In any individual case, the safety of the conclusion that a child has (or has not) been sexually abused must be built on the quality of the process by which it is reached – which must combine medical examination by an appropriately qualified examiner, high quality microbiology from sample collection onward, close attention to the safety and emotional welfare of the child and family and a careful multidisciplinary process characterised by excellent inter agency communication, peer review and a reluctance to jump to easy conclusions – whether those be conclusions for or against sexual abuse.*'

133 Drs Ghaly and Rothburn were united in their evidence that this infection is susceptible to dryness and in Dr Ghaly's view would only survive for a very short period of time on a toilet seat. Whilst Dr Rothburn was perhaps more open to consideration of it surviving for a longer period in humid and unhygienic conditions his position was not founded on any firm evidence (clinical or otherwise) and, as he observed, does not account for the fact that it was found in multiple sites or how it would get into the vulva.

134 I have carefully considered whether one of the girls could have been infected by a non-sexual way, such as through the bathroom, and then gone on to infect other areas in her body, as well as pass on the infection to one or both of her siblings. Whilst I can't rule that out completely when looked at in the context of the medical evidence about the susceptibility to dryness, the lack of any research to underpin this analysis as the cause and the evidence that points the other way, such as the evidence of Drs Ghaly and Rothburn, and the infection being found in multiple sites I have reached the conclusion that it is more likely than not the mode of transmission was sexual.

135 **<u>Finding 4</u> XA has infected at least one or all of the children through sexual contact**

136 XA denies that he has had any intimate sexual contact with any one or more of the subject children and denies that he has infected any of the children through sexual contact. It is right the girls have made no allegations of sexual contact against XA, either in their ABE interviews or to anyone else. There is also no evidence of any physical signs of sexual contact or sexualised behaviour.

137 XA is the only person who came into contact with the children during the relevant period in 2018 who is known to have been infected by gonorrhoea. He was living at the property and was not working for most of the time they lived there. As was demonstrated through the analysis of the school records the girls spent the majority of their time at the property (26 non-school compared to 29 school days plus weekends) and they did not often go out. D did not attend nursery so was present in the home throughout the period.

138 The evidence in relation to the degree of contact that there had been between XA and the girls changed significantly following the receipt of the statement of S's mother, Y, and the further ABEs of the children on 23 November 2019.

139 The position prior to that was the mother has been saying in her statement of 11 July 2018

> Para 6 *'I can confirm that at no time were the children left unsupervised. I would always make sure the children were not left alone; they were either with me or with their father. D in particular is very clingy and she would never leave my side.'*
> Para 12 *'There was an occasion I remember when we were at the property when XA drove us to buy fish and chips but this was a one off and again the children were not left alone with him.'*

140 In his statements XA echoed the same position in his statement dated 5 August 2019 at para 3 '*I confirm that I have never spent any time alone with the children….* And at para 4 *'I was never alone with the children for even a period of 5-10 minutes.'*

141 The court now has a very different picture. Y's statement to the police stated that on an occasion when she visited G's property when the subject family were staying there the girls were in XA's bedroom. She states

> '*I asked the mother where her children were and she said: 'In XA's room'. So then I went into XA's room. There was XA sitting on the bed, at the far end by the wall, and then two of the mother's daughters were sitting next to him on the same side of the bed, playing on some electronic games device, and then the third girl came in whilst I was talking and saying hello. I asked their names. The third girl stood next to the two girls on the bed and joined in playing with them. I had a little chat with them…'*

In her oral evidence Y described seeing the two girls (B and C) sitting on the edge of one end of XA's bed using an electronic device and XA was at the other end facing the television and clarified that it was the youngest girl who came into the room while

she was there. She said that the door was pulled closed but not locked. She did not notice anything untoward.

142 In her ABE interview C said that they went into 'XA's' (the name she used for XA) room to see him, to talk to him and once they went on his phone.

143 In his evidence XA said that having heard Y's evidence he remembered her visit and that the girls were in his room. He said that the girls spent time in his bedroom on 3 or 4 occasions and that C borrowed his phone charger most days. He said that he was never in the house alone with the children, which was what he said he was referring to in his statement. He said that he did not go up to the attic room while they were there.

144 In her evidence the mother has now agreed that C borrowed his phone charger most days and has conceded that there were a limited number of occasions when the girls spent time in his bedroom. She agrees there was a time(s) when she popped her head around the door to check the children were not annoying him. She does not agree that she told Y that the children were in XA's room when she visited. I reject the mother's evidence where it differs from Y, the mother's account of what was going on has been far from consistent. What was notable about Y's evidence is the fact that it seemed to portray something (as in the children being in XA's room) that was not out of the ordinary in that household at the time.

145 The evidence is now that there were (at least) 3 or 4 occasions when the girls were alone with XA in his bedroom. Y told the court that the door was pulled closed but not locked when she visited and XA has said he prefers to keep the door to his room closed. It is right that there is no evidence that anyone noted anything of concern about the way XA behaved towards the children but that has to be looked at in the context of the developing evidential picture regarding the actual contact he had with the girls and that is it very likely it mostly took place behind closed doors.

146 Both the mother and XA seek to suggest that the content of their statements were to be read in the context of XA not being alone in the house with the girls. I reject that as a credible explanation as it was perfectly clear it was not limited to that and in my judgment presented and maintained a false picture of the position for a considerable period of time.

147 The evidence in relation to XA's lifestyle and drug taking whilst not on their own determinative provide a context in which his evidence needs to be viewed. As the father said he had always found XA to be quiet and well mannered, yet for part of his life at this time that was not the position. XA is someone who appears to be adept at hiding the reality of what is going on. He engaged in very risky behaviour through his drug taking. Whilst it is not suggested he was taking drugs at the house he is likely to have been there when he was still suffering the after effects and has demonstrated an ability to successfully conceal from others what is going on in his life and how he behaves.

148 Consideration also needs to be given to the evidence that he knew about the children having gonorrhoea in early June yet did not give any information to the authorities about his recent testing. At that time, he had still not attended any medical appointments following being informed he had the infection. Miss Collinson relies on

his evidence that he undertook the internet searches which confirmed the most likely transmission of the infection was sexual, and as he denied any sexual contact he did not consider he could be the source of the infection. Looked at in isolation that could be credible but when it is considered together with the other internet searches the position, in my judgment, looks different both in relation to their content and timing. The searches included "Can a child get an STD?" "How do you catch gonorrhoea?" "If a 9-year-old touches a 5-year-old" "Who sees my STI results?" "Do I have to disclose my STI infection to the Courts" and "Can police look into STI files". I reject XA's explanation for the search 'if a 9 year old touches a 5 year old' as referring to the allegations made by S as the ages correlate more closely with the children in this case than the circumstances of S's allegation.

149 Whilst the transcript of S's video recorded interview is in the papers, as well as the statements of his mother and sister I agree with the submission of Miss Budden that this evidence should not be taken into account, by way of propensity or otherwise. The evidence is hearsay and the local authority have not sought findings or sought to call S to establish whether they are true. In the circumstances of this case where it is denied by XA and for the reasons articulated by Sir James Munby in *Re A (Application for Care and Placement Orders)* [2016] 1 FLR 1 at paragraphs [7] to [10] I am satisfied I should not take this hearsay evidence into account to establish the truth or otherwise of the findings in relation to the girls.

150 Drawing the evidence together I consider it is more likely that despite the way the evidence was initially given in the statements XA had the infection at the relevant time and had the opportunity to infect the girls with gonorrhoea. They were regular visitors to his bedroom, the door was closed and there was little by way of monitoring of the girls when they were inside the room. It is more likely than not that the mode of transmission was sexual, as the medical evidence supports, and the mode of transmission does not necessarily mean there will be physical evidence of sexual abuse with the girls to support that conclusion. I have carefully weighed in the balance that the children have not made any allegations either in the ABE interview or otherwise and apart from the account given by C of being frightened in her second ABE interview, which appears to be supported by evidence of an event that chimes with the account given by her, the children do not display any real fear or concerns about their contact with XA. However, when balanced with the other evidence that does not drive the court to a different conclusion. There is no evidence of the children engaging in sexual or other intimate contact with each other and they wore clothes when they went to bed. As a result, it became increasingly remote that one child was sexually abused and thereafter infected the others, particularly as the infection was in multiple sites.

151 I agree with Mr Stevenson that the following findings can properly be made on the evidence:

(1) That XA was infectious at the time of the subject family's stay at G's home and, after 10 April 2018, he knew about this and failed to take steps to be treated;
(2) XA had the opportunity to infect the girls with gonorrhoea – they were regular visitors to his bedroom, the door would be closed, and there was little by way of monitoring of the girls when they were inside;

(3) XA has sought to mislead and conceal that he was infectious with gonorrhoea when the girls were living with him; and therefore
(4) On the balance of probabilities, it is XA who infected the three children with gonorrhoea.

152. **<u>Finding 4A</u> XA has frightened and thereby silenced the children from speaking about the sexual abuse of them by XA**

153. I am not satisfied that this finding is established on the evidence to the required standard. Whilst it is correct there are curious and some concerning features of the children's ABE interviews which raise a suspicion that such action was taken by XA (for example the events described by C, in the second interview not using his name) there is equally some evidence from the mother to support one of the events described by C which put it in a different context. It is also of note that when Dr P saw the children on 4 June and asked whether anyone had touched them their answers in denying such behaviour appeared genuine, spontaneous and appropriate for children of their age.

154. I agree with the observation by Ms Bradley that XA's relationship with the children was not straightforward. In his evidence there appeared to be a conflict, on the one hand they irritated and bothered him, but he also felt sorry for them and describes them coming into his room and just sitting on his bed or standing in the room.

155. **<u>Finding 5</u> In the event that XA has sexually abused the children whilst the children were in the care of the mother, the mother has failed to adequately supervise and protect them from harm.**

156. I do not support this finding being made. I agree with Ms Budden a finding of failure to supervise and protect cannot be made against a parent on a strict liability basis, it must involve a degree of fault on the part of the parent.

157. There is no evidence to suggest that the mother knew that XA was a sexual risk during the period of time that the mother and children were living at G's property.

158. Prior to the allegations being made by S (which was after the children had left G's home) the only knowledge that G (and possibly F) had of XA's sexual behaviour was that he was gay and was HIV positive and that he sometimes stayed away overnight. The mother described discussing with XA in general terms his issues and the difficulty he was experiencing in his relationship with his mother at the time but the evidence does not establish that she knew or ought to have known he was a risk in terms of sexual harm

159. However, what I am satisfied of is that the mother was untruthful in her initial accounts about her supervision of the children during the relevant time. I reject her explanation that, like XA, she was referring to the children not being left alone in the house with him. The evidence establishes through the accounts given by F and G, and more latterly by Y, XA and the mother, that A, B and C, and to a lesser extent D, spent considerable periods outside the direct supervision of the mother within the property, which included times spent in XA's room with the door closed.

160. **<u>Finding 6</u> In the event that XA has sexually abused the children whilst the children were in the care of the father, the father has failed to adequately supervise and protect them from harm.**

161. The evidence establishes that the mother was the children's main carer when they were at the property although the father visited regularly in the early stages of their time there.

162. There is no evidence to suggest that the father knew that XA was a sexual risk during the period of time that the mother and children were living at the property. In his oral evidence he expressed his genuine shock at what he had learned about XA during this hearing.

163. The evidence does not support this finding.

164. **<u>Finding 7</u> The father has not been truthful and has provided inconsistent accounts, including to professionals, about the care arrangements for the children and his own living arrangements from 24 March to 5 June 2018 and sought to minimise his attendance at the property**

165. I am satisfied this finding is established. Whilst the father's explanation for the untruthful account given in paragraphs 27 and 28 of his first statement that he stayed at the property in the early stages of their time there to avoid any suggestion that he was neglectful it has to be seen in the wider context of the opaqueness of his accounts to various professionals about the parent's and children's living arrangements. His lack of openness and clarity about where they were all living, together with the older children's significant absences from school caused additional delay and confusion for the professional network preventing them from being able to safeguard and support the children.

166. **<u>Finding 8</u> The mother has not been truthful about the care arrangements for the children and the extent of her supervision of them when they were residing at the property**

167. I consider this finding is established for reasons I have already touched on. In reaching my conclusion I have carefully considered the reasons the mother gives for her varying accounts. She has experience of the care system in her background, she felt let down by the authorities over the difficulties the family were experiencing in securing housing and did not want to upset the delicate position she found herself in with the children, in overstaying by a significant period of time at the property. Even making all due allowances for those considerations the hard facts are three of her children had the gonorrhoea infection in multiple sites which resulted in their removal from her care. The evidence suggests that she was really only willing to consider the infection being caused through unhygienic conditions in the home and not, as she should have done, consider as a parent what other sources of the infection there could have been. She readily recognised to Dr P she knew it was a STI. Her failure until very recently to give a more realistic account of her level of supervision of the children in the property has played a part in preventing these proceedings reaching a conclusion with the benefit of all the relevant evidence. If she had given the account she now gives about the level of contact the children had with XA, or at

the very least accepted that was a possibility it is very likely to have prompted much earlier investigation of the circumstances of who lived at the property and probably earlier resolution of the proceedings and significantly reduced the risk of findings being sought and made against the father.

168. **<u>Finding 9</u> Neither the mother nor the father have provided any reasonable explanation for how the three children became infected.**

169. In relation to the mother this is really another aspect of the previous finding that if she had been more truthful in her account of the circumstances of the children and her level of supervision it may have led to earlier investigation of the occupants of the property. I agree.

170. In relation to the father I accept the submissions of Mr Stevenson that this is not established in relation to him as the evidence demonstrates from a relatively early stage of the period the mother and children were living in the property he was limited to the sitting room during his visits and they reduced over time. He was, in effect, reliant on what he was told by the mother which as he explained in his oral evidence, he feels let down by the mother that he wasn't giving the true picture at an earlier stage.

171. A further aspect of the evidence that has troubled the court is the parent's respective reactions to being informed their children may have gonorrhoea. For some reason it appears the father did not know about the medical appointment on 25 May 2018, although on his account he left it with the mother after the 17 May 2018 appointment to follow it up. Also, the medical records demonstrate that he was informed about the positive results in relation to D on 31 May 2018 (despite saying in his prepared statement when interviewed by the police that he didn't know prior to his arrest). In his oral evidence he seemed unable to give any coherent account that following his shock at receiving this information what steps he took to discuss this with the mother and try and understand how D could have been infected with a sexually transmitted disease. The evidence suggests there was little, if any, discussion between the parents about this, either at that time or subsequently, despite it being very shocking news to both of them about serious harm that had occurred to their children. This reflects some worrying dynamics in the relationship between the parents.

172. **<u>Finding 10</u> If the parents are being truthful in their accounts that the children were only ever in their sole or joint care then either or both parents must have known that XA was sexually abusing at least one of their children.**

173. The parents are no longer saying that the children were only ever in their sole or joint care. There is no evidence that either of the parents knew that XA was sexually abusing any of their children. In those circumstances I agree with Ms Budden a finding being made in these terms is not supported.

174. **<u>Finding 11</u> In failing to inform professionals as to the extent of XA's contact with the children the parents have hindered and delayed the investigation into how and by whom the children came to be infected.**

175. For the reasons already given this is not established in relation to the father as he was reliant on what he was told by the mother about the care arrangements at the property .

176. For the reasons already given I consider this is established in relation to the mother. Her account until relatively recently that the children were not out of her sight has now significantly changed. If that account had been given earlier it is very likely that earlier steps would have been taken to investigate the living circumstances at the property, both by the local authority and probably the police.

177. **<u>Finding 12</u> Further, the parents hindered and obstructed the investigation by refusing to disclose the children's address to professionals.**

178.| I am satisfied that both parents hindered and obstructed the investigation by failing to give reliable information about the children's address. The father can have been in no doubt that the information was required and requested and his explanation that the accounts he gave related to what he hoped would be the position lacked any credibility. Whilst I take into account the sensitivity of the position both parents had with the other occupants of the property there is no evidence of any attempt by them to explain to F why the information was being requested, other than possibly on one occasion. I accept the detailed references in paragraphs 12.2 – 12.12 of Ms Bradley's closing submissions demonstrate the extent of 'smoke and mirrors' the varying accounts given by the parents created, to the detriment to each of their children.

179. **<u>Finding 13</u> The father has physically chastised A by 'whipping' him on the palm of his hand with a wooden spoon on numerous occasions and making A face the wall for a long time.**

180. This is denied by the father although he accepts that he has smacked A with his hand and held a spoon up as a warning on at least two occasions. He accepts that he made A face or stand by the wall but not for long periods, no more than 10 minutes.

181. A has made these allegations to a number of people including the IRO on 14 August 2018 (as detailed in her statement dated 28 August 2018), which B and C agreed were true. The IRO made a further statement dated 11 December 2019 providing information about how she had made her notes. She produced a note that she had dictated to herself sent at 14.29 on 14 August 2018. She also produced a note of a telephone conversation that she had with the Guardian the following day which she sent to herself at 12.44. Mr Stevenson on behalf of the father made some criticisms of her system of record keeping, including not keeping any original notes, and not always recording the actual words that were used which undermined, he submits, the credibility of her account.

182. The Guardian also produced her note of her conversation with the IRO.

183. In addition to this evidence from the LAC review in August the court has evidence that on 12 March 2019 B said to the Guardian 'I feel disgusted when my dad smacks me on my hand with a spoon when being naughty'.

184. On 20 April 2019 A told his foster carer in the car on the way home from a contact visit that he was often hit with a wooden spoon by his father. The record of the contact visit describes A becoming very upset with his father but also in turn seeking comfort from his father. The foster carer's oral evidence was clear in her recollection about what A said, it was volunteered by A and I accept the foster mother's account of what he said.

185. On 25 April 2019 B told Ms K when she visited that the father would hit them on the hand with a spoon and it was very sore. C agreed and said their father did this. Mr Stevenson expressed some concern about the circumstances of this visit, the record keeping, the influence of the presence of the foster carer and A, particularly bearing in mind the dynamics of the relationship between A and B.

186. Having considered all the evidence and factoring in Mr Stevenson's concerns about the circumstances of the accounts of the children relied upon by the local authority I am satisfied that the father has hit A with a wooden spoon, on more than one occasion, to try and manage his behaviour. This is consistent with the father's evidence of trying to bring about strategies to do this. He accepted he hit A and B and C on the hand on more than one occasion. He described A being the more difficult child to manage and whilst he only acknowledges he threatened A with a wooden spoon I am satisfied he did actually use it. That accords with A's account to the foster carer, which was unprompted and clear, supported by the accounts given to the social worker and the IRO. The father accepts he developed the strategy of making A stand by the wall until he agreed to behave.

187. **<u>Finding 14</u> The mother has failed to prevent the father from mistreating A and has thereby failed to protect A from emotional and physical harm.**

188. In her evidence the mother was aware of the strategies the father adopted to be able to manage the behaviour of the children. A said to the IRO that 'his mum used to tell his dad to stop but he wouldn't." I accept that evidence from A and that description is consistent with the dynamics of the relationship between the parents. I accept on the evidence this finding is established.