

IN THE FAMILY COURT

Case No: OX20C00084

BEFORE RECORDER LIEBRECHT

21-28 JUNE 2021

BETWEEN:

A LOCAL AUTHORITY

-and-

L

-and-

M

-and-

N

-and-

P

-and-

R, S, T, U, V & W

(By their Children's Guardian)

JUDGMENT

Miss AJB, counsel , for the Applicant

Mr JKR, counsel , for the First Respondent

Mr MC, counsel , for the Second Respondent

Mr JV, counsel , for the Third Respondent

Ms LKn, solicitor,, for the Fourth Respondent

Ms LKi, solicitor, , for the Fifth to Tenth Respondents, by their Children's Guardian

This judgment is being handed down in private on 28 June 2021. It consists of 26 pages and has been signed and dated by the judge. The Judge has given permission for the judgment (and any of the facts and matters contained in it) to be published on condition that in any report, no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by name, current address or location including school or work place. In particular the anonymity of the children and the adult members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court. For the avoidance of doubt, the strict prohibition on publishing the names and current addresses of the

parties and the child will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain. Copies of this approved judgment as handed down can be treated as authentic.

Introduction

1. These proceedings concern the children R, S, T, U, V and W.
2. L is the mother of R and S. Their father is M who has parental responsibility for the children. N is the mother of T, U, V and W. Their father is P who has parental responsibility for those children.
3. Currently all the children are subject to interim care orders made on 24 July 2020. R is placed in foster care but the other 5 children reside with Ms N, there being an exclusion order in place requiring Mr M to be absent from their home, this order having been imposed since 10 September 2021 and extended to date.

Applications

4. On 15 July 2020 the local authority applied for orders in relation to all the children under s.31 of the Children Act 1989.
5. The case has been listed for consideration of fact-finding at this hearing.

Representation and arrangements for the hearing

6. The local authority has been represented by Ms AJB, , counsel, Ms L by Mr K-R, counsel, Mr M by Mr C, counsel, Ms N by Mr V, counsel and Mr P by Ms Kn, solicitor. The children have been represented through their Children's Guardian by Ms Ki, legal executive advocate.
7. This hearing has taken place as what has come, during the time of restrictions on social interaction due to the Covid-19 pandemic, to be known as a hybrid hearing. As such parties and their representatives have all attended by remote means except for Mr M and his representative when Mr M was giving evidence when they have attended court in person.
8. Given the subject-matter of this hearing, the attendance of Mr P and his legal representative has been excused, except for attending for judgment and subsequent case-management directions.
9. The case was considered by the Court on 14 June 2021 upon the application by Mr M for directions requiring R to give live evidence within this hearing. The outcome of that application was that questions were to be put to R by the children's solicitor with the

Children's Guardian present, being recorded, on 21 June 2021. The Court subsequently approved the questions to be put to R. That recorded questioning took place as directed on the first day of this hearing. The evidence was then viewed by all parties and by me on the second day.

Background

10. Until June 2020 the 6 children all lived in the same household with Ms N and Mr M.
11. Ms L has two other children, one of whom is O. They are half-siblings to R and S.
12. There had been previous proceedings between Ms L and Mr M relating to their children in the Family Court, first in 2011 following their separation in 2009, which led to an order setting out Mr M's time to be spent with the children.
13. Mr M and Ms N began their relationship in about May 2016.
14. There were subsequent proceedings when the local authority was directed to provide a s.37 report after R had alleged that her mother, with whom she then lived, had assaulted her. Following an occasion when the children were with him Mr M had not returned the children to their mother on the advice of children's services so Ms L made applications to the court. The recommendation of the s.37 reporter was that S and R should move to live with their father and that was endorsed by order of 15 August 2017. The fortnightly contact that was envisaged with their mother took place only a few times.
15. Mr M and Ms N complained to the police of alleged confrontational and harassing incidents in June and September 2018 instigated by Ms L or someone on her behalf.
16. By December 2018 the children had not spent time with their mother since January that year. The children were joined as parties and represented through a Children's Guardian. Eventually Ms L did not wish to go through a final hearing, at which she was unrepresented, given the recommendations in professionals' reports, and those proceedings culminated in an order dated 28 March 2019 for her to have indirect contact twice a year and at birthdays and Christmas.
17. I observe at this point that the order of 28 March 2019 has been interpreted by Mr M as an order that Ms L is not allowed direct contact with the children and any such contact would be in breach of the order. That is not what the order says. It seems that professionals have often taken their cue from Mr M. In fact the order placed obligations on Mr M to ensure certain indirect contact and consultation with Ms L on important issues. It has not been the focus of this hearing but it does appear that there is little evidence to suggest he complied with that. He told the children's school their mother was allowed no contact and moved home without telling her.

18. There was an incident on 12 September 2019 when Ms L and her sister came to be driving in a car in the road where Mr M and Ms N live with the children. O and the mother's other child were also in the car. Ms N spotted the car driving by. As the occupants of the car came to be identified by the family, Ms N went out to film them to report them to the police and four of the children emerged into the street with her. Ms N's challenge to Ms L as to why she was there, given the court orders that provided for limited contact, rapidly degenerated into the adults raising voices, shouting, criticising and accusing each other, all in front of all the children. The children became embroiled in the incident as well as being exposed to it. The incident became the subject of police investigation. With multiple varying accounts from a number of the participants, that investigation resulted in no charges.
19. On 17 June 2020 Ms L reported to the police that R had told O that a couple of weeks previously Mr M had kissed her neck and touched her "private area", her vagina. R told O of these events in a series of messages on the Snapchat social media platform, in circumstances described below. O included her mother in the information that was coming through and Ms L contacted the police. Later that evening the police and a social worker attended the children's home. When spoken to R said that she had been touched in her vaginal area. She was removed from the family home under police protection powers. Mr M was arrested. R was placed with her paternal grandmother. By the next day, when the grandmother brought R to be interviewed by the police, she said she would not carry on caring for her and R said she would not go back with her. R was placed in foster care.
20. Mr M was interviewed on 18 June 2020 and bailed to the family home, being restrained only from having contact with R. Mr M declined the local authority's request to stay away from the home and intended to rescind his consent to her accommodation by the authority under s.20 CA 1989 when his bail conditions were to due to expire on 16 July, the police considering them unnecessary as R was in foster care and Mr M could be warned that attempts to contact her might constitute offences.
21. The local authority issued proceedings. Interim orders and subsequently arrangements as mentioned above were put in place.
22. At the time proceedings were initiated the local authority also articulated its concerns at the responses to R's allegations from Mr M and Ms N, and the children's exposure to domestic abuse and consequent emotional harm, the domestic abuse being the occasions

of confrontation, discord and aggression in incidents involving Mr M, Ms N and Ms L, while they were all living with Mr M and Ms N.

23. I should mention Mr P. He and Ms N separated in 2015. Arrangements for him to spend time with his children broke down in 2017. He had some contact with V in early 2020 but arrangements broke down again. Preparatory steps are being taken towards reintroducing contact with his children and he is being assessed within these proceedings. However the local authority does not seek any findings against him separately from his acceptance of his historical criminal convictions and matters that may be considered as part of welfare considerations in respect of the children at a later hearing.
24. Within proceedings the process of obtaining the necessary disclosure of potential relevant material has been protracted. The case was listed previously for a fact-finding on 4 January this year. That was put back to 1 March when some 10,000 pages of data were disclosed that had been extracted by the police from electronic devices during the investigation. Then it was deferred to 4 May 2021. The course of action set out in the court's directions to manage that material did not hold, so that on behalf of Mr M a request was made for greater disclosure than provided on the local authority's schedule of material it proposed to disclose as relied upon. Following a hearing on 27 April 2021 this hearing was set down.
25. The various issues of contact – between the 5 children and Mr M and the prospect of reintroducing Ms L and Mr P to their children – have been fraught with practical difficulties and management challenges – but those I do not need to go into here.

Issues

26. I am asked by the local authority to make the findings now set out in the schedule dated 15 June 2021. In relation to Ms L and Mr P the matters that they accept are set out and then it is recorded that the local authority does not consider it proportionate to seek further findings against them. Findings sought against Mr M are:
 - (1) On a date in 2020 M sexually abused R by way of touching (the detail of which it is not necessary to set out in this judgment) :
 - In doing so Mr M caused R sexual and emotional harm.
 - (a) Mr M exacerbated the harm by not stopping when the child asked him to do so.
 - In not stopping Mr M caused R further sexual and emotional harm.
 - (2) In sexually abusing R, Mr M has put the other children of the household at risk of sexual harm and emotional harm.

(3) Mr M has caused R emotional harm in allowing the 5 children, including R's brother, to ostracise her from the family.

27. I note here that the contentions of the local authority do not mention the kissing to the neck that R mentioned in her messages to O. The local authority does not invite me to make any finding in respect of that alleged conduct, given the nature of the evidence on it and given that it has not before now formed part of findings sought. Mr K-R has suggested I can and should include it in my findings. It has been considered in this hearing as part of the sequence of events that R alleges, has been the subject of questions of witnesses and I include it in my wider considerations.
28. Mr M, as set out in his responses to the contentions, wholly and thoroughly denies the allegations.
29. As against Ms N the contentions of the local authority had been amended following the hearing on 14 June 2021. I made some preliminary observations on those contentions and gave permission for Ms N to file a statement in response to the contentions which had already been prepared on her behalf. In the light of what Ms N said in that statement the local authority reached the view that further consideration of matters relating to Ms N was best placed at the welfare stage of these proceedings in the light of such findings as I might make.

Evidence

30. I have been provided with the bundle of documentation prepared for the case. Documentation from previous proceedings I have mentioned has been included, as has documentation arising out of children's services previous involvement. Disclosure of material has been obtained from the police. I have viewed the video recordings of interviews by the police with R and Mr M regarding R's allegations and of Ms O and Ms L regarding events of September 2019. I have viewed the recording of questions put to R on 21 June. I have considered the extracts from the very extensive material that has been downloaded by the police from Mr M's and R's phones.
31. I have heard oral evidence from O, Ms L, Mr M and Ms N.

Law

32. The burden of proof rests on the Local Authority. The fact that the Local Authority relies on the lack of a satisfactory explanation for injuries/events does not amount to a reversal of proof: Re M-B (Children) [2015] EWCA Civ 1027.

33. Where a respondent fails to prove on a balance of probabilities an affirmative case that he or she has chosen to set up by way of defence, this does not of itself establish the Local Authority's case: Re X [2015] EWHC 3651 (Fam).
34. In Re B [2008] UKHL 35, per Baroness Hale, para.70:
“the standard of proof in finding the facts necessary to establish the threshold under section 31(2) or the welfare considerations in section 1 of the 1989 Act is the simple balance of probabilities, neither more nor less. Neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts. The inherent probabilities are simply something to be taken into account, where relevant, in deciding where the truth lies.”
and Lord Hoffman, para.2:
“If a legal rule requires a fact to be proved (a "fact in issue"), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are 0 and 1. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it, a value of 1 is returned and the fact is treated as having happened.”
35. In Re A (A Child)(No 2) [2011] EWCA Civ 12, Munby P noted:
“the elementary proposition that findings of fact must be based on evidence (including inferences that can properly be drawn from the evidence) and not on suspicion or speculation”.
36. “The court invariably surveys a wide canvas” of evidence; Butler-Sloss LJ in Re LU, LB (Serious Injuries: Standard of Proof) [2004] EWCA Civ 567 [para.26]; and the “evidence overall must be evaluated, it cannot be assessed in separate compartments” Re T [2004] EWCA Civ 588.
37. The conclusions to which the court comes must be based upon *the totality of the evidence*. All the evidence, both medical and non-medical, has to be considered in assessing whether the pieces of the jigsaw form a clear, convincing picture ... the medical evidence is only one aspect of the case. (See Re A (Non-Accidental Injury : Medical Evidence) 2001 2 FLR 657 – Bracewell J.)
38. In determining the facts in a family case, the court should have regard to the guidance given in R v Lucas [1981] QB 720 to the effect that a conclusion that a person is lying or

telling the truth about point A does not mean that he is lying or telling the truth about point B: a person may lie for many reasons, for example: to bolster a true defence, to protect someone else, to conceal disgraceful conduct of his or out of panic or confusion.

39. One can refer to some of the analysis of Mr. Justice Baker in the case of Re JS (A Minor), [2012] EWHC 1370, as encapsulating the approach to a fact-finding hearing.

“36. In determining the issues at this fact finding hearing I apply the following principles. First, the burden of proof lies with the local authority. It is the local authority that brings these proceedings and identifies the findings they invite the court to make. Therefore the burden of proving the allegations rests with them.

37. Secondly, the standard of proof is the balance of probabilities (Re B [2008] UKHL 35). If the local authority proves on the balance of probabilities that J has sustained non-accidental injuries inflicted by one of his parents, this court will treat that fact as established and all future decisions concerning his future will be based on that finding. Equally, if the local authority fails to prove that J was injured by one of his parents, the court will disregard the allegation completely. As Lord Hoffmann observed in *Re B*:

"If a legal rule requires the facts to be proved (a 'fact in issue') a judge must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are 0 and 1."

38. Third, findings of fact in these cases must be based on evidence. As Munby LJ, as he then was, observed in *Re A (A Child) (Fact-finding hearing: Speculation)* [2011] EWCA Civ 12:

"It is an elementary proposition that findings of fact must be based on evidence, including inferences that can properly be drawn from the evidence and not on suspicion or speculation."

39. Fourthly, when considering cases of suspected child abuse the court must take into account all the evidence and furthermore consider each piece of evidence in the context of all the other evidence. As Dame Elizabeth Butler-Sloss P observed in *Re T* [2004] EWCA Civ 558, [2004] 2 FLR 838 at 33:

"Evidence cannot be evaluated and assessed in separate compartments. A judge in these difficult cases must have regard to the relevance of each piece of evidence to other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward by the local authority has been made out to the appropriate standard of proof."...

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

43. Eighth, it is common for witnesses in these cases to tell lies in the course of the investigation and the hearing. The court must be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear and 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] QB 720)."

The application of a Lucas direction was considered recently in *Re A, B and C (Children)* [2021] EWCA Civ 451, per Macur LJ:

"54. That a witness's dishonesty may be irrelevant in determining an issue of fact is commonly acknowledged in judgments, and with respect to the Recorder as we see in her judgment at [40], in formulaic terms:

"that people lie for all sorts of reasons, including shame, humiliation, misplaced loyalty, panic, fear, distress, confusion and emotional pressure and the fact that somebody lies about one thing does not mean it actually did or did not happen and / or that they have lied about everything".

But this formulation leaves open the question: how and when is a witness's lack of credibility to be factored into the equation of determining an issue of fact? In my view, the answer is provided by the terms of the entire 'Lucas' direction as given, when necessary, in criminal trials.

55. Chapter 16-3, paragraphs 1 and 2 of the December 2020 Crown Court Compendium, provides a useful legal summary:

"1. A defendant's lie, whether made before the trial or in the course of evidence or both, may be probative of guilt. A lie is only capable of supporting other evidence against D if the jury are sure that:

(1) it is shown, by other evidence in the case, to be a deliberate untruth; i.e. it did not arise from confusion or mistake; (2) it relates to a significant issue; (3) it was not told for a reason advanced by or on behalf of D, or for some other reason arising from the evidence, which does not point to D's guilt.

2. The direction should be tailored to the circumstances of the case, but the jury must be directed that only if they are sure that these criteria are satisfied can D's lie be used as some support for the prosecution case, but that the lie itself cannot prove guilt. ..."

56. *In Re H-C (Children) [2016] EWCA Civ 136 @ [99]*, McFarlane LJ, as he then was said:

"99 In the Family Court in an appropriate case a judge will not infrequently directly refer to the authority of Lucas in giving a judicial self-direction as to the approach to be taken to an apparent lie. Where the "lie" has a prominent or central relevance to the case such a self-direction is plainly sensible and good practice.

100 ... In my view there should be no distinction between the approach taken by the criminal court on the issue of lies to that adopted in the family court. Judges should therefore take care to ensure that they do not rely upon a conclusion that an individual has lied on a material issue as direct proof of guilt."

40. I also bear in mind the additional guidance of MacDonald J in AS v TH & Ors [2016] EWHC 532 (Fam) relating to the statutory and non-statutory guidance regarding the proper approach by professionals to dealing with allegations of sexual abuse, adherence to which will have a bearing on the court's evaluation of evidence arising from their dealings.
41. A host of reminders appear in Re P (Sexual Abuse: Findings of Fact Hearing) [2019] EWFC 27 to reinforce the necessary approach. One of the reminders – at para.240 – is that a decision to make no or only some findings is not a failed or unsuccessful outcome but as much a valid outcome as one in which all findings were found proved to the requisite standard.
42. Having in mind in particular the need to evaluate the “wide canvas” of evidence overall and not to do so in “separate compartments”, in all of what follows I have referred or cross-referred to various aspects and sources of evidence where necessary in the course of my evaluations and in reaching conclusions.

Witnesses

43. R. As R's evidence was comprised of the recorded interview on 18 June 2020 and then questions put to her by Ms Ki on 21 June 2021, I make some comment here on the processes and context of her evidence being obtained. I also bear in mind throughout

that R has not given live evidence before the court in the way that an adult would in that her evidence has not been tested by conventional cross-examination.

44. R was seen by a police officer and social worker at home on the evening of 17 June 2020. I have the notes of the interaction. It is right to observe that R's initial reaction to some questions about any worries was to say that she did not wish to get into any trouble. It is the officer that asks if she told her sister something and then asks "what did he do?" Questions did then go beyond the very bare establishment that an allegation was being made. However questions were very limited and I cannot read into them any influence, endorsement or encouragement of what R has gone on to say to others.
45. R stayed overnight with her paternal grandmother on 17-18 June. The police contacted the grandmother to get her to bring R for interview the next day. In messages to O R had not wanted her nan to know about her allegation as she feared she would tell Mr M. On 18 June the police record that R did not wish to go back to her grandmother's and the grandmother did not want the "hassle" of having R in her care. R has subsequently said that her phone was taken away on the evening of 17 June and there was no conversation on the journey with her grandmother to the police station on 18 June, which fits with the grandmother's stance towards R. It seems that if there had been any influence on R from the paternal grandmother overnight it would have been wholly disapproving of R having made an allegation. It also seems that the investigating officer had intended to speak to R about her allegations before the ABE interview but from the police records that did not happen before the ABE began at 11.25 am. As such there were no significant interactions that would influence or contaminate what R had to say in her interview.
46. The ABE interview. Taking place as it did on 18 June 2020 the ABE interview of R happened just one day after her allegations came to light and not that long, though in her mind a few weeks, following the events she complained of. The interviewing officer dealt with R's understanding truth and lies in very short form but R confirmed that she had that understanding (the transcript is not accurate on this passage), as she did more clearly when questions were put to her for this hearing. In my evaluation there was then much information offered as free narrative, subsequent questions by the officer were not leading or obscuring and in all those respects R's account was not undermined or contaminated.
47. R gives a clear account of what she says her father did. Her answers are readily given, though naturally and not eagerly. She gives context and detail of where and how it took

place. Her responses detailing the event are given without hesitation; as is the demonstration, consistently done at two points in the interview.

48. There is nothing in R's presentation or demeanour in the interview to suggest malice, vengefulness or pleasure in making the allegations. On the contrary, she says that her relationship with her father is usually fine and gives an example of him treating her well in making sure that the eldest children get plenty to eat. At times in her account she is wracked by distress, congruent with what she is describing. Equally, her subdued sadness and distress is consistent with her expectation that her family will be angry with her and hate her for what she has done.
49. There were shortcomings in the ABE interview process but they were not down to R and ultimately did not detract from what she had to say. As I have mentioned it seems that there was no or at best a limited pre-ABE assessment of R. The interview took place as another interview had been cancelled so the interview suite had become available. R learned of it only on 18 June. She was unsupported in the interview even though it was a joint investigation with children's services. The timeline of events was not properly explored and although the screenshots of messages with O were available to the officer they were not referred to for exploration with or explanation by R. As a consequence this has contributed to the need for R to be questioned further and at some length for the purpose of this hearing.
50. R was more composed when answering questions as part of this hearing, becoming subdued as questions eventually turned to aspects of the alleged abuse itself, and then distressed. Again there was no feature that would lead one to think that there was a motivation of malice or vengefulness. She answered willingly and promptly. There was no sense of her fishing for the right answer or hesitating so as to contrive one. Again she said that her relationship with her father had been all right, normal. She described that he had been more angry in recent weeks before the allegation, imposing more rules on all the children, but she did not paint a picture of her having been singled out in a way that might give rise to thoughts of retribution and included others as having been on the receiving end of them. Indeed others of the children made comments to the police about the number of rules imposed on them. She readily confirmed that the restrictions of "lockdown" got on her nerves, she would argue in particular with T who would blame her and then she would get into trouble.
51. About her use of social media and devices she was very open. She was also open, as in my view she had been in the ABE interview, about knowing Q. She offered the detail of

having been contacted in about May 2020, of having deleted messages so as to try not to get into trouble and acknowledged that when found out she had been spoken to and told off and she had got angry and upset. Similarly she confirmed that the Snapchat communication with O had begun on the day she made her allegation, which ties in with the messages that are available in the evidence. She offered the detail that she had communicated with O from the first foster carer's placement when not allowed, and got into trouble for doing that.

52. She confirmed that her father had kissed her neck at the time she alleged he touched her private area. Asked why she had said that it (or something like it) happened twice, in her message to O, she did not remember saying "twice", and said without hesitation that it was once. She said that she did not mention it to the police in the home as she had said some things already and did not want her father to hear. She did not remember why she had not referred to it in the ABE interview; it was just that she was not really thinking at the time.
53. She was unable to recall with any great confidence, when various other events were offered to her which might help place events in time, exactly when the father had touched her. She continued to orientate the event by reference to Ms N having gone to work, adding that she had needed to work as they did not have that much money and Ms N having told her she was off to work the night before. In passing she alluded to times Ms N would go out, including to visit her mother.
54. O. For entirely understandable reasons, O was a witness who saw events through a similar lens to Ms L, being her daughter and living with her. That said, I did not form the view that that made her, or that she was, a dishonest witness. She readily confirmed not just that she had accompanied her mother to court hearings as support in 2018 and 2019, but also that she knew her mother did not wish R and S to live with Mr M, then, since, and now. Indeed she had no hesitation in saying that her mother thought Mr M a bad man, and she did too, though she had not thought he was harming the children. She and her mother had talked often, weekly, about R and S, about things they remembered about them and things they did with them.
55. She was open about having looked for R on social media at times, and sent her a birthday greeting once, though that did not get through or was not responded to and she did not establish any communication link successfully. She appeared at first to say that she was unaware of the contact made by Q with R, but the manner in which she then went on to

describe what she later learned of Ms Q's contact indicated to me that she meant that she had not been aware of that contact in advance or at the time of it taking place.

56. O's responses to questions about the extent of the social media/messaging communication she had with R were consistent with the time signatures (where available) and content of the messages that have become available in evidence. They were to the effect that communication had begun only on 17 June 2020, and that she had begun to message at about 5.30 pm on 17 June, asking if R was all right, then Ms L started to take pictures of the messages a little later. This is consistent with the photos of messages available from 5.36 pm that day.
57. She described her reason for going round to R's home in the car with her boyfriend that evening as due to being worried for her and not knowing if she might run away. I do not find in this anything indicative of a plot or plan to go and collect R. As R put it from her side of things, she was still her sister. As O said, she had not been the recipient of such an allegation by anyone else so it was a shock to her. The message exchanges do not indicate a planned pick-up but contain enquires about where R is and where she is going to go. When asked about it, it seemed very much news to her that R was said to have packed a bag to take with her.
58. She denied the suggestion that she had, on her own or with anyone else, put R up to making an allegation or had encouraged her to do so. There was none of the evasion or minimisation of the antipathy towards Mr M that might be expected had she been striving to keep concealed and protest against a clandestine effort to bring about a false allegation against Mr M.
59. Exercising the caution that O's evidence had to be considered in the context of being Ms L's daughter, I nonetheless found her evidence to be evidence I could accept.
60. *L.* Ms L was equally frank about feeling at the time of the private law proceedings that the children should live with her and felt the same now, that she had had lots of concerns about Mr M and that the children were at risk living with him. She blamed him for the cessation of contact that had occurred between her and the children and felt let down by the court and professionals in the previous proceedings. She confirmed that she had desperately wanted the children with her and was always talking about them with O.
61. She accepted that she knew of the communication with R by Q though I am not confident that she was wholly frank about how much and how early on she knew of this communication, in particular that Q was making a suggestion that R might see her

mother. It is likely that Ms L would have willingly exploited this possibility if it had not been shut down by Mr M spotting the communication. Ms L's reticence, though, is likely to arise from her knowledge that it was not a route of contact envisaged by the March 2019 order or one that Mr M would tolerate. She may well have told O little of it for the same reason.

62. Like O, she accepted that O and she had in effect kept an eye out for R's presence on social media, spotting R's TikTok posts, where publicly accessible, in about April 2020, getting the Snapchat name R might use from that platform. R did not then respond to their requests to link up on Snapchat until 17 June.
63. She denied any direct communication between her or O and R before 17 June 2020 and denied getting R somehow to make a false allegation. An apparent discrepancy in her evidence was pointed out to her in that her statement of 26 May 2021 she said that she began to take photos of O's phone once O had told her R had said her father had done something, whereas the photos are in fact of the exchanges for a time before and including R's message that she has been touched by her father, suggesting that she had been photographing the messages to get evidence of an allegation that she knew was coming. Ms L said she still remembered things in the order she described in her statement and she was not just out to get evidence to use against Mr M.
64. Again I am not confident that she was wholly frank in her responses. Both her feelings about Mr M and her experiences of court proceedings are likely to have led her to want to keep a record, that might be some sort of evidence against Mr M, as soon as she thought something might be amiss. However, it is eminently likely that R's Snapchat "story" that O had identified on her Snapchat account which read "I am sad and confused" and O's sense that R was "panicky" were enough to make her want to record information. Similarly I consider it likely that there was more of a discussion with O than she professed about where O subsequently set off to in the car with her boyfriend, that is R's home. At the same time, Ms L was making calls to the police, children's services and the NSPCC and the suggestion of any plan to go and pick up R does not fit with Ms L contacting the police so that they would be likely to go and get her.
65. With the above in mind, but having heard Ms L give her evidence, it is very difficult to conceive of Ms L having the wherewithal to set up, implement and conceal a plan, through social media, to incite and get R to make a false allegation against Mr M, both in terms of being able to use social media to that effect and in terms of the degree of sophistication and construction it would require. More likely her approach would be that

of September 2019, going round to the children's home with a lack of regard for the potential, if not likely, confrontation that would occur.

66. *M.* Mr M had provided 3 statements in these proceedings and was interviewed by the police on 18 June 2020 and 11 December 2020. He confirmed that he had told the truth in all of them. Mr M gave evidence in a manner adamantly sure of his own rightness and reflecting an approach that if he continued to give his version of events at length he must be believed.
67. He gave an extended description of how, as he saw it, R's behaviour had deteriorated continuously as from Christmas 2019 when she was given a phone. It was an unforgiving account, saying that her attitude and persona had changed, causing difficulties with several of her siblings in particular, being rude and disruptive, being more secretive about her social media activity, not liking rules and not liking being told what to do.
68. This picture offered by Mr M in oral evidence was of a much greater deterioration in behaviour in R than was described in previous statements. His account is also at odds with what he said both to the police in June and in his statement in August 2020, which was that he and Ms N had noticed a change in R's behaviour in May 2020. Indeed it was at odds with Ms N's statement and oral evidence that it was not until March or April that a change in behaviour was noted.
69. He emphasised that R became more secretive in March and April 2020. U and T had brought this to his and Ms N's attention as R would at times stop letting them see what she was doing on her devices. There was also the discovery of the communications with Q. He held to his suggestion made in his statement that R had been put up to make false allegations by Ms L and O. Challenged about whether there was evidence of this in any of the communications retrieved from various devices, he said that it must have been that Apps were loaded, used and then deleted. He viewed the messages between O and R of 17 June 2020 as reflecting a pre-arranged plan for O to come and get R.
70. He asserted, as he had in his police interview in December 2020, that R had had a bag packed on 17 June in readiness to leave the home. This was not supported by reliable evidence. It was something Ms N said to the police on 23 June 2020 that one of the children had told her. The record of the police officer of that evening clearly suggests that when it was decided that R should be removed she went and packed some things.
71. In his account of family life at the home in 2020 early on in his evidence the emphasis was on the family abiding by lockdown rules to stay at home. As he told the police in

June 2020, he was “shielding” – in other words needed to stay at home and avoid venturing out if at all possible.. In the same interview he said that he and Ms N “pretty much” did the shopping together so that Ms N was there – at the home, with him – “pretty much” most of the time. In his statement to the court he said that occasionally he went out to do the shopping on his own, but mostly he and Ms N did it together, so “I was therefore never in the house without Steph”.

72. This last statement was completely eroded in the course of his oral evidence. Reminded of the “shielding” his response was that he just went out just a few times, as he had felt confined by lockdown requirements but he was very careful. He was taken to a number of the phone messages passing between him and Ms N between 2 April and 6 June 2020 which indicated that on about 10 occasions Ms N was out of the house, shopping, on errands or visiting her mother, without him. To the first occasion he initially suggested that he could remember at that time being at Tesco getting things for a birthday two weeks later. Subsequent questions showed this to be an attempt to escape an occasion when he would have been at home without Ms N. As questions went on and he realised the number of these occasions they showed it to have happened and he accepted that they showed Ms N to be out of the house without him. The police had noted that for some reason there were no messages between them for the time 22 May to 5 June and he confirmed in evidence that the pattern of Ms N’s movements was likely to have been the same during that time. Even if, as he sought to suggest, there were some occasions when he went out at the same time as Ms N or she, on one occasion, took the girls to visit her mother, it meant that there were many occasions when in fact he was at home with the children without Ms N.
73. Asked to consider R’s presentation in her recorded evidence for this hearing, his response was to deny he had done anything and confirm that she had made up the allegation. His responses were devoid of empathy for R, her distress and her plight, even if she had been “put up” to an allegation.
74. I was compelled to the conclusion that his evidence was not evidence on which I could have any confidence as giving me a reliable description of R or the unfolding of events in the household. In particular, he had sought to present a false picture of himself never being left alone with the children without Ms N and therefore of not having had any opportunity for the abuse R alleges.

75. N. I had to conclude that Ms N was very much influenced by her belief and wish that R's allegations are not true. She said that having known Mr M for 5 years she has no doubt that that the allegation is not true as Mr M has very strong views on and "does not like that sort of stuff". She said both R and S are damaged children and having seen R's ABE interview, her comment was that R would cry, and then there were no tears, and she was good at doing that. Her implication was that R was putting it on.
76. As to events on the evening of 17 June 2020, she accepted the record of the police officer present that R had come to her and said "sorry mum" and that her allegation was true. She confirmed that R called her and treated her as her mum. When attention was drawn to her own response recorded by the officer, which has not been the subject of challenge at this hearing, that "it's all making sense now" and that Ms L's sister had warned her about Mr M, she said she had been in absolute shock, did not recall that and had not had a message from Ms L's sister. The officer on 17 June had recorded Ms N saying they had not been intimate for 3 years. She did though accept that a message between her and Mr M on another day contained a reference to difficulties in their intimate relationship. The officer's recordings are likely to have been correct. She accepted, as she had done in her statement, that in order to settle the other children, who had overheard some of the events, she said to them that R had been telling some lies, a choice of words which she said was made in those difficult circumstances and which she now regrets as wrong.
77. At several points her evidence was aimed at minimising the possible force of aspects of the case against Mr M. She was keen to emphasise that she and he together monitored the children's devices and social media. In spite of the evidence that there were numerous occasions when Mr M would be at home with the children she sought to imply that her trips out might be for something simple or she might take the girls with her. She joined with Mr M's vociferous criticism of Ms L's behaviour towards them, disgusted that after all Ms L had done, it was Mr M that got arrested.
78. With the observations above, Ms N was a witness whose evidence was far from objective, could not be taken as uncontaminated by her own belief about R, and on which I could place little if any reliance.

Evaluations and conclusions on the evidence

79. I have to recognise that for the purposes of my consideration of R's allegations Mr M has a clean record. This is in the senses both of having no criminal convictions at all, let alone any convictions that would suggest any risk of sexual assault, and in the sense of

there having been no allegations against him historically of any untoward or sexually inappropriate behaviour by any child or young person. Following their investigation in this case the police decided to take no further action. Nothing in the way of inappropriate content was found by the police on any device taken from Mr M.

80. I bear in mind the troubled background between Mr M and Ms L, the lengthy private law proceedings and that relations between them have been, as Mr Calway aptly put it, rancorous. Within those private law proceedings there were some limited concerns that there was a tendency towards “alienating behaviours” by Mr M but the professionals reached recommendations that the children should move to live with him and later endorsed that position.
81. Some of the other children in the household offered comments to the social worker, when an assessment was done following R’s allegations, about Mr M having been moody and there being too many rules, but none have made any complaint of any significance and indeed say much that is positive about their relationship with him.
82. The nature of the abuse alleged by R (non-penetrative touching on one occasion) and the time elapsed since she said it had happened meant that there was no physical examination by a medical professional. No medical evidence of abuse was to be expected. It remains a fact, though, that there is no corroborative medical evidence. In the absence of such corroborative evidence and indeed other corroborative evidence in the sense of a witness who saw the allegedly abusive event or saw Mr M and/or R at a time very close to it, I need to exercise particular care and caution in reaching conclusions.
83. Mr M suggests that R has made allegations against him incited or coached by Ms L, or as a result of others, such as O or Q, placing pressure on R on her behalf, with the aim of getting R back into her mother’s care, and that in effect they planned the events that took place on 17 June 2020. He notes that after Ms L and O having apparently been absent from R’s life since 2018, except for the unhappy events of September 2019, suddenly they emerge and it is to O that R reports allegations, rather than to someone one might expect R to trust and say something if it were true. He suggests that this was done by phone messaging communications and through social media. He also draws particular attention to the fact that R alleges that the abusive behaviour occurred a couple of weeks before 17 June 2020, when Ms N was at work, but Ms N was furloughed in early 2020

and returned to work only on 15 June, so she could not have been out at work as R suggests.

84. Mr M kept a close eye on the children's use of social media and digital communications. He and Ms N agreed on this but it is clear Mr M felt strongly about it. Allowing or removing access to their phones was a means of discipline. Devices had to be given to him or Ms N to be charged. If there was bad behaviour the child's name went on a piece of paper put into a pot and at the end of the month access to phones was lost for that child the number of days equal to the number of slips in the pot. Mr M picked up on the messages to R from Q in May. R's description of the communications with Q are consistent with those of Ms Q when spoken to as potential alternative carer for R. Ms N confirmed that the messages sent to Q rejecting further communication and any potential contact with her mother were R's own views. R had no hesitation in giving the police the password for her phone. R's openness in the ABE interview and questioning about the extent of the communications with Ms Q leads me to conclude that, put together with R's own conduct in the course of making the allegation, and the evidence on the case more widely, it is highly unlikely that there were clandestine communications with that incited R to make a false allegation.
85. Ms L accepts that she was following R's TikTok account around the time of her birthday in April 2020, but an attempted message to R did not get through. She says that R would put a status message up to the effect that she could not communicate with people her father did not like. There is no evidence of some other direct route of communication open to Ms L to influence R until 17 June 2020.
86. R has said consistently that she re-downloaded Snapchat onto her phone on 17 June and communications with O did not start before that date. The evidence before me does not contradict this. Ms L became aware of this through her own phone and sent one message, suspicious she says that it may actually have been Mr M activating the account. There is nothing in Ms L's message to R on 17 June at 5.26 pm to suggest previous communications or that R should make any allegation. While I do not have the initial messages between O and R in the intervening 10 minutes that pass until the first photographed message sent by O at 5.36 pm, it is wholly unrealistic to think that R could in that time have been brought round from the young girl seen despising her mother in September 2019 to one making false allegations at her mother's instigation.

87. R's messages reflect not just the house rules about time limits on having her phone but her fear that she will lose all her social media just for being found out to be messaging O. It is then that she first refers to her father having done something, to her "area" being touched and her father kissing her neck. However she tells O that she does not wish her to come and get her, the consequences of O intervening as she sees them being that her dad would kill her, that she would be put in care by social services and everyone would hate her. The messages could not be further from taking part in a plan to make a false allegation and/or doing so under the influence of O or Ms L with a view to possible return to Ms L. I am reinforced in this by references in documents in the private law proceedings to both R and S being of the view that life at home with their mother was chaotic, and not trusting her, and, again, the striking images of R screaming at her mother in the street in September 2019 that she should go away and that Ms N was her mum.
88. Whatever R may be saying in subsequent messages to O, R was then clear to the social worker that she did not want to be returned to her mother's care without a gradual getting to know her and more about the situation. During these proceedings she has been very cautious in her approach even to having contact with her mother.
89. More likely is that, as R said, she was scared to tell Ms N what had happened as she would tell Mr M. R's messages on 17 June 2020 and what she has said subsequently to the social worker reflect her fear of not being believed, fear for herself and others, including her mother if she were in contact with her. She was certainly right in this fear. The police officer describes her coming down the stairs that evening shaking and short of breath, saying "She couldn't stay at the house as everyone hated her". When she went to speak to Ms N she was rejected. Later that evening Ms N said to the other children that R had been telling lies. While O would not have been her preferred person to tell, there was no one else she could tell, she did not want to make anyone angry and did not know what to do. As she has commented in police interview, O was still her sister. O was the only option and she took it. Telling someone at school had ceased to be an option as her school had stopped pupil in-person attendance on 20 March 2020 due to the Covid-19 pandemic.
90. I conclude that R did not know that the police were coming or who was in the car outside the home on 17 June 2020 any more than she described in response to questions this week, that is that she has spotted the car and the two boys its occupants, looked at her sister's Snapchat location and gleaned that her sister was likely to be there. In fact

after the police had come R asks O in a message if she had got someone to come to the house. There was not a plan preconceived with R to go off in the car. From O's and Ms L's perspective calling the police offered nothing like a guarantee or prospect of O being able to take R away with her.

91. My conclusions to the effect that there is no evidence of R having been incited or influenced by Ms L, O or someone else to make allegations as Mr M has suggested, do not of course mean that the allegation must be true.
92. Subsequent to her removal from her home, in her ABE interview R remains aware that her family will be angry with her. It is clearly a painful situation for her. Still she maintains the allegation rather than withdrawing it or trying to explain it away to retrieve the situation. At the same time there are numerous aspects on which she might have exaggerated or embellished if she were making a false or malicious allegation – but she is clear it had not happened before, just once; that she was touched on the outside surfaces of her genital area but not inside; she does not take any cue from questions that explore and may imply that her father was physically aroused.
93. I did not find that the evidence around R's report to O of her father having kissed her neck undermined her evidence overall. It is understandable that she may well not have wished to go into further information with the police in the home on 17 June, being worried she would be overheard. At that stage of events the police enquiry was of course very limited, rather than looking for detail. The ABE interview was clearly a distressing experience when the focus was on the alleged touching. The police officer did not raise it as the subject of a closed question after open questions. It is likely that this was because the officer worked from the note of the different officer who spoke to R the night before when it was not mentioned, and did not pick it up from the messages. In questioning this week R was both definite in her confirmation that it happened and that it was only once. In the circumstances of the messages sent to O on 17 June the word "twice" is easy to see as ambiguous, possibly referring to the touching and kissing, to being kissed twice on that occasion or there being two occasions.
94. Nor was her evidence significantly detracted from by her inability to place it in time in the first half of 2020. In her ABE interview she had already clarified that to her "a couple of weeks" meant more than two. Notwithstanding Ms King's best efforts to allow and help R to remember, through the questions that had been formulated, and R's effort to provide an answer, R was not helped by them and indeed in my view became confused

by the references to other dates, stating that abuse did not happen on Easter Sunday as Ms N was there, that it had happened before that and her birthday but then adding that it was hard to remember as a rider to her answers. Given the circumstances of March to June 2020, with schools shut and being confined at home for much of the time, it will have been difficult to remember and her memory of that period is likely to have become blurred. She remained adamant that Ms N was at work and it was when the children were off school due to Covid-related restrictions. I see this as no more than a natural imperfection in her attempts to remember events over a year ago.

95. I have considered carefully the issue of R having said that the abuse happened on an occasion when Ms N was at work. While I accept that Ms N was furloughed for a period from March to June 2020, given the context that R was otherwise able to give to the circumstances of the occasion she was touched, and all the other features of her evidence and conduct I have mentioned in this judgment, I do not consider that if she was mistaken in her perception or memory about where Ms N was on that day it must suggest that her account is false. As has become apparent at this hearing, Ms N went out of the home with regularity even during the period of “lockdown”, leaving Mr M with the children with equal regularity.
96. At the same time the shortcomings in the evidence of Mr M that I have identified are of significance. I cannot help but conclude that Mr M has sought to portray R as becoming devious, rude, disruptive and rebellious so as to make it seem more likely that she would make a malicious allegation or fall under or was under the influence of her mother and O. Further, he now felt he had to describe the deterioration in R’s behaviour as having begun earlier than he said before, because her answers to questions for this hearing were to the effect that it happened earlier than everyone previously understood, and nearer to the time when it actually did happen. Yet he had said to the police that he had a brilliant relationship with his daughter. The account is out of tune with previous accounts and even the extent of Ms N’s account. It is not reflected in what the other children say. It is not possible to know how much of the views of Mr M and Ms N the other children had picked up on by the time they were seen as part of the Child and Family Assessment completed in July 2020 – certainly some – but while they mention R being rude and mean at times T and U say they were close to her and miss her.
97. It is likely that R’s behaviour reported by other family members as from April or May was the result of having been the subject of abusive behaviour and having no way out of

the situation. At the same time R's sense of Mr M being angry or aggressive with her is likely to be consistent with him realising the risk and consequences of her telling someone.

98. Mr M's insistence that there must have been other communications with Ms L and O is not borne out by the evidence. Nor is his insistence that the available messages reflect a plan made with R to get her out of the home. Implicit in his interpretation is that R agreed to or was made to make a false allegation. His concentration on Ms L, O and clandestine social media in this way is part of his effort to deflect attention from himself.
99. His dishonesty in suggesting that he was never alone with the children in the home without Ms N was a straightforward attempt to suggest that there was no occasion on which the alleged abuse could have taken place and to undermine R's account.
100. Taken separately and together I conclude that these features are clear indicators of Mr M trying to deflect from or conceal a culpability he does not wish to admit.
101. While I note the difficulties in the intimate relationship between Mr M and Ms N that have been mentioned, I cannot say whether they have a bearing on Mr M's actions and do not give them any significance in my determination.
102. I am compelled to the conclusion that, taking into account all the many factors in this case I have mentioned, that R's account of her father's behaviour is one that is given by reference to real events, with real detail and context. Detail of where she was, that she had come to the kitchen, was hungry, the other children were in their rooms – which was consistent with the regime implemented by Mr M and Ms N for when they should be doing school work or were allowed on their devices, and the layout of the home matches and allows for this occurrence - she was showing her father something on her tablet, that she leant against him affectionately, only for him in that moment to behave inappropriately and abusively as she described. Nothing in what R has since done suggests that she has needed to cover up any deceit of her own or to correct, embellish or fill gaps in what she has said to make it more believable.
103. Once the police arrived on 17 June and no doubt the seriousness of the situation become apparent, I consider that R's action in going to Ms N, as the police officer describes, sobbing and saying to her "I'm so sorry, mum, it's true" would be entirely inconsistent with the betrayal that would be a false allegation against her father. She herself made a poignant final point at the end of her evidence for this hearing having been recently asked whether she had made up the allegation. She said "I don't get why I would lie?"

Final Conclusion

104. I therefore find proved item 1 of the schedule of Findings sought. In addition, and in the light of that, I find item 2 proved. I do not know or try to specify the level of that risk to the other children, but it is a risk to their welfare of significance.
105. I do not make any additional finding in relation to the description of Mr M kissing R's neck, not being invited to and given the ambiguity, not through R's fault, of the evidence about it. Equally, I do not make any finding that it was a falsehood.
106. As to item 3 I find that R has been ostracised by her brother and the other children with whom she was living until June 2020. This is a consequence of Mr M denying the allegation, supported in his denial by Ms N, so that by the end of 2020 all 5 of them had said consistently that they did not wish to have any contact with R. The consequence of their perception of events has been of R having been in the wrong or caused her own separation from the family. There being no counter to this perception, R has been an outcast.

END