

Neutral Citation Number: [2022] EWFC B13

Case No: ZW21C00290

IN THE WEST LONDON FAMILY COURT

West London Family Court,
Gloucester House, 4 Dukes Green Avenue
Feltham, TW14 0LR

Date: 9 February 2022

Before:

HIS HONOUR JUDGE WILLANS

Between:

THE LONDON BOROUGH OF EALING

Applicant

- and -

(1) JS
(2) "Lisa"

Respondents

(by Children's Guardian Ms Heather Gibbons)

-and-

LD

Intervenor

Mr Theodore Bunce (instructed by **Ealing Legal Department**) for the **Applicant**
Ms Aysha Miah (instructed by **Sriharans Solicitors**) for the **First Respondent**
Ms Laila Bhunno (solicitor advocate of **Duncan Lewis Solicitors**) for the **Second Respondent**
LD in person

Hearing dates: 17-19 January 2022

JUDGMENT

His Honour Judge Willans:

Introductory Points

1. This judgment is given following a final hearing which incorporated a significant fact-finding element. In order to preserve anonymity within this judgment I will refer to the child subject to the judgment by the name 'Lisa' (this is not her real name) and to the respondent mother by the initials JS and to the intervenor by the initials LD.
2. I heard evidence over three court days from (in order); (i) Ms F and Ms B (teachers at Lisa's school); (ii) Ms Lewars (allocated social worker in the first weeks of this case); (iii) Ms Militaru (Team Manager); (iv) JS; (v) LD, and; (vi)

the Guardian. I have had regard to all the documents contained within the hearing bundle and to the submissions from the representatives for the applicant and respondents and from the intervenor in person. I then adjourned to consider the evidence and provide this reserved judgment.

3. At the outset of the hearing it was made clear that JS accepted the legal threshold was crossed and that a final care order should be made under which Lisa would remain in foster care. Subject to some limited questions as to the approach the applicant would take to working with Lisa concerning the possibility of rehabilitation of the family relationship, this hearing has focused almost exclusively on allegations contained within a threshold/scott schedule.
4. As a result, this judgment is almost entirely focused on the resolution of this disputed fact finding. I do though deal with welfare disposal at the end of this judgment. In providing my assessment and conclusions I will not deal with every piece of evidence but will instead focus on the key and material evidence which has led to the conclusions reached. I have though continued to bear in mind all the evidence.

Allegations in the case

5. I generally refer to the combined schedule of findings found at A53-A61. The allegations summarised are as follows:
 - i) On a date when Lisa was between 3½ and 7 LD sexually abused Lisa to include rape by both oral and penetrative means.
 - ii) LD would often be drunk and whilst in this state would grab Lisa, pulling her onto his lap and holding her in such a way as to make her uncomfortable.
 - iii) JS has failed to protect Lisa. In particular shortly after the events alleged at §5(i) above Lisa reported the assault to JS who told her not to worry but took no protective action. When Lisa further mentioned the assault to JS in March 2021 she was ‘victim blamed’ for the assault but no protective action was taken.
 - iv) JS has physically abused Lisa by regularly slapping her to the face. This was often related to occasions when Lisa made a mistake or achieved at school to a level lower than expected by JS. Separately JS has hit Lisa on her hands and knees and kicked her.
 - v) JS has emotionally abused Lisa to include threatening behaviour. She has responded to Lisa crying by calling her worthless and a ‘mistake’, she has threatened to burn Lisa with a candle, made threats to beat her and made as if to throw a metal chair at her. As a result of the above Lisa does not feel safe in her mother’s care and is scared of her. This has led to Lisa wanting to have no contact with JS.

- vi) When Lisa has expressed suicidal thoughts both JS and LD have yelled at and threatened to hit Lisa.

Legal principles

- 6. I will deal with this in a proportionate fashion and with no wish to unnecessarily weigh down this judgment. At sections VI-VII of the applicant's opening note [§1-33] a detailed overview of the relevant law with respect to both fact finding and welfare is set out. I accept that summary and adopt it when approaching this case. It is attached as annex I to this judgment.

Background history

- 7. The background history in this case can be dealt with relatively briefly. I take this essential history from the following sources; (a) the statement evidence of JS and LD; (b) the initial social work statement; (c) the report of Ms Diamond (ISW).
- 8. I note the following:
 - i) JS and LD are related. Lisa's parents were married (2005) but it would appear Lisa's father has not been involved in her life and his current whereabouts are not known. In 2003 JS came to this jurisdiction and LD was JS's only relative in the jurisdiction. Whilst pregnant with Lisa JS had to give up work and with JS in financial difficulty LD offered help and she moved into his home. Lisa was born in late 2006 and until she was aged about 11 (in 2018) she believed LD to be her biological father. Following her divorce in 2011 JS formed a relationship with LD.
 - ii) In 2010 Lisa was presented at accident and emergency with a minor injury to her vaginal area. Whilst this was a source of concern it ultimately led to no greater investigation. This event was at one point a discrete allegation within these proceedings, but the applicant no longer seeks a specific finding. In 2018 there was a report of Lisa appearing uncomfortable in LD's presence when at a school meeting. This was subject to a multi-agency discussion and problematic drinking on the part of LD was noted as a likely cause of family stress.
 - iii) On 22 June 2021 Lisa made allegations to her teachers at school of both sexual and physical abuse. Consequent upon the same the police were involved; Lisa underwent an ABE interview process, and following this Lisa became subject first to police protective powers and then further removal pursuant to section 20 and then under interim care provisions. Since 22 June 2021 Lisa has been separate from JS and LD and currently expressing a wish to have no contact.
 - iv) Both LD and JS have been subject to police interview and the police are currently reserving their position as to criminal proceedings. I have received a request for disclosure and there is a consent order agreed

between the parties providing for such disclosure. This will be incorporated into the final order in this case.

- v) The evidence alleges Lisa has made a number of reports as to sexual abuse over the years as follows: (a) to her mother contemporaneously with the alleged abuse; (b) to her cousin with whom she was then living in 2020; (c) to her mother in March 2021, and; (d) finally to the teachers at school (and thereafter to the police) in June 2021.
- vi) Both JS and LD report separating in the days following the June allegations. I am told they have not resumed their relationship.

Procedural history

9. I would generally refer to section B of the hearing bundle which includes the key procedural documents. The case was initially allocated to Her Honour Judge Corbett who fixed this combined fact finding / final hearing at the case management hearing on 5 August 2021. Throughout the proceedings Lisa has been subject to an interim care order and has opposed contact with her mother. LD was joined to the proceedings at this early hearing. I was then allocated to hear the final hearing and I have conducted three case management hearings and note the following with respect to these hearings:
 - i) On 12 October 2021 I conducted a hearing, the central purpose of which was to consider directions with LD now present within the proceedings. This proved to be a problematic hearing in that I struggled to understand what LD was saying as a result of a mixture of technological and accent issues. I determined the hearings would forthwith need to be conducted on an attended basis.
 - ii) On 10 November 2021 I held an attended directions hearing. I wanted to consider the timetable for the case to include consideration as to whether the available 5 days would be sufficient to determine all issues. I also wanted to consider the question as to whether Lisa would be asked to give evidence. Initially I was told that no-one wanted Lisa to give evidence, however on examination it became clear to me that the position was not so straightforward and appropriate regard had not been had to the potential for special measures or to the expressed wish of the child to give evidence. I was concerned that inadequate regard had to been given to the requirements for a fair hearing. I was concerned future argument might suggest only limited weight be given to Lisa's evidence if she did not give evidence notwithstanding this was a case in which she had expressed a willingness to attend. The issue required closer consideration and I gave directions towards a Re W hearing.
 - iii) On 23 December 2021 I held a substantial PTR/Re W/directions hearing. I ultimately concluded Lisa should give evidence and over the course of a full day considered the detailed special measures that would apply when she was giving evidence. I agreed all questions to her

should be put by me and that I should in advance of the hearing review all questions to be put. I set a timetable for this to be done. I also set the practical arrangements for the giving of her evidence to include Lisa's location, who would be with her and how both JS and LD would engage in the hearing when Lisa was giving evidence.

- iv) I also sought to understand how JS would put her case. At that point her final evidence had not been filed and I wondered as to how JS would be approaching the issue of placement in circumstances in which, whatever my finding as to abuse, it would be highly likely that Lisa would continue to maintain the allegations and be oppositional to all contact with JS. In short there was no obvious reason as to why Lisa would not continue her position irrespective of my findings. How realistic was it for JS to seek Lisa's return in such circumstances? It was agreed that I would be updated following the filing of JS's final evidence were that to call into question the need for a final hearing/determination of all the issues in dispute. However, and importantly my directions required all questions for Lisa to be filed with me in any event.
- v) Unfortunately, and subsequently, whilst I was informed JS accepted that threshold was crossed and would no longer be contesting the proposed final care plan, no party actively engaged with my directions with respect to questioning Lisa. I was left to chase these outstanding questions and it was only on the Friday preceding the commencement of the final hearing that I received final confirmation that no party had any questions for Lisa. I immediately decided Lisa should be stood down as a witness and I asked for an apology to be made to her for this late notice. I consider it unacceptable that such careful directions were breached and particularly so given the likely impact this might have had on Lisa. I am in no doubt that Lisa would have been anxious as the final hearing approached and there really is no excuse for the failure to keep to the directions or update me appropriately. It is now some time since a President of the Family Division cautioned practitioners against a lax attitude to compliance with directions. This was a case in which the directions were likely to have a direct impact on the welfare of the child. This should never happen again.
- vi) At the outset of the final hearing, it was submitted on behalf of JS that her concessions were such as to remove the need for a fact-finding element to the hearing. I determined that the nature of the outstanding matters (particularly the sexual abuse allegations) was that that the fact finding needed to proceed. I concluded that future work with Lisa and any work towards reconciliation in the relationship between JS and Lisa would be severely hampered if these issues were left hanging. The hearing proceeded as intended.

Evidence

Sexual abuse

10. I would provide a brief summary at this point as to the impression I have formed of the witnesses in the case. Insofar as Lisa, JS and LD are concerned I will return to this later when considering and assessing the evidence. In the case of the other witnesses, I can deal with this aspect in very short order. I formed a positive view of each of them as witnesses and most importantly have no basis for not accepting their evidence in its entirety. In the case of the guardian and Ms Militaru the evidence was uncontroversial and focused on care planning. Their evidence was child focused and was not challenged. Insofar as Ms F, B and Ms Lewars are concerned the key probing of their evidence related to the potential for Lisa's allegations to have been influenced, contaminated or otherwise effected by their involvement. At its highest the position taken by LD might be said to have suggested they were responsible for the allegations being made. Having heard their evidence, I can reject any such suggestion. By the end of their evidence the suggestion had all but dissipated. I found each of these witnesses open and transparent in their role and engagement with Lisa. I accept their account of their interactions without question. I will touch upon these points when summarising the evidence below.
11. I will set out the evidence by reference to the categories of allegation. The allegation of sexual abuse comes entirely from Lisa. On 21 June 2021 Ms F was approached by a friend of Lisa's who told Ms F that Lisa wanted to speak to her. Ms F was then alone with Lisa and asked what she wanted to talk about. Lisa asked if she could write it down. On reading the note Ms F first noted an argument at home and sought to console Lisa. She carried on reading and was alarmed as to the rest of the content. She immediately took Lisa to Ms B who was the safeguarding teacher. I have this initial note at F86, which includes the allegation as to the threatening behaviour with the chair. The second point in the note recorded that: "*when I was 7 or younger years old (I don't remember too well) he raped me*". Ms F told me that having delivered Lisa to Ms B she had no further involvement in the case. I accept her evidence.
12. Ms B confirmed she saw Lisa at the end of the school day and Lisa was worried about getting home late. She agreed a safety plan with Lisa for that night and arranged a meeting for the next day. The following morning, she met with Lisa who explained to her what was happening. She asked Lisa to write a statement and left her on her own (but in sight) whilst she did this. Having received the statement, which is at G1-8 with unredacted sections at F87-88, she made a referral to social services. In addition to her statement evidence Ms B provided her contemporaneous note of the meeting [F85]. She attended the meeting later that day but had no further involvement. I accept her evidence.
13. I then have a statement from PC McDermott who attended the school pursuant to the referral and the strategy discussions undertaken. On her arrival she found JS in the teacher's office with Ms B and a duty social worker. On the phone was a manager from MAST (Multi Agency Safeguarding Team). JS was informed by the manager as regards the allegation of sexual abuse and PC

McDermott recorded the questions asked and the answers given by JS. I have a pocket notebook (or equivalent entry) of the meeting [G168]. As a result of these responses the police felt it necessary to take Lisa into police protection.

14. On the next day, 23 June 2021, Lisa underwent an ABE interview at the police station. She was brought to the station by the then allocated social worker, Ms Lewars. She was present at the station during the interview but confirmed that conscious of the fact that Lisa was about to be questioned she did not speak to Lisa about the allegations at any point. I accept her evidence.
15. In the course of the ABE interview [I have a video copy and a transcript of the same] Lisa at outset volunteered she had reported being raped; that there had been verbal and physical abuse; being yelled at; having suicidal thoughts and the incident with the chair in the days previous to the report. As to the rape she reported [G54 on]:

"I was either 7 years older or younger when it happened...my mum...does night shift...our families lived together in one room....the other tenants in the house, they weren't there...I think my dad was drunk when it happened. But he said it [inaudible] and you know, I trusted him because he was my dad...so he told me it would be a game...I think it lasted throughout the night...I told my mum about it the next day and she said things would be okay. And then after that I could just forget about it, and then I started to remember during...the first quarantine..."

Lisa then reported raising the allegation with JS in more recently whilst they were in the car alone and her mother responding "*Why didn't you do anything about it? Why didn't you try to stop him?*". She described her mother 'victim blaming' her. She also reported telling her cousin what had happened and that she had been shocked.

16. She was then asked to give as much detail as she could remember and confirmed she was speaking about LD and that he was not her biological father. She gave a detail of the living arrangements at the relevant time and the layout of the property. When asked as to the reported assault she continued:

"...we were getting ready for bed...my dad's there, he's already lying down in bed. So I get in, he, you know, he just wanted to play a game, that stuff. He undresses me, then he, you know, it's hard to actually say it, I'm sorry...He inserted his dick into my mouth first, you know, he said it would taste like chocolate...and then he inserted it into my vagina after a while, and he moved around a bit, and then he stayed still after a while, and then he pulled it out after a while, I don't know, I think I fell asleep after a while...and that's all I remember".

17. Further questioned she confirmed the room was dark and that LD was on the sheets lying on the bed. She explained it was normal for her to share the bed with him as she had done for most of her life. She was initially dressed but then he undressed her. He asked if she wanted to play a game before assaulting her. Lisa gave evidence of LD undressing her and guiding her head towards his penis and holding her head whilst she was forced to engage in oral sex. She reported complaining that she did not like it and being encouraged by LD.

LD's hand was at the back of her head '*pushing her up and down*'. She then spoke about LD raping her by penetration. She said he had inserted his full penis and she feels like she '*shut down*'. She wasn't able to time any of the events but recalls LD '*thrusting*'. She recalled him not wearing a condom and the assault ending with her falling asleep. When it was suggested LD had undressed, she said this was not the case.

18. As to the dating of the assault Lisa was unclear but appeared to date it to around 7 years of age, Lisa commenting she was not sure if she was going to school at the time and agreeing this might mean it was when she was not old enough to go to school. She reported telling her mum the next day but did not recall being in any pain. She recalled telling her cousin later but couldn't recall exactly when. She was asked as to whether there had been any other incidents of a sexual nature and reported the allegation of being pulled onto his lap but that '*this had happened in the old house, and I was really young*'.
19. It can be seen from this account that Lisa alleges she was assaulted a number of years prior to 2021; that she told her mother the next day and her mother took no action; that she subsequently reported it to her cousin and raised it again with her mother before reporting it to the school. She explained that this had come out now because her emotions had been building up, it was too much to handle and that she had had a sort of mental breakdown on the Sunday prior to the report. In her interview she also referred to having told her mother once when she was around 13 (this would be different to the most recent report to her JS which is dated to 2021) and having around that time told two of her friends at school via messaging. Lisa was not subject to examination although as explained above a full opportunity was given for questions to be put to her.
20. I take JS's account first from her statement evidence and then her live evidence. In her written evidence she stated that she has been surprised when told about the allegation of rape and that she recalled Lisa '*telling her on one occasion that she had played a game with LD*' and that she '*did not think much of it at the time because I thought it was an innocent game that any father would play with his small daughter*'. She did not date this report. The above is the totality of her response to the sexual abuse allegation in her first statement. In her second statement she maintained she was shocked by the allegation; that Lisa had '*never specifically told [her] that she had been raped*' and that she would have taken extra precautions if she had known. In this statement she commented on the conversation reported by PC McDermott and said this had been taken out of context, that she had been referring to an incident which was not of a sexual nature. She repeated this position in the Scott Schedule. She did not recall Lisa referring to the incident again in 2021. In her final statement LS indicates she '*believes Lisa believes she did suffer sexual abuse at the hands of [LD]*'.
21. PC McDermott recorded JS's responses to questions from X (with X being the Manager). This account was not challenged, and JS accepted it was correctly recorded as follows

JS: Yeah that was long time ago – 7 years ago she mentioned it to me

X: The sexual assault?

JS: Yeah

X: Did she go into detail?

JS: No

X: Did you ask her?

JS: No

X: Did you approach partner about this?

JS Yeah several times – he denies it

X: What have you done to stop it happening again?

JS: She is not on her own now. He cannot hurt anymore I know that for sure.

X: Why did you not tell anyone?

JS: Yeah because I know when I disclose it would lead to something else – complications, Try to manage it myself

X: Complications for who?

JS: Everybody. For our life actually.

22. In live evidence it was very difficult to obtain a clear understanding from JS as to whether anything had been historically reported and if so what. She started by continuing to say that matters had been taken out of context and continued to refer to the conversation being about a game. She could not explain how it would be that she would have any striking recollection of a historical conversation about something so seemingly innocuous as a game being played in her absence. At the outset of her evidence the statement from the officer was not available. When it was available and put to her, she, whilst accepting its contents, seemed to suggest the contents were the consequence of fear and pressure at the time. She was ultimately unable to give any further detail or account of either the report made by her daughter or what she did as a result or indeed what was said between her and LD as a result. This process was very difficult, and it seemed to me at times she was actively distinguishing between whether she had been told of a rape rather than a sexual assault. But despite significant probing her evidence remained vague and unclear.

23. She agreed she had rejected the allegations when they were made and felt under pressure to accept them to have her daughter back. She didn't believe the allegation of rape. She referred to Lisa's presentation in her ABE (Lisa was visibly shaking during the ABE) and felt this showed Lisa was lying. She was questioned at points about giving an answer that she 'did not recall' rather than

a response that something 'did not happen'. She was clear as to the difference but stood by the former wording. She agreed all her references to a conversation (whether a game or otherwise) were to the same conversation. In live evidence she dated this to about 2011 although elsewhere in her evidence she was dating it to when Lisa was about 7 (and thus 2013). She referred to having caught Lisa at this time watching an animated film with some pornographic elements (although no detail was given). When probed further she agreed Lisa had discussed 'inappropriate behaviour' when she was about four and that this had been the 'game' conversation.

24. LD denied these allegations. In his statement evidence he claimed the allegations had been fabricated by the applicant with reference to a child who was '*emotionally and mentally disturbed due to internet addiction*'. In addition to this challenge to the source of the reporting, he argued the process followed had been manipulated and that the ABE was poorly managed. Elsewhere and in his live evidence LD pointed to a range of surrounding circumstances as leading to the false allegation. He noted Lisa's discovery that he was not her father in about 2018 and he noted the impact of covid and consequential social isolation on her. He pointed to a growing dependence on her mobile phone during this period and her increasing isolation within the home. He questioned to what extent these points may have combined to lead to a false allegation. As above he argued in any event what had been said had been distorted or wrongly embellished by the professionals. He was asked about the historical report. He had not dealt with this in his statement and said this was because he did not think this was relevant. It had happened when Lisa would have been about 6. What he remembered was limited due to the passage of time, but he recalled JS asking '*did you do something*' to Lisa. He had responded '*what?*' and had a sense the issue was something physical. He remembers this now because of the issues now arising. He did not speak to Lisa as there was nothing to talk about. He had not dealt with this in his evidence as '*no-one asked for it*' and he '*did not think it was relevant*'. He had replied to JS at the time and they had moved on.
25. Both JS and LD were subject to interview by the police under caution. Aside from confirming personal details JS gave a no comment interview. LD veered in interview between answering no comment and providing a reply. He continued to deny the allegations. Insofar as he responded beyond this his account was similar in form to that set out in his statement evidence before this court and summarised above.
26. Finally, on this topic I note the kinship viability assessment undertaken in this case. It relates to the cousin who Lisa allegedly made a report to about such abuse. At F63 the cousin confirms that in the summer of 2020 she noticed Lisa had a decline in mood and presentation and asked Lisa what was wrong. In response Lisa had told her about being raped by LD when she was 7 years old when her mother had gone to work. The cousin reports being shocked by this report as she had seen no evidence to suggest such behaviour. It appears Lisa asked her not to tell anyone and she did not.

Physical abuse / verbal abuse

27. I intend to deal with this in less detail. This reflects the focus of the hearing on the allegation of sexual abuse. In summary Lisa raised the issue in her initial note to Ms F and provided a more detailed account in her document for Ms B. Most if not all of the matters raised before me can be traced to that note. In ABE she was asked about these points and confirmed the truth of the same. Save for the incident with the chair it is difficult to date the incidents. Lisa's document is fairly described as a 'flow of consciousness' and does not lend itself to a clear chronology. As regards the allegation of being pulled onto LD's lap I have already noted Lisa's clarification of this happening some time before in the old house when she was younger. As to the alleged physical abuse this was said to have happened when JS was alone with Lisa. She linked verbal and physical abuse to occasions when she fell short of her mother's expectations. Her account of these events within ABE starts at G81. She talked of being kicked when she was aged 10. When asked when she had been last been hit, she answered this has probably been during the second (covid) quarantine - and so late 2020. She had not required medical assistance as she had not been '*hit or kicked that hard*'. This would depend on JS's anger and LD would annoy JS when he was drunk. Later she commented that '*it was mostly verbal now*'. This involved JS calling her '*worthless*' and a '*mistake*'. This would be triggered by Lisa making a mistake for instance at school. Lisa then spent some time detailing what had led to her making the report. She explained the incident (with the chair) and how everything had come to the surface. Lisa had been screaming and hitting things and her mother threatened to hit her and throw a chair at her and was also screaming. The cousin and LD were also there. LD was also yelling. Lisa had referred to feeling suicidal and JS had run in and was threatening to hit her. LS had picked up a chair and LD had intervened to stop her.
28. Far less time was spent on these issues at the hearing. At the outset JS accepted there had been sufficient emotional abuse to constitute the meeting of the threshold and accepted this has led to the break down in their relationship. She did not accept the specific allegations of physical violence specifically questioning the suggestion of regular assault or kicking. She denied the chair allegation whilst accepting the fact of an emotional confrontation. She spoke of simply moving a chair. She denied the specific threats but appeared to accept using words that were hurtful at times and likely emotionally damaging. As with LD it seemed she was explaining the deterioration by reference to the effect of social isolation particularly linked to covid and a developing dependence by Lisa on her mobile phone. She told me the most recent chair incident was linked to her removing Lisa's mobile phone and this caused Lisa to respond in a highly emotional manner.
29. LD was less involved with these allegations as Lisa claimed the assaults happened when she was alone with her mother. But he confirmed he had seen no assaults and whilst he appeared to accept some emotional heat in the relationship, he broadly disputed any emotionally damaging verbal comments.

He referenced the dependency on her mobile phone as a causative factor and also spoke of suggested issues which possibly related to Lisa's sexual identity. Lisa had mentioned this on the basis that she was speaking about a friend but that both JS and LD had responded in a highly negative fashion as a result of their religious convictions. He corroborated JS's account of the incident with the chair.

30. LD did accept an issue with alcohol consumption although he considered matters had improved more recently. At one point he was regularly drinking half a bottle of whisky in a session and on a very regular basis, but this was now reduced to a quarter of a bottle. He accepted this was an issue and he was seeking support with his problem.

Failure to protect

31. By the conclusion of the hearing the applicant was putting its case on the basis of the historic report and the failure of JS to show any effective response to the same. The applicant also relied upon an attendance at A&E in 2010 when Lisa was found to have a small injury in the area of her vagina. The applicant did not seek a finding in this regard but contended that this should at least have caused JS to pause for thought when faced by the allegation of sexual abuse. LD and JS were firm in their denial of this attendance being abuse related. No finding was sought.
32. As to failure to protect; JS's position mirrored her evidence with respect to the substantive allegation as set out above. LD denied the allegations and did not engage with this issue.

Fact finding assessment and conclusions

33. My central focus in this judgment is on the allegation of sexual abuse given its prominence within the hearing. In carrying out this assessment I do not lose sight of the fact that each allegation should be assessed separately and that a finding on one issue should not automatically lead to a finding on another. However, I will at the same time have regard to overarching issues of credibility and accept my assessment of credibility on one allegation is likely to be informed at least in part by the conclusions on credibility reached elsewhere.
34. In the case of the allegation of sexual abuse I first make clear that I make no finding of sexual abuse with respect to the '**pulling onto the lap**' referenced by Lisa. On the available evidence I accept that something of this sort happened but cannot conclude it was surrounded by any sexual motivation. I have a strong suspicion it was affected by alcohol consumption as alleged and amounted to clumsy behaviour on the part of LD whilst under the influence of alcohol. This is why it has stuck in the mind of Lisa. Lisa does not suggest this was in fact sexual in context. I don't make a threshold finding in this regard given the historic nature of the event and real uncertainty as to whether it can be said to have caused significant harm to Lisa. I note there is evidence to

support the suggestion it possibly predates the alleged sexual abuse in any event (see below).

35. Turning though to the more explicit allegation of **sexual abuse** I find this allegation proven. I find there was a wholly inappropriate act of a sexual nature by LD upon Lisa when, in my assessment, she was likely aged around 7 years of age or so. On balance I find this involved an act of oral sex involving LD's penis and actual or attempted vaginal penetration. Having regard to the available evidence I retain a residual doubt as to whether the act involved actual penetration (hence my conclusion) but this does not diminish the seriousness nor the significance of this finding. In reaching this conclusion I have had particular regard to the following matters:

1. I reject the suggestion of any fabrication inducement or contamination on the part of the teachers, social work team or police. The evidence does not support this allegation. The evidence supports a very clear and simple process under which in the space of less than 48 hours Lisa first made a summary allegation, she then produced a statement and was then interviewed. On my assessment the professionals conducted themselves in a sensible and appropriate fashion. Neither Ms F or B engaged with Lisa in such a way as to suggest they promoted or induced the allegations. I accept their evidence in this regard. In any event it is difficult to understand what motive they would have for doing the same or why Lisa would be vulnerable to such encouragement. Whilst I accept Ms B asked some limited questions to obtain clarification these aspects do not undermine the process. I accept Ms Lewars evidence as to her careful engagement with Lisa prior to the ABE.
2. I also reject the suggestion that the ABE interview was poorly managed and was such as to contravene ABE with the consequence that limited, or no reliance should be placed upon it. I have watched the video and whilst the audio is at times a little challenging it is possible to follow the process assisted by the transcript. I do not consider this was an example of poor interviewing. Rather the officer (after the requisite explanation of 'truth and lies') allowed Lisa to give a free-flowing account. The officer then summarised what she had been told and asked Lisa for any further details with regard to each aspect of the report. I agree the officer erred in wrongly leading Lisa as to LD undressing himself, but this is not material as Lisa corrected the officer in any event. I also believe the officer may have introduced the notion of the report to the cousin. However, this is equally immaterial given that there is a separate and independent confirmation of the same from the cousin (which is not challenged).
3. I next turn to the accounts given by Lisa. I have reviewed the ABE interview. Lisa presents as firm in her evidence and gives an account without hesitation. She does not waiver in her account and it is clear she is telling her story rather than saying something she has been told to say. Her account is clear and appropriately detailed. It includes elements which go

beyond the bare minimum required and suggest a witness reporting something that has happened.

4. I accept Lisa appears highly anxious in the video with her legs nervously moving from side to side. I do not consider this indicates she is lying as is suggested by JS. Rather it suggests an anxious and stressed child. The interview concerns deeply embarrassing events and it is as likely she is reflecting anxiety in telling a truthful story as a false one.
5. I bear in mind Lisa has remained firm in her account and indeed was willing to come to Court to give evidence. This willingness was expressed as being cautious and she was relieved when this was not required. However, I reflect on this as being indicative of her firm wish to give her account. This is a relatively modest point in the overall assessment, but I do not overlook it. Until Friday of the preceding week Lisa would have known she was going to be examined. At no point did she pull back from doing so.
6. I also bear in mind that this is not an allegation which came 'out of the blue' in 2021. I cannot overlook the fact that on everyone's case Lisa made her first report in this regard at least 7 years ago. This is relevant as it calls into question the suggestion that this report has only been made as a result of recent events. Neither JS nor LD were able to reconcile their explanation with the historic report. But this was not only a report made in 2021 to the school. I accept the report was made to cousin in 2020 (this is not in dispute) and was repeated in 2021 to JS. In this regard I accept Lisa's account which is consistent with the overall picture and is in reality not challenged by her mother who speaks of not being able to recall the conversation.
7. I consider it is relevant that the allegation has remained consistent throughout and there have been no marked changes in account.
8. As noted above Lisa gave detail which was plausible and in no way undermined her account. She gave details which might be expected to be recalled and was less clear on points that might be expected to be less clear (exact dating and timings). Her evidence as to her experience of the assault seemed to me one which had the ring of truth about it and did not have the sense of an account borrowed from some other source.
9. I consider the early report to be significant. As noted above it gainsays the suggestion of contemporaneous events leading to the report. In simple terms a child appears to have reported her stepfather sexually abusing her. There is no explanation as to why Lisa might have mistakenly made this suggestion at the time or alternatively why she might have lied. The simple fact of the allegation at this time has some probative value. That I do not have a full account of what was said is due to JS being unable or unwilling to provide the same (see below).

10. I consider significant the account (or lack of account) given by both LD and JS of the conversations that surrounded this allegation at the outset. It is now clear there was such a report and equally clear LD and JS spoke about it. In this regard I reject the suggestion that the conversation with X reported above was anything other than an essentially correct account of what had taken place. In essence this amounts to an admission against interests by JS and is more reliable for this reason. The notion that it was in some way taken out of context by PC McDermott is implausible when one considers the nature of the responses and the detail supplied by JS. This was not a simple yes and no interview but included responses which only JS could supply.
11. That leaves what I consider is an incredible absence of detail from both LD and JS as to what was said at the time the original report was made. It is almost unbelievable that such an allegation could be made and yet neither can now remember the detail of the conversations at that time. In their written evidence neither in reality accepted the report and it was only when forced to do so by the evidence that the admissions were made. It is noteworthy that JS attempts to explain the report by reference to a 'game'. I cannot but help draw attention to the fact that this is how Lisa explained the commencement of the event and this reinforces the consistency of her report.
12. I am left with two choices in this regard. I simply cannot identify a plausible third option. Either I am not now being told what was said, and that would likely be because it now makes for uncomfortable consideration and is felt to likely be harmful to LD and/or JS or there was no conversation at the time because LD and/or JS wished to avoid a detailed conversation. In my assessment either option is deeply problematic. I reject the vague account given by both as whilst I would accept some degree of blurring of memory it is fanciful that both would have all but forgotten the essential terms of the conversation. This after all was a conversation in which a child had alleged sexual abuse by a family member. Furthermore, such vagueness has to be seen in the light of the ability of JS to detail to X (a) the account being given; (b) confronting LD on several occasions, and: (c) the suggested rationale for not doing more.
13. Whilst it is not for LD or JS to disprove the allegation, I simply have no rationale as to why Lisa would have made the allegation if something had not taken place. I have no account that might explain a mistake, if such was plausible. I have a clear and consistent account from Lisa which she stands by. In contrast I have a deeply concerning lack of detail from both adults when one would plainly be expected. I ask myself how it is that the child can still give an account, but the adults are unable to do so?
14. I also have the question of the approach I should take to the fact that Lisa has given an account, that I have required her to attend and made provision for the same, and that both LD and JS have chosen not to question her.

This is not the case of weighing the evidence of a child who does not give evidence. This is analogous to the approach to a witness who is made available but not challenged. I consider myself obliged to take this approach. It does mean the evidence inevitably has greater weight.

15. I also bear in mind the expert evidence. I make clear that I would not make findings as a result of the opinions of the experts as to the likely truth of the allegation. That is after all a matter for me. However, I do weigh in my assessment the views of the expert as to Lisa as suffering from PTSD/anxiety and her presentation being consistent with a traumatic history of abuse. I recognise the expert evidence does not rule out a range of causes for such PTSD / anxiety or that allegations can be fabricated. However, in my assessment this expert evidence is consistent with and supportive of my observations rather than inconsistent with the same.
16. On my assessment of the evidence the incident likely took place when Lisa was about 7. This dating is far more consistent with the global evidence than with the earlier dating to age 4. This would only seem to be under consideration due to Lisa talking about not being at school at the time but there is of course a whole host of reasons why she might not have been at school at the time (she might for instance have been on holiday). Elsewhere there is consistent reference to a time around 7 years of age.
17. I have borne in mind the absence of a further allegation. Why would it be that this was an isolated event? Whilst it is not for me to explain this, I do consider whether this might undermine the allegation. However, it is relevant that a report was made. In my assessment the fact of a report may reduce the chances of repetition in that an offending party may back away from further misconduct for fear of what will happen. Further I cannot exclude the possibility that this conduct was affected by alcohol consumption on the part of LD. Lisa reports LD as being 'drunk'. It is possible LD recognised the impropriety of his action when sober and this conditioned his future conduct. But the absence of a further report does not in my judgment diminish the substance of the report itself.
18. I have also borne in mind that LD is a man of good character. However, as a matter of reality this does not preclude such behaviour and the Court is more than familiar with such issues arising in the context of an absence of any history of offending.
36. The above provides a sufficiently comprehensive summary of the reasoning for my decision
37. On the above findings this almost inevitably leads to a finding of **failure to protect** on the part of JS. I am persuaded she was told by Lisa that there had been an act of abuse and she plainly failed to take any meaningful action to protect Lisa. JS accepts the same. That Lisa did not thereafter suffer a repeated act of sexual abuse is not relevant. It is clear the failure to act had a profound impact on Lisa who was conscious her mother was not only failing to protect

her but came to blame Lisa when the issue was later mentioned. In this regard I accept Lisa's evidence. As a result, Lisa was left in a home with an adult who had abused her. This is a plain failure to protect.

38. I accept the broad admission of JS as to **emotional harm**. This now includes the emotional harm arising from the matters above. However, in my assessment there is no need to make further discrete findings in this regard beyond those matters admitted and my acceptance that JS in particular has responded in moments of stress by using language to Lisa which has been emotionally damaging. This has included referring to her as 'worthless' and responding in an insensitive manner when Lisa raised her suicidal thoughts. I do not need to and do not make further findings.
39. As to **physical abuse**, whilst not fundamentally rejecting the allegations I have struggled to clearly identify when these matters occurred. As such it has been difficult for instance to make a specific finding for threshold purposes as to an incident which might be quite historic. I bear in mind these further allegations will not have a material impact on the planning for Lisa in the light of the more serious finding above. I am though of the view that JS has in the past responded to Lisa with inappropriate physical force; that this has occurred since 2020 and remained present as a fear in Lisa's mind at the time of the report to the school. I accept Lisa's account of the incident with the chair. I find this was a highly emotional incident in the course of which JS raised the chair and caused Lisa to fear she would be struck with it. I do not and do not need to make further findings.

Welfare assessment and conclusions

40. I agree there should be a care order with respect to Lisa and approve the care plan. This outcome is consistent with Lisa's wishes and feelings. JS recognises that any suggestion of return to her care would be unrealistic at this time. Lisa needs include a stable and secure home placement. Her educational needs require the same. This is only consistent with the care order. I have had regard to her personal characteristics and my findings identify the risk of harm present in this case. Issues around emotional harm plainly continue at the date of this judgment. At this point in time it is clear JS does not have the capability to meet Lisa's needs. As to change in circumstances this decision will leave Lisa where she is. A change based around return home would be damaging to her at this time. I consider the applicant needs to share parental responsibility. On the findings in this judgment this order is necessary, reasonable and proportionate. Any lesser form of intervention would leave Lisa's welfare needs unmet. It will now be for the applicant to work with Lisa to attempt to repair the damage done to her. The future role of JS in Lisa's life will have to be assessed in the light of the progress made in such regard and ultimately will have to have regard to Lisa's wishes.
41. I am sending this judgment out to the parties. I ask the applicant to ensure a copy is sent to LD forthwith. This judgment can be shared with the lay and

professional clients in advance of handing down. This will be handed down as previously indicated at 9.30am on 2 February 2022 [*due to judicial non-availability this had to be put back by a week*]. I ask the parties to deal with the following points in advance of that hearing:

- i) To raise any corrections or requests for clarification by 4pm on 31 January 2022
- ii) In the light of the fact that this judgment will likely be published on Bailii to inform me as to whether there are any necessary corrections to preserve anonymity
- iii) To send me a draft order by 4pm on 1 February 2022. The order should incorporate a disclosure paragraph (or be accompanied by a separate order) dealing with the proposed police disclosure order.

His Honour Judge Willans

ANNEX I: APPLICABLE LAW

Threshold Conditions

1. The relevant date for the purposes of the threshold conditions is the date that protective measures were first taken (22 June 2021); Re M (A Minor) (Care Order: Threshold Conditions) [1994] 2 FLR 577, HL.
2. In establishing that the threshold criteria have been crossed at the date of intervention, the Local Authority is entitled to rely upon information acquired after the date of intervention and even on later events if those events are capable of proving the state of affairs at the date of intervention: Re G (Care Proceedings: Threshold Conditions) [2001] 2 FLR 1111, CA.

Burden and standard of proof

3. The burden of proof lies with the local authority in relation to the findings sought. It is not reversible and not for other party(ies) to establish that allegation(s) are not made out. 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.
4. In family proceedings there is only one standard of proof, namely the balance of probabilities. This was described by Denning J in Miller v Ministry of Pensions [1947] 2 All ER 372: "If the evidence is such that the tribunal can say: "We think it more probable than not", the burden is discharged but, if the probabilities are equal, it is not."
5. In Re B (Care Proceedings: Standard of Proof) [2008] UKHL 35, [2008] 2 FLR 141, Baroness Hale, stated, while approving the general principles adumbrated by Lord Nicholls in Re H and Others, expressly disapproved the formula subsequently

adopted by courts to the effect that ‘the more serious the allegation, the more cogent the evidence needed to be to prove it’. Baroness Hale stated:

[70] My Lords, for that reason I would go further and announce loud and clear that the standard of proof in finding the facts necessary to establish the threshold under s 31(2) or the welfare considerations in s 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.

[71] As to the seriousness of the consequences, they are serious either way. A child may find her relationship with her family seriously disrupted; or she may find herself still at risk of suffering serious harm. A parent may find his relationship with his child seriously disrupted; or he may find himself still at liberty to maltreat this or other children in the future.”

6. The inherent probability of an event remains a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred: “*Common sense, not law, requires that in deciding this question regard should be had, to whatever extent appropriate, to inherent probabilities*” – per Lord Hoffman in *Re B* at para. 15
7. At Paragraph 31 of her judgment Baroness Hale stated,
“In this country we do not require documentary proof. We rely heavily on oral evidence, especially from those who were present when the alleged events took place. Day after day, up and down the country, on issues large and small, judges are making up their minds whom to believe. They are guided by many things, including the inherent probabilities, any contemporaneous records, any circumstantial evidence tending to support one account rather than the other, and their overall impression of the characters and motivation of the witnesses.”
8. The burden of disproving a reasonable explanation put forward by the parents falls on the local authority (see §10 S (Children) [2014] EWCA Civ 1447). The inability of a parent to explain an event cannot be relied upon to find an event proved. See Re M (A Child) [2012] EWCA Civ 1580 at §16 – the view taken by the Judge was “*that absent a parental explanation, there was no satisfactory benign explanation, ergo there must be a malevolent explanation. And it is that leap which troubles me. It does not seem to me that the conclusion necessarily follows unless, wrongly, the burden of proof has been reversed, and the parents are being required to satisfy the court that this is not a non-accidental injury*”.
9. Findings of fact 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 1.
“[26] 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.”
10. In Re B [2013] UKSC 33, Lord Wilson took the view that “*significant was not a word that needed defining but quoted from Hedley J in Re L (Care: Threshold Criteria) [2007] 1 FLR 20150 (para 50) “... a society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent...”*

Approach to Evidence

11. The Court must decide if the facts in issue have happened or not. *There is no room for finding that it might have happened. The law operates a binary system in which the only values are 0 and 1, per Lord Hoffman in Re B at para. 2.* This applies to the conclusion as to the fact in issue (e.g. did it happen; yes or no?) not the value of individual pieces of evidence (which fall to be assessed in combination with each other).
12. When carrying out the assessment of evidence regard must be had to the observations of Butler-Sloss P in Re T [2004] EWCA (Civ) 558
"[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."
13. When considering the 'wide canvas' of evidence the following section of the speech of Lord Nicholls in Re H and R (Child Sexual Abuse: Standard of Proof) [1996] 1 FLR 80 remains relevant.
"[101B] I must now put this into perspective by noting, and emphasising, the width of the range of facts which may be relevant when the court is considering the threshold conditions. The range of facts which may properly be taken into account is infinite. Facts including the history of members of the family, the state of relationships within a family, proposed changes within the membership family, parental attitudes, and omissions which might not reasonably have been expected, just as much as actual physical assaults. They include threats, and abnormal behaviour by a child, and unsatisfactory parental responses to complaints or allegations. And facts, which are minor or even trivial if considered in isolation, taken together may suffice to satisfy the court of the likelihood of future harm. The court will attach to all the relevant facts the appropriate weight when coming to an overall conclusion on the crucial issue."

Evidence of the parents

14. The evidence of the parents and of 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.*"The assessment of credibility generally involves wider problems than mere demeanour which is widely concerned with whether the witness appears to be telling the truth as (s) he now believes it to be. With every day that passes the memory becomes fainter and the imagination becomes more active. The human capacity for honestly believing something which bears no relation to what actually happened is unlimited. Therefore, contemporary documents are always of the utmost importance."* Mostyn J in Lancashire CC v R [2013] EWHC 3064 Fam
15. In the case of Re Y (Children) (No 3) [2016] EWHC 503 (Fam) Sir James Munby P at Paragraph 20 observed

Thirdly, that the fact, if fact it be, that the respondents (here, the parents) fail to prove in a balance of probabilities an affirmative case that they have chosen to set up by way of defence, does not of itself establish the local authority's case. As

His Honour Judge Clifford Bellamy recently said in Re FM (A Child: fractures: bone density) [2015] EWFC B26, para 122, and I respectfully agree:

"It is the local authority that seeks a finding that FM's injuries are non-accidental. It is for the local authority to prove its case. It is not for the mother to disprove it. In particular it is not for the mother to disprove it by proving how the injuries were in fact sustained. Neither is it for the court to determine how the injuries were sustained. The court's task is to determine whether the local authority has proved its case on the balance of probability. Where, as here, there is a degree of medical uncertainty and credible evidence of a possible alternative explanation to that contended for by the local authority, the question for the court is not 'has that possible alternative explanation been proved' but rather it should ask itself, 'in the light of that possible alternative explanation can the court be satisfied that the local authority has proved its case on the balance of probability'."

Expert evidence

16. A summary of the guidance contained in the relevant authorities is set out in the judgment of Baker J in Devon CC v EB & Ors (Minors) [2013] EWHC 968 (Fam).

The findings made by the judge must be based on all the available material, not just the scientific or medical evidence; and all that evidence must be considered in the wider social and emotional context: A County Council v X, Y and Z (by their Guardian) [2005] 2 FLR 129. This was expressed as "the expert advises and the judge decides" in Re Be (Care: Expert Witnesses) [1996] 1 FLR 667.

17. In A Local Authority v K, D and L [2005] EWHC 144 (Fam), [2005] 1 FLR 851 Charles J referred to the important distinction between the role of the Judge and the role of the expert (see para.39), saying:

*(a) that the roles of the court and the expert are distinct, and
(b) that it is the court that is in the position to weigh the expert evidence against its findings on the other evidence, and thus for example descriptions of the presentation of a child in the hours or days leading up to his or her collapse, and accounts of events given by carers."*

18. These comments were developed by Charles J. in a lengthy section in the judgment in K, D and L by a review of the relevant case law in the area:

"[44]...in cases concerning alleged non accidental injury to children properly reasoned expert medical evidence carries considerable weight, but in assessing and applying it the judge must always remember that he or she is the person who makes the final decision;"

"[49]...In a case where the medical evidence is to the effect that the likely cause is non accidental and thus human agency, a court can reach a finding on the totality of the evidence either (a) that on the balance of probability an injury has a natural cause, or is not a non accidental injury, or (b) that a local authority has not established the existence of the threshold to the civil standard of proof;"

19. The conclusion reached by Charles J. (following his judicial summation of the relevant case-law in this area) is to be found at para.63, where he said:

"I am therefore able to reach a conclusion as to cause of death and injury that is different to, or does not accord with, the conclusion reached by the medical experts as to what they consider is more likely than not to be the cause having regard to the existence of an alternative or alternatives which they regard as reasonable (as opposed to fanciful or simply theoretical) possibilities. In doing

so I do not have to reject the reasoning of the medical experts, rather I can accept it but on the basis of the totality of the evidence, my findings thereon and reasoning reach a different overall conclusion."

20. The court must be careful to ensure that each expert keeps within the bounds of their own expertise and defers, where appropriate, to the expertise of others (see observations of Eleanor King J in Re S [2009] EWHC 2115 Fam).

"The judge in care proceedings must never forget that today's medical certainty may be discarded by the next generation of experts or that scientific research would throw light into corners that are presently dark" Butler-Sloss P in Re U Re B [2004] EWCA Civ 567.

Hearsay evidence

21. In R v B County Council ex parte P [1991] 2 All ER 65 (at 72J), [1991] 1 FLR 470 at 478, Butler-Sloss LJ observed that, 'A court presented with hearsay evidence has to look at it anxiously and consider carefully the extent to which it can properly be relied upon.' When assessing the weight to be placed on hearsay evidence the Court may have regard to the matters set out in section 4 of the Civil Evidence Act 1995 even in cases (such as this one) where the Civil Evidence Act does not strictly apply.

22. Section 4 of the Civil Evidence Act provides

(1) *In estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.*

(2) *Regard may be had, in particular, to the following—*

- (a) *whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;*
- (b) *whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;*
- (c) *whether the evidence involves multiple hearsay;*
- (d) *whether any person involved had any motive to conceal or misrepresent matters;*
- (e) *whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;*
- (f) *whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight.*

23. There are limits to the use of hearsay. Aikens LJ in Re J (A Child) [2015] EWCA Civ 222 at 53

(endorsing Munby P's reminder in Re A (a Child) [2015] EWFC 11):

"iii) Hearsay evidence about issues that appear in reports produced on behalf of the local authority, although admissible, has strict limitations if a parent challenges that hearsay evidence by giving contrary oral evidence at a hearing. If the local authority is unwilling or unable to produce a witness who can speak to the relevant matter by first hand evidence, it may find itself in "great, or indeed insuperable" difficulties in proving the fact or matter alleged by the local authority but which is challenged."

Lies

24. The rule of R v Lucas [1981] QB 720 was adopted in the family courts in *A County Council v K, D and L*. The principle is that *if the court concludes that a witness has lied about one matter it does not follow that he has lied about everything*. A witness may lie for many reasons, for example out of shame, humiliation, misplaced loyalty, panic, fear, distress, confusion and emotional pressure.

25. In the criminal courts a lie can only be used to bolster evidence against a defendant if the fact-finder is satisfied that the lie is deliberate, relates to a material issue and there is no innocent explanation for the lie.

26. The court is respectfully referred to the case of H-C (Children) 2016 EWCA Civ 136 and to paragraphs 98 to 100 of the decision of Lord Justice McFarlane where he said:

"98. The decision in R v Lucas has been the subject of a number of further decisions of the Court of Appeal Criminal Division over the years, however the core conditions set out by Lord Lane remain authoritative. The approach in R v Lucas is not confined, as it was on the facts of Lucas itself, to a statement made out of court and can apply to a "lie" made in the course of the court proceedings and the approach is not limited solely to evidence concerning accomplices.

99. In the Family Court in an appropriate case a judge will not infrequently directly refer to the authority of R v 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. One highly important aspect of the Lucas decision, and indeed the approach to lies generally in the criminal jurisdiction, needs to be borne fully in mind by family judges. It is this: in the criminal jurisdiction the "lie" is never taken, of itself, as direct proof of guilt. As is plain from the passage quoted from Lord Lane's judgment in Lucas, where the relevant conditions are satisfied the lie is "capable of amounting to a corroboration". In recent times the point has been most clearly made in the Court of Appeal Criminal Division in the case of R v Middleton [2001] Crim.L.R. 251.

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

27. In Lancashire CC v C, M and F (Children: Fact Finding hearing) [2014] EWFC 3 Jackson J stated "...in cases where repeated accounts are given surrounding injury...the court must think carefully about the significance or otherwise of any reported discrepancies. They may arise for a number of reasons. One possibility is of course that they are lies designed to hide culpability. Another is that they are lies told for other reasons. Further possibilities include faulty recollection or confusion at times of stress or when the importance for accuracy is not fully appreciated or they may be inaccuracy or mistake in the record keeping or recollection of the person hearing and relaying the account. The possible effects of delay and repeated questioning upon memory should also be considered as should the effect upon one person of hearing accounts given by others. As memory fades a desire to iron out wrinkles may not be unnatural- a process that might inelegantly be described as "story-creep" may occur without any necessary inference of bad faith.

28. The practical application of these principles was reviewed by Macur LJ in Re A, B And C (Children), [2021] EWCA Civ 451 where she said:

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."

57. To be clear, and as I indicate above, a 'Lucas direction' will not be called for in every family case in which a party or intervenor is challenging the factual case alleged against them and, in my opinion, should not be included in the judgment as a tick box exercise. If the issue for the tribunal to decide is whether to believe X or Y on the central issue/s, and the evidence is clearly one way then there will be no need to address credibility in general. However, if the tribunal looks to find support for their view, it must caution itself against treating what it finds to be an established propensity to dishonesty as determinative of guilt for the reasons the Recorder gave in [40]. Conversely,

an established propensity to honesty will not always equate with the witness's reliability of recall on a particular issue.

58. That a tribunal's Lucas self-direction is formulaic, and incomplete is unlikely to determine an appeal, but the danger lies in its potential to distract from the proper application of its principles. In these circumstances, I venture to suggest that it would be good practice when the tribunal is invited to proceed on the basis , or itself determines, that such a direction is called for, to seek Counsel's submissions to identify: (i) the deliberate lie(s) upon which they seek to rely; (ii) the significant issue to which it/they relate(s), and (iii) on what basis it can be determined that the only explanation for the lie(s) is guilt. The principles of the direction will remain the same, but they must be tailored to the facts and circumstances of the witness before the court.

'Failure to Protect'

29. In *Re L-W (Children) [2019] EWCA Civ 159*, the Court of Appeal emphasised that a finding of failure to protect against a carer is of the utmost importance when it comes to the assessment of the parents and the welfare decision. Courts should however be alert to the danger of such a serious finding becoming a 'bolt on' to the central issue of perpetration, or assuming too easily that if a person was living in the same household as the perpetrator such a finding is almost inevitable. There must be a connection between the facts found and the risk alleged; that connection must be evidence that the parent knew or ought to have known that the carer presented a risk to his or her child.
30. If the Court is satisfied that the threshold criteria is crossed then it must consider whether or not to make a final care order by considering Lisa's welfare as the paramount consideration and by way of evaluation of the matters set out at section 1(3) of the Children Act 1989, together with the range of orders available.
31. There must be a global and holistic evaluation of the child's welfare needs as reminded in *Re H [2016] EWCA Civ 1131* and to this end the Local Authority relies on the analysis set out by DTM Ms. Militaru.
32. In *Re G [2013] 3 FCR 293*, at paragraph 44 the President of the Family Division said:

"We emphasise the words "global, holistic evaluation". This point is crucial. The judicial task is to evaluate all the options, undertaking a global, holistic and multi-faceted evaluation of the child's welfare which takes into account all the negatives and the positives, all the pros and cons, of each option.

What is required is a balancing exercise in which each option is evaluated to the degree of detail necessary to analyse and weigh its own internal positives and negatives and each option is then compared, side by side, against the competing option or options."

33. The Court must evaluate the proportionality of the proposed order by conducting a balancing exercise in which each of the realistically available options are evaluated as to their positives and negatives in order to arrive at a decision as to which of those realistically available options is the most proportionate way of meeting Lisa's needs.