



Neutral Citation Number: [2023] EWHC 905 (Fam)

Case No: BM21C00153

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**  
**Sitting at Birmingham Civil & Family Justice Centre**

Royal Courts of Justice  
Strand, London, WC2A 2LL  
Date: 21 April 2023

**Before :**

**Mrs Justice Morgan**

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**Between :**

**Birmingham City Council**

**Applicant**

**- and -**

**Mother (1)**

**Respondents:**

**Father (2)**

**B, a child (by his children's Guardian, Karen  
Clevely-Aldridge) (3)**

**C, a child (by her children's Guardian Sian Heffey)  
(4)**

**D and E, (by their children's Guardian, Menaka  
DeSilva) (5 and 6)**

**A (7)**

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**Sam Momtaz KC and Emily Verity (instructed by Birmingham Children's Trust Legal  
Team) for the applicant**

**Lorna Meyer KC, and Helen Arthur (instructed by Greens Solicitors) for the first  
respondent**

**Vanessa Meachin KC and Andrew Neaves (instructed by Anthony Collins Solicitors) for the  
second respondent**

**Lucy Hendry KC and Orla Grant (instructed by Duncan Lewis Solicitors) for the third  
respondent**

**Richard Hadley and Param Bains** (instructed by **Baches Solicitors**) for the **fourth respondent**  
**Tracy Lakin** (instructed by **McDonald Kerrigan Solicitors**) for the **fifth and sixth respondents**  
**John Vater KC and Nina Bache** (instructed by **Glaisyers Solicitors**) for the **seventh respondent**

Hearing dates: 31 October 2022 – 11 November 2022 and 15 December 2022

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**Approved Judgment**

This judgment was handed down remotely at 12pm 21.04.2023 by circulation to the parties or their representatives by e-mail.

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MRS JUSTICE MORGAN

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

MRS JUSTICE MORGAN  
Approved Judgment

**Mrs Justice Morgan:**

1. The Local Authority makes an application for s 31 orders in relation to 4 children. They are B who is 16, C who is 14, D who is 13 and E who is 10. The children's older brother A who is now 18 is also a party to the proceedings.
2. This judgment follows a fact-finding hearing at which the Local Authority seeks to prove those matters set out in its schedule of findings sought. It is on the basis of that schedule that the local Authority contends that the threshold in respect of the children who are the subject of the application is made out. The trigger for local authority intervention is that C has made allegations that she has been sexually abused by her two brothers A and B. The allegations made along with other matters flowing from them are reflected in the schedule. The Local Authority also relies on and seeks to prove allegations of ill treatment of C by her parents.
3. In the alternative and as far as one child only is concerned the Local Authority has pleaded having regard to information which has come after the start of proceedings, an alternative threshold which does not rely on the schedule of findings sought but which if established would nevertheless permit orders to be made on the basis that that child (C) is beyond parental control.

#### Representation

4. At this hearing the Local Authority has been represented by Mr Momtaz KC and Ms Verity, the Mother of the children by Ms Meyer KC and Ms Arthur, the father of the children by Ms Meachin KC and Mr Neaves; B by Ms Hendry and Ms Grant, C through her guardian by Mr Hadley and Ms Bains, A by Mr Vater KC and Ms Bache and the two youngest children of the family by Ms Lakin.
5. It has been a difficult hearing and one at which it has been entirely appropriate for Leading counsel to be instructed at the earliest possible stage for the key participants. That this was done has been reflected in the quality of representation from which the parties, and I, have benefitted at this hearing. I have been very much assisted by the detailed written closing submissions from each party without which it would not have been possible to complete the hearing. The conduct of the hearing, has had none of the rancour which occasionally features in this sort of case and has been made far smoother by the deployment of the practice more often observed at the criminal bar of adopting and building on the cross examination which has gone before. The parents required the services of interpreters, difficulties with whom might have at points derailed irretrievably the hearing. I am grateful to all of those concerned who ensured that the difficulties were overcome for their efforts.
6. Finally, before leaving the topic of representation, I was dismayed to hear on the day listed for submissions that A, who by the effect of a few months was no longer a subject child, had encountered a difficulty with legal aid funding since that distinction of age meant that he did not fall into the non means non merit tested category. That his leading and junior counsel continued notwithstanding and that became known only at the conclusion of the hearing should not pass without acknowledgment. Nor should the observation that it was vital that he should have been so represented and I cannot see how even lip service could have been paid to his Article 6 rights had he not been.

The Precipitating Background to These Proceedings and Allegations made by C

7. An allegation was made to a teacher (the designated safeguarding lead) at school on 26 May 2021 that C had suffered sexual abuse by her older brother A since what she said was the age of 8, and B for around the last year. The allegations placed the most recent incident of sexual abuse as occurring on 24 May 2021 and included that she was forced to keep the sexual abuse a secret.
8. C presented as worried that her parents would find out about the allegations of sexual abuse.
9. C also made allegations that she has suffered emotional and physical harm from her parents, stating that she is treated differently to her siblings, has been physically assaulted in the past including on or about 24 May 2021 by her mother dragging her hair, and that her father has threatened to hit her on occasions.
10. Before the allegations came to the attention of the local authority on receiving a referral from the school on 26<sup>th</sup> May 2021, none of the children were known to the local authority and there had been no involvement with the family.
11. The family were originally from Syria fleeing the country as refugees and living for a time in another country before onward travel to the United Kingdom where they ultimately settled. An older brother was sent by the family to live in America at or about the time that the family left Syria. All of the children speak Arabic and English fluently, but the parents have limited English – in the case of the mother very little indeed.
12. After receipt of the referral, and attendance at the school by the police, a section 47 investigation was initiated on the same day. Given the nature of the allegations a Sexual Abuse Child Protection Medical was arranged but C did not consent to a full medical, and specifically refused an intimate examination. Accordingly, there is no medical evidence.
13. An ABE interview was undertaken by the Police on the 26<sup>th</sup> May 2021 and again on 2nd June 2021. C was removed into foster care. She is presently living in a residential unit.
14. A and B had been at school and were removed from home and interviewed by the police. B denied all the allegations. A on advice of his solicitor made no comment to questions in interview. I invited Counsel at this hearing to discuss between themselves and then indicate to me whether it was the intention of anyone either to cross examine him about anything he might say now or to make any submission in closing as to that, given his previous no comment interview. I received a clear indication that there was no such intention from any party.
15. Neither B nor A have lived at home since removal. B is living in a residential home. A was in supported living accommodation and has since started university. The Police investigation continues. They were initially on bail with conditions. As part of the conditions, they were not to have unsupervised contact with a child under 16 nor contact directly or indirectly C, or in the earlier stages with D and E.

16. On 5th October 2021 C was admitted to hospital. She had told her social worker, and foster carer, that she had ingested disinfectant fluid. She had marks of self-harm on her upper arm and had used implements to cause her hands to bleed. Following a visit from her Court appointed Guardian C said it made her '*lose her mind*' she continued to self-harm and said she wanted to kill herself. After she told hospital staff, she was suicidal she was kept in overnight.
17. On 6th December 2021 C moved to her current residential placement. She was said to be settling into her new placement but professionals supporting her felt that she needed but was not receiving therapeutic support.
18. On 27th December 2021 C made allegations to placement staff that she had been sexually assaulted by five males in total. This included her brothers, A and B, a pupil at school called F and her cousin G who lives in London. She did not identify who the fifth male was at the time. C also said G had sexually assaulted her sister but did not specify which sister.
19. C also alleged to placement staff that her mother physically abused her regularly and said that she had bruises on her arms, legs, chest and stomach as a result of physical chastisement from Mother. She described home life as being sad and said her mother would refer to her as a slave.
20. On 25th January 2022 C made an allegation to placement staff that someone called V had also raped her. In the s 47 report he was said to be her cousin and the same age as C had been at the time – twelve. C was reported by the local authority as having said to staff that '*rape seems to run in my family*'. There had been an intention by the allocated social worker and the officer in the case to discuss the allegation with C on the afternoon of 24th February 2022. But at the Child in Care review in the morning she said that she did not feel able to discuss these allegations and has not done so since. This allegation is not one in respect of which the Police intend to conduct an ABE interview with her.
21. The allegation made of sexual abuse by G resulted in a referral to Brent Children's Services. C was not willing to make a formal complaint and the Police are not pursuing an investigation. He has, however, been referred to social care.
22. The allegation of sexual assault by a peer, F resulted in his being interviewed voluntarily. He denied the sexual assault. C has again been unwilling to make a complaint and the Police have marked it as no further action.
23. The allegations made about others have not formed part of the fact-finding hearing in the sense that the Local Authority have not sought to prove them and an earlier case management decision of Lieven J indicated that it was not proportionate to seek to. It has however always been the case that the respondents facing allegations rely on the making of allegations in circumstances where they submit they cast doubt on C's credibility.
24. For reasons set out in an earlier ruling C did not give evidence at this hearing. Although it had originally been determined at a hearing before Lieven J that she should, that was a decision to be kept under review and by the time I was asked to review it, circumstances were such that I reached a different conclusion. An

inevitable consequence of that accepted by the Local Authority both at the stage when it was submitted on its behalf that she should not be required to give evidence and again in closing submissions is that less weight will be attached to her evidence (in the wider sense) than would otherwise be the case.

25. Mr Momtaz submits that whilst it is a relevant factor that her parents, and her brothers, who face allegations made by her have been deprived of the opportunity to cross examine it is not, so far as the allegations are concerned, a determinative one. I agree. There are many cases when for all sorts of different reasons, a complainant cannot be cross examined about their allegations and it is well recognised by those who practice in the field that allegation may be established by other means. It is important to have regard to the other evidence. To the evidence of what has been said or done outside the court room and to the integrity and quality of that evidence. To the wider canvas and the contextual circumstances of the case. It is perhaps one reason why, in relation to the ABE guidance, what is contemplated is a wider process of achieving that best evidence than simply the interviewing of a complainant in the formal setting of the interview. Mr Momtaz is quite right that it is open to this court, as it so often is, to find that the allegations made are more likely than not to be true on the basis of the totality of the evidence and without a single question being asked of C by any counsel.

Allegations of abuse by her brothers in Another Country and in the United Kingdom

26. C alleges that her brother A first abused her sexually when the family were living in another country having fled from Syria. She says she was 7 or 8. She was not. She was 4 or 5 but the Local Authority says that is exactly the sort of mistake which can properly be ignored as it is not her age but her account of what was done to her which was important. I agree with the Local Authority on that point. It is. What will matter is the authenticity of the account and the experiential detail of it. A was 8 perhaps 9. The account is that he rubbed her vagina (touching her over her clothes) and then told her to keep it a secret.
27. In submissions Mr Vater KC poses the rhetorical question what possible motive a boy so young could have to abuse his sister and to have the motivation to coerce his little sister to keep it a secret. I don't agree that it assists to think about the motivation for sexual touching of his sister or for that matter that it is helped by the point about secrecy. It is well known that some children, even young children, are for want of a better word perpetrators of peer-on-peer abuse. Furthermore, children who have a sense of something being wrong are well versed in the importance of secret keeping - 'don't tell' is part of the language of childhood. Mr Vater's far better points are however the improbability of a precocious sexual abuser stopping and then only starting again years later with no other indication of risk attaching to him in the real world or when examined in the virtual world of his digital downloads and second the further improbability that he could have so abused his sister when the family were all living as refugees in a single room.
28. C alleges that since about February 2020, her brother B has abused her sexually. Putting his fingers, and the tip of his penis into her vagina.
29. She further alleges that A has resumed sexually abusing her including by trying to put his penis inside her vagina and inside her mouth. Most recently on 22<sup>nd</sup> May on which

occasion she alleges that someone coming upstairs stopped him albeit that she alleges him to have said 'let them come and join us'.

30. The most recent incident on 24<sup>th</sup> May in relation to the allegation about B is one in which C is recorded as saying that B came to her room and abused her when she was still sleeping at 11am. It is agreed at this hearing that although a Monday it was not a day when the children were at school. Her allegation is that B put his hand inside her underwear and put his fingers inside her. On one account she says he put 2 fingers into her vagina and that he never used more than two fingers. At the interview she said that he put his hand deep inside her.

#### Allegations against others

31. As outlined earlier, C has also made allegations against others. In one such instance she is said to have made an allegation against her father to her foster carer sometime before 5<sup>th</sup> July 2021. The evidence about this allegation is notably unsatisfactory even within the context of the record keeping in this case. The officer in the case, and in charge of the investigation ('the OIC') confirmed the police had received the allegation, there are no contemporaneous notes of what was said or may have been said. I cannot possibly evaluate it or take it into account in any way at this hearing.
32. In relation to the allegation, she made about her cousin G, the production of primary recordings was fraught with difficulty. What emerged when they finally came is that on the day after Boxing Day 2021, C alleged to a worker at the unit that five other people had raped her. Included in this was G. Though in the joint visit by the OIC and the social worker what is described is sexual touching. Pursuant to directions made by Lieven J G was given the opportunity to make a statement. He denied the allegation.
33. In January 2022, C spoke to the officer in the case and the social worker about her allegations that a peer at school (F) had sexually abused her shortly before her foster placement broke down in July 2021. The previous month, so it now emerges from digital material before me, C is asking another friend to break up with her best friend's ex (F). The allegation of sexual assault she makes about F she in a later letter describes as being raped by her best friend's ex. F was interviewed. He denied the allegations and in so doing advanced an explanation for why she might have fabricated them.
34. On 16<sup>th</sup> May 2022, C made an allegation that a girl at school had sexually abused her. Investigations and review of CCTV at the school could neither substantiate the incident nor identify the girl.
35. By a letter dated 8<sup>th</sup> June 2022, C alleged she was raped by a patient whilst an inpatient in hospital. This was at a time she was receiving 1:1 care. She declined to speak about the allegation further when visited by the police.

#### Evidence At This Hearing

36. In addition to the large volume of written evidence I have at this hearing heard oral evidence from Ms. JB social worker for C; the social worker for B; the second safeguarding lead; the officer in the case; the first attending officer (male) and the first attending officer (female) police officers; the school designated safeguarding



lead, a teacher; the unit manager; the foster parent; a family assessment social worker, B, A, the mother and father. It is not my intention in this judgment, nor would it be realistic even were there purpose, to rehearse all of that which I have heard and read. It will however be necessary for me to make reference to that which has been of particular relevance and has been influential on my thinking in the determinations I have reached.

37. The school designated safeguarding lead is the safeguarding lead at the school and had been so since 2016. She has undertaken safeguarding training through both the NSPCC and through the council. What she had taken from that training she told me was to treat allegations sensitively, not to ask leading questions and to judge whether the threshold was met for the notification of outside agencies. Her written evidence before me came formally in the form of 3 statements; one given to the police on 26<sup>th</sup> May 2021, one made by her to the school on the school system, some hours later on that day after 4pm and one made in these proceedings in children act form 2<sup>nd</sup> December 2021. The school designated safeguarding lead readily accepted early on in answer to Ms Meyer KC that of those statements it was the one given to the police that was most proximate to the time and likely to be the most accurate.
38. The school designated safeguarding lead was, I find, a straightforward and honest witness doing her best to assist the court. She was nervous – as many of us might be giving evidence for the first time and faced with a roomful of strangers – but neither defensive nor unwilling to concede what she did not know or acknowledge what she might have done differently. She no longer works in the school and left for reasons unconnected quite soon after the events with which her evidence is concerned. From her oral evidence it emerged that she did not know particularly well either C or H. It is her habit to get to know the children and young people for whom she has overall responsibility but it so happened that there had been only about a term between C joining the school and the school designated safeguarding lead having a period of maternity leave and then a further interruption to normal school life because of the pandemic meant she did not know those who had been in year 7 when her maternity leave started as well as she might by the middle of 2021
39. What she told me was that on 26<sup>th</sup> May 2021 H and C approached her as she was on duty at the entrance door for years 7 and 8. It was H who asked to speak to her and who spoke to her throughout the conversation at the door and there was nothing said by C at all; it was apparent from H (rather than C's) demeanour that this was not something trivial and the school designated safeguarding lead told the girls they should go and get their mark in the register. When the school designated safeguarding lead came to her office at about 830 after entrance duty H was already there waiting. C was not. Her evidence was that H said that C had told her something personal and that the way in which H said it coupled with what she knew of the girl i.e. she was a quiet girl not someone who came to staff, not someone to speak out and put her head up was sufficient for the school designated safeguarding lead to go without more, to get C from her classroom asking her form teacher if she could 'borrow' her.
40. It was not far to go and get her. The school designated safeguarding lead was not able to tell me what she had said to C on the way back to the office but had made a remark or two so that it was not as she put it *a silent walk* and whatever it was she gave C to understand that H was there at the office but she could not say now (and had not

recorded) what conversation there was about H at that stage. Once the 3 were in the office the school designated safeguarding lead asked C the question *how can I help* which produced from C not a response but a request that H should relay the information. In her evidence the school designated safeguarding lead said that C *asked H to tell me because she couldn't say it*. That last detail that she couldn't say it, is not something she recorded and at this distance I cannot safely know if it was the school's designated safeguarding lead's impression that C couldn't say it, or it was part of C's request to her friend to speak for her. It was also the school's designated safeguarding lead's oral evidence that C had asked for H to be present. From that it is obvious that from the outset there was conversation taking place and in particular things said by C which are not recorded either contemporaneously or as part of the school's designated safeguarding lead's statement made very soon afterwards. The school designated safeguarding lead was asked in cross examination why it was that she spoke to C not by herself or with another member of staff but with another child. In her evidence she said that she had at one stage said that H should leave but C had been '*adamant*' that H should be there. She could not now say why that wasn't included in her statement There was no recording of that aspect which appeared from her oral evidence to be an adamant wish expressed by C more than once. When asked to expand the school designated safeguarding lead gave an account of C expressing distress including appearing by her body language to be stressed, at the prospect of H leaving. Of course, I recognise that her oral evidence given now 18 months on from the events means she is doing her best to recall but that is not what caused me disquiet about it. It is that there were self-evidently conversations with C – things said by the school designated safeguarding lead; things said by C (and for all I know H) which are simply not recorded so I don't know and can't assess the significance of them, if any, on the receipt of the allegations about B and A on which reliance is placed before me.

41. The overall impression I had from the combination of the school's designated safeguarding lead's written and oral evidence was that she had been slightly wrongfooted by the approach from H and C. Although she told me that she had had the appropriate training she also told me that this was the first time she had taken so serious an allegation from a child in her role as safeguarding lead. She was on that day without her deputy who was away on long term sick. She also agreed that her training to make a note of questions asked and answers given did not 'kick in'. As with all things it is harder doing it for real and unexpectedly than to do the training exercise. As always it is easier for those at a later hearing to pick over the bones and offer a counsel of perfection. I acknowledge all of that but for me there are the following serious deficits – having regard the stakes either way whether C is making allegations which are true, or her brothers are facing allegations which are not – in what went on that morning
  - i) The allegation is not received from C but from her friend
  - ii) There is unrecorded conversation in the initial stages
  - iii) C is not seen by the school designated safeguarding lead privately or with another adult but in the company of another child. Who does all the talking. At least the talking that is recorded.
  - iv) There are no notes of what if anything C was asked

42. The school designated safeguarding lead had been explicit that her own understanding of her role was to ascertain whether an allegation reached a threshold for involvement of other agencies. Here, her evidence of what H said by way of allegation was *C's brothers have been sexually touching and raping her*. Ms Meyer's point is well made that whatever might be the threshold, that is well over it. Neither the school's designated safeguarding lead's role nor her training (as she accepted) equipped her for further questioning. Nor is there a need for more beyond perhaps what was not asked of C which was whether what her friend had just said was correct. In fact, there followed a series of questions the first of which according to the statement was *how long has this been going on*. Giving evidence however the school designated safeguarding lead was asked about that and replied *I can't recall if that was my first question about the rape allegation*.
43. My unease at what it is not possible to know of the reporting (already second hand) was increased by this witness going on to say *I may not have been accurate about the initial beginnings of the conversation but I took the information to pass on to children's services and police*.
44. That is reflective of the way in which as I have already said I assess her as a witness doing her best to assist this court but also it underscores what is the real anxiety about the thread of allegations where do they start; how do they evolve. The school designated safeguarding lead was unable to tell me whether although there came a time when C was aware the police were coming that was because she explained to C that she would have to call them or that they were already on their way. She thought she had said to her that she had called them but there is no note of how this was explained to C or what C said about it. It may be that that detail is not important but what is important is that on the school's designated safeguarding lead's evidence C and H were left together on their own in the mentoring room after the discussion with the school designated safeguarding lead and before the police came. This was for at least 15 minutes. She had no idea what if any discussion they had. Neither do I.
45. It is easy to be wise after the event. It is however the case that those safeguarding are trained for exactly this sort of event. I am troubled by the early contamination (which in the circumstances of this case I use in the sense of confusion rather than anything more sinister such as might be suggested as procuring an allegation or an account from a child) by the fact that the report comes not from the child herself at all; that there are no contemporaneous recordings; there is (very significantly) no way of knowing what the questions were asked which produced the answers. The evidence from this witness in the particular circumstances of this case is the closest thing I have to a first report. It follows that it warrants close scrutiny.
46. The second safeguarding lead who is the school safeguarding lead made a recordings formally on the system. She had also visited C at her residential home and received notification that further allegations had been made by C of sexual abuse by five men. I heard short evidence from her but I did not find her evidence helped me with the issues I have to determine.
47. The first attending officer (male) who attended the school with the first attending officer (female) on referral took the statement from the school designated safeguarding lead has been a police officer for 24 years and said had had various forms of safeguarding training last having had training in ABE interviewing 14 or 15 years. He

spent about an hour taking the statement in a side room but did not have any contact with or speak to C who was seen by his colleague the first attending officer (female). It was probably he thought about 10 15 having arrived a couple of minutes earlier when he went off to take the statement. This officer was unable to assist with where C was between the time they arrived and the time his colleague recorded as seeing her. She was with another teacher (because the school's designated safeguarding lead was with him). He didn't know who. He did recall when asked by Ms Hendry that C had a friend with her. A girl of a similar age whose name he didn't know. Both officers were at the school for a good few hours and he estimated that it was about 1230 – 1pm when they left.

48. The statement contained all of the information which the school designated safeguarding lead gave and was what she had said with follow up questions to expand. the school designated safeguarding lead was not referring to any notes when she spoke to him as far as he remembered.
49. Although he had estimated that they left at 12 30 or 1 he agreed that on the logs produced it looked as though at 1352 there was a call asking the officers to bring C to the police station and he said that it is *a good assumption* that they were still at the school as *they wouldn't have been asking us to take her then*.
50. This officer, because of the role played, could not help with any of the allegations made by C or the detail of how they were taken or by whom. From his evidence however, it became clear that the visit to the school was quite a long one. After he had finished taking the statement from the school designated safeguarding lead, he had what felt like quite a long wait for his colleague who was speaking to C to finish. Long enough to be appreciative of the sandwiches someone brought him because it was coming up to lunchtime at the school. That there was such a long wait for the conversation to finish with the yet to be ABE interviewed complainant child is of interest when one comes to examine the primary source materials of that conversation.
51. The first attending office (female) was the officer who spoke first to C. She had attended the school as a responder. She is not child protection specialist she said and so did not undertake ABE interviews but had had training in how to take an initial account from a vulnerable witness. On arrival at the school, she had what she told me was a briefing from a teacher about what had gone on. She could not tell me who that teacher had been nor had she taken any note of what was said.
52. She was one of several professional witnesses who had not made a note of the verbatim conversation with C which produced her narrative. It is mystifying to me that there has seemed to be running through the evidence of the police and social work professionals from whom I have heard at this hearing a complete lack of appreciation of the value of making a contemporaneous and as near as possible verbatim note in cases such as this. Whilst this witness said she is not a child protection specialist the situation was no better with those who profess to be precisely that. As it will be necessary to consider in the context of the evidence of the OIC.
53. The first attending office (female) struggled to remember details at some distance and struck me (by way of contrast with the impression I later formed of the OIC) as being anxious not to get something wrong or be unable to recall rather than defensive about

her own actions. She readily accepted that the time entered in the RASSO booklet as commencing at 1250 must be in error. Whilst I regarded her willingness to concede that she must have made an error as fair, she could not at this distance help with what would have been the right time and seemed to me to be hazarding a guess when she said it *could have been 1150 or something*. It is of course an error which added to the lack of clarity about how and for how long the child was spoken to at school. It made it difficult to square with the evidence of the first attending officer (male), which I accept, of sitting waiting in the corridor having completed the statement of the school designated safeguarding lead. As her evidence developed, she became surer that she must have started in the Rasso with notes about the more recent allegations and then gone on to her note about the wider allegations C expanded to making once she spoke to her. But the fact that she the officer had made no note of what questions had been asked eliciting the answers or narrative given makes it difficult to be able confidently to rely on what is recorded. That there must have been questions asked is evident from some of the information recorded. For example, the information that mum was in the shower can only sensibly be understood as a response to being asked. That is but one example of how the words recorded are not always those said by C, other examples of where that is apparent from what is written, were accepted by this officer when she was taken to them in cross examination. I do regard it as unsatisfactory that she did not keep a verbatim note but bear in mind that her role was to attend not to conduct an interview.

54. Having reviewed the evidence of the first attending office (female) I was left with the following serious misgivings about it
- i) The first attending office (female) was an officer taking the initial police account from the complainant child. If she is sent to do that, it is reasonable to expect her to have a proper working knowledge and to apply the basic requirements of the ABE Guidance such that she is able to perform that task satisfactorily. That was not so here.
  - ii) There was confusion such that did not permit me to know when the first attending office (female) and the first attending officer (male) arrived; the time she spent in questioning C – when that started or finished; or the sequence in which things happened or most particularly in which notes were made. From the entries on the system by those back at the police station the Officers were in attendance sometime between 10.20 and 11 20; From this officer's own notes in her own RASSO it commenced at 1250. There are variously recorded requests for C to be transported to the police station at 12 47 and 13 47. This stems from a failure to follow ABE Guidance – which is not just there for interviews- or even to use the RASSO in the way it is intended.
  - iii) It is not possible either to tell from this officer who is making initial contact what was the discussion; the setting of it; the timings of it; who was present; precisely what was said by whom including any questions asked and answers given. There was in fact not a single question recorded, though the Officer did not deny some were asked. Those details do not emerge from the first attending officer's (female) handwritten notes which were the subject of close and appropriate scrutiny during her evidence. Unsurprisingly she was not able

to make up the deficits at this distance of time. This again stems from a failure to follow basic tenets of ABE guidance.

55. Ms Meyer in submissions makes a characteristically thorough complaint that the handwritten notes are not even sufficiently properly paginated to be able to sequence them. I am less troubled by that than by the content not reflecting the flow of the conversation and how information is elicited. To that extent I agree with the local authority submission that it is not perfection that is required. It is notable to me however that the local authority in its closing submissions has not sought in any detailed way to address the way in which the professional evidence on which it invites me to make findings is riven with serious breaches of guidance and good practice.
56. The OIC gave oral evidence. She did not attend the school on the morning when the allegations were made but she took over from the officers who had attended at C's school once called by the school designated safeguarding lead. She conducted the ABE interviews. It is to say the least unfortunate that notwithstanding clear directions for disclosure of all relevant police material into these proceedings during the lifetime of the case notebooks containing relevant working materials were not so disclosed. This officer had been aware of the directions. It was, said the OIC, a misunderstanding or an oversight on her part that they were not necessary as what those books contained were only really names and numbers and dates when things needed to be done and suchlike. Even leaving aside that it is not for the officer to decide what is or isn't relevant in the face of a direction for the production of all, it is not the case that that was all that was contained in those notebooks. They contained for example the plan for the interview intended to be carried out with the mother. So it was that the whole of a morning was lost when the documents in question were made available. Shortly into the first period of cross examination of the officer it became clear that she had not taken the opportunity to view again the recordings of the ABE interview she had conducted with C, and it hadn't crossed her mind to do so. I thought that surprising. A little further into the cross examination it emerged that neither had she taken the opportunity (or the local authority reminded her to take it) to read the transcripts of those interviews before coming into the witness box. That was beyond surprising. It also meant that having lost the morning a significant part of the afternoon was lost whilst she re-read that on which it was inevitable she would be cross examined the moment she set foot in the witness box.
57. The OIC has been a detective constable for 12 years and working in the field of child protection for 10. She has, she told me undertaken the initial ABE training at the start of her qualification and then returned to look at the guidance as and when she needed to for a particular issue – the example she gave me (outside her working of this case) was how to work using intermediaries. She had never attended any follow up or refresher ABE training and her experience did not seem to be that which I have often heard in other cases from other witnesses of every 2 or 3 years having updating training.
58. Within the bundle there was no interview plan for the interview the OIC intended to carry out with C. There was none to be found in the working notebooks she produced either. Asked whether she accepted good practice would expect such a plan she agreed but said to Ms Meyer that the plan didn't have to be written down and an experienced officer might just have it all in her head. Since there wasn't a written plan here that was what she had done. She was not now able to tell Ms Meyer – or me -

what interview plan had been in her head since so much time had now passed. Thereby illustrating precisely, the desirability of having the written down plan rather than the in the head plan. She had no option but to accept that obvious point.

59. Whatever had been the plan, the interview, with C was problematic. Surprisingly so from an officer of such experience who had been trained and then worked in Child protection field for a decade.
60. It is of course not unheard of for there to be some of these deficits within interviews and the more so because there is often a need to be responsive to what a complainant child says and that can't be predicted. Having a plan is not the same as having a script and an ABE interview is to elicit information not to tick boxes. Very often the submission is made for good reason that what is important is a core uncontaminated account running through the case notwithstanding the existence of breaches of this or that part of the Achieving Best Evidence Guidance. What has given me particular pause for thought here in the circumstances of this case is that the discussions which preceded the OIC's interview with C were already problematic. Illustrative of the extent to which they were problematic is the fact that at this fact-finding hearing, I did not in fact have an account of a first complaint made by the complainant.
61. I found the officer's evidence in relation to what might have been that first complaint especially troubling. The evidence which emerges from the bundle here is that there is a suggestion that probably about a month before C's friend H approached her schoolteacher, C had first made an allegation to her. There is no statement from H. There is no interview with her or note of anyone speaking to H, it was not until December, some months later that the OIC on re-reading, so she told me in evidence, the case file realised either that no one had spoken to H or the significance of H's evidence. I found it profoundly disturbing that the officer in the case had not appreciated the importance of getting at the earliest possible stage the evidence of the person to whom the first complaint is said to have been made and furthermore that she had not appreciated it as soon as she took over the case. It is not complicated nuanced thinking that is required, it is basic investigative good practice. My impression of the officer's evidence from her answers was that when she talked of not appreciating the significance of H until she re read the case file was that she had not registered that the approach to the school designated safeguarding lead and the complaint to her came not from C herself but from her friend, or that there had been an earlier complaint to that friend. As it turned out, by the time attempts were made, there was it seems an unwillingness on the part of the child's parents to permit her to be spoken to and further involved. Whether that would have been so earlier cannot now be known. What remains is that the friend to whom apparently C had said something, who it is suggested had encouraged, so I heard from her foster carer, C to tell a teacher; who had in fact been the person who went herself first to tell a teacher is not someone from whom I have any direct evidence.
62. In relation to her approach to the interviews and conduct of them the following features which emerged from her evidence I found troubling:
  - i) She did not as I would have expected gather relevant information prior to interview. By way of example only to find out for herself the level of C's sexual knowledge
  - ii) There was an absence of considered and documented planning for the interview

- iii) In a way which was striking for so experienced an officer she did not appear to have a proper appreciation of ABE guidance and certainly did not properly apply that guidance to the interview process.
- iv) Linked to that is that from her evidence in cross examination she did not seem to appreciate the consequences of not having applied the Guidance on the reliability of the answers obtained from C. A single example of this emerged from a very effective piece of cross examination by Ms Meyer in relation to C's knowledge of ejaculation:

It is the OIC who first describes ejaculation.

The officer accepted that when she used the word ejaculate to C there was no audible response but on the recording C could be seen shaking her head

Asked by Ms Meyer *do you think that it is appropriate that you are the first person to describe it, ejaculation* the OIC responded *is it right? I am going to say possibly not*. I found that answer both as to the substance and as to the flippancy with which it was given curious.

Elsewhere the OIC accepted that where C reports her brother as saying *Going to cum in your mouth* the officer does not follow up to ask about her understanding ?

And where C said *I feel like every time he was close he would stop* the OIC had to accept she did not invite any independent explanation of that and what she meant by *he was close*

Finally in this part of the evidence the officer asked what she conceded was a leading question *Would he then go in the bathroom?* It was put to the officer that she had made assumptions about what had happened eliciting the response *I am human at the end of the day I am going to make some assumptions* . And it was perhaps inevitable though no less telling for that, that the OIC when asked *You have assumed that you understand what she is trying to tell you?* had no option but to respond *Yes I am*

- v) That part of the cross examination warrants replication in such detail as it exposes the extent to which the flaws in the interview itself are not trivial. This exacerbates rather than ameliorates the difficulties which come from the way in which the earlier information gathering proceeded.
  - vi) There was a total lack of appropriate curiosity and follow up to the answers given about other parts of the interview by C for example when C mentions her interest in Anime, which has assumed significance as to her sexual knowledge and curiosity is not picked up by the officer at all.
63. Although I have considered already an especially problematic aspect of leading questioning I hold in my mind as I consider this officer's evidence the submissions made, in particular for the mother and B, that she brings into the interview room as well as preconceptions and assumptions improper or incorrect assertions of fact. I do see in this officer's evidence other instances that she does that. There is approach which involves her telling C what she the officer already knows rather than eliciting information from her. In relation to the physical assault allegation for example during



the interview what is said is *I know there's been a hair pulling incident and I know she's said some horrible comments to you*

64. I regret to say that I did not find the OIC an impressive witness. '*We can all be wise after the event and looking back*' she said to Ms Meyer. That is of course often the case. There is however no need to look back after the event to see starkly what this experienced officer should have done. I found the way in which the officer gave her evidence - which at some stages resembled a litany of breaches of good practice and guidance - strangely complacent. Mr Vater when he put to her that in terms of ABE, she had broken every rule in the book was not far off the mark. Not only did I find her complacent, but she also seemed to me to be casually dismissive, in a way that bordered on arrogant, in her responses to Ms Meyer's perfectly reasonable and measured questions. I did not know quite what to make of this and even allowing for the fact that I recognise she may have been nervous and that I need to remember that that is something that can manifest itself in a range of different ways, the more I heard from this witness the less helpful I found her evidence.
65. The OIC told me that she had had a conversation with a social worker in which she had discussed doubts which she had had, and that they had together considered doubts as to C's reliability. Or as the officer expressed it things that would undermine her evidence. This was in the context of other allegations which C had made - about a patient in a hospital at which she had been treated; about a peer at school and about a cousin which had been seemingly false. The officer's evidence to me was that she could not recall which social worker it was with whom she had had that conversation. Or when it had been. She had not made a note of the discussion or any note on her workings of the case of the ways in which she had wondered whether the other allegations undermined those which C had made about her brothers. In one part of her evidence, the OIC said that she had not made a note on the system because it would be something that would have to be disclosed and the doubts were anyway only her own thoughts. I was very troubled by that answer. Sufficiently so that I gave the officer at the end of her evidence the opportunity to comment on the impression hearing her answer had made on me which was that a motivation in not recording the doubts about C's reliability was that the fact that that recording would be disclosed would make a prosecution or charge less likely. She said that she could see that it might have sounded like that but assured me that that wasn't so. Everything C said - both in support of and against the allegations made - would have to go into her report for the CPS at the end and it was then up to them what happened. Rather in the way of the interview plan that was not written down, I was left uneasy as to how without making a note of discussions about the emerging doubts as to reliability, this aspect would find its way into a later review of all the material. I was left uneasy also as to the unsatisfactory answer about why this witness had not made a note of such an important discussion about an emerging thought.
66. Reminding myself that at this hearing I am not conducting an inquiry into how this officer conducted the investigation, I step away from making any finding about why no proper note was made of the doubts which it is said were discussed. I do however form the view from all of her evidence that this officer was not investigating in the sense of looking in an open-minded way to see what evidence supported and corroborated and what ran counter to and pointed away from the allegations she had received but looking only for that which supported it.

67. That view was reinforced when I heard the approach she had taken to the digital material when available. Her evidence was that she had not examined the digital material by reading it or by reading the salient parts of it. There is of course an enormous amount of material disclosed and trawling through it is a time-consuming and tedious exercise and there are not limitless hours in the working day. I accept all of that although I observe in passing that it is an exercise which has been undertaken by Counsel in this case. Instead, what this officer had done was to rely on key stroke searches and searches of the material for key words. A consequence of that is that because only that which supported the allegation is searched for, the investigation of the digital material is characterised by something akin to confirmatory bias. This was amply demonstrated by the short passage of extremely effective cross examination in which Ms Hendry invited the officer to consider other information which emerged from the digital material as to C's knowledge of and active interest in matters sexual which were available to be found on a reading of that material. The officer's incurious approach to the question of what knowledge of or interest C might have of matters sexual was perplexing but entirely in keeping with what I am driven to find is her lack of interest in any consideration of the possibility that the allegations might not be true. By way of example only Ms Hendry returning to a point Ms Meyer had touched on asked the officer what she had made of C's answer when asked if her brother had ever ejaculated and she responded that it felt like when he was close he would stop. It seemed that nowhere in her mind had been the question *what does that tell me about what C knows or has experienced and where does that come from?*
68. Ms JB's evidence was, unfortunately, resonant with that of the OIC in the sense that her working of the case was underpinned by a fixed belief that C was a child who had been sexually abused by her brothers. I did not detect in her evidence that there had been any sense in which she was evaluating what she heard or that her mind was open. The local authority in closing submissions does not address in detail the evidence given by its social worker but makes the overarching submission in the following terms: *'the court will make its own assessment of each of [the social work] professionals. We submit that they all came across as committed and caring professionals who were striving to ensure that C was safe' and later 'the evidence does not support a finding that C was constantly being reassured by professionals that what she was saying was true... In any event ultimately it does not matter what those professionals believed, it only matters what this court finds to have happened on a balance of probabilities.'*
69. There are a number of problems with the approach that the Local Authority invites me to take in this part of the submissions. Of course, it is absolutely right to say that I must make my own assessment of the social work witnesses. My assessment of Ms JB's evidence is that it was unsatisfactory.
70. The Local Authority submission does not survive the passage of cross examination in which Ms Meyer KC asked Ms. JB about whether she had ever considered an alternative to the allegations made by C in respect of her family being true. Ms. JB said that in discussion with CAMHS, about C's emotionally dysregulated behaviour (in care after removal) and complex presentation it was felt it was that of a child who had suffered trauma. Asked by Ms Meyer what was the trauma, Ms JB responded *'I understood the trauma to be that she had been sexually abused'* and expanded to say *'I was believing the truth of the allegations yes. As her social worker I reassured her*

*that I was there to support her and yes the message she got from me was that what she said I believed. I regarded her as a child who had been sexually abused. I had wondered in listening to the social worker's evidence whether she might have been meaning (although it was not what she was saying) that she regarded C as a child who had been sexually abused but that she retained an open mind about the allegations on the basis of which the local authority brings the case i.e., that it was her brothers who sexually abused her. However, from her evidence given during Ms Hendry's later cross examination it was crystal clear that could not be so. Ms JB had said to Ms Hendry that when she first came into the case she wanted to have an open mind and so formed no view as to belief though she came to believe the allegations over time and accepted that C would have picked up that she believed her. Within this context I did not understand what she had meant by wanting to keep an open mind since in her working of the case as exposed by the able cross examination of her at this hearing there did not seem ever to have been as a component any consideration of what might be an alternative to the allegations being true. Be that as it may, it was Mr Hadley who pressed her on whether she had ever volunteered to C that she believed her and elicited from Ms JB the following response: 'After a few months I did say I support and I believe you and that was in the context of her saying how she felt on that day and she was saying .. I remember that conversation yes and yes it was the case that I was saying I believe what you have said about your brothers and what they did to you'.*

71. Of course, I accept Ms JB's view offered in evidence that it is the role of the police to conduct the investigation into the allegations. At least in the sense that is of the criminal investigation. That does not however as I see it obviate the need for a social worker working in child protection to have properly an open mind in the sense that I would expect that to be understood. I have also reflected carefully on Mr Momtaz's stark submission that it doesn't matter what this witness believed because the only thing that matters is what I find. The superficial attraction of that however is that it overlooks the fact that what this witness believes has affected her working of the case. Ms Hendry's questions of the social worker illustrated neatly an example of the effect. Ms JB agreed she had reviewed the placement notes and agreed that different professionals had told C that they believed her. Ms Hendry suggested to the social worker that one consequence of this was that in so doing they are validating her account reinforcing it? Ms JB saw it as *continuing to offer her support*.
72. Ms Hendry went on to ask Ms JB to consider whether if the original allegation is not truthful and the child is told a false account is believed would not more turmoil flow from that? Ms JB agreed that if that were the case then that is possible. Listening to her give that answer I had the strong impression that it was the first time she had considered the possibility or anything like it. I found that troubling. She had to accept Ms Hendry's next point which follows that it doesn't give the child the opportunity to say it wasn't true.
73. During this very effective passage of cross examination Ms JB also agreed when asked that she and the OIC had been concerned about her reliability and her truthfulness. Elsewhere I have considered the grave reservations I hold about the OIC's evidence on and approach to this aspect of the case. Those reservations were in no way diminished by hearing Ms JB's response that it was possible that C's later allegation may '*weaken*' her allegation about her brothers. As with the officer it had

the flavour not of one who in an open-minded way wanted to get to the truth of the allegation made but of one who wanted to uphold or look to confirm the allegation. The working together practice of the police and the local authority in cases of suspected or alleged sexual abuse has real value. In the circumstances of this case however the fact that two key professionals from each of those public bodies took the same flawed approach importing at best a lack of open-mindedness and at worst a confirmatory bias to their thinking means that neither acted as a check or balance or a critical thinker for the other.

74. Ms JB's thinking at the time did not have the benefit of being informed as mine has been at this hearing by the hinterland of C's online and digital life. The material was not fully available to her at the time. It has become available only more recently.
75. The unit manager is the manager of a specialist unit at which C has been placed since December 2021. Within the unit C has shown sexualised behaviour. She is talking about what she would do to boys what they would do to her what she will do to them when older. She has self-harmed within the unit – often by superficial cutting.
76. On a daily basis she says she will take her own life and does not wish to continue living does not wish to go on. Those at the unit take it seriously but with C it is so often that the unit manager described it as a form of dysregulation. She has never made a plan to go out of her way to harm herself so it has come to be viewed more as suicidal ideation than intent.
77. The unit manager gave evidence of an incident on 26<sup>th</sup> December when C had behaved sexually towards him and then written a letter of apology. He told me he had read the letter on the day of the incident and met with C as he was still on shift *I didn't do any 1 to 1 work with her* he said. Asked what he made of C's behaviour towards him that day he responded that it is not uncommon for children to form relationships with staff and proposition them but it was in his view very much that she felt that because he was a man and he was providing care *I was going to assault her so that was not very comfortable* and he was not sure about how far forward this would have gone if there had not been other people in the home and he had had them there. He told me that he thought it would have continued if he had not had others there.
78. Mr Vater asked the unit manager whether he from his experience of C would agree that she is a girl who can do very extreme things and say very extreme things without having any thought of the consequences to herself or to anyone else. That behaviour was something which the unit manager said he agreed was what he had seen in relation to C. His evidence in this respect had echoes of that which came from the foster carer whose evidence (not least in respect of a fleeting allegation which C may have made about her father) gave the impression of C as someone who made quite casually and without much thought allegations of a serious nature. These were foster carers whose reasons for giving notice on the placement was that they did not feel they could keep themselves or their family safe. The unit manager described how in his own working with her, he took steps to ensure that he was not what I would understand as at risk of being compromised – he would now sit on the step outside her room rather than going in; he would not allow her to lie across him on a cushion when watching TV.

79. His understanding from her about her allegations about her brothers is that in relation to them they were of rape. This contrasted with the allegation about G which was one of sexual touching.
80. It was to the unit manager that C made an allegation that she had seen on the family laptop the use of the discord app. He was himself familiar with Discord and had explained it to the OIC who was not. On the laptop C said she had seen her own name in between searches for pornographic websites when she had opened the lid of the laptop. The reporting of this allegation onwards was something she did not do herself but, sitting beside the unit manager, wanted him to do it. The picture that he gave of this in his evidence was very like the way in which she appears on the evidence I have heard to have wanted H to speak for her at school.
81. From the unit manager who is clearly an experienced manager of a unit at which children and young people with challenging and complex needs are routinely placed I gained an impression of C as a young person who was exceptionally complex in her functioning and needs.
82. B who is now 16 gave evidence by link from his counsel's chambers. I had considered by way of ground rules the special measures needed to enable him to give his best evidence. He had asked that the link was arranged so that he would see only the judge, his own leading counsel and counsel asking him questions at the time. Counsel had divided between them the topic areas on which he was to be examined. Inevitably shouldering as he does the burden of proof as leading counsel for the applicant Mr Momtaz took responsibility for the greater part of the cross examination. B was cross examined with great skill and sensitivity by Mr Momtaz. It is not an easy thing to do at all. Still less to do well.
83. In chief B had told me about the effect his arrest and the effects of it had had on his life. He is living now in what he called a care home. He told me it's an ok place to live but it's not being at home. He gave evidence politely and listened carefully to what he was asked answering in a straightforward way. Unsurprisingly, given what he was being asked about he appeared from time to time to be embarrassed.
84. He gave a slightly idealised view of his faith and his parents describing them as *the best to walk the earth*. He was inevitably conscious of his parents at the back of court listening. There was a warmth in the way he spoke of his brother and I noticed his smile when he spoke about how A was a bit of a hero and a great footballer.
85. He was more realistic in telling me about how he had taken money from C for downloading snapchat when she was not supposed to have it and hiding the app in the sense that no alerts would come up on her phone to give her away. There was a clearly transactional quality to this whereas he had no compunction about what I would call grassing her up when she was having what he saw as too much to do with a male friend from school.
86. I found wholly convincing the shamefaced way in which the fact he had watched pornography was in evidence dragged out of him in authentic way for a 16-year-old in a room full of strangers as his mother sits listening. What was interesting to me watching him give his answers to Mr Momtaz about having watched some pornography was to see the process by which he came to admit it. From a starting

point that he hadn't watched any to having found it and watched some heterosexual pornography; man and woman having sexual intercourse is how he put it. He appeared to me to be mortified to be admitting to this and it was my impression that he had thought about -and gone one or two answers along the route of - not admitting it. He was however also clear about the various circumstances in which he had seen pornography. By search on one maybe 2 occasions or by being sent links. The links were he said to homosexual porn, because it was a way of trolling someone there would be no point trolling with straight porn. The point is that it's gay (my word not his) pornography. I observe in passing that in 2022 in this young man's life the dismal fact that it's gay porn is what makes it the trolling.

87. When he spoke about C's behaviour some of that had echoes of the cultural mores of his life -going out to parks etc wanting to go out was not something that he seemed to think was right for C even though it was fine for him. There was in the way he spoke of this something of the flavour of being a brother in charge of a sister.
88. B had now had a girlfriend, he had met online and with whom he explained he would go into C's room for privacy in speaking to or messaging her. He had not wanted to do that from his own room which he shared with his brother. A when he gave evidence told me he had been unaware of the girlfriend until he heard about it at this hearing but knew that his brother would be online in the other room gaming. The girlfriend lives in Europe and it was not at this hearing suggested the relationship had progressed further than that. In C's room there was writing on the wall B sexy B Yum. What B said in his evidence was he did not know who wrote that, but he had thought it might be his brother. His brother denied writing it though he told me he had at other times written something to the effect that his brother was fat or lazy. None of the family members cross examined about the writing on the wall gave any evidence which shed light on how it came to be there or what it might signify in forensic terms for that which the local authority seeks to prove.
89. From B's evidence came a frank explanation of the pressure on a young person to conform. I reflected on the fact that he was a young man being trolled by his peers with gay pornography when he explained that he felt out of the crowd with his friends because he had no girlfriend. To convince his peers that he had a girl he saved C's number in his phone under the name 'Helene'. This is something about which he was asked for obvious reasons, careful questions by the local authority. I have considered the possibility that the explanation for this odd behaviour with his sister's phone details could be more sinister than that which he gives. What does not fit with that however is that what C alleges is that B assaulted her, not that there was something akin to a blurring of the boundaries of a sibling relationship or grooming which in earlier times might wrongly have been called an incestuous relationship. She alleges a number forced abusive physical assaults. I have accordingly not found the issue of Helene is one which assists the local authority in proving its case.
90. He denied the allegations his sister makes that he abused her sexually. Cross examined about it he described wracking his brain to think why she would say it. He had denied the allegations made in interview in like form. In submissions Ms Hendry rightly reminds me that he was questioned in police interview on a basis for a large part of which there was no evidential foundation. I accept her submission that however it came about it should not have happened and is an inexcusable way to approach an interview of a young person in his position.

91. It was suggested to him by the local authority that he had feigned illness to leave school on the morning the allegations were made by C. I agree with the submissions made later on his behalf that the available contemporaneous evidence does not support that suggestion.
92. B gave sketchy evidence of the family's life as refugees in the country they lived in having left Syria. He recalled going to school. Thought the family had lived in two rooms. Was able to remember a time when his mother was managing alone, and his father was not there but had not when asked understood this in any sense of his parents having separated. He had little to contribute about his eldest brother's role in the family in earlier times or his absence from it now. On reflection I regret permitting him at Ms Meachin's request to be shown the photographs of his family in years gone by. There was I thought little if any forensic purpose to the exercise and certainly not forensic purpose that justified the evident distress it caused him. To be clear I do not interpret that distress as indicative of innocence or culpability in relation to the allegations he has abused his sister for not only is there the well-recognised danger in demeanour for that purpose but as it happens the distress could be consistent with either. To the extent that the fact that he was so upset by seeing those images of the family told me anything it underscored for me that whether his removal from it has been for good reason or not this is a young person whose removal from his family is something which he feels keenly. It has marked the latter years of his childhood and will mark his life.
93. A gave evidence after his brother. He is now a full-time student on an undergraduate architecture degree and living in halls of residence. Like his brother he has not lived at home since the police removed him from school on 26<sup>th</sup> May 2021.
94. In the course of his oral evidence, he said he was in some ways similar to his brother but in some ways different. He was interested in sport and often out whereas B was what he called a techno kid and into his games. He wished that B were more interested in sport and interested in coming out to train with him, but he wasn't. Before he was removed from his home A had been serious about football since the age of about 12 training 3 days a week and playing for a team. He was he explained always selected in the line-up for the squad, so he always played. To approving nods from the front bench he told me he was a supporter of Liverpool FC. As well as football he had been serious about boxing before these proceedings and had several bouts lined up. He had, he said, not had the motivation to continue that since being removed from home as he had been left feeling *'sad and angry because I was taking it so seriously and when this happened I felt empty and I just did not want to do it any more'*. This remark was one of a very few occasions when this young man, who told me he was coping with the situation by getting on with things and not letting his emotions or any signs of weakness show, permitted a moment of illumination as to how his life has been affected by these proceedings, whatever may be the truth of the allegations.
95. He was very positive about both his parents. His mother he described as kind and caring his father hard working and someone who made him comfortable to be around. He said flatly that he couldn't really remember when he had last seen his mum really it was before he had moved to London. From his evidence a picture emerged of a household in which his mother was broadly 'in charge' of matters domestic within the home whilst his father dealt with things outside the home including shopping for

groceries. The overall impression I had was that this was in part driven by cultural considerations and in part by the fact that his father had the better command of English.

96. He described close sibling relationships with his siblings when they had all lived at home. This extended to C who both when giving his evidence in chief and when cross examined he said had an energy was jumping and dancing in the house and with whom he had thought he got on well. She mostly seemed happy sometimes he thought there might have been times when she came home from school and seemed as though something might have upset her but he had never asked her about it. He had not been especially close, not in the sense that they didn't get on, but that B was in more than he was so she would probably be more likely to talk to him. He had not known her to tell what Mr Momtaz described as 'a big lie' before this. He said to me that the allegation she had made about him made him feel sad, angry and disappointed. My observation was that he found it hard to put into words what he wanted to say but he explained it in this way: *she is my little sister and when I see her say it and do it, it makes me think about it very deep, start crying, question myself and think why is she doing this.* By angry he explained that he meant *not as in I want to shout at her but as in I am disappointed and shocked.* Were there to be the opportunity now he said *I would stand up and hug her and say how much I miss her not care about what she has said and done just try to bring back the way things were.*
97. Mr Vater in his submissions reminded me that A does not have to explain still less prove anything about what his sister says or why she says it, but it so happens that when asked by Mr Vater why he thinks his sister has made these allegations, A offered the view that although he wasn't really sure he thought that perhaps her friends have more freedom and she wanted to have that for herself to do what she wanted to do and not have to obey her parents . Elsewhere in his evidence he accepted and, in a sense, seemed to regard as normal, the fact that C would be expected to housework and chores with her mother which were not expected of her brothers. when he was asked about the relationship between C and her mother he said that from what he had seen he had thought they had a good relationship and denied seeing any occasion of physical violence like hair pulling. He had however heard his mother what he agreed was 'yelling' at C he was not sure what it was about as he was upstairs, and he could not remember what the words were, it was just shouting. His evidence was also illuminating as to the extent of the restrictions on her going out which were greater than I had understood from the written evidence. She was allowed to go to school but otherwise if she left the house, it would be in the company of one or both parents. Sometimes she would ask permission to go to the shop alone, but permission was never forthcoming. Rather as with the question of domestic chores, A's natural acceptance of what was permitted for C as distinct from her brothers, even allowing for age, was telling.
98. He was largely impassive in his evidence. He denied and was unshaken in cross examination any suggestion that he had touched his sister sexually. Much of the time his denials were given politely and flatly without any noticeable emotion. In two instances however there was a departure from this. The first came when he was asked about a time when suspicions were raised about a contact he had had with his other sisters (during the lifetime of the proceedings) and with more obvious feeling he responded that when he heard people were suspicious that had been the moment that



most made him angry because as far as he was concerned he was just with his little sister and the fact that someone could think that normal things were suspicious made him angry. The second occasion came when Mr Momtaz was asking him fairly and appropriately about the specific ways in which it was alleged by C that he had abused her sexually in another country when he was 9 or 10 and then when he was older and living in the UK. When he was asked if there had ever been an occasion when he had placed or tried to place his penis in his sister's mouth and whether he had said to her *'i'm going to come in your mouth'* his emphatic denial was accompanied by a visceral and obvious expression of disgust.

99. A, in contrast to his brother B was more up front about having looked at pornography. In common with B, he had been sent pornographic memes. It was something friends sent to one another, and he had shown some of these to his brother. He had not known until he heard B say so that B had searched on Pornhub. He denied that he had shown pornography to C or that he had been shown pornography by her. He did not in fact know much about her activities on digital media though he did know that she was not allowed snap chat and had on one occasion arrived home when there was what sounds like a row going on about her use of it. He knew that B had deleted, and he knew of at least one occasion when her phone had been confiscated by her mother as a punishment. He agreed with Mr Momtaz that there was little if any communication by text between he and his sister and said they would mostly speak face to face.
100. He agreed that the laptop used within the house was his and that it was password protected. The password was however known to everyone so anyone could use it. It needed to be put in on opening.
101. As with his parents later A was asked about his knowledge of his older brother. He had last seen him ten or eleven years ago. He had no real understanding of how he had come to be less involved with or part of the family. There had been a time when they spoke about once a week. He had assumed that work commitments and the time difference meant that calls tailed off. He had, whilst in London spoken to his brother on the phone a few times. General chat most recently a couple of months ago. He hadn't spoken of the situation with C and when asked by the local authority what he knew if he had regular phone contact with his parents, he said with a palpable air of sadness that he didn't live with them anymore, so he didn't know. To the extent that the eldest child has relevance to determining the allegations (as to which more elsewhere in this judgment) A's evidence did not advance matters.
102. A was asked about what he remembered about living in another country after the family fled Syria. This period is the first in which C alleges he sexually assaulted her. He said that he did not remember all that much of the time and thinks he was about 7 when he arrived there saying *I can't really remember that much about Syria I can't remember too much I remember what the houses look like and the streets but not specific memories.*
103. He remembered going to school for a short time but then it stopped because he said the system was 'corrupt' he would be out in the streets playing in the day and in at night. He thought B's description of life there, which he had heard, was mostly right but he thought he was wrong about the family having 2 rooms. He thought they had all lived in just one room with a kitchen and toilet off it. He agreed that there had been a time when his dad had left for some months and come to the UK and that things had

been hard for his mum to manage then for food and money. Neighbours had helped. He seemed nonplussed by the suggestion that his parents' relationship might have come to an end or been in difficulties at the time and he thought his mum had wanted to come to the UK because she thought it would be safer.

104. All family members were asked on behalf of the Local Authority if they had had any traumatic experiences in Syria (which I took to mean specific incidents above and beyond fleeing their homeland to live as refugees elsewhere) A said *I don't think I had any traumatic experiences or I would have remembered* going on to say that he didn't think B or C did either. This line of questioning was one which was unproductive with all witnesses.
105. The evidence I heard from the parents was inevitably affected by the fact that there turned out to be difficulties in the interpretation for them. On more than one occasion it became obvious that something had been quite literally lost in translation. I recognise that there may have been other occasions when something was lost but not obviously so. Mostly, though not in respect of the eldest child, I had the impression that they were trying to answer the questions that were put to them. Sometimes the answers were concrete and literal and could not always tell whether this was because of language, or cultural understanding or something else. I was able to observe them listening attentively to the translated evidence of others. They were each mostly contained and reserved as they listened and watched. I noted that there was obviously distress and anxiety when witnesses spoke of C expressing thoughts of suicide and the mother became markedly upset when listening to a witness relay that C had expressed a sexual attraction to a 19-year-old girl whilst in foster care.
106. Shortly after entering the witness box, the mother became extremely distressed whilst explaining how she found it impossible to believe the extent to which as she put it her family and her heart had been ripped apart. I entirely accept that that distress as submitted was genuine. My own observation is that whilst not probative of anything it was completely in keeping with what she was telling me.
107. The mother told me that she had had dreams for her daughter to study and be the best in the family. She explained that hearing the evidence in this case she had become upset at thinking how it could come to this but that she still loves her saying *she is always going to be my daughter she is a child maybe tomorrow when she grows up she will maybe change her mind.*
108. She understands that C has said she does not want to come back and she accepts this saying: *I will leave this to her but my house is always open to her there is always going to be a space for her it is what she wants.* She has not seen C since she left.
109. She agreed that she was not happy with C's use of snapchat when her brother told her about it and she confiscated the phone as a punishment. This she estimated was about 20 days before C made allegations of abuse about the brothers. She returned the phone to C but there was another incident when the younger children said she was using snapchat again. Confiscation was one form of discipline she used in the home but the other way she showed the children she was upset with them was to stop talking to them and her experience was that after 15 minutes or so they would apologise since they did not like her to remain upset.

110. There were, she said different social media rules for C and for brothers because C was very young and she was worried *people would tell her things that's not there* she explained *To be honest I was worried. I was protecting her she was too young after what happened there were many events and many accidents that took place, I thought she was just a little girl. By events and accidents, I felt from my knowledge about some papers I have seen that too many of those females have taken the wrong way because of social media. From this I took the mother to mean that she had heard sufficient of the dangers of social media to think it necessary to restrict C's access to it. There was also a difference about being allowed out after school again because she is only 12 and the mother told me she was not going to be allowing her to go by herself. The mother realised she was not happy she banned her from social media.*
111. She agreed that more was expected of C domestically so she could know as a girl what is expected from her and how to be learning to do things for herself. *In our Syrian culture she said that is normal for a girl I will direct her what she is doing an supposed to be doing. In the future she would get married and would need to know how to keep a house.* She did not think C had any complaints about this.
112. She readily accepted when asked about it that life when they left Syria had not been easy. She did not see the children as having had traumatic experiences as she and their father had been trying to protect them from being in the front line so as to avoid them living in deadly and risky situations. That answer reminded me starkly of the circumstances from which this family had come.
113. She agreed also that being left with 5 children and living in the outskirts of a city that had been difficult there was one big bedroom a bathroom and the kitchen directly off it. She was not surprised B did not remember the number of rooms properly as he was only 6.
114. She agreed that of course it was difficult for her when her husband came to England, she was in a place in a country not her country but she got to know the neighbourhood then her children very young meant her responsibility became bigger and things more demanding. She denied any problems with her relationship with her husband while he was away. I observe that although there was cross examination of all family members on that point, I did not see how it was likely to be of assistance even had it produced answers in the affirmative. She denied also that she had been reluctant to leave and come to UK, quite the reverse.
115. The mother denied any knowledge of there being any abuse of C by her brothers. She had not heard anything or seen anything to alert her to anything happening. It was a small and busy household. There had been no occasion when she had heard anything from a room with C and B or C and A in it.
116. C had not complained to her or seemed upset or hurt and she had seen no signs of anything amiss. B was more of a friend with C but A was out a lot though C was closer to her younger sister than her brothers.
117. C was she said something of a favourite in the family coming as the first girl after three boys she had no idea why it is that she has made these allegations, but she does not think that they are true. Whilst C might have told small lies in the past of the ordinary childhood sort she had never known her to be caught out in something big.

118. C was not allowed out on her own and if she went out of the house she would always wear headscarf which she had been of an age to start doing during the year that the allegations were made. If she was not at school her mother told me then she would be at home. The impression I had from the mother's evidence is that these were not regarded as abnormally strict rules by her and that it had not crossed her mind that C might think otherwise.
119. Within these proceedings the Mother had seen a copy of C's diary. She had seen the lyrics of a song copied by her daughter including my mind is a prison and was asked what she thought of it . She responded that she didn't know what was on her daughter's mind or what she meant by writing this but these are lyrics heard by thousands of people so she didn't know what it meant to her daughter. She was asked again about whether she accepted that C had been unhappy at home and she denied with some emotion that this had been the case. C's diary has been produced and is relied on by the Local Authority to give an insight into C's unhappiness. The parents were each asked about those parts in which she had written out song lyrics seeming to reflect unhappiness or even despair. In particular they were asked about a page on which she had written that she just wanted a life. Neither agreed they had felt she had been unhappy at home. I noted in passing that on the page adjacent to one of those which the parents were being asked about was one on which in listing her preferred parts of the (school) day, C had identified 'hometime' as the best. This for me reduced somewhat the force of what was being suggested to the parents about C's obvious unhappiness. I did however detect in both mother and father a sense that their expectations of C were just that and that the issue of whether she was or was not happy about them was not something that really came up for discussion.
120. The mother did agree that her own bedroom was in general terms off limits to the children as she kept important things like passports in there and didn't want them to mess around but C could go in if she asked permission. She would however be able to hear from downstairs on the wooden floor if she tried to go in without permission and did not when asked agree it would be possible for someone to be in there without her hearing it.
121. The mother was obviously distressed at the reports of her daughter saying she wanted to kill herself since suicide is forbidden and though of course she is worried to hear it she did not believe her daughter would do such a thing.
122. Her evidence about the children's knowledge of matters sexual was slightly more realistic than that which I heard from their father. This I detected is likely to be because she had spoken to C more about it. She was prepared to agree with Mr Momtaz that it was likely that her sons knew more about sex than she might have realised or expected even allowing for the fact that there had been sex education at school. That did not however change her thinking about whether there might be truth in the allegations C makes about them because as she put it in response to Mr Momtaz *No even though if they have an idea about this thing and they came to know what it is they wouldn't do this with their sister.*
123. It was suggested to her that the logic that must follow if her sons are not capable of doing these things is that C is capable of telling a massive lie about it. She had no answer and nor could she think what motivation C could have for telling such a lie. Other than perhaps she had been influenced by friends. She appeared throughout her

evidence to be mystified as to why C had made the allegations but also certain that she did not believe they were or could be true.

124. The mother denied physically abusing C by hitting or pulling her hair or in any other way. She offered no explanation because, she told me she could think of none, for why her daughter had said that she had done this.
125. The father told me C was a lovely character smart and clever when she lived at home, he called her princess (in Arabic). He did not think it was a possibility that something had happened to her and he would worry that she does not feel able to talk about it to him because at the end of the day he is her father. He had seen no sign that she was unhappy at home or wanted to leave.
126. He did not understand why C was saying things had happened and did not agree that she might just have misremembered how old she had been when she was living in another country since there were other things, she had said which were also not true. The example he gave was when she said she had taken an overdose of paracetamol and yet on the blood test there was none in her blood. And similarly when she made allegations about other people like G and F .
127. Before this hearing he did not know that there had been such worrying material and snapchat messages on her phone he knew that there had been discussions between his wife and B and C about snapchat and was aware her phone had been taken away from her as a punishment. He hadn't been aware of anything like the digital material at this hearing.
128. Although he had not himself spoken to the children about suicide, he seemed unsurprised that his wife had done so. Since suicide is forbidden in not just Islam but as he saw it all humanity, he thought it was very common that everyone would know that and that the children were spoken to about it. He thought C must have been younger than 13 when her mother spoke to her about suicide because it was well before she left home.
129. He agreed that hearing the unit manager's report C as speaking about killing herself on a daily basis was very worrying because suicide was something that should never happen. *Not in my house not in my family not with C not at all* was how he put it with some emphasis. The strong impression I had from both parents when they were asked about C's threats to take her own life was one of obvious parental distress at the thought of it underpinned by a strong faith-based abhorrence of the notion.
130. Although both he and his wife had some health problems it was not the case that this impaired them moving around the home or that they did not go upstairs, and the children were unsupervised. It was in any event he said a small house with seven people living in it, it was that overcrowding and not the stairs that meant they were trying to secure a council move. He disagreed when it was put to him by the local authority that it was not the case that one could hear easily from one room to the next what was going on.
131. Before May when the children were taken, he would go out when the family needed the shopping since he had reasonable English and would otherwise be at home.

132. Asked to think about the fact that C said sexual abuse occurred usually when he was out of the home he did not agree that that was likely the more so since she had made the allegation also that on Monday 24<sup>th</sup> May at 11am she had been abused in her bedroom and at that time everyone was in the house. He did not see how it could be something that had happened when all the family was there and when C was saying that that was specifically the time she had been abused by her brother.
133. When the father was asked about the children and their knowledge of sexual matters and their viewing or pornography, I did not have the impression from his evidence that he had anything like a clear picture of what his children knew about sex or that he had had much involvement beyond knowing that there was some sex education received at school. When he told me that his knowledge of his sons watching pornography came for the first time when he heard it in court, I found that not at all surprising and wholly believable.
134. He was appropriately challenged about whether in contacting C by text he had been trying to put her under pressure to drop her allegations about her brothers and come home when he said to her forgive your brothers. There was a disagreement within the court room about the translation of the word 'forgive' which was unfortunate. My overall impression is that the father was not being straightforward in his evidence about why he contacted C. Nothing he said in his evidence oral or written makes me think that he has ever thought the allegations she makes about her brothers are true. I do however think that he had hoped that it might be possible to persuade her not to maintain the making of those allegations and to find a way to return the family to the way things had been before they were made. I think it is more likely than not that this lay behind him making contact with C. I am reinforced in that by his unconvincing explanations when asked why he made the calls from outside the home.
135. As to the specific allegations C has made of sexual abuse, he told me that he did not believe that what she was describing is something she had experienced herself. He did not think it had ever happened. Asked by Mr Momtaz whether he thought it was all from her imagination he said he did not know but it was a small house and although she was describing it as times when it was quiet he just did not agree that there could have been a time when a brother could have been abusing as sister in a small house always full of people.
136. Specifically in relation to the allegations made by C that she was sexually abused by her brothers on 22<sup>nd</sup> May he could not say whether he did or did not go out on that day but on 24<sup>th</sup> May he did not go out before breakfast and if C had said he was out by 11 and she was still asleep that was not true. The allegations she makes are, from his perspective entirely false and made up but as her father he has no idea why she has said what she has said about her brothers or done what she has done.

The eldest brother

137. One of the strands of evidence I have heard at this hearing about this family's life is that which centres on the eldest son of the family. Within the written evidence provided to me for reading in advance of this hearing there was relatively scant information about him. He appeared as a shadowy figure in the lives of his siblings, barely remembered by the older children, unknown to the younger. At or around the time his parents fled Syria they took steps to get him out of the country and sent him

to America. He was aged about 17. It is not surprising that his family in the time preceding the declaration of the Caliphate took steps to distance their near adult son from Syria. Many families did similar. What was curious was that in the years that followed he seems almost to have disappeared from the family despite the fact that in the age of communication over various digital platforms even those who find themselves separated by distance and geopolitical events are able to retain links. He has been absent in any meaningful sense from his family since about 2011.

138. The first of the preliminary impressions I had formed on my advance reading was that the likely reality was that he had come to lead a more westernised life which did not fit easily with his much more religious family and so had become distanced from them. The second was that the evidence as to the eldest brother and his relationship with the family was unlikely to be of assistance to me determining the allegations which the Local Authority seeks to prove at this hearing since he was neither living within or in contact with his family at any time to which the allegations relate. In the course of the oral evidence, however, my impression was that it was a far less straightforward issue.
139. Neither parent had mentioned the eldest brother when they were first being assessed by Dr Freedman or when they were undergoing a parenting assessment. It was from C during these proceedings that those working with the family came to know of the eldest brother's existence and only after that did the social worker, understandably, speak to the parents about him in January 2022. What the mother is recorded as saying is that the eldest brother lives in New York, and that she had not seen him for fifteen years, in her written statement she said 14. It is recorded that she told the social worker that he was married with children. What the mother had also said in her statement to the court was that she had no way of contacting him now. The father in his written evidence had given a similar impression of physical and emotional distance saying in his statement that his eldest son had started a new life which was very different to theirs.
140. Coming as it did against that background the oral evidence of the parents was extraordinary.
141. I found the Father's account of the telephone conversation he had had with his eldest son out of the blue unsatisfactory. On one level his account of the phone call and the way in which he surprised his wife by appearing with the telephone and passing it to her giving her the opportunity to speak to her first-born child for the first time in years seemed authentic accompanied by seemingly congruent emotional affect. The Father described the way that on realising it was the eldest brother his wife started crying, they were both so happy. Yet it was to me wholly incredible when the father told me that his son told him that he had a child – a first grandchild for these parents – who had been given her grandmother's name and yet he did not mention this to her. Pressed about this by Mr Momtaz he said he had never at any stage told his wife of the existence of a granddaughter who bore her name. By way of explanation, he said he had forgotten to tell her of it. I did not believe him. Since I did not believe him, I thought it fair to tell him as much and to give him the chance to reflect on what he was telling me. He did not alter or amend what he said. He said to me that it was something that was very affecting at the beginning but that he didn't tell his wife and maintained that probably he forgot to tell her about the grandchild. When the mother gave evidence, she too was asked about the eldest brother and said that she did not

know if he had any children. Her evidence cast no light on how or why it was that the eldest brother had come to be so distanced from the family. Nor did she make any clearer what if anything had happened to resume such limited contact with him as had happened in the recent past. She, as well as the father, I did not feel was giving me a frank account about this.

142. So what am I to make of this? I formed the clear impression that I was not being told the truth, certainly not the whole truth by either parent about the eldest brother. It is not a trivial matter. This is their first-born son. They are a traditional family. The steps they took to keep him safe and place him beyond the reach of the events following the outbreak of civil war and what followed in Syria speak for themselves as to what he meant to them. Yet still I am given from them explanations for his absence which are nonsense. There were in relation to the father significant difficulties with the court appointed interpreter who, for reasons it is unnecessary to go into, was not at all a helpful part of the process and had to be replaced. I am however satisfied that whatever else I might have regarded as being lost in translation in his evidence, here the issue was not want of understanding but want of truth. It was perplexing to me that the seemingly genuine emotion with which each parent told me of the telephone conversation with him did not fit with the impression of distance given by their other evidence. Mr Momtaz for the Local Authority says that it is relevant because the eldest brother is a sibling who has become ostracised by the family for living a life that the parents disapprove of and that is something that mirrors their current approach to C. Ms Lakin for the Guardian submits that this aspect of the evidence (as to which she submits the parents were not telling the truth) impacts overall on their credibility and whether they are prepared to tell the truth as to what was truly occurring within the family home with regard to C. She goes on to acknowledge that this does not prove the allegations in and of itself.
143. I agree with the submissions made by a number of parties that the evidence of the parents in this respect is evidence to which in principle the Lucas direction has relevance. The parents have, I am sure, lied about the eldest brother. Within the agreed note of the relevant Law counsel had drawn my attention to the reminder by Keehan J in *Hertfordshire CC v Ms T and Mr J [2018] EWHC 2795* that when taking account of lies found to have been told account should be taken of them if there is no good reason or other established reason for the person to have lied. In issuing that reminder Keehan J had drawn into focus the purpose of the Lucas direction which in 2016 the Court of Appeal had had cause to emphasise in *Re H-C [2016] EWCA 136* bearing in mind that the lie is never, in the criminal jurisdiction where Lucas has its origins, taken as in and of itself providing direct proof of guilt and that what is under consideration is whether the lie is capable of amounting to corroboration.
144. A curious feature of this aspect of the evidence which struck me forcibly when I reviewed it in writing this judgment is that I remain unclear as to what exactly it is in respect of the eldest brother that the parents are lying about beyond his general absence from their lives.
145. Listening to each of the parents giving their evidence about their eldest son, I held in my mind the familiar caution as to the various reasons why people might lie, within which obviously is included lying by omission and withholding what is known. It has seemed to me that there are perhaps reasons of embarrassment, shame – and its



near relative pride – and fear all at play here. I was unsure which of those motivators or combination of them might be operating.

146. More fundamentally however, here I am not satisfied the lies I was being told about the eldest brother and his family circumstances are capable of amounting to corroboration of what the Local Authority invites me to say is going on i.e. that the parents are lying about what happened to C; are being untruthful about what happened to her at home.
147. The submission the Local Authority makes about this hinge on what it described as the eldest brother being ostracised, and from there moving to look at the similarity with the fact that his sister is out of the family and disbelieved and so in another way ostracised. I do not accept that I have evidence on which I can conclude as a starting point that the eldest brother has been ostracised. Such evidence as I have is just as consistent with the eldest brother choosing to remove himself from close contact with his family. I accept Ms Meyer's submission that I have the Local Authority speculation in relation to this. I have been careful not impermissibly to speculate myself, but I note of course that when I look at the application of the Lucas direction, the motivation for the lies the parents have told me about the eldest brother that too is as consistent with his distancing himself as it is with his parents ostracising him. I do not accept that the local Authority has established that the lies told by the parents help me. Ms Hendry on behalf of B puts it this way in her submissions "*...residual unease about issues pertaining to the eldest brother does not entitle the court to conclude that the credibility of lay parties is found wanting in respect of this issues to be determined by the court.*" I agree.
148. I have not found that the lies told about the eldest brother are of assistance in the way suggested in the first thrust of the Local Authority submission but of course as Ms Lakin submits the lies fall to be considered when I am assessing the credibility of the parents. As to that aspect, I bear in mind that in the very broadest sense in assessing credibility they establish for me that the parents are people who are prepared to withhold information from the court and to do so on oath.

#### Preservation Of Original Notes And Recordings

149. In this case I expressed surprise that where a note is taken by an employee of the local authority such as a social worker working a child protection case such as this and is later entered onto the computer system the original note is not retained. There is, I heard a policy that they are destroyed. It takes a moment's thought to see why that presents a problem with the forensic integrity of the process. No one can go back to the primary source material to see if what has been entered matches or replicates entirely what was noted. It need not even be that there is anything sinister which is suggested prompts a need to check. How many people have never in error missed out a 'not' or similar sense changing word when transcribing.
150. I find it extraordinary that such a policy exists and is thought by those directing it to be appropriate. Mr Momtaz KC made enquiries and provided a detailed and helpful explanation in his closing submissions including a link to the local authority's policy on case recording which is reviewed on an annual basis. There is a requirement for social workers to have up to five working days to enter their case notes onto an electronic recordings system. He submits that in fact there is no requirement for

handwritten notes taken at the time of a discussion to be retained and that that is ‘in line with national policy approved by the regulator’. I am sure he is right about that. It does not however make it any less unsatisfactory in forensic terms.

### Cleveland

151. In 2019 Macdonald J delivered a judgment in which he expressed in unambiguous terms a real disquiet that so many years on from the events which led to the Cleveland Inquiry it is as if those working in the field of child protection today did not have the benefit of all that which had been learned as a result. It would be purposeless for me to try to improve on the way in which he expressed himself there but I associate myself with all of his observations in the case of Re P (Sexual Abuse- Finding of Fact Hearing) [2019]EWFC 27 . The observations in that judgment are to be commended to the local authority - and to the police witnesses from whom I have heard in this case. At this hearing, three years on, in the same building – although as Mr Momtaz has been astute to remind me involving not the same but a neighbouring local authority - Counsel have again been asking witnesses, professional local authority witnesses working in child protection, if they have even heard of the events which led to the Cleveland Inquiry only to be met by blank faces and negative responses.

### The Findings Of Sexual Abuse Sought By The Local Authority

152. The Local Authority has not satisfied me to the requisite standard on any of the findings it seeks that C has been abused sexually by either of her brothers. Whilst the Local Authority urges me to the view that *there is a core thread of consistency and truth in the first accounts C has given* that does not accord with my own impression of the evidence I have heard and read. Furthermore, it is a submission undermined – and fatally I find – by the fact that what I am asked to consider as first accounts are a) not that at all and b) affected by the failures to observe good practice and guidance to which I have made extensive reference in this judgment. I accept that Mr Momtaz is right when he says that failure to observe good practise does not mean that findings cannot be made, nor does it render evidence inadmissible. There are however so many difficulties here with the evidence on which the local authority relies for the findings of sexual abuse.
153. I disagree in any event that the allegations taken from C are broadly consistent as the Local Authority submits, I prefer and accept the submissions made on behalf of B that they are inconsistent in important respects. By way of illustration, only the variation over a short time from the allegation of penetration by B using his fingers (never more than two) to putting his hand deep inside her. Consistency is also however, in the sort of situation I am faced with here, not a straightforward proposition. Where it emerges from early stages which are tainted by lack of clarity and real potential for contamination its value is lessened.
154. That leads on to another aspect of the evidence which leans away from the notion of the core thread of truth. When I read the evidence from C and I watch her ABE interview, whilst her accounts are vivid and descriptive, I regard it as striking that there is so little in the way of contextual and experiential detail. Remaining with the inconsistent accounts of penetration whether by fingers or hand: neither account is one which in the way that she describes it gives any sort of experiential detail to accompany it. There is nothing of the experience of feeling touch, of the sensation at

the time; of the smell; of pain; of texture or whatever else characterises it as a lived experience.

155. In other cases, a powerful component of the core thread of truth submission is what might be called ‘the how else could she possibly know’ argument. That might have been the case here absent the digital and online material. Absent that material, weighing heavily in the balance would have been the question as to how, unless it had happened to her, this sheltered girl, who was not even allowed out to the shops by herself and whose parents had faith-based and to secular eyes old-fashioned rules for her, would even begin to know how to make an allegation of fisting or of penetration/attempted penetration orally with a penis or the language for *I'm gonna cum in your mouth*. Reviewing the online digital hinterland in which she lived however the weight of that question in the balance diminishes to very little. Adding then the fact that what is described is not accompanied by experiential detail of pain, or taste, or smell, or sound or discomfort or mess, or bleeding or for that matter pleasure but most significantly of anything that you can't get from seeing it or talking about it online rather than experiencing it diminishes yet further.
156. Often an approach commended to allegations of sexual abuse is to evaluate it by a two part question first on the evidence *has this child on the balance of probabilities been sexually abused* and second, if so, *does the evidence permit me to identify on the balance of probabilities the perpetrator or perpetrators of that abuse*. I am not satisfied that having regard to the totality of the evidence in relation to the allegations C makes that the first of those questions can be answered in the affirmative. The integrity of the accounts and of the primary source material is far short of a finding that it is more likely than not.
157. I further find that the digital material exposes an aspect of C's functioning which indicates that there is a strong component of fantasy in her thinking. It is on occasion hard for the outside observer to distinguish between the two. Linked to this I accept the evidence of those who have been charged with the care of C – notably the foster carer and the unit manager - that she is a girl who makes easily and without thinking through or perhaps even caring about the consequences, serious and extreme allegations.
158. I had during the course of the evidence wondered whether another pointer away from the allegations being true must be that the mother, had it happened, could surely not have failed to notice the signs that her daughter was experiencing abuse. That she would have noticed something about her daughter; about her laundry, about her clothes or her bedding marked with blood or otherwise soiled. I suspect it is still to be expected that she might have if it happened, but I do not ultimately rely on the fact that she did not as a factor which has helped me to form a view of the allegations. I have not overlooked that if the submission made by Ms Lakin i.e., that as to credibility here is a mother prepared to lie on oath is taken to its logical conclusion it is just possible that she might not say even if she saw something. So it is that in assessing the mother I must factor in that this might be a mother who knew that her sons were sexually abusing her daughter and is covering up for them. I did not assess her as lying about that in her evidence, the more so when I reflect on that evidence, I heard from her about the eldest brother when I did think she was lying. I therefore have come to the view that this point does not help either way.

159. I recognise that it is important in a case such as this not to fall into the trap of compartmentalising, that is to say looking at separate parts of the evidence without thinking about how they relate to each other. The value of taking a step back and reflecting on what the whole picture reveals is well- recognised. It can be an appropriate safety net against chipping away at this matter of detail or that matter of detail and in so doing losing sight of what the whole reveals. I have found that exercise valuable here. I wish to be explicitly clear that I have reached my conclusions both by considering the detail of the different parts of the evidence and by stepping back to think about the sum of those parts.
160. I have heard evidence and received submissions at this hearing about what might motivate C to make allegations which are not true. In a sense it is territory into which it is unnecessary to tread far since my task is to determine whether the local authority has satisfied me that the allegations are made out on the balance of probabilities. A component of that determination is however to consider what might be that motivation as part of my overall assessment of the evidence. To that extent therefore it is territory into which I step.
161. It is more likely than not that C felt restricted by the rules imposed by her parents on her and that she wanted more freedom. I accept the evidence from the foster carer that C told her she had done her research on foster care and as she expressed it knew what it was all about. I accept also the foster carer's own impression that she liked going to parks after school and hanging out with friends which was something she said her parents would not allow. Linked to this there is at least some evidence that C was interested in and saw some opportunities for material gain – a striking example being the very expensive gift of an Anime book which she wanted and the foster carer gave her as a farewell present and there are indications in the papers that she yearned for a wealthier life but I am not convinced that this aspect was operating on her mind before she left the family home in the same way as the desire for freedom. Material gain it seems to me was an opportunity once she was in care rather than a likely motivation to make allegations.
162. The evidence of her desire for more freedom is wider and more nuanced as it emerged than simply not being allowed out alone. Although I have been careful not to speculate impermissibly I note that there are indications in the digital media and from her expression of a same sex attraction to the foster carers 19 year old daughter of at least the possibility that C is experiencing a development in her own sexuality. The strength of her mothers distress which I observed in court when this aspect featured in the evidence gave me at least an insight into how C might have anticipated that to be received within her home. More prosaically there is ample evidence of the way in which it is more likely than not that she felt unfairly treated in comparison with her brothers. It is of note that even and although the receipt of the complaints from the morning of 26<sup>th</sup> is something which gives cause for concern, one of the very first things that H is reported as saying is that the parents treat C differently to her brothers. Which may give a sense of its prominence in what C complained of.
163. Underpinning all of this, whilst not properly to be described as a motivation for the allegations is the fact that C is on any view a young person with complex mental health and emotional functioning profile. I bear in mind the picture that emerged of her from the unit manager. Ultimately it is likely that the expertise to know, if it can

be known, why C has made allegations which I have not found proven, lies outside the courtroom.

164. The findings in relation to the treatment of C within the home are less straightforward. I am satisfied on the balance of probabilities that she was treated differently from her brothers within the home and that she perceived herself to be differently treated in a way which felt to her unfair. One must tread carefully through the cultural landscape of others and I have reflected with some care on the fact that this aspect of the case is one in which the cultural mores of the family provide the context within which C, as the eldest girl, is treated in a way which may be unremarkable in an observant Muslim family with its roots elsewhere whereas it would be a cause for real criticism were she a girl in a white British secular family. I have found in this respect that the evidence of her brothers has weighed more heavily than other evidence. Each of them appeared to recognise that she was indeed given less freedom and expected to undertake more domestically than they were. Each of them seemed interestingly to think that there was nothing remarkable about that. I have reached the conclusion that C was treated differently from her brothers, and that as part of that she was allowed much less freedom – by way of example only A who albeit older was out of the house playing sport and could come and go pretty much as he pleased whereas she was not allowed even to go to the shop unaccompanied. This I accept she felt keenly. The material which has been produced at this hearing of C’s digital life online reinforces my view that the restrictions and the traditional values within which she was expected to live at home are likely to have been experienced by her as oppressive. To the extent that I make that finding however, it is therefore within the context of the culture within which the family lived. Findings are not sought for no purpose. They are sought in satisfaction of the threshold. I am not on the evidence before me persuaded that this finding which I make is one which satisfied me that by reason of it C has suffered or was at risk of suffering significant harm attributable in the way the statute requires to the care afforded to her by her parents. Nor has the local authority satisfied me that this finding establishes the risk in relation to her other siblings.
165. The evidence of physical abuse at the hands of her mother at this hearing has been scant. I do not accept that the local authority has discharged the burden of proof and that it is more likely than not that the allegations of hair pulling and hitting are true. I do not repeat the observations I have already made in respect of the unsatisfactory approach to the interviews by the police but note that amongst the more egregious examples of leading and contaminating questioning already considered are those which relate to these allegations. The corroboration such as it was to be found in A’s evidence as to ‘yelling’ was of a pretty low level one off occasion.
166. I take a different view about the emotional abuse which flows from C’s exposure to toxic, corrosive, and harmful material in the digital world. In her otherwise persuasive submissions Ms Meyer KC asks rhetorically this: *is a parent's inability to follow or keep up with internet or social media use of their children a parental failing warranting statutory intervention*. Later comes this *the court will need to exercise caution that it is not exacting an unachievable standard of perfection that many if not most parents may fall below or requiring a level of control and scrutiny that may itself verge on inappropriate parenting*. I do not accept what is implicit in those questions that these parents could not and should not have been expended to in their parenting afford to C care which would have prevented her, as I find that she has,

suffering emotional harm from that which she experienced online. She was not a late teenager otherwise living an independent life out and about. She was 12 or 13. Furthermore these were parents who, as I have observed, were not at all reticent about imposing on her restrictions which they felt were appropriate to her age her gender and the cultural expectations of her. The Mother was as I accept from the evidence at least to a degree anxious to restrict her daughter's use of the phone because as became clear from her oral evidence she thought it had the potential to be dangerous to her. She is right about that.

167. Ms Meyer's superficially more attractive submission is whether the social work and police lack of awareness or naivete in respect of for example Anime and its nature and content should give me pause for thought in considering whether C's parents should have protected her. That the police and social work evidence on this was woeful does not as I see it mean that I should not make the finding in respect of the parents. I find that in this respect C suffered emotional harm in the care of her parents. It is not a makeweight finding. For what follows from it is this. C has suffered in this respect emotional harm in the care of her parents. Her younger sisters – as to whom there is no evidence of such exposure to digital material – are at risk of harm if the parents do not take a different approach.
168. It would be easy, but I conclude intellectually lazy, to make the same or a similar finding in relation to B and his access to pornographic material. In respect of him however first and most importantly the evidence I have heard of what he saw and had access to online is of a wholly different character than that which I have seen in relation to C. Furthermore he is and was older and far less under the control and supervision of his parents at the time. Additionally the submission which is made by Ms Meyer and supported by Ms Hendry that it is not clear what evidence is relied on by the local authority to assert that he had developed inappropriate sexual knowledge is one I accept.
169. I agree that so far as C is concerned she is beyond the control of her parents. That sufficiently enables the making of orders under s 31. I will invite counsel to draw up an order which reflects the findings I have reached in this judgment and such consequential directions as may be appropriate.
170. Finally I should like to thank all counsel once again for their assistance in this case. Thanks are due also for their patience, and that of the parties they represent, in waiting longer than I had intended for a judgment because of a combination of the overrunning of the evidence and a lack of earlier available time.