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IN THE EAST LONDON FAMILY COURT

6th and 7th Floor
11 Westferry Circus
London

Before HER HONOUR JUDGE SUH

IN THE MATTER OF

LONDON BOROUGH OF BARKING AND DAGENHAM (Applicant)

-v-

(1) THE FATHER
(2) LM (through his Guardian)
(3) MM (through her Guardian) (Respondents)

MISS WATSON and MISS CRAMPTON appeared on behalf of the Applicant
MR S RAHMAN, instructed by Wilsons Solicitors LLP, appeared on behalf of the First Respondent
MR TWOMEY KC and MS V ROBERTS, instructed by Matwala Vyas LLP, appeared on behalf of the Second Respondent (through his Guardian, CG 1)
MS S STAMFORD, instructed by National Legal Service, appeared on behalf of the Third respondent (through her Guardian, CG 2)

JUDGMENT
7 JUNE 2023

WARNING: 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.

JUDGE SUH:

1. Today I am concerned with LM, born on [redacted] , and MM, born on [redacted]. The issue I have to decide at this fact finding is whether LM touched MM sexually and if their father knew about this. I have to consider whether he failed to protect his children. This is not a single issue case and other aspects of the threshold have not been addressed during the fact finding hearing.

2. This fact finding hearing took place on the 16, 17, 18, 19, 22, 23, 24, 25, and 26 May and on the 6, and today, 7 June 2023. Miss Watson and Miss Crampton represent the local authority. The father is represented by Mr Rahman. LM has a Guardian, CG1 , and he is represented by Mr Twomey KC, and Miss Roberts. And MM has a Guardian, CG2, and is represented by Miss Stamford. The children's mother passed away in November 2020.

3. At the beginning of this judgment I want to thank all counsel for the calm, clear, and courteous way they have conducted these proceedings. I want to thank again our interpreter and am really glad to see the same interpreter back, and to pass my thanks on to the intermediary who helped LM give his evidence and indeed the other intermediaries who have been involved in the court process.

Procedure

4. I want to make sure that I have been fair to everyone and I have been mindful at all times of the Family Procedure Rule 3A and Practice Direction 3AA. We have had the benefit of the same interpreter throughout these proceedings and we have had an intermediary to help LM give his evidence. That evidence was given after a visit to the court, it was given with the assistance of a video link, breaks were taken in accordance with the intermediary's instructions and report, and questions were prepared in advance by all counsel and cleared by the intermediary. All questions were put by one advocate, Mr Twomey KC, and there were no follow-up questions for LM. No one alerted me to any unfairness and indeed the intermediary did not warn me at any part of the process that I needed to modify the way that the hearing was conducted.

Background

5. By way of background, another London Borough issued care proceedings in 2014. These concluded on 30 April 2015 with a 12 month supervision order for LM. The supervision order was extended for a year in April 2016. In May 2016, the case transferred from another local authority to the London Borough of Barking and Dagenham. In 2017, there were pre-proceedings for neglect and in 2018 the case was closed. In August 2019, the children were on Children in Need plans under the category of neglect and that Children in Need plan came to an end in February 2020. The children's mother passed away in November 2020.

6. On 7 June 2021, there was a referral from MM's school which was about concerns that the father was not meeting her every day care needs. Again, the children were placed on a Children in Need plan under the category of neglect in August 2021. On 11 March 2022, MM's school contacted the social work team to inform them that MM has made allegations of sexual abuse against LM. On 25 April 2022, LM was made subject to a child protection plan under the category of neglect. On 5 May 2022, there was an intermediary assessment for MM and her ABE took place.

7. On 10 May 2022, Dr R carried out a medical and the relevant parts of the medical are that at F55 of the bundle, no information about the allegation was obtained from MM that day, and there were genital findings consistent with poor hygiene. The medical assessor says it is not possible to conclude from a normal examination that no sexual abuse has taken place. It is generally acknowledged that many incidents of sexual abuse in children take place without leaving any physical evidence detectable at examination and injuries in the genital region heal very quickly.

8. On 23 May 2022, LM gave an ABE interview, a no comment interview, and a pre-prepared statement. On 7 June 2022, proceedings were issued for MM and Recorder Jones heard them on 24 June 2022, making an interim care order for MM. An application was made in relation to LM to the court on 2 September 2022. And on 5 September 2022, DJ Wright gave directions.

9. The matter first came before me on 4 November 2022 when I adjourned an application for a global psychological assessment generally with liberty to restore and thereafter applications for intermediaries were made and dealt with by consent for each of the children.

10. On 21 April 2023, I had a pre-trial review hearing. There was an application on behalf of LM's team for MM to give evidence and an application by the local authority for LM to give evidence. I needed to decide whether there still should be a fact finding hearing and I gave judgment deciding that there should be and that LM should give evidence but MM should not.

Parties' final positions and summary of their submissions

11. I will record briefly in accordance with the case of *Re H [2021]* EWCA Civ 319, the parties' final positions and the main points of their submissions to me.

12. Miss Watson said that the local authority sought the findings in their schedule and pointed to features of the evidence that made the allegations credible. She said that the court had to consider whether the desire of the school safeguarding lead to get a referral to social services had compromised MM's evidence, and she submitted that if MM's allegations were true then the father had failed to protect both MM and LM.

13. Mr Rahman for the father highlights that MM's evidence was at its highest that her father 'knew bits', and he said that the supporting evidential steps between 'MM says' and 'the father knew' are missing. He warned me to draw a clear distinction between the general matters of neglect raised by the local authority and the very specific allegations that were subject to this fact find. He said that the father was neutral as to the allegations but that looking at the evidence, LM's evidence was to be preferred. He said that the father accepts a lot of things were wrong in the care of the children historically but this does not equate to him failing to protect his children about sexual matters.

14. Mr Twomey KC reminds me that MM's evidence has not been challenged by cross-examination given that I ruled she would not be called. He reminds me he does not take instructions from a competent client and he took me through the checklist of cardinal principles in *Re P (Sexual Abuse – Finding of Fact hearing) [2019]* EWFC 27 and submitted that each of these had been breached. He submitted the court could not be satisfied that the local authority had made out their allegations.

15. Miss Stamford was neutral and she helpfully highlighted both strengths and weaknesses of the evidence that I had heard, and she stressed that the message MM had given that LM touched her had been clear and consistent. She asked me to consider if the court has sufficient clarity about what MM said or whether the primary investigation had been confused or tainted. She accepted legitimate criticism could be made of the recordings of the allegation and if the court concluded that this had undermined what MM said then MM herself had been let down.

The law

16. I received an agreed note of the law and am very grateful for all the work that went into it. The father, should he have wished to do so - has had time to go through this with the interpreter. I will make reference to key legal principles as I analyse this case to make sure I direct myself with precision. However, I make it clear that the legal framework in its entirety, as agreed by counsel, is the one that I apply.

17. Of course, at the beginning I remind myself that the burden of proving a fact rests on the person who asserts it. The standard of proof is the balance of probabilities. Is it more likely than not that an event occurred? Neither the seriousness of the allegation nor the inherent probabilities alters this.

18. Although the note of the law contains a reference to the case of *Lucas* and the more recent case on its application in the Family Court *A, B, and C*(Children) [2021] EWCA Civ 451, and Miss Watson highlighted points of evidence that may suggest witnesses were not being entirely frank at times, this is not a case in which any party strongly submitted that a *Lucas* direction was necessary. The submissions were more to the point that this is not a question of honesty but of the reliability of the evidence.

Evidence

19. I remind myself to consider the broad canvas when considering findings of fact and I must only proceed on findings of fact and inferences properly drawn, not on suspicions or speculation. The case of *Re T [2004] EWCA Civ 558* reminds me that evidence cannot be evaluated and assessed in separate compartments. A Judge in these difficult cases must have regard to the relevance of each piece of evidence to the other so as to exercise an overview of the totality of the evidence.

20. The written evidence in very broad terms records MM saying that her brother played two games with her. One was about touching each other's private parts, and the other in relation to him pretending to be a baby and to breastfeed.

21. The oral evidence I heard was from MM's class teacher, the designated safeguarding lead at MM's school, DC Wildish, the social worker, the father, and LM.

22. There is also a volume of material in the bundle which has been prepared by witnesses who have not come to court and spoken to it. When I consider this hearsay evidence I consider its potential weaknesses, it has not been tested by cross-examination, and the weight for it to be assigned is for me to determine. Of course, Dr D's report, previous social work records, all fall into this category, as does MM's evidence of course.

23. I have watched and listened to the ABE interviews of both MM and LM several times during the course of the case and I have read and re-read the bundle. I may not mention every piece of evidence in no doubt what is already an overlong judgment, but I do bear it all in mind.

24. I will now give a broad overview of the oral evidence and then refer to it in greater detail when I look at the findings sought. I will highlight the evidence I find most relevant and compelling. The class teacher and the safeguarding lead struck me as very dedicated school staff. They have supported this family both before the mother died and afterwards and safeguarding lead met regularly with the mother to help her with practical matters like housing.

25. After the mother died the school staff provided practical support that went way beyond what their job titles could have reasonably expected of them. They helped MM manage her periods, her hygiene, they measured her for a bra, they gave instructions on the application of thrush cream, and they brushed her hair and provided batteries for her hearing aid. This staff team is clearly passionate about child welfare, committed and kind, and the emotional impact of the allegations on the team has been very apparent to me.

26. The class teacher was very clear that her role was a class teacher and that the safeguarding lead was the designated safeguarding lead. She was the first person to whom MM spoke on 11 March 2022 and she struck me as a caring teacher. She did however come across as consistently unclear on points of detail put to her in court and the specifics of what was said when she responded to questions. She often said she could not remember or could not recall. Both she and the safeguarding lead used the word 'potentially' in responding to questions which is a very vague and confusing word that did not help me understand at all what did or did not happen. The class teacher's evidence as a whole I would characterise as vague. When she referred to MM gesturing, it was not clear what she meant by this, and the overall impression I was left with at the end of her evidence was a deep sense of a lack of clarity as to what exactly MM said within her hearing. She said her training is that we always believe the child.

27. The safeguarding lead was a talkative and animated witness. She frequently did not listen to the end of the question before replying. She clearly prides herself on looking after the children in her school. She knew every member of the family and had worked with them for years and she intuited rightly that the mother had learning needs and was in many respects uniquely placed to help the court. The strong impression I gained from her evidence was of a school team working under pressure with a really challenging demographic of pupils. This was not an isolated incident of reported sexual abuse according to the safeguarding lead. She was working under particular pressure on Friday 11 March 2022. She repeatedly used the phrase 'time critical' and gave evidence that what was written after speaking to MM was written in the course of about 25 minutes. She finished speaking to MM at lunchtime and was very conscious of the weekend approaching. She had experience of social workers not responding to referrals so she needed enough information for social services to take this seriously.

28. The clear view I formed of her was of a dedicated member of school staff working under difficult circumstances and significant time pressure with an agenda to get things done and to provide to the social workers what she thought they needed. However, of all of the witnesses, she was the least able to accept that she could have done anything differently or to see the potential weaknesses in her approach. She is a forceful and charismatic character

who had a very particular view of things. The evidence that the social worker gave that the school were in quite a panic and they were trying to make sure that they said everything chimed exactly with the impression that the safeguarding lead gave me.

29. DC Wildish was a straightforward, calm, clear witness. She did not seek to elaborate or justify her actions. She responded simply and concisely to the matters that were put with her. She is ABE trained but had not worked with an intermediary before the MM interview and was not aware of all the components of the ABE guidance that were put to her in the witness box.

30. When I look at the evidence of the father and LM, I remind myself that the burden of proof is not reversible as Mostyn J said in the case of *Lancashire v R* [2013] EWHC 3064 Fam, there is no pseudo-burden on a parent, or indeed LM, to come up with an alternative explanation for the allegations that MM makes. I remind myself that a blameless person might cast around for all manner of explanations simply as a means of seeking to understand the situation that they find themselves in but of which they have no culpable knowledge.

31. The evidence of the family members is of utmost importance and it is crucial that I form a clear assessment of their credibility and reliability - see *Re BR (Proof of Facts)* [2015] EWFC 41.

32. I remind myself of what Macur LJ said in *Re M (A Child)[2013]* EWCA Civ 1147 about demeanour, that it is "advisable that any Judge appraising witnesses in the emotionally charged atmosphere of a contested family dispute should warn themselves to guard against an assessment solely on the basis of the behaviour in the witness box and to expressly indicate that they have done so". I make it clear that I direct myself accordingly.

33. The father clearly loves both his children, both MM and LM, and I know that the loss of his wife must have been a desperately difficult thing for all the family. He became a sole carer having, on his own account, relied on his wife to deal with the home and child-related matters. The father often repeated the phrase that he would leave it to the professionals to decide if what MM said was true. He frequently left long pauses before answering questions and I note that Dr D observed that he "had a little bit of difficulty processing" what he was asked at times. His answers frequently lacked detail in court but he is in a very difficult position. He loves both of the children. I did not get a clear sense of the children's personality or the nature of their relationship with their father from him when he spoke and he did not seem to be able to put himself in the children's shoes at times when he answered questions. In fact, I got a far better sense of MM's personality from listening to her brother speak about her.

34. The father gave evidence through the interpreter and of course no witness should be disadvantaged because their first language is not the one that the court is using. It clear at times that the father did not quite understand the question put, and I understand that not every concept has an easy translation. We are also talking about very sensitive matters that are particularly hard for the father address culturally.

35. I have looked back at the papers and I see he did not have an interpreter when he met with Dr D in previous proceedings and he told Dr D he did not need one, but the father's first language is not English, and although he was taught English at school he came to the UK in 2005. Dr D noted he had a good enough conversation with the father but that he had to repeat, simplify, and paraphrase questions. He found that the father's verbal communication

was in the extremely low range which could be because English is not his first language. I bear in mind that when the father has been talking to social workers they would have been mentioning at times words relating to safeguarding that he is unlikely to come across in every day English. Although he uses English at work when he speaks to customers, he spoke a language other than English to his wife and at work. His wife was born in the UK and fluent in English so the papers might suggest that historically the father has left some interactions with professionals to her which might be partly due to language difficulties.

36. The social worker said: "When I got to know him I could communicate in English but when I arranged a child protection conference, I make sure there is an interpreter there. And when I told him I was going to issue I had an interpreter. The core groups I attended at his home and he has never communicated he has not understood what I have said.". But she later also gave evidence that she is "not sure what he takes on board". There could be a number of reasons for this and one may be a lack of understanding. So, I exercise real caution when I look at the exact detail of his responses as recorded in social work notes and his understanding in the light of there being a language difficulty and Dr D's assessment of the extremely low range of verbal comprehension he observed.

37. Although the father did not accept that "passive" was a word that should be used in relation to him, the fact he had not watched the ABE interviews of his children or read the transcripts might suggest otherwise. I am not going to unpack the arrangements he may have had with his solicitor but on any analysis he knew that both children had been interviewed by the police and might have been expected to ensure that he knew what they had both said.

38. The father was a quietly spoken, polite, and reticent witness. He did not strike me as a strident or pro-active character and that is consistent with the impression he has made on other professionals over time. Dr D found him "quiet, timid, and compliant, passive, and under assertive" and the independent social worker thought his general approach to difficulties is that they would resolve themselves in due course. This chimes with the social work assessment at F413. I remind myself of course that the father has not had a chance to challenge any of those witnesses and people who have written those things about him, but I mention it because it chimes with the impression that he made on me.

39. The social worker gave very fair and balanced evidence. She had not received ABE training but she did not seem to me to be partial or dogmatic in her approach to this case but rather open-minded and able to see things from different perspectives. She was open about when she could have done things differently and volunteered that she knew she had used a leading question in speaking to MM. It takes professional courage to reflect on one's practice like that. She struck me as someone who had got to know the family really well having never worked with them prior to 11 March 2022, and she did not in any way take one child's side over the other and came across as very compassionate towards them both and she clearly has built a very good relationship with both children.

40. LM gave evidence on affirmation with the assistance of his intermediary and I remind myself that he is 15 years old and giving evidence in an adult court. Maybe unsurprisingly, he came across as guarded at times. It is difficult for me to ascertain whether that is because he genuinely did not understand some of the ways that the questions were phrased, or because of the sensitive nature of the allegations which may have made him defensive. His guarded presentation could have been for a number of reasons.

41. Overall, however, his evidence was not evasive. He did not shy away or ask for a break during the critical putting of the allegations to him in the most direct terms. He was able to say when he did not understand a question and answered all the questions he was asked after any re-phrasing. He was able to correct matters he thought were inaccurate, so, when asked if he met the lady policewoman, he said that there was a man there too. And when asked if he spoke to the social worker and the police officer, he made it clear he spoke to the social worker. He did not appear distressed and answered sensitive questions with clarity. When he was asked specifically about MM's allegations he denied them all consistently, firmly, and clearly. And he gave unequivocal evidence that MM was wrong in what she had said: "Because that's my sister, I only see her as my sister, I see her as nothing else, and in my religion and my culture I respect her as my younger sister.".

42. LM did not seek to blame MM or call her a liar, but said: "Maybe like in the school, the people in school manipulate her easily and she watches stuff on YouTube and they talk about this stuff, their brother hitting them, or someone telling them to do stuff, and manipulated and she got scared or something, I don't know.". Although he described MM not listening and not cooperating with her dad when asked about the impact of her mother's death, I did not get the sense he was trying to badmouth her. He was also very critical of himself, saying openly that when his mother died: "Emotionally and mentally I was upset. I was going through a lot at the time. It affected me at school and I was not cooperating with the teacher. I didn't know what to do and was feeling down most of the time.". This struck me as very thoughtful and emotionally attuned for a boy of his age at this point of his evidence.

43. It is noteworthy that his written evidence too at times, for example, F314, records him as being disarmingly open about what he could do differently and he does not make excuses for his own bad behaviour. So, at F314: "I am lazy. I don't want to go to school. I don't listen to dad and he (dad) is getting frustrated.".

44. He also spoke of MM with real affection at times: "She is talkative, she is just a fun person to be around. She keeps you, I don't know what the word - she keeps you going through the day. She doesn't make you get bored.".

45. I have referred already to MM's evidence and I refused an application for MM to give evidence and gave my reasons at the time. I remind myself that the Court of Appeal has made it clear that where the evidence of a child stands only as hearsay, the court when weighing up that evidence must consider the fact that it has not been subject to cross-examination. That is the case if *Re W* [2010] 1FLR 1485. And I make it clear that I have done so.

46. I also remind myself that a court considering the hearsay evidence of a child must consider not only what the child has said but the circumstances in which it was said. That is *Re v B County Council ex parte P*, [1991] I WLR 221. And it has long been recognised that care must be taken not to focus attention on statements made by the child at the expense of other evidence and I remind myself in that respect of the 1997 handbook of Best Practice Children Act cases. So, I remind myself that as with all hearsay evidence I must treat hearsay evidence anxiously and consider carefully the extent to which it can be relied upon.

47. In the assessment of both children's evidence, I remind myself that they are both vulnerable. They have both lost their mother and at times their behaviour has been challenging at school. The general observations about the fallibility of memory and the

particular matters impacting on the evidence of children set out at paragraph 577 of the case of *Re P* apply, maybe with particular force, to these children.

Analysis- family background

48. I now turn to the analysis of the evidence and I am going to look first at the family background before I come to the specific allegations because I must look at, among other things, the family circumstances and the quality of parenting and I remind myself of the case of *Leeds City Council v YX and ZX* [2008] EWHC 802 Fam.

49. The long history of social work involvement and the previous supervision order is an indication that previous courts must have found that the threshold for public law proceedings has in the past been made out. The threshold in this case needs further consideration but neglect is a pervasive concern in the papers and it is centred around the children's weight and the professional opinion that this is attributable to diet and learnt behaviour rather than underlying medical conditions. The evidence suggests that the father provided financially for the family and the mother was at home and carried out the practical day to day care of the children.

50. Dr D's report sets out the mother's cognitive profile that puts her in the learning disability range of functioning and the safeguarding lead said that this was very much apparent in her interactions with the mother. The papers suggest a period of difficulty in the parents' relationship and a period of separation in 2012 and there were tensions, I think, when the mother passed away between the father and her family.

51. LM's evidence was that his parents would speak to him about the importance of education when behavioural issues were raised with the school. The school had considerable concern for him at the end of year 6 following an incident where he set fire to the toilets and posted on social media what appeared to be a gang sign. LM himself in the papers showed some insight into his own behaviour.

52. The evidence as a whole does not suggest the household was one with strict boundaries or intense parental oversight, and there are notes historically of LM having had a large amount of power within the household and getting his way which the safeguarding lead thought was an accurate assessment. The overall picture suggests that both parents had their own roles and did not parent together greatly as a team. Both LM and the father's evidence did not suggest that the parents were actively involved in their children's use of tech, checking the browsing history or imposing firm guidelines for usage, and LM said that MM watched the internet and "saw really not good nice stuff". I don't know if there were parental controls on any of the devices.

53. Both children have clearly been emotionally impacted by the death of their mother and MM's personal hygiene has caused concern for the school who I have already described providing a high level of support for her. Looking at MM's GP notes, her personal hygiene appears to have been a longstanding matter of concern. There are entries in the GP notes starting in 2016 and going through to 2020 about itching in her genital area. So, I will give you the page references: October 2016 is at F120, December 2018 at F111, June 2019 at F108, February 2019 at F110, and there is also a reference for April 2020 at F108. The medical assessor who saw MM on 30 March 2022 associated thrush with poor hygiene rather than sexual abuse, and that was the conclusion that the social worker agreed to in the witness box.

54. The evidence as a whole does not suggest that either LM or MM have showed any sexualised behaviours. There is a reference that was explored by Miss Stamford at F335 of the bundle to MM rocking and making inappropriate noises at lunch in September 2022, but it is not clear what this was and it is not a repeated theme of the school notes. I can discern no other indicators or behaviours that might be indicative of sexual abuse. For example, at F55, MM says she has no nightmares and sleeps through the night at the May 2020 medical. It is very clear from the evidence that the school took a parentified role towards MM and the guidance for her personal care came after her mother's death primarily from her teachers in looking at the evidence as a whole. When I look at that background, I am reminded of the guidance of Jackson J in *BR (Proof of Facts)* [2015] that all of that helps the court understand the relevant background factors which might increase or decrease risk to the child, but the factors in and of themselves prove nothing and I must look with granularity at the facts of this case.

Assessment of factors which are relevant to the analysis of MM's evidence

55. I now look at factors which are relevant to my assessment of MM's evidence because the allegations rest on what MM is recorded to have said so I need to look at what we know about her as a child. It is clear MM has a range of physical medical issues, including longstanding severe obesity putting her at high risk of developing Type 2 diabetes. She has lower limb primary lymphedema in her left leg, cholesteatoma - an abnormal collection of skin cells in her ear, and a history of recurrent ear infections and bleeding. She has used a hearing aid and the safeguarding lead noted her lack of responsiveness attributable to poor hearing. She has seen a large number of medical professionals over the years and the records do not suggest she has ever made allegations in their presence. She has also had a large number of social workers involved in her life for prolonged periods and the Child in Need visits of course should have provided an opportunity for her to be seen alone by social workers on numerous occasions. She has also had a high level of school involvement in her life and there is no mention of anything untoward sexually until 11 March 2022. That could of course be because she was too young to understand what was going on, or it could be, alternatively, because nothing untoward was going on.

56. The evidence as a whole does not suggest a particular trigger for what she said on 11 March 2022, there was no recent PHSE teaching or particular event. On 1 March 2022 she attended the GP with her father and was given thrush cream. On 7 March 2022 there was a discussion between the class teacher and Miss T with MM about where the thrush cream goes and she was being measured for a bra on the morning of the allegations being made.

57. MM's family of course will know her well, so, I look across the papers about what her family say about her cognitive abilities. Her grandfather tells a special guardianship assessor at E59 that she forgets things quickly both at home and at school. Her aunt in her assessment seems concerned with MM's understanding. She was sent to the kitchen to get something from the big cupboard and could not find it, even though there is only one big cupboard in the kitchen is her account at E100BA.

58. MM is described by LM in his evidence: "'Cause sometimes she listens to what I say and I think yeah, she understands and gets what I'm saying. But at the other time she just says she understands and doesn't really understand what I'm trying to tell her.". Of course, we have professional views of MM's cognitive abilities and paediatrician says she appeared

immature and came across as somewhat younger than her chronological age at E115. This is a view shared by her Guardian at page E188 and the intermediary at the ABE.

59. The school staff note that she will seek attention regardless of whether it is positive or negative at F206 and there is a speech link assessment in October 2022 at F360 that describes MM's understanding of concepts and figurative language as not appropriate for her age.

60. Mr Thomas provided an intermediary assessment prepared to help the court decide if MM should give evidence, and of course, nine months after the ABE itself. He highlights that tag, leading, and multiple part questions cause her particular difficulty. He records that she could very easily be induced to give incorrect answers to his questions and to identify features of an advertisement that were not there. He gives some very striking examples at page E176 which I think bear reading because they are illustrative of some of the difficulties she has. For example, he says, when looking at a picture of an advertisement and: "She could be induced to give incorrect answers to my questions and identify features of the advertisements that were not there. For example, neither of the children is wearing a tie. When asked: "Which one is wearing a tie? The boy, the girl, or both of them?". She answered: "The boy". The boy has two hands in his pocket. Asked: "Does the boy have one hand in his pocket, two hands in his pockets, or no hands in his pockets?". She replied: "No hands.". The children's shoes cannot be seen. Asked: "Has the boy got black shoes or hasn't he?". She replied: "Yes.". When asked what colour the girl's shoes were, she said: "Black".". He also deliberately made mistakes when checking what MM told him and she was able to correct him as he notes at times on page E176.

61. The school MARF referral at F6 says MM has social complex communication needs which can make her level of understanding a little more difficult. The Educational Psychologist report of 18 October 2022 gives the court an insight into how she functions at school. In class, she relies significantly on adult support and required constant prompting and scaffolding (F202). The conclusion is that she presents with significant cognitive difficulties that are impacting her learning across all areas of the curriculum. In summary, all of MM's schools across the core sub-tests fell within the low or very low categories indicting significant difficulties in relation to all the cognitive skills assessed by the tool. This indicates that MM is experiencing learning difficulties which are likely to be significant and enduring.

62. Now, I pause her to caution myself that when a complainant has a learning need or is particularly vulnerable as MM is, it is important that they are not denied access to justice as a result of their communication difficulties. I remind myself particularly of paragraph 3.3 of the ABE guidance. It does mean, however, that particular care needs to be taken when speaking to MM and to structure any investigation in a way that she can engage with reliably. I also caution myself that some of the reports I have just quoted from were prepared after the allegation was made and not for the purpose of the investigation itself. However, they contain general information about MM's abilities and if anything her cognitive abilities would have been expected to improve with age rather than deteriorate which may help me to understand something of her abilities as of 11 March 2022.

63. I look at whether there is a pattern of MM not telling the truth. Her father's evidence in the witness box is that she has told lies in the past about small things but he could not comment on these allegations in particular. In his first statement at C37 he says MM is still very young and known for making up stories about getting into a fight with her brother. I bear in mind that MM has never taken back what she said about LM but neither has she

repeated it in any detail after the ABE interview. She told her Guardian during the *Re W* assessment that she remembered what she said. The special guardianship assessor notes as follows: "When asked why she can't have contact with her brother, she informed me that this is because of what happened between her and her brother when they were little. She told me she doesn't remember how old she was but when she was little he wanted to touch her private area.". That is at E40.

64. I look at F297. That is the social worker on 26 May 2022, who notes a phone call with the safeguarding lead. "MM had disclosed some of the things she said about her aunt and recorded in her notebook are not true", is the social work record. The safeguarding lead gave evidence that: ' "The aunt was really staring at me in the shower", was what MM said and it turns out that the auntie was helping her wash. MM came in and reported this to a teacher very upset. The auntie had been calling her a fat pig, LM's spoon or slave, and she said: "She hates me and that I am awful.". But when this was discussed she would say: "Auntie called me a fat pig but didn't say that she hates me."'. The safeguarding lead gave evidence that this was "saying one thing and then there being another layer but that this only happened in relation to the aunt". The word that the safeguarding lead used was "embellishment" to describe what MM said about auntie.

65. The safeguarding lead said that before 11 March 2022 MM was truthful on the whole but not 100 per cent of the time.

66. LM gave evidence that MM did not get on well with either of the aunties who stayed with them. He said: "She would say something my aunt had done but then it turned out my sister had done something to my aunt. Vice versa. My sister would say something to the school that the aunt had done something but it was the opposite and my sister had done something to the aunt.".

67. There is an entry at F435 on 12 November 2022 that suggests the teachers got the impression that MM was being slightly misleading in order to get sent home from school when she told them about her itchy genital area.

68. Overall I cannot discern a pattern of MM being deliberately dishonest. The evidence as a whole though suggests that this is a child who is not a clear communicator and who can easily be misunderstood or communicate things in a confused manner.

69. MM has been asked by the social worker as of May 2022 if there were times when she felt unsafe or had a horrible feeling with LM and she told the social worker there was not. She told the social worker she wanted to see him. That is at F409. She tells the social worker in June 2022 that: "LM is responsible, takes care of me by showing me that he loves me.". The social worker is told by MM that: "She would want to chill with LM if she saw him and she would say to him that she is sorry about what was said because he does not think he is forgiven but she does forgive him.". The reference for that is at F410. "She felt something bad had happened, that it was not something siblings do, and when I asked her what she meant about this, she said it was the telling, that she should have told her dad first, that this is what he said too.".

70. The social worker gave evidence that her understanding of what MM meant was that she was sorry that she had told people. The evidence that the social worker gives is clearly that MM loves LM and is very close to him and looks up to him. She wants to know what he is doing, she wants to speak to him and see him, and she is excited about going to the

secondary school next year. This is consistent with what she has told the educational psychologist.

Analysis of LM's response to the allegations

71. I want to analyse now LM's response to the allegations. I remind myself again that there is no burden on LM. He has consistently denied the allegations so I have looked back at the notes that were taken at F327 by the social worker when she attended at the school on 11 March 2022. Both the social worker and LM's evidence was that LM was taken to MM's school and waited there and that it was evening by the time the social worker and DC Wildish spoke to LM. The social worker puts it at 8pm and said that LM had been waiting four hours before she spoke to him. There is no evidence before me about what was discussed with him or what he was told during that waiting time.

72. The evidence that the social worker gave is that the conversation was a brief one and it is set out, as I have said, at F327. She gave evidence that LM was "quite animated saying it was not true that type of thing. He looked like he might cry and was quite upset". The handwritten notes provided by DC Wildish contain a different level of detail to DC Wildish's later write-up. Her contemporary note reads: "Had a row with each other. V/W (ie MM) threatens to tell school.". The threat to tell the school from my memory was not put to MM or indeed LM in terms during the investigation as far as I can see. I see the DC Wildish write-up at H10 which also suggests that this was a very brief conversation. Her note, however, is rather confusing and contradictory: "Without telling him what the allegation was, he said he had never been inappropriate with his sister when it was suggested". So, it is unclear from that entry whether his response was being given after being told the clear allegation or not. The social work statement of 6 May 2022 records that LM denied he had ever sexually harmed MM and stated she is not being truthful and has a history of telling lies.

73. In the witness box he said he did not have an argument before 11 March 2022 and he did not hit MM. When asked why he said that at school, as recorded by The social worker, he said: "I just said what came into my mind, what I thought. I didn't think straight, it was late in the evening. I was scared when I saw two police officers. I was scared and worried and upset. I was there for so long at school I didn't know what was happening and said whatever came out of my mouth.". He accepted in the witness box that they did argue from time to time. He has told his Guardian, at E232, that he wants to understand why MM has said the things that she has said.

Family response

74. I look at the wider family response, again by way of relevant context and background. MM has been living with her grandparents and the evidence as a whole suggests that they might struggle to accept that what she said is true. The Aunt says - and this is at E100BD - "No one in the family has ever discussed with MM the sexual abuse that she disclosed.". There are, however, a couple of indications in the bundle that the grandparents may have raised this with MM. The special guardianship assessment suggests that the grandparents have not spoken to MM but MM's guardian notes when she met with the grandmother on 31 January 2023: "She told me that she had asked MM about it on one occasion and MM confirmed to her it happened when she was a baby.". The reference for that, E189. And MM's guardian says that during her visit to the family home on 17 February 2023, the grandparents attempted to speak to her and the solicitor within MM's presence about the allegations.

75. Looking at the evidence as a whole, it does not suggest the family have been talking consistently to MM about this and there is no suggestion on the evidence before me that MM has been asked to change her account or been put under pressure by her family in any way.

Analysis of records kept of what MM said

76. The allegations are founded on what MM has said. There is no third party or medical evidence and so I need to analyse with care the evidence of what she is recorded as saying on 11 March 2022 to ascertain, as far as I can, what words she used.

77. The records of what was said on 11 March 2022 are in the handwritten notes prepared by her class teacher at C54 to C56. The class teacher and the safeguarding lead have both provided two statements. These are electronically signed. The first is dated October 2022. The second are both undated but they respond to my order of 4 November 2022 so must have been prepared after that. Both staff gave evidence that the second statement was prepared in a response to questions asked by a solicitor.

78. The class teacher gave evidence that her first statement was entirely from memory without reference to the notes she took on the day. The safeguarding lead's evidence was that her first statement was not in a form she would want to provide to the court. She recalled being asked to write it down and send it through. She thought there was some kind of miscommunication in its preparation and she could not remember how it came about, but on the second day of her evidence she seemed to suggest that she was not sure if the statement was hers. I need to analyse these statements and notes and place what MM said in context.

79. On 11 March 2022, MM was being measured for a bra by her class teacher and TA. There was then assembly followed by breaktime. During breaktime MM approached her class teacher around 10.35 according to the class teacher. Her evidence was that MM would often ask to talk to her but she had never asked for the door to be shut before as she did on this occasion and that that was unusual. This is an important context because the class teacher's evidence was that MM would usually speak very openly in front of other pupils about personal hygiene.

MM speaks to the class teacher

80. I am going to look now at the class teacher's two statements and the notes that she took and it is fair to say they are not consistent about what exactly happened at this initial stage:

(1) The notes say, "I feel the need to share". That is what MM is recorded as saying. The first statement says, "MM needed to talk to me about something but was not sure if she should say.". And the second statement says, "Can I talk to you?".

(2) The class teacher's response is differently recorded as well. In the first statement, "She could share anything but the right people need to know" is the recorded response. There is no mention of her response in the notes. And in her second statement she is recorded as responding, "Yes, MM", before the allegation is made and, "I am really proud that you came to speak to me but we need to speak to somebody else", after MM had spoken to her. Her

statements differ as to whether the class teacher herself mentioned going to see the safeguarding lead by name at this stage.

(3) The first statement records, "LM used to touch her". The second statement records, "You know my brother, LM, he touches me.". And the notes use, "Used to touch.". The class teacher was clear in oral evidence that "touch" was the root word but she could not remember the tense that MM had used.

(4) The first statement includes no mention of MM gesturing. The second statement includes a reference to MM gesturing to her groin area at this stage. There is no reference to gestures in the notes. In oral evidence in relation to this initial discussion, the class teacher could not remember if MM used one hand or both hands and she says that, "I was at the desk and she was in front of me", when MM gestured.

81. After this initial discussion, the class teacher and MM go to find the safeguarding lead. MM's classroom is in a different part of the school to the office area where the designated safeguarding lead has a room. MM was sitting on chairs outside when the class teacher found the Head. The class teacher's evidence was that she had been tracking MM's periods and that she was concerned that MM's period was late. She gave evidence that she told the Head she needed to speak to the safeguarding lead and that she mentioned MM might be pregnant.

82. The class teacher gave evidence that before she and MM spoke to the safeguarding lead, it was not clear how MM was touched, with what, and there was no surrounding context given. The class teacher could not remember what exactly she told the safeguarding lead but she said she may have used the word "touched".

83. The safeguarding lead's recollection in the witness box was she was in her office on a call on Teams for another family and the Head and the class teacher came to her at the same time. "I was told I needed to end what I was doing. They stood in the doorway and he said, "You need to end that now". And I could see the seriousness of his face. The class teacher said LM had been touching her and I think she might be pregnant.".

MM speaks to her class teacher and the safeguarding lead

84. At this point the class teacher and the safeguarding lead speak to MM until the lunch bell goes at noon.

85. The allegations that are first said to be made in detail by MM are made in this meeting so it is necessary to analyse with some care the records of what MM said and how this meeting was conducted.

86. Both staff gave evidence that they were not trained to write notes when speaking to children and the class teacher wrote notes after the meeting had finished as the safeguarding lead wrote the MARF referral. The class teacher gave evidence she regarded her notes as secondary to the safeguarding lead. She said they were in her handwriting and that "potentially" she discussed them with the safeguarding lead and she could not help us as to whether the "can" which has been inserted on page C55 was her handwriting and whether it was added later. The notes the class teacher made make no differentiation between what was

said to her alone and what was said with the safeguarding lead present. They have no timings, no clear chronological flow, and they are not detailed or comprehensive.

87. It is necessary look at the records kept by both staff, their internal consistency, and their consistency with each other. I have a number of points here to make but I will try and focus on the most material. If anybody feels that I need to supplement my reasoning I can add the less material points, but in the interests of brevity I look at the most material inconsistencies and differences.

88. The class teacher gives two statements and there are differences and inconsistencies between the two statements and the written notes of 11 March 2022 and her oral evidence. I look at what the class teacher says about the discussion with MM in the presence of the safeguarding lead:

(1) There is no mention of gestures in the first statement or the notes but they are mentioned in the second statement which states that MM used a lot of gesturing. The class teacher was unable to give any detail in the witness box of how MM gestured when she understood that LM's fingers touched her groin area under her knickers. Her description of gesturing was vague overall.

(2) The order in which MM mentions things differs in the notes and in the statements and there is no clear chronology.

(3) Both the notes and the class teacher's statements are imprecise in their use of language and what exactly MM, or indeed LM did, is unclear. I give you an example. The notes say, "made crying noises". It is not clear who made crying noises, MM or LM.

(4) The notes in the statement differ in relation to what, if anything, was said when the mother appeared at the doorway and who pulled the duvet down.

(5) The class teacher accepted she was not in a position at the time of writing her second statement to provide direct quotations, even though the statement contains quotation marks for MM. Her notes do not make it clear what MM actually said and what is a paraphrase or an inference, and there are no quotation marks used in the notes document.

89. I look at the safeguarding lead recording of that conversation in her two statements:

(1) It is unclear reading her statements what game was said to continue after the mother died.

(2) Her first statement has that MM could not remember what mummy said when she spoke to her in the kitchen. The second statement records the mother saying, "Oh, don't worry", and shooing her away.

(3) What the mother said when she came in and the children were under the duvet differs between the statements together with what, if anything, LM said.

(4) In the first statement, "Daddy knows bits" is recorded. In the second statement MM says, "I haven't said anything to daddy".

(5) The first statement is MM stuck to the words "boobs" and "private parts". The second statement records MM using "private parts" in quotation marks but not boobs. And in oral evidence she said MM was not using the words "private parts".

(6) The first statement says, "He took her hand and used my fingers on him.". The second statement has MM saying, "I put it there", suggesting she placed her own hands on LM's private parts.

90. I look at how the safeguarding lead and the class teacher's statements fit together:

(1) Crucially, the questions that MM was asked are not consistently recorded between the two teachers' evidence.

(2) Crucially, what MM is recorded as saying in reported speech is significantly different between the two statements made by the teachers.

(3) The safeguarding lead records in her first statement that she told the class teacher in the classroom her brother used to play a game. The class teacher said from memory that MM never said in the classroom "game" and it is not used in the class teacher's statement nor the notes as being something MM said in that initial conversation. In oral evidence, the class teacher said that MM did use this word but she could not remember if MM or the safeguarding lead used it first. The safeguarding lead thought MM used the game word first and that she picked up on it. However, later in her evidence she could not remember if the game thing was introduced by the class teacher.

(4) What the safeguarding lead said at the start of the conversation with MM differs between her statement and the class teacher's, and the extent to which MM said anything at all before the safeguarding lead mentioned that "we're all girls here", and started to talk about private parts differ. Neither of them record MM saying anything substantive before the safeguarding lead intervenes and frames the conversation.

(5) The safeguarding lead mentions "LM touching her breast", "like his kissing". There is no mention in the class teacher's statements if he touched her breast at all.

(6) A more minor point. The safeguarding lead records the word "scratchy" being used. The class teacher uses "hurt".

(7) The safeguarding lead says that MM is alluding to fingers going inside her vagina. The class teacher notes that fingers went inside but no quotation marks are used. In oral evidence she said, "I believe that she said fingers went inside", and this was out of keeping with the safeguarding lead's evidence, that it was MM's gesturing and the use of "sore" and "scratchy" that led her to think that MM was alluding to digital penetration.

(8) The timelining that the safeguarding lead and the class teacher use for placing the events in context by reference to "boobs" and uniform is not consistently recorded across their statements and it is not clear from reading both statements when a timeline is being used and which events are being placed in context.

91. There was a significant difference that I have already mentioned between the class teacher's oral evidence and written evidence about digital penetration. The other note of significance to make in relation to the class teacher's oral evidence is that she does not mention in her written evidence that she told the Head that MM might be pregnant but she did mention this in her oral evidence.

92. I look at the most material differences now between the safeguarding lead' oral and written evidence:

(1) In her second statement she says that MM was sent back to class. In oral evidence she said she was sent to lunch with a TA and did not go back to class.

(2) In oral evidence she mentions MM spoke about auntie coming and sleeping and arrangements changing. That is not in any of her statements.

(3) There were a couple of points in oral evidence when I got the strong impression that the safeguarding lead was recounting to the court a form of words that she frequently uses in conversations with children. Her patter, if you will, and I do not mean that in a derogatory sense, but there was a fluency about when she said, "I say to them, what is my job? To make us happy and safe, the children reply.". Another example of this is when the safeguarding lead says, "There's always a thank you so much for being so brave and trusting us with this.". That narrative, if you like, is missing from any of her statements.

(4) There was a reluctance, the safeguarding lead said twice in evidence, on MM's part to say things. That does not come across at all in her statements which give this impression of a fluency. In oral evidence, there was a lot of gesturing and saying, "down there". There is no mention made in any of the statements of the term "down there" which in oral evidence the safeguarding lead suggested was used repeatedly.

(5) Both the safeguarding lead and the class teacher accept they did speak about the incident during the reporting of it on 11 March 2022 to the social work team. "On 11 March there were conversations back and forward", said the class teacher. The safeguarding lead said, "We had several conversations like our own debrief after 11 March 2022", but her evidence later shifted to being "not many occasions" on which they discussed the substance of the issues. But what is clear is that there was some discussion between teaching staff - and the safeguarding lead used the word "regaled" to describe speaking to professionals - she spoke to the Head, the MASH team, the strategy team, the social worker, the secondary school, and another social worker on her evidence on 11 March. There is a real risk, I think, that the documents and

maybe the second statements in particular, are coloured by discussions which continued both on and after 11 March.

Other records from 11 March 2022- MARF referral

93. I look at other contemporaneous records now of 11 March and the MARF contains different details to other records kept or made by the school. The MARF was provided by the safeguarding lead in the lunch break. It contains the following differences to other records:

(1) It says that this happened three years ago. In oral evidence the safeguarding lead confirmed that MM did not say this.

(2) It says that LM began touching her vagina and penetrating her with a finger. The safeguarding lead confirmed in oral evidence that MM did not say that and it was her suspicion about penetration.

(3) It records that, "MM disclosed LM touched her vagina" and the safeguarding lead clarified in oral evidence that MM did not use this word but there was a lot of gesturing and saying "down there".

(4) "She said it has stopped". This is not something MM is recorded as saying in terms elsewhere in the school records.

(5) "She says dad is aware" is in the MARF, when the other records at their highest record, "he knows bits".

(6) The MARF used "breastfeed" and the safeguarding lead gave evidence that MM did not say that word.

Form 87A

94. We then have the Form 87A which is filled in by social worker Z. She was the allocated social worker and the social worker gave evidence that her colleague social worker Z spoke to the safeguarding lead on the phone. I cannot find a note of that discussion in school or social work records. The Form 87A is actually in the police evidence at H6. And again, the Form 87A differs from other accounts of what was said on 11 March:

(1) It gives a definite timeframe for one incident happening when MM was at [redacted] school in year 2, age 7. That does not appear anywhere else in the school recording, although of course later MM tells the social worker she was at [redacted] School.

(2) It records this happening in dad's bedroom rather than LM's bedroom as recorded by the staff accounts, or in the parents' room as records in the social worker's later account.

(3) It gives direct quotes, "on the outside of her private parts", "turned it into a game", and "breastfeed him", and "grew big", are assigned as quotes to MM and those quotes do not appear to chime with what is recorded elsewhere.

(4) The mother is quoted as saying, "Why would you do that to your sister?" which does not appear anywhere else.

(5) "LM took down his underwear" is recorded, which does not appear to be recorded in those terms anywhere else.

(6) "After some discussion MM confirmed that he had penetrated her with his finger" is recorded which the safeguarding lead's evidence suggested MM was merely alluding to.

Strategy meeting

95. There is then a strategy meeting on 11 March and both social worker Z and the social worker attend the strategy meeting. The records of it are at F3. It is not clear from the note of the meeting exactly what time it took place but I can infer it would have been before DC Wildish arrived at the school at 15.20. The safeguarding lead's report to the strategy meeting as recorded is different again from the other accounts of what exactly was said on that day:

(1) It suggests that there were two distinct occasions of touching.

(2) Again, it records expressly that LM penetrated MM with his finger which is missing from the witness evidence accounts.

(3) It records the conversation after lunch which MM alluded to, "It's still going on".

(4) It refers to the parents', not the brother's bedroom.

(5) It records, "Dad also knows about".

(6) "She does also talk about when she gets out of the shower and he looks" is a reference which differs from the class teacher's second statement. "When she gets out of the shower she's worried LM is there watching and thinking about her body" is recorded in the second statement. And the notes have, "When he gets out of shower, she is worried he is thinking he can ? touch", and "can" is inserted with a circle and a question mark underneath. There is no mention of showers in the safeguarding lead's statements.

96. Drawing all of that together, the records of what was said to the school on 11 March are inconsistent and deeply unsatisfactory. There is a lack of forensic clarity about exactly what was said which is only compounded by the oral evidence of both the safeguarding lead and the class teacher. Whenever in the witness box they were pressed on what exactly MM had said and whether what was contained in quotation marks was verbatim, they were unable to give clear answers. They often referred to gesturing and I am afraid that after hearing them I was left with a pervasive sense of uncertainty about what exactly MM said and what they said and what they intuited.

Social worker arrives at the school

97. Against this backdrop, the social worker then comes to the school and she gave evidence that she was covering, as it were, for social worker Z who was unwell on the day

and doing the school visit. She had not met the family before and had no knowledge of MM and LM prior to that day. She said she spoke to the safeguarding lead for LM and to the safeguarding lead on route to the school. There are no notes anywhere in the bundle of those conversations. There are no notes of the discussions the social worker had with the school out of MM's earshot, although in oral evidence the social worker said that the safeguarding lead was keen to speak to her.

98. The social worker could not remember if she spoke to the safeguarding lead before she spoke to MM, and she said it was quite a confused picture. "There were people around. I was not sure what had been said and when. When people spoke, they spoke fast and were animated. It was a highly charged environment.". The social worker told me a lot was being said to her by the school and at a fast pace, and they were very keen for her to understand what they had done for MM historically. "Confused" was a word that the social worker used more than once to describe what she was hearing from the school. When asked to comment on the safeguarding lead's approach, the social worker agreed that the safeguarding lead talked a lot in court and she said: "She was like that on the day. She spoke a lot and she has got a lot of presence. She was not anxious, quite hyped up, and eager to be part of it and to be part of what was going to happen next.".

99. The evidence that the safeguarding lead gave that this was time critical and she needed to get social workers' records so that they could take action added to the overwhelming sense I gained from the evidence that the school was somewhat chaotic and panicked on 11 March. And the numerous different accounts of who said what add to the strong impression I have formed of a very unstructured and high-stress response to MM approaching her class teacher.

100. By the time the social worker came to speak to MM after school on 11 March, MM had spent the whole day since 10.35 in the presence of teachers. I do not know the identity of all of them and the evidence suggests that she was spoken to more than once and there was no clear record of who was with her at all times, what was said, and no clear line drawn under her discussion with the safeguarding lead and the class teacher. By the time the social worker arrives at school, the evidence clearly suggests that MM was trying to communicate something to the school and the gist of what the teachers thought MM was communicating was that LM had touched her private parts, that she had touched LM's private parts, and they had played a game in which MM pretended to breastfeed LM.

101. However, the oral evidence of the teachers gave me a sense of a lack of clarity and I can make no firm findings about who exactly said what. The school evidence and record keeping as a whole is so confused and shifting that I cannot determine on the balance of probabilities exactly what words MM said to them.

102. I look at the social worker's record keeping. The evidence suggests that before MM met the social worker she had received a degree of affirmation and a somewhat directive response from the school staff. Both teachers record telling MM they are very proud of her and the safeguarding lead says, "It's your body. That's not right darling. It's not right anybody plays games like that.". The safeguarding lead is sitting by MM when the social worker is talking to her and the social worker recalls an arm on her and her being reassuring to MM.

103. The social worker's meeting notes of her discussions with MM are at F327 and the social worker was asked exactly about what MM said by reference to these notes in the witness box. The social worker was clear that MM mentioned she was at [redacted] School,

she was clear that MM said he had asked her if she wanted to play a game called "touch your private parts", and that MM had used the words "touch your private parts" which appear in quotation marks in the social worker's notes. She could not recall if anybody else had used those words in front of MM or otherwise at the school and she could not recall if she asked a question to elicit this response. She says that her recording is accurate, that MM said that LM asked her to touch his private parts and she said no. She confirmed that MM said he touched her private parts over knickers. This made her uncomfortable and she didn't want it to happen. She told her mother. They played a game called "Be the baby" and MM, the social worker recalls, used that phrase, and that LM asked MM to lift up her top and he would put his mouth on her breasts.

104. What the social worker records differs from the accounts of what MM is said to have said to the school. "She was in [redacted] School" was recorded by the social worker whereas the teachers locate what happened by reference to blue and green uniform, the infant and junior school. MM gives detail of "in the parents' room" drinking tea, a detail that has not been recorded elsewhere. The game called "Touch your private parts", the social worker asks if this was a name MM called it or her brother called it and she told her that that is what her brother called it. That detail does not appear from the school records. "Over her knickers" is used expressly whereas the impression the school got was from MM's gestures leading them to think there was digital penetration. The detail of what the mother said to MM differs between the social worker's accounts and what the school record.

105. The social worker records that MM told her the "Be the baby" game was described and labelled as a game by MM. "This meant that he would put his mouth on her boobs" is recorded by the social worker. That suggests skin to skin contact. The school records are not clear about whether it was skin to skin or not, and the social work statement ultimately written by the social worker records, "he sucked her breasts". No one else records sucking. There is a difference between the social worker's records and those of the school about what happens when MM's breasts were small. MM tells the social worker this happened when her breasts were small. This differs from what the safeguarding lead recorded in her school statement that "it happened when she had little boobies and after she had big boobies", although it is not clear from the safeguarding lead' statement exactly what "it" is. This is different to what she told the social worker. The social worker records that this happened three to four times, although it is not clear exactly *what* she records as happening three to four times in her notes.

106. By the time DC Wildish attended the school she decided wisely, in my view, not to speak to MM who had already spoken to her teachers and to the social worker. She records the social worker telling her that nothing happened at the current school which does not appear in the social worker's notes.

107. Having looked in some detail at the recording, I am going to move on to look at how this process conforms with the relevant guidance. I wonder if the interpreter needs a break before I do so? Five minutes. Thank you very much.

(Short adjournment)

JUDGE SUH:

Analysis- compliance with the Achieving Best Evidence Guidance and good practice

108. I now turn to look at the extent to which the investigate process on 11 March 2022 conforms to good practice. I have gone back to the ABE guidelines and they are said to be intended for "all persons involved in relevant investigations". The case of *SR* [2018] EWCA Civ 2738 quoted at paragraph 590 of the case of *Re P* says this:

> "The Court of Appeal made it clear that the principles set out in the statutory guidance, the ABE guidelines, are relevant to all investigations which include interviews of alleged victim's abuse whether or not the interviews purport to have been conducted under the guidance. Within this context the ABE guidance covers interactions between the child and others prior to any ABE interview and recognises that the need to consider a video recorded interview in respect of allegations may not be immediately apparent to professionals involved prior to police being informed.".

109. It seems arguably that the ABE guidance did apply to the teachers and to the social workers but even if I am wrong about that, whether or not it expressly bites on them, it is a yardstick of good practice against which the reliability if the information obtained may fairly be measured.

110. I think it is helpful to remind myself of the Court of Appeal guidance in *Re Y and E* [2019] EWCA Civ 206. That set out that where investigators have failed to comply with the guidance, a Judge has to assess the extent to which those failures undermine the reliability of the evidence. Baker LJ at paragraph 32 of that case encapsulates the main points of the ABE guidance and I use those main points as my structure for my analysis of what happened at the school.

A well-conducted interview will only occur if appropriate planning has taken place. The importance of planning cannot be overstated (paragraph 2.1 of the ABE guidance).

111. I look in general terms at the degree of planning for what happened on 11 March 2022 acknowledging of course that one cannot plan for things that are said by children on the day and unexpectedly. The evidence of the class teacher and the safeguarding lead is there was not a plan or a detailed discussion of how they would speak to MM. Far from it, the clear impression I formed is that there was this unstructured atmosphere of panic and conversations being had with MM without any clear boundaries or framework put in place.

112. The safeguarding lead repeatedly talked about the need to timeline. She said: "I was jumping backwards and forwards. Mummy here or not here. Green or blue uniform. Year 5 or not year 5?". "Trying to timeline" were her words. I got the strong impression that she wanted, the safeguarding lead, to gather enough evidence for the social workers to take her referral seriously but there was no clear shared understanding between the safeguarding lead and the class teacher as to what exactly MM had said to the class teacher, let alone a planned approach before they spoke to MM together.

113. Of course the social worker's plan was clear in that she wanted to gain an understanding of what MM had said because she was confused by the information coming from the school and she needed to make a decision about whether MM could go home.

Any initial questioning of the child prior to the interview should be intended to take a brief account of what is alleged to have taken place." (paragraph 2.5 of the ABE guidance).

114. The Court of Appeal in *Re S (A Child*) [2013] EWCA Civ 1254 emphasised that the preliminary discussions regarding factual allegations should be rare and certainly not regarded as standard practice. The case of *Lancashire County Council v M & Others* [2023] EWFC 30 , Hayden J draws a distinction between discussions about the facts in issue and whether and what allegation has been made and against whom. However, on any analysis, the questioning by the school exceeded the reasonable ambit of initial questioning.

115. The class teacher estimated in her written evidence the teacher spoke to MM for an hour and the first mention of the allegation was in the break at 10.35. The safeguarding lead recalled they finished speaking five minutes after the lunch bell which would have been 12.05 and there was no clear line drawn under the end of the interview and in total, MM seems to spend between 10.35 and until the social worker arrived at the school with one member of staff or another. The evidence as a whole is strongly suggestive of some degree of ongoing conversations. Arguably, social services should have been called after MM spoke to the class teacher but the safeguarding lead gave evidence that there was no "scaffolding" and she took the view she did not have enough information for Children's Services. The conversation had an unstructured and imprecise duration and focus. Of course, the aim was to gather information.

In these circumstances, any early discussions with the witness should, as far as possible, adhere to the following guidelines, the first of which is listen to the witness.

116. When the school approached their conversations with MM against a background of a history of concerns, they were emotionally involved with her and the safeguarding lead said their main concern was to keep her safe. I have no doubt that they wanted to understand what she was trying to communicate to them but when their evidence was unpacked in the witness box it became very apparent that the process was more difficult than their written evidence suggests. That word that the safeguarding lead used, "scaffolding", is also incidentally used by the educational psychologist when he talks about MM generally relying on the help of others, adults, to aid her understanding of learning and the world. And there was an extent to which the teachers were trying to interpret, I think, what MM was saying to them. They both refer to her using gestures which they understood to relate to her private parts, but whenever the gestures were replicated in the witness box they were vague in the extreme. When the safeguarding lead replicated the gesture in the witness box her hand was down by her side, by her thigh, is my note.

117. The safeguarding lead was the first person to use the term "private parts" when MM was gesturing. This is a very directive approach rather than a simple listening mode. The safeguarding lead's oral evidence was that her first use of private parts was not the first time a body part had been mentioned because MM had told the class teacher about LM touching her. However, the class teacher made it clear that MM had not mentioned body parts to her and that she did not mention body parts to the safeguarding lead before they met MM together. The phrase "private parts" seems to me more likely than not to have been first used by the safeguarding lead. By the time the social worker arrives, MM herself uses the words "private parts" and the social worker records MM used the word "knickers". The social worker accepted that when she was in conversation with MM, MM was using words to describe things rather than the gestures that she had first used when she was talking to her teachers.

"Do not stop a witness who is freely recalling significant events.".

118. Here, I need to read the safeguarding lead' second statement, paragraph 18 and 19. "I asked her", says the safeguarding lead, "what do you mean by inappropriate things? MM had an embarrassed look on her face and gestured to her chest and said "inappropriate like this." I stopped MM at this stage and told her "she had nothing to be embarrassed about, me and the class teacher are girls, and we all have the same bits and pieces as you have". I then went on to describe body parts in a child-friendly names like boobies, noonies, and willy to show her there was no need for her to feel embarrassed about these things. At this stage MM had a little giggle.".

119. When the safeguarding lead gave oral evidence she spoke very fluently about some of the phrases that seemed to be her stock or familiar phrases that she used when she spoke to children. "She had her head down", the safeguarding lead said in the witness box, "and I say what is my job? " To make us safe and happy". I know you had a conversation with the class teacher and we need to have a conversation with the class teacher but we need to talk about that. I know some of the things we will need to talk about might be embarrassing but you can say anything you want here, boobies, willies, noonies, bums, or private parts.".

120. Both the safeguarding lead's written and oral evidence suggests that she introduced this concept of private parts. The evidence at its very highest was that MM said that LM had touched her, done something inappropriate, and gestured before the safeguarding lead mentioned boobies, willies, noonies, and private parts. The gesturing replicated in the witness box by each teacher was very unclear to me and open to a range of different interpretations and I would describe it as vague in the extreme. The direction and the flow of this conversation appears to have been heavily influenced by the safeguarding lead and she is a forceful, charismatic personality.

121. The social worker's account can be read as a relatively free flowing account. However, I note that in the police disclosure she told DC Wildish on the day that MM "started to tell her what she told her teachers but closed up about it" and in fairness that was not explored with any of the witnesses in the witness box I should note.

Where it is necessary to ask questions, they should, as far as possible … be open- ended or specific-closed rather than forced-choice, leading or multiple.

122. The safeguarding lead's own evidence records the use of leading question, despite her theoretical knowledge that they should not be used. When Mr Twomey KC put specific leading questions to her in the witness box, she did not seem to see them as leading. She said in her evidence that she understood that leading questions should not be used and added, "Which with MM is interesting. We tried.". I asked her what she meant by this and she said: "You have to be clear with MM. Open questions are a challenge. She doesn't know what you are saying. If you leave open to her interpretation of what you're saying, she won't understand what you're asking her.". This approach is particularly concerning given, as I will deal with later, the safeguarding lead had her own idea of what MM wanted to say to her in the first place before MM had directly said anything to her.

123. It took the safeguarding lead and the class teacher an hour to obtain the first account of what MM wanted to communicate and the overall impression I gained was that this was not an easy task and involved a great deal of gesturing and the safeguarding lead talking. Now,

of course this could be because MM was embarrassed about speaking about a sensitive topic or alternatively it could be because she was not sure what was going on and was being led into talking about things that maybe did not happen in the way her teachers seemed to assume and that she was confused. The social worker was open in telling the court very honestly that she did use a leading question. She says: "I am not perfect. I made mistakes. I would try but I am human.".

Ask no more questions than are necessary in the circumstances to take immediate action.

124. The lengthy and unstructured discussions at the school suggest a level of exploration that goes well beyond what was necessary to take immediate action. It amounts to a prolonged and open-ended approach which is far in excess of obtaining the basic information. The social worker's evidence was: "I think at the time I felt there were more conversations with MM and they had all sorts - and sort of swarmed in and there were different people around, and then the safeguarding lead and the class teacher, and I felt I was not able to get a clear picture.".

125. The evidence that the social worker gives me is the school in a state of confusion which chimes with the school evidence as a whole. The social worker was a fair and balanced witness in her accounts of confusion and her evidence about the situation at school is compelling. The social worker was then put in the invidious position of needing to make a decision before the weekend about whether MM could go home but receiving an account from the school which was incoherent. She therefore understandably felt a need to speak to MM but may have inadvertently added another layer of complexity to the forensic investigate process by doing so. The social worker's conversation could arguably have been brought to a close once she had a clear allegation of sexual touching but she goes on to ask more questions after the account of the first incident to elicit details of another incident and then asked when and how many times it happened.

Make a comprehensive note of the discussion, taking care to record the timing, setting and people present as well as what was said by the witness and anybody else present (particularly the actual questions asked of the witness).

126. The questions asked of MM by the teachers were not contemporaneously recorded nor were her answers. Their oral evidence, as I have said, was unclear about the specifics of what was asked and what the response was. The notes the class teacher kept were, in her own words, not a timeline of events, very jumbled, not in chronological order.

127. The social worker's record keeping is more reliable. She created a Word document and typed prompts for herself as she was speaking to MM. She then transferred this to her case note. The first time the case was saved was 17.40 and finalised at 22.48 that evening. Her note does set out who was there, that the safeguarding lead and the class teacher were with her when she was speaking to MM, and that the officer was with her when she spoke to LM. The note reflects the order in which those discussions took place she told us, and the questions she asked of MM are not recorded. In the witness box she could not recall what specific questions were asked to elicit certain responses. She thinks, she said in the witness box, that she might have prompted MM and accepted, it was fair to say, she could not remember if there were questions asked.

Make a note of the demeanour of the witness and anything else that might be relevant to any subsequent formal interview or the wider investigation.

128. No contemporaneous note is made by the teaching staff of MM's demeanour. The safeguarding lead says that when MM is embarrassed or uncomfortable she puts her head down to one side and goes wide-eyed. The class teacher's written evidence after the event is that she could tell that MM appear uncomfortable from her demeanour but no further detail is given.

129. MM is described as giggling by the staff. That of course could be because she is embarrassed by these memories she is trying to recount or alternatively by the school staff introducing words for private parts that she was not expecting and it may not be what she was trying to communicate. It is very difficult for the court to say.

130. The social worker has no contemporaneous note of MM's demeanour but she describes her as shy and quiet. Physically, she had her head down. Her hair looked messy and her top was stained. Over the last year she says that: "MM presents very differently, lots of eye contact, more alert posture, looking at me.". And that is actually more consistent with how MM comes across in the formal ABE interview.

Fully record any comments made by the witness or events that might be relevant to the legal process leading up to the interview.

131. The strategy meeting, as I have already said, includes the phrase, "After lunch, she alluded that it was still going on.". The safeguarding lead had asked a TA to keep an eye on MM and it was not clear from the safeguarding lead's evidence exactly what was said to the TA, whether it was passed on to the safeguarding lead via the class teacher, and there is no note on the school system of this discussion. A couple of teachers were with MM late in the day when the social worker arrived and no evidence is provided as to what, if anything, they said or MM said to them.

132. There was no discussion between the police and MM between 11 March 2022 and 5 May 2022, and the evidence of DC Wildish is that the substance of the allegations was not discussed prior to the formal ABE interview.

A full written record should be kept of the decisions made during the planning process and of the information and rationale underpinning the investigation process.

133. No record was kept by the school staff or social worker of any concerted planning process on 11 March 2022 or any agreed approach. The social worker was in a very difficult position because her understanding was, she told us in the witness box, is that the police were not going to attend and therefore she did not wait to discuss the matter with DC Wildish.

Underpinning the guidance is a recognition "that the interviewer has to keep an open mind …".

134. The school have a long history of involvement with MM and her family and I have already talked in detail about how they particularly supported her after the death of her mother. There is a degree to which the safeguarding lead was particularly emotionally impacted by involvement with the family and it was very moving when she described supporting MM after her mother was admitted to hospital and when she died. She said that

on 11 March 2022 she thought, "oh my goodness, something else they have to deal with, something else has happened".

135. The school had made a referral about MM in 2021 and social services were already involved, but the school's view is that MM's welfare needs were still not consistently being met at home and that the improvements that had happened when auntie was there deteriorated after auntie left. Their role was well beyond teaching and the safeguarding lead in particular took a motherly approach to MM.

136. The safeguarding lead has experience of making referrals to social workers that she feels have had an inadequate response. The safeguarding lead also gave evidence that was highly critical of LM's final term at the school saying we had behavioural challenges with him and that he posted this gang sign on social media and set fire to the toilets, leading to a strong conversation with the Head which was unlike any other she had heard between the Head and a parent.

137. This background frames how the school responded to MM when she wanted to communicate with them. When the class teacher speaks to MM, first of all, all she knows from MM is that LM touched her and the tense of "touch" is unclear. She did not know with what, when, or where. She also knew that MM's period was late and she told the Head that she was worried MM might be pregnant. By asking the safeguarding lead to end her call, that signalled to the safeguarding lead that there was something serious going on and the safeguarding lead recalled, as I have already said, the seriousness on [the head's] face.

138. The safeguarding lead was asked if the class teacher mentioned private parts when she came to find her? Her reply was: "If the class teacher is at my doorway saying inappropriate things and "I think she is pregnant", I can make a confident assumption that something has been mentioned.". When the safeguarding lead was asked whether she questioned the class teacher in saying why do you think she is pregnant, she said: "It was mentioned to me that MM had not had her period. I do not need to ask. I could follow her train of thought and I did not feel the need. We have a working relationship and she would have told me if I needed to know more.". She later said: "Because we have such an in-depth knowledge of her, when (the class teacher) was in my doorway, I can see where some dots might be joining here.".

139. It seems to me that the safeguarding lead and the class teacher made assumptions and expected the very worst from the most minimal information that MM originally gave the class teacher that LM touched her - again, the tense being unclear. It is a trait of human behaviour that we all have a tendency to interpret things in the light of our own beliefs. There is a real risk that the approach of the school was infected by this confirmation bias.

140. The school staff also were not aware of the extent to which they might have unwittingly influenced MM. The safeguarding lead was asked if she might have got the wrong end of the stick. She said: "MM would have corrected me. "You're wrong"… she would have said. She wouldn't follow a flow of inaccuracies, I have no doubts about that.". There is some evidence in the bundle that MM can correct people, she corrects DC Wildish in the ABE when she suggests she met MM at school. However, relying on MM to correct mistakes does not fit very easily with the intermediary reports that suggest she has a tendency to please and to agree with statements and a tendency to guess when she is unsure - that is H59.

141. The school in my view were not detached objective interviewers. Emotionally they had invested a lot in MM's welfare and it had taken an emotional toll on them. This made the whole process emotionally charged and I am concerned that they made assumptions on the most minimal information and that the following conversation was framed and led by the safeguarding lead.

142. I, for completeness, look at the extent to which the social worker has kept an open mind and she was taken to entries in the social work records that could be interpreted as the social workers forming a view that the allegations were true, and although the language in the notes might be interpreted that way, I cannot detect from the social worker, having heard her in the witness box, any dogmatic or tunnel visioned approach from her in dealing with this case. She is clearly a social worker who has a good relationship with both children and did not present a fixed view of the truth of the allegations.

Conclusion about the information gathered on 11 March 2022

143. I remind myself of the principles of good practice which are set out in the ABE guidance and highlighted to me in cases such as *Re P* that very great professional is required when dealing with the allegation of sexual abuse in the initial stages. The school was not set up for evidence gathering. The departures from the good practice are forensically significant and go to the heart of the reliability of what MM was trying to communicate. The response to her was unplanned and precipitant and their interactions of course all have a potential to influence MM's memory. MM is a particularly suggestable child and children's memories can be influenced by the environment in which recall is invited. The first responders had preconceived ideas as to what MM was trying to communicate.

144. On any analysis there was delay between what MM was trying to communicate what had happened and the time she was trying to communicate it at school. On one analysis it was years since these things had happened, and so there was a particular need for care to help her unpack what she wanted to communicate. The way in which the initial questions were asked has a potentially profound effect on MM's evidence as a whole.

145. MM was clearly trying to communicate something about LM touching her but the process during which her account was obtained means I cannot be clear on the balance of probabilities about exactly what she said to the school and what was their gloss and their use of language which may have influenced her. By the time the social worker arrived and made a clearer record of what was said, MM had been in the presence of the teachers by my calculation over five hours. By the time her account is more clearly recorded by the social worker, any influence or contamination may have already occurred and MM is now using phrases that were first used by the safeguarding lead, notably "private parts".

146. In summary the records of what MM initially said to the staff are deeply unsatisfactory and prior to the social worker arriving I cannot make findings as to exactly what MM herself said. The social worker's record as to what MM said is clearer but the danger is that by this stage MM now has a narrative that may be from her own memory or may to a greater or lesser extent be a product of the school's interventionist approach and coloured by their positive affirmation, affirmation that she has received from two staff members to whom she turns for guidance about intimate personal care, and both of whom came with preconceived ideas as to what she wanted to communicate.

147. All of these factors render what is recorded that MM said to the school on 11 March 2022 unreliable. So, I am afraid I can put minimal weight on the evidence obtained on 11 March 2022. I do not disregard it all together. Clearly, MM was trying to communicate something but it has been confused and contaminated by a process which on my analysis departed in almost every respect from good practice.

Analysis of the ABE interview

148. When I look at the ABE interview itself I remind myself of the need to look at the ABE guidelines and analyse the weaknesses and inconsistencies in the evidence as is emphasised by the case of *Re W and F (Children)* [2015] EWCA Civ 1300. Again, the Court of Appeal in *Re E* [2016] EWCA Civ 473, guides me that the departures from the ABE guidance require me to engage with a thorough analysis of the process in order to evaluate whether any of the allegations that the children make to the police could be relied on. I have to consider any flaws in the police process and whether there are so fundamental as to render the ABE record itself unreliable.

149. I remind myself of other recent cases in which the court has stressed the importance of complying with the ABE guidelines. MacDonald J in *AS v TH & Others* [2016] 532 Fam, *Re P* I have already mentioned, and most recently, *JB* (*A child) (Sexual abuse allegations)* [2021] EWCA Civ 46 which says that even a substantial failure to observe the requirements of an ABE interview may not necessarily mean that a Judge cannot properly rely on the hearsay statements made by a child.

150. The Court of Appeal in *BY* [2020] Civ 767 highlights that even in cases where the interview has been conducted largely in accordance with the guidance, it is almost invariably the case that the interviewer could have occasionally asked a question that ideally would have better been phrased differently. The question is whether the mistakes in the conduct of the interview are of a sufficient scale to call into question the reliability of the process.

151. I remind myself of course that ABE guidelines are just that, not tramlines, and that the ABE interview may be buttressed, corroborated, weakened, and undermined by the wider panoply of evidence available. Although I am going to go through the ABE interview in some detail, again structured by the good practice principles in *Y and E*, I remind myself that it must be viewed in the context of the evidence as a whole. First I am going to give the impression that the court formed of the ABE interview and then go through those points of good practice again in relation to the interview itself.

152. The strength of the ABE interview is that MM uses the first person, she talks about her experience objectively and the reference she makes to her thoughts and feelings throughout are credible. It is on its face a fluent and persuasive account. I look at the content of what MM says and of course this is the only recorded account from MM so I can hear her own words and be clear about what she said. She uses age appropriate words; “odd”, “awkward”, “weird”, “it made me feel I wouldn’t really want to do that”.

153. She was able to give context such as to the breastfeeding incident on page H39, she is forthcoming, she is able to speak with a degree of confidence.

154. There was also some features of her interview that caused me to pause and approach it with particular care. I look at the consistency between the interview and what she is recorded as saying before. She uses “touch” or “private area”, not “parts”, well, that maybe a rather

minor point, but elsewhere in the ABE she gives a level of detail that is missing from other accounts.

155. To give an example, she says: "I was sitting on the bed just like, yeah, what, to erm they [inaudible], in there as normal, and then he walk up and he said to me, "lie on the bed", and I said to him "OK, please don't tell me you're going to do this to me". Then he did it.". Now, this is the record of an interaction between MM and LM, the detail of which is not recorded in any previous accounts. And the phrase, "Please don't tell me you're going to do this" is a really striking one. It is a colloquial form of words for a young child and it does not fit easily with the chronological age that MM would have been when she said these things happened. It is also a form of words, "Please don't tell me you're going to do this to me" that suggest a degree of habit or expectation. Now, this could be a degree of detail that MM is recalling piecemeal, or alternatively, it could be that she is beginning to tell a story that has become her narrative. Similarly, the use of "lie on the bed" from LM is not mentioned anywhere else.

156. Elsewhere in the ABE she says: "After that he said "let's stop" and then it stopped.". That detail, quoted speech from LM is not given anywhere else that I can see. And so, she gives this conversational tone in her account between her and her brother which is not on my analysis mentioned before. "Again, I had to pretend I had milk in it" is a striking phrase that is not mentioned anywhere else. She gives the impression in the ABE that the breastfeeding incident happened straight after the touching incident. That does not seem to be consistent with how it is recorded elsewhere. And at H38, "where the egg was going" is a really unusual phrase for a child to use. It is a kind of biological reference that is not unpacked at all by DC Wildish.

157. The difficulty the court has in approaching this ABE is that on one analysis there is a child who has become increasingly fluent, detailed, and confident in her report of what has happened to her. The evidence of the school suggests that she started mainly using gestures and not using words to describe private parts. The evidence then suggests in discussions with the social worker she did use those words, "private parts", and then in conversation with the police officer in the ABE comes over as quite fluent and animated. The fluency and detail she gives in the ABE when recalling events of some time ago is in contrast to the intermediary assessment of that very morning in which MM had to be actively prompted to give details of her current morning routine.

158. If what she said happened did happen then it would have been traumatic and of course that may have affected MM's recall in many different ways. And of course, memory is not a simple single system. Maybe MM's account is becoming more detailed and fluent because that initial difficulty and embarrassment has been overcome and she has been believed, or maybe, alternatively, because this narrative has been established in her mind and has become her reality. The ABE of course cannot be divorced from the process that led to it and so, I look at the reality of what is said in the ABE by reference to the guidelines.

A well-conducted interview will only occur if appropriate planning has taken place.
The importance of planning cannot be overstated (paragraph 2.1 of the ABE guidance).

159. The officer asked the school about MM and booked an intermediary, clearly good practice, and she was aware of MM's vulnerability from the school. The intermediary

assessment took place just before the interview and the written intermediary report that I now have was not available until after the interview had taken place.

160. DC Wildish said the intermediary had decided on the day to go on and do the interview rather than come back another day and of course, as Miss Watson reminds me, the ABE guidance highlights at 4.93 the impact of delay on vulnerable witnesses and there are obvious advantages to avoiding delay. However, one disadvantage of this approach is that there was no clear written plan. DC Wildish had some verbal feedback from the intermediary that timings and trying to please were the main issues for the interview but when pressed by Mr Twomey KC as to exactly what was discussed with the intermediary in addition to this, DC Wildish was unable to remember. Likewise, she was unable to remember if specific steps were discussed to address the issue of MM's other cognitive tendencies. She could not recall if she was aware of the other limitations more recently recorded in the intermediary report, namely MM's limited ability to order events in a chronological or logical way, her literal understanding, and the need for simple vocabulary and sentence structure.

161. The intermediary report itself records that all these aspects had to be taken into consideration during the planning of the ABE interview, but the report is silent as to the detail of this and how the intermediary addressed this with the officer. The disadvantage of going ahead on the day then is that there was no written plan put in place to help the court understand how MM's specific cognitive profile had been considered and addressed. The officer of course, did not have a wider picture of MM's other difficulties but it is fair to say she did use simple language to her credit throughout.

162. I am going to look now at MM's tendency to guess when unsure. That is a clear feature of the intermediary report. The ABE records MM being told not to guess and then almost immediately guessing that the intermediary had toast for breakfast. DC Wildish gave evidence that her plan to address this guessing tendency was to address it as the VRI went on and she accepted it was a fair criticism of the process that there should have been a more thorough process adopted to make sure MM did not guess.

163. When I look at the aspects of planning as to how witnesses should be prepared for the interview, for example, in paragraphs 2.246 and 2.247 of the ABE guidance, it was not clear to me when I listened to DC Wildish that she approached the preparation of MM for the interview with all of those things in mind. The shortcomings and failing to prepare MM for the interview may arguably be highlighted by MM's own response to the interview. For example, MM asked to go to the toilet as soon as the interview starts, suggesting she may not have understood how long this could take.

164. At the end MM asks: "What is your actual job?" which might suggest a degree of misunderstanding of the process. And she says finally: "Well, at least I had a good conversation.". That might suggest that she thought she was there for a chat and did not grasp the distinction between the game playing and the getting to know you of the intermediary assessment with the formal interview process itself. It is very difficult for the court to calibrate the exact extent of MM's understanding and it is fair to say that broadly speaking, regardless of this lack of clear planning, MM seems to understand why she is there and it is as her opening remark suggests clear to her what she needs to talk about.

Any initial questioning of the child prior to the interview should be intended to elicit a brief account of what is alleged to have taken place; a more detailed account should not be pursued at this stage but should be left until the formal interview takes place (paragraph 2.5).

165. DC Wildish exercised good judgment in deciding not to question MM at school and there is no suggestion that there is questioning off camera before the interview started from the evidence before me. I would observe that no matter how good an ABE DC Wildish conducts, she could not in any way undo the process that had been started by the school. She had no alternative but to build on the foundation that others had laid and her interview must be seen as part of this whole process.

Fully record any comments made by the witness or events that might be relevant to the legal process up to the time of the interview (paragraph 2.6 of the ABE guidance).

166. There was no discussion between the police and MM between 11 March and 5 May, and DC Wildish was clear the substance of the allegations were not discussed during the intermediary assessment.

During the course of an investigation it may be necessary to ask a witness to explain a significant evidential inconsistency between what they have said during the interview and other material gathered during the course of the investigation. Explanations for evidential inconsistencies should only be sought where the inconsistency is a significant one and after the witness's account has been fully explored, either at the end of the interview or in a further interview, as appropriate. Questions intended to elicit an explanation for evidential inconsistencies should be carefully planned, phrased tactfully and presented in a non-confrontational manner (paragraphs 2.161-3).

167. I have already gone through the numerous recorded differences in the accounts that MM is said to have given and it is hard, as I have already suggested, to tell whether these differences are in relation to what MM herself said or due to the recording, or a mixture of the both. DC Wildish does not have before her, as far as I can see from the evidence, the school notes that the class teacher took on the day. Of course she would not have had the benefit of the witness statements that I have now had. She would have had, I think, the form 87A and the strategy discussion that appears in the police records but the police records do not include the most comprehensive notes of the social worker or the MARF.

168. It seems to me that DC Wildish was not in a position to explore any evidential inconsistencies because she did not have all the documentation or the records that existed at the time. I think in fairness to her, it might have been hard for her to do so in any event given MM's cognitive profile and the poor record keeping as a whole. But it is interesting she did not pick up on the word "egg", that interesting turn of phrase used by MM, and ask her to explain that.

A full written record should be kept of the decisions made during the planning process and of the information and rationale underpinning (paragraph 2.222).

169. I have already alluded to the intermediary report being prepared after the interview and so cannot have been considered in its entirety before the interview took place.

For all witnesses, interviews should normally consist of the following four main phases: establishing rapport; initiating and supporting a free narrative account; questioning; and closure (paragraph 3.3).

170. The rapport building stage was not fully carried out. There is no discussion of neutral topics because MM herself initiates the conversation with, "I know why we're here". The introduction of a free narrative phrase is introduced as follows, and I am going to quote this verbatim:

"Q: Okay. So, we're here. I don't know if you remember that we came and spoke to you at school a little while ago. Do you remember, with Michelle?
Q: Yeah.
Q: Do you want to talk about what happened, that you told us at the time?
A: Well, I didn't meet you at that point.
Q: No, I was there but you didn't see me. Michelle was there, I was sat with Michelle in a different room.
A: I'll talk to you about it.
Q: Yes?
A Yeah.
Q: So, what happened? What did you talk to them about, do you remember?
A: Yeah.
Q: Do you want to tell me about it?
A: I talked about my private area."

171. It is important to look at this extract and indeed the interview as a whole in the context of a child who is particularly vulnerable to suggestion and is easy to please. The phrase "Do you remember?" is used a number of times in the extract I have just quoted and I look at Mr Thomas on page E181 where he refers to the need to avoid, "Do you remember?" questions. The officer's approach arguably encourages MM to tell her what she has already said to the social worker rather than telling her what happened which may be significant if the original account is tainted. MM responds with: "I want to talk about my private area", which might suggest she is recalling what she has already talked about as opposed to being taken back to the memory of the event she has been asked to recall itself. And it is very difficult for the court to assess exactly what, if any, impact this might have had on MM's recollection.

172. The way she talks about breastfeeding and touching are free narrative accounts which contain, as I have already said, more detail than the school accounts as the local authority rightly point out.

Where it is necessary to ask questions, they should, as far as possible in the circumstances, be open-ended or specific-closed rather than forced-choice, leading or multiple.

173. This good practice is particularly important for MM because Mr Thomas highlights specifically to be careful with forced-choice questions. That is at E181. I note examples of forced-choice questions at H35, H38, and H39.

174. And an example I will quote illustrates the danger of forced-choice questions for MM. She was asked: "Has it happened one time or more than one time?". "More than one time", she replies, with an inflection in her voice that suggests, as it were, a question mark that she is asking a question in response. Here, MM was not given the choice in that question of "I cannot remember" or "I do not know" which is unhelpful when you look at her response.

175. There are examples of multiple questions, H36, H38, H39. And again, this is noteworthy in the light of Mr Thomas' guidance at E180 that each question should contain a single point because MM needs information broken down for her. Again, of course I remind myself that Mr Thomas' report post-dates this ABE but it does shine light on any particular difficulties with the approach taken.

176. The intermediary report prepared for the ABE makes it clear that MM has a tendency to please and will agree with statements. This is a view that is later shared by Mr Thomas who says that the danger with this type of question is MM will say what is suggested to her rather than what is true. And there are examples of leading questions at H36, H37, H38, H39, and H42.

177. I think it is instructive, and I do this by way of example and illustration only, to look at what MM says about one particular point and that is her recollection of whether she was touched internally or externally. So, the first time she mentions this is on H38:

"A. He, like, first he touched the outside and I think he touched the inside. When, where the [egg?] was going.
Q. You think he touched you inside?
A. Oh, actually, he did touch the outside and the inside.
Q. Yes? And what did he do when he touched the inside? Do you remember?
A. No."

Later in the interview the officer tries to reflect back, quite properly, her understanding of what MM has said which leads to the following interaction:

"Q. And then he touched your private parts?
A. Yes.
Q. Yes? On the outside or do you think on the inside?
A. Yeah
Q. You're not sure?
A. Not sure.
Q. Not sure? That's OK.".

178. MM's evidence about where she was touched internally or externally seems to vacillate through the interview and one interpretation of this could be that she is guessing or shifting in response to what the officer is asking her. It could be suggestive of a child who is easily influenced.

179. There is another example of this kind of shifting when the officer tries to confirm back to her.

"Q. And there is also a time when he has put his mouth on your upper body.
A. Yes.
Q. Yes?
A. Sort of, yeah.".

The risks and pitfalls of using drawings, pictures, photographs, symbols, dolls, figures and props include: Some props, e.g., anatomical dolls or drawings, can result in distortions or inaccuracies; Many props, poorly used, can create confusion or miscommunication (paragraph 3.123 of the guidance)

180. The maps were introduced after MM has referred to a game of "Touch your private area". What she means by private area is not clear before the body maps come out and she clarifies by reference to the maps. At times MM appears confused by the maps, which is male, which is female, which is front, and which is the back of the body. She does not seem able to assimilate what she is seeing but points very quickly in a cursory way to the maps.

181. I remind myself of the principle that pictures should not be combined with leading questions and should be used with caution (paragraph 3.125). And there are a couple of examples of the officer referring to the body maps with a leading question: "So, he asked you to touch his number 4?". She says at one stage, "but on a boy", the officer leads and corrects MM in relation to another indication MM gives.

182. It is also noteworthy that there is good practice in this interview. The officer does use simple language and open questions through the interview and importantly MM is able to correct her when she gets things wrong. She corrects the officer about the nursery, having a uniform, and corrects herself in relation to the body maps at H36 and H39. She is also able to correct the idea that breastfeeding was invented as a game. "It actually wasn't a game. He just made out it was.", is her response.

The rapport phase includes explaining to the child the "ground rules" for the interview (paragraphs 3.12-14) and advising the child to give a truthful and accurate account and establishing that the child understands the difference between truth and lies (paragraphs 3.18-19).

183. I look at the principle set out in the guidance about the importance of ground rules and the difference that the child understands between truth and lies. As I have already said, the rapport stage does not happen in full because MM starts the interview with: "I know why we're here because it is to tell you what happened. This is before any rules could be set out for her. MM volunteers: "Michelle said to me if there are some questions you don't want to answer, just say not sure.", which suggests there might have been some discussion between MM and the social worker off camera, but more likely than not this is a discussion recorded at H408 that the social worker tells her the most important thing is to tell the truth and that if there was a question she felt she could not answer that was OK.

184. The ground rules are explained clearly by DC Wildish, "Don't guess", "Say if you don't understand", "Important we tell the truth in this room", and MM was able to distinguish between the truth and lies in the video. It is raised by Mr Twomey KC that it is not explained on tape that the officer was not there at the event in question and so, MM did not know it was important to give as much detail as possible and the officer was not sure whether this was done off tape. And of course the officer does give two conflicting messages to MM about who might see the tape saying that: "Anyone can listen again", but then saying, "What is said in this room stays in this room.". I would be speculating if I tried to determine the exact impact of this on MM's recall, if any.

185. The truth and lies exercise is, it is submitted by Mr Twomey, undermined because two professionals have arguably modelled untruthfulness to MM. The social worker in saying:

"If you don't want to answer, say not sure", and the officer by denying that she has got questions on her notepad. Again, it is hard to know if MM would have picked up on these somewhat subtle issues and the extent to which she may have been influenced, and again requires me to enter into speculation. What is more significant in my view is MM's response to the truth and lies exercise which she highlights: "The boy has lied because he does not want to get into trouble". It would have been better if MM had been re-assured that she would not get into trouble for telling the truth which would have addressed her response to the truth and lies exercise directly and corrected any misapprehension she might have been under that she would be in trouble for telling the truth.

Underpinning the guidance is a recognition "that the interviewer has to keep an open mind and that the object of the exercise is not simply to get the child to repeat on camera what she has said earlier to somebody else"

186. DC Wildish framed her interview by start by reference to what MM had told others, but in my view she does not demonstrate a fixed or dogged approach into getting MM to report on camera her previous allegations.

Demeanour in the ABE

187. The case of *BM* [2021] EWCA Civ 1371 is a case where the Court of Appeal reminds me that "the demeanour of a child is likely to be of real importance to the court when assessing the recorded interview or live evidence of children. Here the court is not only entitled but expected to consider the court's demeanour as part of the process of assessing credibility, and accumulated experience of listening to children's accounts sensitises the decision-maker to the many indicators of sound and unsound allegations".

188. I pause to observe that MM's presentation in the ABE is really different to how both the school and the social worker report to her presenting on 11 March 2022 when she was said to be looking down and appearing shy. MM comes over as talkative, maybe slightly high-spirited, and certainly upbeat in her interview. She initiates the conversation and she has a very relaxed conversation with the intermediary when the officer leaves the room. She appears confident and one possible way of reading the interaction is that she does not seem to be distressed by it at all. There are some signs of slight fidgeting or nervousness but overall the thrust of the interview is a child who appears to be reasonably relaxed, in stark contrast to how she is described by the school.

189. Of course there may be explanations or possible explanations for her demeanour. It could be because she does not understand the seriousness of the process, or because she is telling a story, a narrative, or because she is genuinely relaxed thanks to the good preparation done by the intermediary. It is hard to know but by any analysis, what MM says and the gravity of it is at odds with her earlier presentation.

Conclusion in relation to ABE interview

190. What MM says in the ABE is the clearest account I have of her allegations, but DC Wildish in my view did not have a firm foundation on which to conduct the ABE process in two forensically significant respects. Firstly, the ABE process cannot undo or mitigate or address the initial discussions which have been excessive and I found departed from good practice, and in my view breached the cardinal principles set out at paragraph 1245 of *Re P*

flagrantly. Even a perfect ABE interview, if there were such a thing, cannot go back in time and make good any deficits in the initial discussions.

191. The second forensically significant respect which I think DC Wildish to build her ABE on an unfirm foundation is this, that the intermediary report in its entirety had not been obtained and a specific plan to address the cognitive profile of this child and her specific vulnerabilities had not been drawn up or clearly implemented. This was crucial because MM has a tendency to please, a tendency to agree with statements, and as we see in the ABE itself a tendency to guess when unsure. In my view, the reliability of what MM says in this interview is seriously undermined by these two crucial factors.

192. Although the use of some leading questions and the breach of the guidance which I have gone through already may not have been as significant for another child, for MM who is suggestive, eager to please, and vulnerable, these lapses in good practice are forensically significant and do not help the court discern what is MM's actual experience as opposed to what may or may not have become her narrative. The ABE interview and the weight I can place on it is significantly reduced. I do not discount it all together but I do weigh it with real caution in the context of all the evidence and mindful of the limitations.

(Luncheon adjournment)

JUDGE SUH:

LM's evidence

193. I am going to now look at LM's evidence and LM is a tech savvy teenager who is keen to present a certain image of himself to the world on social media and he is understandably pleased by the number of followers he has and that he is recognised in the street. He presents a certain image of himself which may belie a deep desire for peer approval and popularity. He has Type 2 diabetes, is obese, and is under the care of the Royal London for this. Social workers have been involved in his life from a young age due to the concerns of parental neglect.

194. The evidence as a whole suggests to me he is a rather vulnerable young man who has been deeply impacted by the death of his mother. His view of relationships, as recorded in the social work notes, are entirely age appropriate, consistent with his faith, and somewhat naïve. His conversations with the social worker are quite telling. He talks about going to the cinema with friends, his drum, and his trainers.

195. The safeguarding lead was worried about his trajectory at year 6 but he is not as streetwise as first he might appear in my view. What was so telling about LM's evidence is the extent to which he took responsibility for his poor behaviour and he did not seek to justify or excuse it which is consistent with how he has appeared throughout to the social workers.

196. At F314 he says: "I need to take more responsibility for my actions". He is able to name and own the things he would like to have done differently. He says that: "He (my dad) needs to see that I am changing. Sometimes I say things to him (my dad) I don't mean and we'll be arguing.". There's a degree of self-awareness and indeed self-criticism in the way that LM expresses himself. And LM has consistently denied what his sister said. His evidence does not support or corroborate the local authority case. In fact, he speaks

protectively of his sister, both in oral evidence and also when he speaks to the social work team, for example, F422, in worrying how MM's doing with her grandparents.

197. Overall, I found his evidence compelling and I did not detect any element of LM wanting to curate for the court a view of his sister or indeed of himself. He gave me the good and less good aspects of both her and indeed himself in the evidence. I think I can place weight on his denials when the case was put to him both directly and clearly.

What the father knew

198. I am going to look now at what the father knew about what MM has been communicating to others. Has she tried to communicate with her father in what she said or what she has done? MM told her school teachers that he "knows little bits". When asked in the ABE she says: "Well, my dad was at work.". And indeed, the father's evidence is he left home between 7.30 and 8am, returned home between 6 and 7.15 Monday to Friday and in some cases on Saturdays. In the ABE, MM says: "I did mention it to my mum.".

199. In conversation with the social worker on 7 June 2022, MM suggests she did not tell her dad. "She should have told dad first" is what the social worker has recorded. The father's oral evidence was that he was clear that his wife had never spoken of anything about sexual abuse or any concerns MM had raised with her. The thrust of MM's evidence is she communicated something to her mother and that her mother came in on one occasion. Her mother's response is inconsistently recorded throughout the evidence. The safeguarding lead was involved with the family for a number of years and would regularly see the mother and she was not 100 per cent sure that the mother would have seen it as serious as it is and she thought that the mother may not have connected the dots in what she was told.

200. The father's evidence has fluctuated as to the extent to which the children have ever played alone together and that could maybe be part because of these language difficulties or a desire to promote a certain view of the family to the professionals and the court. Miss Watson wisely concluded that this was not necessarily an example of where the court needed to consider a *Lucas* Direction. His written evidence as a whole may fairly be summarised as him struggling to come to terms with what MM has said and really not knowing what to believe. We see that in the first child review report in June 2022 at F67. We see it in his first response to threshold at A24. Then at the December child protection conference at F377 he remains confused on what to believe that note reads.

201. The father's decision to travel to overseas on 24 March 2022 could be seen as a lack of appreciation of the gravity of the matters that have been raised but again, I caution myself that the language barrier and poor verbal comprehension may have played some role in this apparent lack of understanding.

202. The social worker's evidence on what the father might have known or seen I think was very reasonable and balanced. She said there were not warning signs that should have put the father on notice of sexually inappropriate behaviour. She accepted there was nothing wrong with two siblings playing together in a bedroom and nothing necessarily sinister about it. She gave evidence that she would not expect a parent to supervise the children playing together and that the father's reaction of shock was a natural one. However, she did clearly maintain there was a lack of oversight about what was going on in the home and that the father was not curious about what was going on in the children's lives. She thought his relationship with the children was not building in such a way that was conducive to them sharing information with

him and that the family dynamics did not lead to an environment in which people could share what was going on. He did not always look for advice, for example, from the maternal family.

203. The father's oral evidence does not suggest to me he was a father who was closely involved with his children's lives before their mother died. He was unable to answer quite basic questions about their lives such as when LM first got a mobile phone or started puberty. He was unaware of the high level of concern the school had for LM at the end of year 6 and did not know about the online posts which suggested LM may have been dabbling with gang culture and minimised the significance of the incidents in which LM set light to the school toilets. He took no steps to monitor, on his own evidence, the children's use of tech or their presence online by checking their browsing history or looking at what they posted.

204. The father said his wife was doing that kind of thing and in fact repeatedly said his wife was doing things when asked about care of the children. He acknowledged that "she was not as clever as some ladies" but thought although she was slow she was managing it. He did not have any conversations with LM about growing up or sex education and when asked whether he did not supervise the children as they grew up, particularly LM's activities at home, he said: "I can accept about the supervision with LM but with help of the in-laws.". He wanted to work on supervision.

205. MM has reported she has communicated something of concern to her mother. The evidence about what her mother said or did differs in the recorded accounts, and given the lack of clarity about what MM was trying to communicate and the inference that the school might have had on it, and what I know of both MM and her mother's cognitive profile, I cannot be satisfied as to what MM said to her mother and what, if anything, her mother said in response.

206. Although the father said to me that he and the mother did talk about the children, I am not satisfied that whatever MM communicated to her mother or the mother observed between the children was clearly communicated onto him. The evidence as a whole does not support a finding that he knew or ought to have reasonably known of any of MM's concerns before 11 March 2022.

Conclusion

207. Taking a step back and now looking at the broader canvas, I see a family who have been struggling a good deal over a number of years to provide a high standard of care to their children, both before and after the mother died. I see two children who are vulnerable in different ways, both impacted by the loss of their mother, and I weigh very carefully in the balance the broad gist of what MM has been recorded as saying is consistent. She says that she was asked to lift her top and that LM's mouth was on her breast area. She talks of the touching of the penis and the vagina area, although she does not use those terms, I am giving the gist, and that she told her mother.

208. There are indicators that point towards a credible account; age appropriate language, for example, the use of scratchy is an appropriate term, and that her account does not appear to be obviously embellished or exaggerated on the face of it. The evidence does not suggest she said this to elicit a particular effect or reaction, she has not gained from making these allegations, indeed she wants to go home. She wants to see her brother and she idolises him and she has never gone back on the things that she has said.

209. However, the allegations emanate from the discussions on 11 March and MM's narrative has evolved.

210. As I have already pointed out, the discussions lacked the forensic rigour and were a flagrant departure from good practice as set out in the ABE guidance. What MM said herself that day is unclear and in my view the evidence obtained by the school is contaminated by the assumptions they made and the confirmation bias that appears to have been at work in trying to obtain an account from MM.

211. I am afraid MM's account has been muddied and tainted by this process and the school evidence is an unfirm foundation on which all subsequent investigations have been built. I regret to say that MM's evidence has been compromised by this lack of forensic care taken by the school and it undermines the reliability of what she said. There is a real risk that the approach taken by the school has influenced inadvertently a suggestible child. She begins to use phrases that her teachers in the past used and her narrative becomes increasingly confident and fluent until at the ABE she gives an account without a great deal of prompting. And although the breaches of the ABE guidance by DC Wildish maybe not as flagrant as LM's team might have suggested to me in their submissions, they are forensically significant in the light of this particular child's needs and crucially what has gone before at the school.

212. LM's evidence has been clear throughout that he did not do this. He has given evidence under affirmation and answered all the questions put to him. I cannot on the balance of probabilities make the findings that the local authority ask me to make in relation to MM's allegations and their case is not made out.

213. However, the court is not always bound by the cases put forward by the parties and I have looked at the case of *Re S (A Child)* [2015] UKSC 20. I have reminded myself that Judges are entitled where the evidence justifies it to make findings of fact that have not expressly been sought by the parties but I should be very cautious about doing so (see *Re G and B (Fact finding) [2009]* EWCA Civ 10 . I remind myself therefore that any additional or different findings must be securely founded on the evidence and that the fairness of the fact finding process must not be compromised.

214. The evidence as a whole from the father himself is that the father was not proactive in making sure his children were taught about puberty, sex, and relationships. Of course the school has a role in that, teaching PSHE is part of their teaching function, but in my view a parent cannot delegate all responsibility for ensuring their child receives accurate information and understands it on sex and relationships and puberty. It would be reasonable for a parent to find out what their child is being taught at school, to make sure their child understands it, and to say to their child if they have any questions their parents will help them answer them or find someone who can.

215. I understand that for the father talking to MM, this may be particularly difficult for reasons of culture and also reasons of MM's cognitive understanding, but there are age appropriate resources available on the internet and in bookshops that can help children understand periods and puberty and sex education. And of course, there are female family members who might be asked to help.

216. As for LM, the father cannot in my view delegate his job of ensuring his son receives reliable guidance and information about sex and growing up. Similarly, the father has not

ensured on the evidence before me his own evidence that he knows what the children are doing online or taken steps to monitor their use of tech.

217. I think that the evidence fairly supports a finding that the father has not made sure that his children have appropriate guidance around puberty, sex, and relationships, and in relation to staying safe on the internet and when using social media. And both children would benefit from clear teaching and guidance on those issues even now.

218. The decision of the court to make no other findings does not in my view mean that the local authority have failed or that this should be viewed as an unsuccessful outcome. As Baroness Hale said in *Re SB [2010] 1FLR 1161*, we should not expect every case that a local authority brings to result in a court order. They bring the case to court where there is a good case to answer and it is for the court to decide whether the case is made out. That is exactly what the local authority did, they were right to do so, and I make no criticism of them. It is only when all the evidence has been assembled and heard in the witness box that one can exercise that overview of it and it can be tested and evaluated in its entirety.

This transcript has been approved by the Judge