

**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 any child or member of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied. Failure to do so will be a contempt of court.**

**Case No: LV23C50733**

**Neutral Citation Number: [2024] EWFC 305 (B)**

**IN THE FAMILY COURT  
SITTING AT LIVERPOOL**

**The Liverpool Civil & Family Court  
35 Vernon Street, Liverpool, L2 2 BX**

**Date: 31/10/24**

**Before:**

**His Honour Judge Sharpe**

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**B E T W E E N:**

**A LOCAL AUTHORITY**

**Applicant**

**-and-**

**(1) A MOTHER**

**(2) A FATHER**

**(3) THE CHILDREN**

**(Acting by their Children's Guardian)**

**Respondents**

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**IN RE X (CHILDREN: ALLEGED PHYSICAL ABUSE)**  
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**The Applicant was represented by Nicola Miles**

**The First Respondent was represented by Ian McArdle**

**The Second Respondent was represented by Leszek Szczesniak**

**The Third – Fifth Respondent Children were represented by Simon Povoas**

**Approved Judgment**

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*The decision to publish*

1. In June 2024 Sir Andrew McFarlane, the President of the Family Division, issued updated guidance to assist judges, legal advisors and magistrates in deciding whether and how to publish more of their judgments on the National Archive website.<sup>1</sup> According to that guidance the publication of judgments is an essential part of the process of achieving greater transparency about the work being done in the Family Court through the shedding of more light on its ordinary, day-to-day, workings. Given the bad press which the Family Court and the family justice system more widely has had to endure in even relatively recent times it is both a laudable and a necessary aim.
2. The Family Court, like all courts, exists not for the benefit of those professionally engaged within it but specifically for those who need its services and more generally for society as a whole. The increased publication of judgments and the wider aim of greater transparency serves both constituencies. Those who find themselves in the Family Court, whether voluntarily or not, need to be able to understand how the court works, how decisions are made and the importance of effective participation. Most importantly, participants need to appreciate that a court is not a discussion forum, a meeting or a committee and that its outcomes are not suggestions, recommendations or advisory opinions but decisions from which orders flow and compliance must follow. Enabling individuals to quickly appreciate the very different nature of a court from other decision-making organisations in which they may have previously participated is an important part of ensuring either effective engagement or informed disengagement; either way the process of litigation will proceed with more surety and solidity.
3. For the wider public the importance of being able to repose trust in an unelected body taking decisions which can be of the gravest magnitude for individuals is essential. The seven principles of public life apply to courts as much as to elected representatives and include amongst them integrity, objectivity, accountability and openness<sup>2</sup>. Transparency not only enables the public to understand the workings of the Family Court but to see for themselves those principles being actively applied for the benefit of those involved. Even more importantly, through transparency,

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<sup>1</sup> Transparency in the Family Courts – Publication of Judgments, issued 19 June 2024

<sup>2</sup> The Seven Principles of Public Life (sometimes referred to as the Nolan Principles) are Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership.

and in particular the publication of judgments, people can see that fairness of process and justice in outcome are hallmarks of the Family Court which can only generate confidence in its operation.

4. Notwithstanding the benefits to transparency of publishing a judgment the decision to publish this one is not because of any notion that it will shed light to the wider public of the workings of the Family Court. A judgment at the level of the Circuit bench is far more likely to litter the legal landscape than to illuminate it. The law is rarely developed so far down the judicial hierarchy and principles are better framed from a higher vantage point where the view is better both in terms of definition and detail. There is nothing in terms of the law set out below which has not been said more fully and eloquently in the superior courts. The purpose of publishing this judgment is to highlight a problem which appeared to be an isolated incident at the time of the preparation and handing down of the unanonymised version of this judgment but which has since recurred and which suggests that it is a practice which, even if it is no more than a little local difficulty, needs calling out to ensure that in so doing repetition, whether by ignorance or design, is avoided.
5. The problem which not only occurred in this case but in a subsequent and entirely separate set of proceedings is that of a failure to understand the importance of any conversation with a child once an issue of potential abuse has been identified and the importance of how recurring exchanges and conversations can undermine the process of evidence-gathering and create a confused and even chaotic picture of what actually happened. The problem when good practice is not followed and steps are taken to hold further discussions with a child who has made allegations is that a proper understanding of the reality of what occurred is too quickly obscured and the consequences are far more likely to be negative rather than positive. In a situation of disputed, contentious allegations clear findings as to what did (or conversely did not) happen are critical. Time and again the appellate courts have stressed the importance to be accorded to the findings made by the trial court, they become in nearly all cases the fixed points around which later legal argument swirls, and overturning such findings as were made is a summit scaled only with difficulty<sup>3</sup>.
6. Accordingly this judgment is a revised version of that which was previously provided to the parties earlier in the year with full identificatory details and which was abbreviated only for ease of reading. It has been significantly revised not just to anonymise those involved but to ensure that details of specific events or descriptions of individuals do not unintentionally become pieces in an exercise of jigsaw identification. The family in question, to the best of my knowledge, continue to attempt to resolve their difficulties and should not be hampered in that regard by any impediment stemming from recognition. Further this version of the judgment is focused upon the process of evidential collation and contamination rather than family-specific threshold findings or welfare outcomes.
7. However just as publication is not intended to cause difficulties for the family involved neither is it intended to be a stick with which to metaphorically beat the

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<sup>3</sup> See *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5

professionals about whom I have felt the need to be critical. I have considered the guidance referred to above in terms of identifying professionals or even the specific local authority and have reached the clear conclusion that no benefit will flow from identification. Coruscation through publication will not assist in securing change. In any event despite the legion of errors which are chronicled below I reached the clear view that no one acted in bad faith, that mistakes were borne of ignorance and not intent and what is required now is the highlighting of defective processes as opposed to the spotlighting of individuals or even organisations.

### *The proceedings*

8. These proceedings involve three children. It is important at the outset to make that simple but obvious point because throughout these proceedings, and especially during this final hearing, the focus has almost exclusively been on only one child, a girl called Penny. But Penny is only one of a sibship of three as she has two brothers, Alan and David. These are not the children's real names. Penny is older than her brothers followed by Alan then David. All three children are of school age and all attend the same school.
9. Prior to the events with which this judgment is concerned they all lived with their parents. I will simply refer to the mother as M and the father as F hereafter. The parents have been married for many years and have no other children. The parents are both professional individuals with different but time-consuming careers. Each parent succeeded academically and they place great store in their children fulfilling their own potential. The parents undoubtedly aspire for their children to succeed and encourage them to do so.
10. Although the family is close knit, or certainly was before the events with which I am concerned began, they are not isolated and there had been no record of involvement with social services and certainly nothing which might indicate anything other than stable, consistent and caring parenting of three contented children. All of that is true of many families but three factors differentiate this family from many others. Firstly, they are a family of colour and therefore will have had a lived experience which will undoubtedly have been different from those not of ethnic minority status. Secondly, although now long settled in the United Kingdom the parents were born, raised and educated in Western Africa and within families imbued with the culture, values and norms of that region. Thirdly, the family as a whole, and particularly the parents, hold strong religious beliefs and are devout in the practice of their faith. I raise those matters at the outset because each of them has, to some extent, been referenced within the proceedings and particularly during the final hearing and each will therefore form part of the material in this judgment.
11. The proceedings in question are care proceedings and were initiated in the second half of 2023 as a result of Penny having spoken to a teacher at school about physical chastisement being inflicted by her parents upon herself and her brothers. At the same time Penny also raised concerns about feeling emotionally pressured by her parents over her body shape and either being deprived of food or

discouraged from eating by reason of comments made by them, to the point where it was impacting upon her health.

12. As those concerns stemmed from a pupil and were raised directly with a teacher they were immediately picked up by the school which instigated its safeguarding procedures. As part of those procedures Alan and David were spoken to because of what Penny had said and thereafter M and F were made aware of what she had said. Their reaction to Penny and what she had said was, according to the Local Authority, itself harmful because it caused Penny to suffer such emotional harm that it became necessary to remove Penny from the family home. As a consequence, since October 2023 Penny has been living with foster carers, a situation she apparently continues to prefer to returning to the family home. In contrast, Alan and David have remained at home throughout this time albeit that whilst they continue to live with their parents they do so under the constant observation of support workers who are present in that home at all times.
13. For the family as a whole this has been a highly pressurised, uncomfortable and difficult period in their lives. Participation in care proceedings is rarely, if ever, considered to be something which adds to the enjoyment of life but these parents and their sons at least have struggled with the intrusion into their home and their parenting of observant strangers deemed necessary by the court to avoid the removal of all three children. The stress has been considerable and may well have been a factor in recent health difficulties suffered by the father.
14. Neither has Penny been spared from unhappiness. She is currently effectively estranged from her parents by reason of her assertions and is steadfast in refusing to contemplate the possibility of returning home in the near future. As Penny has never resiled from her allegations or even hinted at wanting to retract them Alan and David have been consistent in *not* making any allegations of their own against their parents and of rejecting everything Penny has said. Holding such diametrically opposed views has resulted in an emotional separation between the siblings. Despite the fact that the three children attend the same school and were having regular contact with each other outside of school there is now something of a fractured relationship between the boys and Penny whom the brothers have started to shun at school. The parents, like their children, have been consistent from the start in their own denials of Penny's allegations, and whilst they would very much like her to return to the family home they recognise the chasm which currently separates them from their daughter. It is an understatement to say that this is currently a deeply divided family.

#### *The issues and the approach to be adopted*

15. Although the final hearing has been a composite hearing in which issues of threshold and welfare have been evidenced and argued, for their very different reasons all involved agree that determination of the threshold issues is essential. During the concluding stage of the proceedings both the Local Authority and the Guardian argued that dependent upon the findings I make in relation to the threshold issues and notwithstanding the intention that the proceedings would

conclude with the delivery of this judgment there may be a need for a different approach to be taken.

16. The professionals' argument is that it is only following any findings being made as to what has or has not happened that any plan for progress can be developed. In the event that findings of significance are made in respect of the principle allegations there would be a benefit in proceedings being paused for a short period, measured in weeks not months, to allow for a period of absorption of that factual reality and some reflection as to its impact and effect upon the family before attempting to plot a route which allowed some forward movement for as many members of the family as were willing and able to travel down that path.
17. This is not a view shared by the parents, who see matters from a very different position as they continue to have to live with the unremitting intrusion of continuous supervision of their private life and who wish for the proceedings to be concluded as soon as possible. Their desire for an end to the court process, whatever that might involve, was clearly evidenced just last week in their willingness to proceed with the final hearing despite F's health issues, M's work demands and a need to support members of the wider family at a difficult time. The parents seek factual clarity in accordance with their denials of any wrongdoing in order to bring the proceedings to an end. In the alternative they need a basis upon which they can argue that the scope and extent of the supervision imposed upon them can be remodelled, if not fully withdrawn.
18. It is inevitable therefore that the primary focus must be on the determination of the disputed matters currently relied upon by the Local Authority.
19. The Threshold Document drafted by the Local Authority sets out, in essence, four overall allegations against the parents, some of which are then particularised in specific ways. The overall allegations are: (a) that physical chastisement, including the use of implements, has been practised upon the children; (b) that the parents have lied about this in denying the same when working with professionals and in court; (c) that emotional harm has been visited upon Penny, primarily by reason of her 'whistle-blowing' but also in how they have pressurised her over her weight and so impacted upon her eating; and (d) the parents have failed to allow Alan and David to be assessed for additional needs which the school was stating required professional assessment and support.
20. Each of these matters is important of itself but the matter which demands the main focus is the original and originating issue, physical chastisement.
21. In evaluating the evidence in respect of physical chastisement it is important to note from the outset that the allegations stem solely from Penny and her various accounts of the treatment allegedly meted out to her and her brothers. There is no physical evidence to verify her contentions, nor is there corroboration from any other source, be it oral or documentary. There are no noted injuries, no earlier reports made to professionals, no concurrence by siblings or admissions by parents of these allegations or similar ones made at some different time. The only evidence is what Penny said has taken place.

22. Given that fact it is necessary to rigorously scrutinise not just what Penny said but how it came to be said, to whom she said it, when it was said, where and how it was said and then how it was noted and recorded, whether what was created was a verbatim record or was summarised, interpreted or otherwise mediated. Finally, it is important to consider the extent to which there was compliance with formal procedures for collecting such material and the effect, if at all, of any failure to comply with such guidance as may be identified.

23. Where the focus is upon what was said to whom, when, how and in what circumstances there is clear guidance as to how matters should be structured. In *Re S (A Child: Findings of Fact) [2023] EWCA Civ 346* Peter Jackson LJ, giving the judgment of the court, identified the benefits of adopting a *chronological* structure by which to set out the genesis and subsequent evolution of the accounts given in order to enable a proper evaluation of the cogency and veracity of a child's allegations, particularly in a situation where the process of evidence building has been criticised at trial. He stated:

It would in my view have assisted the Judge if he had identified and focused on the chapters of time covered by the evidence. These might conveniently have been arranged under these headings: the background, the first accounts, the ABE process, [the child's] subsequent statements. This approach would have allowed the Judge to focus on the situation [the child] found herself in at various stages and to address [the alleged perpetrator's] case effectively. [at paragraph 34]

24. In the same judgment the Judge emphasised the importance of *contextuality*, citing an earlier decision of MacDonald J, namely *Re P (Sexual Abuse – Finding of Fact Hearing) [2019] EWFC 72* wherein the latter said:

... it is well recognised that it is important, forensically, in a case of alleged sexual abuse, to examine the first point in time at which a child gives an account or accounts of alleged sexual abuse, the precise circumstances in which the account or accounts arose and how those were treated subsequently by those to whom they were made. It is therefore necessary, as I have noted, to consider not only what each of the children has said but also, and importantly, the circumstances in which they said it.

25. Those cases concerned allegations of sexual abuse but, in my judgement, the processes set out above are equally valid where the allegation is one of physical abuse. The essence is the same: the examination of allegations not just as who said them but when they were said, how they were said, to whom they were said and how those remarks were then recorded and subsequently treated. In adopting but adapting the format suggested in *Re S* above I will deal with each account as and when it was given and, insofar as it is material, consider not just what was said or done at the time but what the relevant witnesses thereafter said about it in their evidence at the final hearing.

#### *Penny's first account – 13 October 2023*

26. On the morning of Friday 13 October 2023 SJ, a newly qualified Maths teacher at the school, was working in the Maths Office when, during morning break, she was

visited by Penny and her friend, Chris, (not her real name). This was, so far as SJ was concerned, an unexpected encounter. In her evidence SJ said that she had taught Penny during the previous academic year and although not teaching her now she would acknowledge Penny when she saw her around the school. Although what followed was not something for which SJ was either prepared or experienced she grappled with the situation as best she could and in doing so, in my judgement, did not put a foot wrong.

27. Initially at least Chris spoke for Penny and explained that Penny wanted to report "beatings" that were happening at home as well as some trouble Penny was having with eating. SJ immediately removed Chris and Penny from the Maths Office, which was not a private space, and took them to an empty classroom. As it was by now the end of break and both girls should have gone to their lessons she also emailed their teachers to inform them that the girls were with her. Having taken those initial steps SJ listened to what Chris and Penny told her. In accordance with safeguarding training she had received whilst studying for her PGCE and then whilst at school she made notes of what she was being told.
28. The first thing Penny said was that she wanted neither her brothers nor her parents to know that anything she was about to say had come from her. This statement is not only at the beginning of SJ's own statement of evidence but also comes at the top of the entry she subsequently made on the Child Protection Online Management System (CPOMS) which the school operates for the recording and storage of information which is relevant to safeguarding issues which fall within the school's province. SJ confirmed that the relevant CPOMS entry for this particular interaction consisted of the notes she made whilst listening to what she was being told and was equally clear that in making her notes she had accurately recorded both the substance of what was said as well as the sequence in which matters had been raised.
29. The accuracy of the sequence of the matters raised was confirmed by SJ in her oral evidence and therefore I can be confident that confidentiality was uppermost in the mind of Penny at the outset. However it continues to remain unclear as to which of the two girls then present had actually said what. According to SJ this was because Penny, initially at least, struggled to speak and so asked if Chris could speak for her. Thereafter Chris provided most of the information which was noted down but accompanied either by assents from Penny as to its accuracy or what were noted in the CPOMS as corrections but which, in her oral evidence, SJ redefined as more accurately being additions to what Chris was saying. SJ said that Chris would often initiate a sentence which Penny would then complete. However SJ was clear that whether information came from either Chris or Penny, Penny was present throughout and actively participating in the information provision that was going on. I was not given the impression from SJ's evidence that Penny was disowning anything that Chris was saying but accepting and adding where necessary to what was being said on her behalf. Penny, in my view, undoubtedly 'owned' the content of the information. This view is supported by SJ agreeing with the view expressed that Chris and Penny were, to adopt the parlance of teenage girls, 'BFFs' (Best Friends Forever), a term which, whilst it may not accurately reflect the actual



longevity of a friendship, infers a depth of connection and mutuality of mindset which marks it out as a different relationship than is expected by reason simply of membership of the same 'friendship group'. It is my general understanding of such matters that a BFF can speak with authority about the inner thoughts of their fellow BFF. They tend to have a closeness which stems from a deep friendship.

30. The initial topic laid out by the two girls was an allegation that there was not enough food in Penny's home, accompanied by a quote attributed to Penny's parents that "she [i.e. Penny] doesn't need to eat." Penny then added that she often did not feel like eating as she was worried about her weight. This had apparently all started during the previous July. Allegedly Penny when at home was described as being fat and her family (apparently including not only her parents and brothers but also her cousins) were in the habit of showing her pictures of herself when she was younger and unfavourably contrasting her appearance then with now. It was claimed that not only was Penny not eating, which was impacting upon her mood and making her feel sleepy and unable to concentrate, but that this self-denial was known and even supported by her parents. Penny was becoming angry with herself when she did eat but M had then added to this self-pressure by complaining, when Penny recently purchased (whether or not she ate) a packet of Bourbon biscuits, that Penny was going to gain weight. It was stated (whether by Penny or Chris) that all that Penny was regularly consuming at that time was coffee or an electrolyte drink.
31. After detailing that issue the conversation moved on to the issue of physical chastisement, what had been referred to as the "beatings." It was stated, again by either or both of Penny and Chris, that Penny, Alan and David were all beaten by both of their parents. It was further said that F's behaviour was worse as whilst M did beat them occasionally she more frequently only screamed at them. Recently sticks [plural] had been used and Penny thought that Alan may have bruises on his back. Penny said that she currently had no bruises but that she did not get the majority of the beatings as they go to her brothers because they are in trouble at school all the time. These beatings had been going on for as long as Penny could remember. Two specific examples were given of occasions of assault. It was alleged that a belt had been used on Penny when she stopped the playing of loud music at home. More recently David had been beaten with a belt on his birthday because he had been naughty.
32. In addition to belts and sticks, it was claimed that Penny had been beaten with a spoon on more than one occasion. Penny said that it was the culture in her family and where her parents had come from to beat people if they misbehave. These assaults were getting Penny down and because of this she opened up to her friends about what was going on at home and it was her friends who had convinced her to speak with SJ.
33. Chastisement was not the only method of parental discipline being meted out as it was stated that the children had been threatened with removal to their parents' home country and/or placement in a boarding school where beatings would also be administered. Punishments happened when her parents were in a bad mood,

which was allegedly frequently the case. At the same time all three children, not just Penny, were being told that their very existence had ruined their parents' lives, that Penny acted as though she was autistic and that she compared unfavourably to the children of friends or other students at the school.

34. SJ noted that Penny was very worried about her brothers; Alan was always sleeping and David was always angry. The recorded comments largely concluded with Penny reiterating that she was very worried that her brothers would find out that she had spoken out to SJ about these matters. Penny was also worried that the school would not take her concerns seriously.
35. In her statement of evidence SJ included a short concluding part under the heading 'my own views.' That paragraph does not set out her opinions but rather describes what she saw, as opposed to what she was being told. What SJ saw was two upset girls, both at times crying and Penny being unable to speak at times due to being so upset.
36. SJ, to her credit, did take the concerns she had heard seriously and immediately followed proper procedures to bring these matters to the attention of those in the school who had responsibility for pastoral care and safeguarding issues. SJ uploaded her notes onto the CPOMS system such that they were recorded as being present by 12:23<sup>i</sup> that day and emailed two senior members of staff. In addition later in the day SJ separately uploaded the handwritten notes she had made to the system for reference should they be required later. In her evidence at the final hearing SJ was clear about what training she had received and demonstrated clear knowledge of the importance of allowing a person to speak rather than directing their conversation, of making a note of what was being said as soon after the episode as was practicable, if not at the time, and of recording the circumstances and state of the speaker. When asked about why she, as a less experienced professional, did not attempt to secure the presence of a more experienced or qualified colleague when first made aware that something of importance to Penny was going to be said SJ replied that the policy of the school was to prioritise the opportunity for the individual to speak rather than to stop them whilst such arrangements were put in place and in doing so risk losing the information or impacting the moment when a person had chosen to speak.
37. Finally, SJ used the word 'disclosure' when referring to what she had heard and when challenged that this was not the appropriate term was clear that in her training this was the word which was used, rather than 'allegation.' Disclosure versus allegation was a theme running through the hearing and a matter to which I will return later in this judgment.
38. In my judgement SJ did everything correctly and Penny could not have had a more appropriate, sensitive and careful recipient of her initial information. Despite her inexperience SJ is to be commended, she set a very high standard in her application of the correct procedures and in so doing ensured that valuable first-hand information was fully captured and properly collated. Unfortunately, as will be seen below, that high standard was never thereafter equalled, to say nothing of being bettered, by subsequent professionals.

*Alan and David's first accounts – 13 October 2023*

39. The upshot of Penny's conversation with SJ was that more senior staff were alerted and became involved. CK was the Head of Year 10, Penny's year, and as such received the daily log in respect of her Year Group. The entry of SJ's account onto CPOMS automatically sent an alert to her and she communicated with TP, the Deputy Head, and also emailed DD, the Deputy Designated Safeguarding Lead, who happened to be working from home that day. Notwithstanding her absence from school DD contacted Careline who advised that until further notice neither Penny nor her brothers should be allowed to leave the premises at the end of the school day.
40. Whilst communication was taking place with Careline TP instructed CK together with another member of staff, LB, to collect the three siblings and keep them all in TP's office pending receipt of advice from Careline. During that time when all three children were together CK with LB decided to speak with them about the matters raised by Penny. It is not clear from her evidence why CK considered this to have been either necessary or appropriate as Penny had already given a full account of what she said was happening and had emphasised, repeatedly, that she did not wish her brothers or her parents to be made aware of what she had said. It is not difficult to see how putting all three children together and directly raising Penny's concerns was more likely to produce that which Penny was against rather than upholding her confidentiality. It was at best ill-advised and at worst reckless. Be that as it may this is what occurred. To compound matters CK, in her oral evidence, accepted that there was no contemporaneous notes taken of anything said by any of the children at the time because, despite being in an office in a school, neither CK nor LB could find a pen and paper to use. No thought appeared to have been given of trying to make a digital record using, for example, a mobile phone or a laptop. Although there is an entry in the CPOMS system, the input date shows that what was uploaded was not put there until Monday 16 October at 15:54, some three days afterwards.
41. The children were initially asked whether they were happy and each replied in a fashion that they were, scoring homework as either a 10 or a 9 (presumably out of 10). The next topic of conversation was whether they had any marks on their bodies. In her oral evidence CK indicated that she raised this because it was an issue Careline had flagged up with DD and in her CPOMS entry a further justification was in case any first aid needed to be administered. In the event negative answers were given to that question by all three children. Some small talk then followed and it was noted that the boys were as monosyllabic when talking about topics which were of interest to them as they had been when answering those earlier questions. Alan was asked about some bruising to his hands to which he replied that they had sustained while playing sport and was either ignorant about or unwilling to explain the cause of what appeared to be a ripped hole in his blazer.

42. The conversation concluded when it became known that Careline had authorised the children's departure from school and all three left the office together.
43. The children had confirmed that they were allowed to walk home by themselves if they did so together but following their departure Penny, now accompanied by two friends of whom neither was Chris, returned to the school to impress upon CK her continued wish for absolute confidentiality in what she had earlier told SJ. The CPOMS record includes the following quotations of what Penny then said: "... please don't tell my parents what I have said", "they can't know it came from me, please no one can", "promise me you wont [sic] call my parents and tell them." Despite reassurances being given to her about having done the right thing Penny was described as 'getting rather worked up' and required calming down. It probably did not assist when Penny was informed by CK, possibly after her seeking the promise noted above, that such a promise could not be given but that help and support would be available. The record ends with the statement that no emails were received over the weekend from either Penny or any of her friends informing school of any adverse situation.

*Penny's second account – 16 October 2023*

44. On the Monday following that initial information having been provided DD introduced herself to Penny. In her evidence at court DD explained that she had only been in post at school since that start of that academic year and had never had any dealings with any of the subject children before that Friday nor previously met them.
45. When DD spoke with Penny she asked her to tell DD what she had previously told SJ. Given that this matter had been fully documented by SJ it is not clear why DD considered it necessary to require any repetition. Be that as it may this appears to be what happened. Appears however is the operative word because although DD said that she had made handwritten notes of that conversation they were never uploaded to CPOMS. By the time she came to give evidence at the hearing DD had left the school and although she had a reasonable idea of where they were located on the school premises she was not now in a position to retrieve those notes nor, as it turned out, was anyone else.
46. Despite the absence of any contemporaneous record of this conversation there was a CPOMS entry but for reasons DD was unable to explain in her evidence it had not been made until twenty four hours later and consisted only of the following succinct record: '[DD] has met with [Penny] to introduce and hear her voice; all disclosures were the same.' However the same CPOMS record immediately continues '[Penny] had disclosed to me yesterday that the boys are often hit on the top of their hands' which was not information which had been noted by SJ. DD had then recorded that she considered that this further information, which when allied with the bruising noticed on the knuckles of Alan's hands, was a matter which should be brought to the attention of Careline. At this stage there had been no direct involvement by social services, albeit DD believed that an Out of Hours visit had taken place during the preceding weekend. In fact there is no record of the

same and I can only conclude that DD was either misinformed or confused about this.

47. DD referenced her belief in the early involvement of social services in the document she provided as a statement of evidence. The document in question is, regrettably, of limited use as it was not a statement containing a statement of truth but a letter, albeit which described itself as a court report, which was not written until one month later on 17 November 2023 and conflated a number of different matters which had occurred by that date.
48. In addition, there are a number of inaccuracies in DD's written account of the disclosure process itself. Chris was described as having being present during the initial disclosures made to SJ only as 'moral support' when the reality was that Chris was in fact a joint provider of information. The process of the capturing of all that Penny wished to say reads not only as if it were a single incident involving only staff from school but is described by DD as being a process of information provision 'without any questions being asked.' The reality however, as DD would have been well aware, was that Penny's full account was given over several different occasions, most of which DD was both present at and involved in, which involved staff from school, social services and a police officer. It would not be unfair to say that far from being a considered and accurate statement containing a carefully compiled record of accurate information, DD's document is more aptly described as an error-strewn summation and as will be seen below, whilst not reflecting anything approaching good principles of information collection and preservation was a good fit with the general approach taken to these important matters throughout these proceedings.

#### *Penny's third account – 19 October 2023*

49. Unsurprisingly the conversations she had had with DD did not appear to have reassured Penny about confidentiality, not least because of the understanding she had been given that there would be a home visit by social services. That information was not recorded by DD in her own CPOMS entry of her conversation with Penny on 17 October but by SJ later on the same day after Penny had sought her out. Given how she had previously dealt with matters I have no hesitation in assuming that SJ continued to be a reliable recorder of detail and her CPOMS entry timed at 12:43 reads as follows:

*[Penny] said she has been told by [DD] that there will be a visit to the house.*

*[Penny] is happy that something is happening.*

*[Penny] said she was worried that if they came at the weekend and what would happen with her parents after.*

*[Penny] is worried that her parents will be annoyed.*

*[Penny] said that she has searched where the nearest police station is and it is too far away from her house.*

*{Penny} said even if she could leave to get help she doesn't want to leave her brothers*

*{Penny} said she is worried it will get worse after the home visit.*

50. SJ properly suggested that DD was the appropriate person with whom to have these discussions. DD shortly thereafter entered her own brief record of the reassurance she had given Penny.
51. It was clear from the concerns DD continued to raise with Careline that she considered that the situation merited involvement from social services and as a result on 19 October a social services Strategy Meeting took place at which DD was present. It is also clear from the record of that meeting that unfortunately not all of the information provided was accurate and that some degree of speculation appears to have infiltrated the discussion. It is not possible to say that different decisions would have been taken had this not occurred but the failure to focus upon the accuracy of the information was possibly a reason why matters escalated at a pace afterwards.
52. DD made reference to David having been hit on the hands by his parents and indicated that on inspection he had had bruises to them. In fact it was Alan who had hand bruising but who had attributed this to having been trodden on whilst playing sport. There was a link made with an apparent episode when David was in primary school and had refused to get changed for a swimming lesson and one more recently when David had not wished to remove his school blazer before playing basketball. Both of those events may well have occurred but neither, let alone both, should automatically have caused DD to have 'theorised' that in acting so David might have been attempting to conceal injuries.
53. In the same meeting DD asserted that it was likely that David required an assessment for Special Educational Needs but added that his parents would not allow the necessary referral to be made. Further DD, when asked, advised that Penny had disclosed that all three children are struck upon the hands and sometimes on the back and on other areas of the body. However this is not what had been recorded by SJ and, if it had been later told to DD, there is no record of that statement anywhere. Confusingly the Minutes of the Strategy Meeting "confirmed" (the word associated with DD) that Alan and David were spoken to by school staff about disclosures made on 16 October, which did not accord with when the boys were actually spoken to, and they record that neither boy disclosed that they had been hit by either parent. Whilst that may not be inaccurate in that neither child did disclose being struck, it fails to fully and accurately describe the exchanges which would have shown that each boy had indicated that they had no marks on their body, that they were happy in themselves and at home with their parents and also that they were generally monosyllabic about all matters, including subjects in which they were interested. Finally DD opined that Penny may feel the need to protect her younger siblings whereas the exchanges Penny had had with SJ, with CK and with DD herself was not about the need to protect the boys but about wanting to ensure that no one, whether her parents or her brothers, was made aware that she had said what she had said.

54. The issue of eating was discussed and Penny's situation was elevated to an apparent eating disorder which was hypothesised as being connected to emotional distress. That Penny had indicated that her attempts at weight loss had begun three months before in July does not seem to have been referenced. Penny's parents were referred to as being supportive of her attempts at weight loss and did not challenge Penny if she chose to skip meals. It is not at all clear where this information came from as it is not recorded anywhere nor, at this point in time, had either parent been spoken to about any matters under review. It would be wrong to say that DD had been misleading in that Strategy Meeting but it would be fair to say that, as a result of what in fact was either DD's willingness to speculate or her failure to ensure she provided accurate information, there was significant confusion and consequent misdirection.
55. The concerns DD was expressing about what she thought might be going on with respect to the children were clearly expressed not only in that meeting but in her CPOMS entries. When challenged during the final hearing about the pro-active stance she had been taking up to that point as well as her inaccurate comments within the Strategy Meeting DD was clear that she had not overstepped the boundary between a professional concern and a personal investment in a particular theory of what was actually happening in the family home. Whilst I do not doubt that DD believed that she was acting in what she thought was a protective mode towards the child consistent with her safeguarding role in the school, she appeared to have formed a view which, on more considered reflection, may not have been congruent with the evidence then available. This, in my judgement, is exemplified by the following entry from CPOMS timed and dated at 12:02 on 19 October, therefore immediately after the Strategy Meeting, where it is recorded that '[DD] shared concerns from School POV [point of view] Boys current unwillingness to disclose.'
56. The decision of the Strategy Meeting was that a joint Agency / s.47 enquiry would be initiated involving a social worker attending the school later the same day for the purpose of gathering information through the undertaking of a Voice of the Child (VOC) exercise for each child as well as considering whether medical examinations of the children should be undertaken.
57. This was the background to the arrival at school at 14:45 on 19 October 2023 of Detective Constable Smith (DCS) followed forty five minutes later by two social workers, AB and CD. The timings were taken from the notes of DCS who appears to have been the professional of the three of them who noted the times when the various discussions took place.
58. Before focusing upon what each of the children thereafter said it is necessary to set out how the meeting was conducted, its purposes and the role each professional participant played in it.
59. The first point which needs to be made is that none of the participants considered that what they were doing was undertaking an interview a child. Although the purpose of the visit was to obtain the voice of the child no one saw this as an evidence gathering exercise. In her oral evidence CD referred to what she and AB

were doing as a "47" which she said was a common part of her role and she referenced how, since October 2023, she had done "hundreds of them." CD accepted that whilst there was always the possibility that court proceedings might follow on from a section 47 visit that was not what was in her mind that afternoon as she headed to the school.

60. In her evidence AB was of the view that the purpose of their visit was to understand the concerns which had been expressed about Penny's not eating and her weight loss. Insofar as there was any discussion about how matters would be managed it appeared to focus upon the sensitivity which would be required in addressing this issue with a teenage girl. Whilst DCS was aware of the issue of physical chastisement she saw the purpose of the visit as being simply to get to know the child and so better understand her. There was no criminal investigation at the time and therefore, as she explained, DCS was present but not in order to lead any questioning of the children. DCS was participating as more than a mere observer but, as the key allegation had been one of physical assault as opposed to sexual abuse, this was not a matter where the police would take control.
61. Whilst individual preparation was, at best, limited it is not unfair to say that any collective approach, that is which individual would take what steps and how those actions would be sequenced and organised to achieve an agreed outcome through a shared process, was near non-existent and is reflected in the confused picture which has emerged about who was present, who was involved and what was noted.
62. DCS was clear that no discussion took place between herself and DD prior to the arrival of the social workers. She simply waited on her own. Once CD and AB arrived DD came to see them all but there was no separate conversation between DD and DCS until close to the conclusion of the visit. According to DCS the social workers arrived at 15:30 but Penny was not brought to where the three of them had been put until 15:50. What was said and done in those twenty minutes of shared company and the start of discussions with Penny is wholly unclear. AB recalled in her evidence there being a 'brief chat' before Penny was brought in but could give no details as to what was said or by whom. From what has been recorded it seems clear that the discussions which took place did not involve any planning as to how the discussions with the children would be structured, what issues were to be discussed and who would take responsibility for what. In her evidence to the court DCS was clear that AB took the lead in questioning each of the children, CD asked the odd question whilst DCS herself 'filled in the blanks.' In contrast, AB's evidence was that CD took the lead in asking the questions of each child whilst AB made handwritten but not verbatim notes of what was being said and DCS did not ask many questions at all. CD however had a third explanation for what had happened as her evidence was that AB did not take the lead in questioning the children but that it was a shared affair with both social workers asking questions on an alternating basis whilst DCS asked questions about the allegation that the children had been hit.



63. This lack of clarity about who asked what questions was compounded by the practice which from the evidence I heard appears to be routine when social workers attend a s.47 / VOC exercise.
64. At the first case management hearing HHJ Greensmith, the then allocated judge, had astutely directed that both AB and CD should each file a statement which addressed three specific issues: (i) the allegations made by Penny; (ii) the context in which those allegations were made and the questions which were asked; and (iii) when the visit was made and what was discussed. Unfortunately the documents thereafter filed failed entirely to address the specified issues.
65. Unfortunately what was filed were two separate statements which each contained identical information about the discussions which had taken place with each child. When challenged on this point at the final hearing both witnesses were very clear that neither had copied the other but that the core VOC material had been created from their joint endeavours that afternoon and they had jointly entered it onto the social services records. As such when each was directed to file a statement as to what had taken place each immediately accessed that record to ensure that they provided the most accurate information. The statements were dated 15 and 16 November 2023, nearly a month after the events in question, which is significant when it is remembered that this type of exercise was a common aspect of each social worker's responsibilities and which they were required to do on numerous occasions. The opportunity for accurate recall would obviously diminish as each new similar exercise was undertaken and details of different 'interviews' began to overlay each other.
66. This was compounded by the fact that although there had been a joint near-contemporaneous handwritten note taken of what each child had said, however generalised and representing a blend of two different recollective streams, that note had been destroyed once the information was entered onto the computer system. It was apparently the policy of the local authority to be paperless and written material was regularly destroyed in pursuit of that aim. Unlike the school it was not part of the policy operated by the social services to defer destruction until after any paper notes had been scanned into the system and so preserved. As a result the only record of any direct information given by a child was lost and in its place a mediated record was created, not intended at distorting what had been said but not being able to be claimed as a contemporaneous note either. Whilst being paperless is a laudable aim in these environmentally conscious times, destroying notes without first uploading them may not necessarily be the most helpful way forward in terms of the preservation of best evidence.
67. Whilst there was no agreement about who had asked what there appeared to be a uniform view about the appropriateness of DD being present when the children were being questioned. Notwithstanding her extensive involvement to date with regard to Penny and the views she was forming about what she believed had happened and was really going on with regard to all three children it seems clear that DD was a presence throughout Penny's interview, if not the others. At the outset it appeared that Penny was asked about the presence of DD but no one

appears to have given any thought as to whether a child was likely to opt for the exclusion of a senior member of the school staff, particularly when that staff member was in the room at the time. The proper course of action would have been to ask in a neutral fashion whether the child would like to have that person to join them. This was not done.

68. What is also clear is that no participating professional's record of what was said, whether as an answer or as a question and answer, is anything like complete. Despite the accuracy of her recording timings DCS was clear that she had not been attempting to capture as much information as possible and CD, who of the two social workers appears to have been the only one taking notes, was equally clear that she did not consider it her role to focus upon creating a written record but to write down what she could whilst prioritising the conversation and not the capturing. As a result there was nothing approaching a verbatim record of what had been said and certainly nothing which allowed a later reader to understand what questions had been asked, let alone how they had been answered.
69. The lack of clarity was not assisted by the CPOMS record which simply stated that '[Penny]'s disclosure was consistent with previous disclosures made to ... staff. Both boys spoken to separately and neither disclosed anything.'
70. What was recorded by CD and AB's combined record was Penny explaining that all three children are beaten at home following a school infringement or if their room is messy. F uses either a belt or a stick whilst M uses a hangar or just screams at them. The belt, if applied, is one F would be wearing and if a stick is used it will be thrown away afterwards. The children are only hit on the palms of their hands but on each hand. This most recent occurrence of the administration of physical chastisement had happened to Penny in September when the children were with F but he walked off and they then could not find him. F telephoned them to locate them, collected them and took them home where he proceeded to hit them each on their hands with his belt. M witnessed this episode but did not interfere. Penny stated that no child leaves the room when another is being hit as this would only get the departing child into more trouble. Penny confirmed that she had never had injuries as a result of this treatment. In addition it was recorded that Penny referred to being called fat by her parents who then forbade her from eating. Penny would then not eat for days, instead only drinking coffee and as a result would then be unable to sleep and would worry about school and her future exams. Penny was very concerned about her parents or her brothers discovering that she had raised these matters and felt so concerned as to want to sit in a separate room away from her brothers after she had spoken to the professionals.
71. In her own note DCS had recorded some additional details. It was mainly F who beat the children and he did so when he was angry. This happened probably every two weeks and stemmed from misbehaviour or an infringement at school. All three children would be beaten. Whilst such punishments would hurt Penny said that she had no injuries. Each parent had observed the other hitting the children and raised no objection. In addition to the belts and sticks M had used a hangar which she would use anywhere on the body. Penny said that the school had seen bruises to

one of her brothers as he was wearing shorts but the children would be hit on the hands. When her brothers were being beaten Penny would leave to go and get a shower. Penny said that the most recent incident had occurred approximately a week prior when the boys had been hit by F following their being told to leave a gym they were attending. Penny did not watch the whole thing once they were home as she went to get a shower. One final point was that Penny was worried about school tests.

72. Having spoken to the professionals and following Penny's departure to her separate room David was brought in and, although far less talkative than Penny, was clear that he had never been hit, that whilst there are consequences for bad behaviour they would result in the confiscation of his mobile phone although sometimes F would also scream at the children. David did say that he could on occasions act aggressively by hitting or kicking a wall in school but when this happened F would only ever speak with him. On a more positive note David stated that he enjoyed life at home and particularly identified watching football with his father as a fun thing to do as well as enjoying family days out. David denied being hurt at home.
73. Alan similarly eschewed any knowledge of being hurt and certainly of being assaulted by a parent at home. He spoke positively of home and of his siblings. Punishments for transgressions involved phone confiscation or not be allowed to watch television but nothing more. Any bruises on him were the result of playing sport and he said that good behaviour was rewarded in treats.
74. During that afternoon and whilst the children were being spoken with F had attended the school to collect them and was himself spoken to by the social workers and DCP. F was made aware of the accusation of physical abuse but he was not told of the source of those allegations. He denied causing any harm to any of his children and explained the system of confiscatory punishments applied when there were infringements at school. F signed a Contract of Expectations which stipulated no physical chastisement and agreed to allow home visits when these concerns would be discussed with social services. It was further agreed that immediately upon F and the children leaving school there would be a home visit and so the social workers followed the family home where they looked around the house and concluded that it was appropriately provided for and, in particular, that there was 'ample food supplies in cupboards, fridge and freezer.'
75. It was following that visit that the next issue arose.

*Penny's allegations of emotional harm – 20 October 2023*

76. Throughout the afternoon Penny, at her own request, had been kept apart from her brothers. The CPOMS log included the following comment: '[Penny] very anxious and visibly worried about brothers finding out it was her who made the disclosure. Penny requested to be sat in a different room away from the boys, whilst siblings were being spoken to.' Notwithstanding her concerns it was noted by the social workers that '[Penny] was observed leaving the school grounds with her F and she appeared happy & relaxed in his company.'

77. M had been in work throughout this time and although she had been telephoned by social workers had only been able to respond to the voicemail left for her after 21:00 when she finished work. Upon being made aware of the allegations which had been raised she, like F, had denied any physical chastisement and had restated their agreed parenting policy of confiscating electronic devices as their preferred sanction. M also consented to an agreement prohibiting physical chastisement and committed to working with social services. She then travelled home.
78. At 00:23 on 20 October 2023 SJ received an email from Penny which she uploaded to CPOMS and thereafter forwarded to DD in which Penny asserted that her brothers had been told by social services that Penny had made the allegation about physical chastisement and had informed their parents. According to Penny F, who was at home with the children whilst M was still in work, had then thrown away Penny's sim card, removed her phone, told her she should go to live with E or her cousins, said that he would claim that she has 'depression/mental illness', alleged that Penny had made it all up – which she refuted doing within the email - was banging on tables and threatening never to forgive her for this, was swearing at her, removed her laptop (which she then took back later that night) and 'showed documentaries of people being abused in foster homes and adoption centres' and would not allow her to speak with anyone or come near her.
79. F partially addressed these matters in his first statement filed in the proceedings and supplemented that in his oral evidence. His evidence was that upon M returning home they had spoken with Penny alone who had told them that Chris had made the allegations of chastisement. F denied reacting as described by Penny but confirmed that he had removed her phone as it had messages from Chris on it and had replaced it with a phone which allowed telephone calls but not access to social media. He never removed her laptop nor told her to leave the family or that he would never forgive her. His evidence was that he was not angry but disappointed in what she had caused to happen. In respect of the allegation about Penny seeing videos concerning children in foster homes he denied making her watch anything but did say that he had used his own laptop to research the effect upon being fostered on children's life chances and that some of that research involved YouTube videos. Whilst he had watched those videos he had not made Penny view them, albeit she may have seen them from an adjoining room.
80. M's evidence on this point was shorter. Nothing of the matters set out by Penny in her email had occurred that night. M had returned home from work and was upset by what she had been told by the social worker on the telephone. There was a brief discussion with Penny upon her return and a slightly longer discussion just with F before she went to bed but she felt too upset and did not want to get involved in any long or detailed discussions. M joined F in denying the principle allegations in Penny's email.

*Penny's fourth account – 23 October 2023*

81. In contrast to the apparent low key reaction of her parents to Penny's identification as the source of the allegations of physical chastisement DD was alarmed by what

she read in Penny's email and immediately contacted Careline to press for an escalation of action given what she considered to be obvious emotional harm which had been targeted at Penny the previous evening. The response from Careline was to agree that there had been a breach of the Contract of Expectations due to emotional harm having been displayed the previous evening. It should be noted that the agreement at that point was only in relation to physical chastisement, there was no mention of emotional harm. DD was clear that she was unhappy at the prospect of Penny being allowed to go home from school that evening and as a result an Out of Hours' (OOH) visit was to be set up for that evening in order to check upon Penny's welfare and allow the possibility of an organised departure from the family at that point if considered necessary. On that basis Penny was allowed to leave the school for the weekend.

82. An attempt was made at a visit by social workers at around 19:00 but no one was at home. At that time Penny was with her brothers at their F's office feeling somewhat isolated and upset with her situation but not otherwise in any harm. The failed attempt at a visit on the Friday evening led to a further OOH visit on the Saturday evening when the children were at home, along with F, and were separately spoken with by AB, who happened to be on duty and had attended the school a couple of days earlier. The record of that evening paints a picture of two monosyllabic boys who, insofar as they said very little, again gave no indication of anything untoward happening within the family. Penny's position was different in that whilst she indicated that no chastisement had taken place she re-affirmed what she said had happened on Thursday evening. Thereafter Penny's only response was to say that she was fine whilst her body language, as noted by AB, suggested she was anxious, wary and distinctly unhappy being at home.
83. A little more colour was added to the home situation by an email Penny sent to DD immediately after AB had left on the Saturday evening. Penny described a situation where she felt ostracised by her brothers who were now being horrible to her whilst her parents maintained their criticism of her for her allegations and its impact upon the family. The gulf between her and her brothers and her and her parents was showing no signs of narrowing but the email did not indicate a child who felt in fear of retribution as opposed to one who felt thoroughly miserable with how everything was now panning out.
84. The concerns being advocated by DD with regard to what she perceived as the increasingly difficult situation for Penny at home had ensured that a social worker was now allocated to this case and PR now visited school at 14:00 on 23 October.
85. The first part of PR's visit involved an extended discussion between DD and PR about the former's concerns in respect of how the parents were treating Penny, their lack of support in relation to her concerns over her weight and the apparent indifference being shown to Penny by her F in not waiting for her at the end of the school day. In addition, DD identified that there had been attempts by the school to secure the parents' permission for David to be assessed for SEN, including a letter from the Headteacher sent on 22 September which had apparently been ignored. DD went on to describe the parents in unflattering terms. F, she said, spoke

disparagingly of his children and could be verbally aggressive whilst M had been requested by the Headteacher to apologise to a Receptionist for how she had spoken to that individual. Whilst there was no requirement on DD to substantiate those matters at that point in time it is only right to say that no evidence in support of any of them has been adduced in these proceedings.

86. Penny was then spoken to by PR. In her oral evidence PR, like AB and CD, was clear that in speaking with Penny she was engaged in an interview in any formal sense. PR was clear that she had not prepared for this engagement as such and was, to some extent, playing catch-up as she had been appointed as the allocated social worker only that morning and even on arrival at the school was receiving additional emails from DD. The purpose of this meeting was simply to introduce herself to Penny and to get to know her. That may have been the basis upon which PR expected matters to be proceed but it would appear that Penny had a different view. According to PR's case note immediately upon sitting down with PR Penny began to describe an event on 8 October when her brothers had been excluded from the gym and taken home by the father, whereupon he had gone to an unidentified part of the house where sticks were apparently kept, procured one and returned with it and proceeded to hit each of the boys on the palms of their hands an unknown number of times. Penny recalled that these actions left no marks on the boys' hands but caused them to cry. No other specific allegations were highlighted within that conversation but it was made clear that this behaviour, primarily but not exclusively the province of F, had been on-going since Penny was 'little'.
87. Penny referenced her concern over her weight and indicated that sometimes she would eat too much and at other times she would eat too little, that she wanted support in respect of her weight and understanding of what to eat but that her parents would not agree to this.
88. Like her colleagues PR made some handwritten notes of what was being said and then, as they had done, promptly destroyed them once the case note had been prepared in accordance with the paperless policy being followed. The case note itself is a summation of PR's visit and may well accurately document the contents of the conversations which she had but it offers no indication of what words Penny used in response to questions which were unidentified and whether information provided was volunteered, prompted or suggested. Whilst there is information contained within it about PR displaying anxiety at the thought of her brothers being spoken to again or of another home visit, her general mood and manner were not described nor any indication given as to how she presented generally and specifically when recounting the incident on 8 October. Helpful as a provision of information it is unhelpful in that it does not enable any picture to be formed of how things came to be said and in what manner or with what effect.

*Penny's fifth account – 24 October 2023*

89. The following day at 15:00 PR returned to school accompanied by another social worker, FH. Prior to going to the school the two social workers had already visited F

at his office for the purpose of securing his consent to Penny's accommodation in foster care. That decision had apparently been taken following a Legal Meeting held by the Local Authority in the morning and communicated to the school by PR around 13:00. The purpose of coming to the school was to speak to the children. Other than to communicate with Penny the decision to remove her to foster care if parental consent was obtained, it is not immediately apparent why a further meeting with Penny was required. Since 13 October Penny had spoken about her situation at home with four different members of staff at school and three different social workers and in AB's case on two occasions, once in school and once at home. According to his written evidence prepared for these proceedings, FH's role was to see each child separately in order to 'ascertain their wishes and feelings and gain an understanding of their lived experiences at home.' That is a surprising statement. Like Penny, Alan and David had been spoken to several times by different individuals without deviating from their initial position of being happy at home, not harbouring marks on their bodies and being unconcerned about any question of physical chastisement. Penny had made clear her position, had added some details at some points but had been singular in expressing a recurring desire for people to speak as little as possible to her brothers and even less to her parents.

90. Notwithstanding the information already available and the fact that Penny had spoken with PR only the day before it was determined that FH would now be the person who would speak with each of the children. Again, the decision to add not just a further occasion of conversation but a new person to do so is one which was never sufficiently reasoned in either social worker's evidence. Like all those who had preceded him FH was clear that this was not an interview and no focused preparation had been undertaken for this task. In his evidence FH thought that there might have been a conversation between himself and PR if he was correct in his recollection that they had travelled together from F's office to school. Vague as he was about any preparation, FH was at least aware that allegations had been made and he also appeared to have some knowledge of what they concerned although he was admirably candid in confirming that he had spoken with neither AB nor CD prior to undertaking this task. It should be added here that PR had similarly not spoken to her colleagues prior to her own conversation with Penny the day before, not least because of the shortness of time between allocation of role and the undertaking of work.
91. As with all previous records of conversations with the children it is very briefly recorded in the case note prepared after the event and in relation to what Penny actually said is limited to one sentence: '[Penny] shared further information with social workers in private in a room away from her brother.' What was different was that as part of his work FH prepared a short note of what each child had said which was, surprisingly, thereafter retained and which has formed part of the record of evidence. For the purpose of this judgment it is unnecessary to repeat verbatim what FH wrote down. It is fair to record that there are words used which suggest that these are the words used by each child but FH himself was clear in his evidence that this was not intended as a verbatim record nor was one.

92. In essence Alan and David yet again confirmed they were untroubled by life either at home or at school, they acknowledged a disciplinary system which was invoked when there was a problem but made no reference to any form of physical chastisement and cited positive examples of good times involving F (watching and playing football with him), of M (as with F her being a good cook) and scored full marks (10/10) in respect of the absence of worries in living at home.
93. Penny, again maintaining consistency, identified the problem of physical chastisement and identified the use of sticks obtained from a tree outside the house and used on the palms of hands before being discarded. Her brothers (not her), she said, were hit with a belt and she had been hit with a clothes hanger once, in June 2021 when it was used to hit her on the back. What, however, was new was information that the children were all being required to assume a stress position which involved being made to kneel down and raise their hands straight up in the air for up to periods of 50 minutes. This allegation had never been raised previously and no further information was supplied as to its frequency of use, most recent occasion, when it had been introduced or any other detail.
94. In addition to FH's notes Penny wished to add one herself and had written it in the company of PR. The note stated as follows:

*'They said I should be grateful that I don't get molested by them and keep praying about it. They also keep showing documentaries and [.....?] with people who don't live with their parents. Dad also keeps driving at high speeds and my Mum keeps making me pray about what I did.'*

(The use of the square brackets [...] represents my inability to decipher the word used.)

95. Following the conclusion of this visit and in accordance with the decision taken earlier in the day Penny was removed into foster care with the consent of her parents. It is fair to record that neither parent actively sought the departure of Penny from the family home and each continued to deny the allegations levelled against them. Both parents had sought either legal or community advice and each has in their oral evidence on this point accused the Local Authority of effectively telling them at the time that they needed to give their consent, irrespective of any contrary views they held. It must follow that the Local Authority have been equally robust in refuting any suggestion of seeking to strong arm either parent and that all steps were taken properly and with due respect to parental rights.

#### *Penny's final account - the ABE interview*

96. Proceedings were issued immediately following Penny's departure into foster care, a situation Penny communicated to DD that she felt relieved had happened before she had to spend the half-term break in the company of her parents and brothers. At the first hearing Penny's separation from parents was confirmed by the court and it was acknowledged that provided there could be ongoing supervision of the parents' care of their sons neither boy would have to leave the home, despite Penny's allegations. This arrangement may have maintained the family's partial



unity but has come at a very high cost to the parents' reserves of patience and goodwill and has created significant pressure upon them. It is right to describe both parents as reserved and private people, M especially so, and living with strangers who were constantly monitoring your movements, questioning where you are going and being an unwelcome presence as they tried to care for the children has been a feat of endurance for them. It is a reflection upon the parents' patience and of that agency's professionalism that matters have endured as long as they have in what undoubtedly has been a difficult time for all.

97. Those decisions were made in October. At the end of that month Penny had indicated that she did not wish to pursue any form of criminal complaint against her parents, a decision she has never resiled from since. According to DCS Penny's decision was based upon a view she took that there would be insufficient evidence to charge her parents but it was also explained to her that a full criminal investigation had yet to take place and that obtaining a full account from Penny would be an important part of that process. Having been invited to think about it further Penny then confirmed her position in early November and the police confirmed the outcome of such inquiries as were made as one of No Further Action.
98. The police having removed themselves from further involvement the responsibility for obtaining a comprehensive account from Penny fell to the Family Court and directions were given to engage Triangle, a well-known expert organisation in this field, to undertake a formal interview with the child.
99. On 9 January 2024 Penny was interviewed following the necessary preparatory work being undertaken by Triangle and properly documented in a report dated 22 January 2024.
100. Although there was considerable difficulties in being able to watch the full interview due to technological and logistical problems that need not be dwelt upon here it was eventually possible to do so and everyone, including myself, has had the opportunity to view the entire interview. For the purpose of this judgment I have reviewed the interview more than once. In it Penny references the use of being hit with a belt on multiple occasions and one of her brothers being hit with a stick on one occasion. Penny describes an occasion when a hangar was used to hit her on the hands by her mother on a Thursday in June in 2021. She also describes a specific occasion when F hit her with a belt for asking him if he would turn off the music he was playing very loudly. This had occurred at some unspecified point but prior to 2022. In addition Penny gave a further date of 3 September as an occasion when all three children had been hit by F with a belt following their becoming separated from him whilst out in the city centre. Finally there was a reference to an occasion when the boys were hit following a visit to a gym and how they had been made to assume a kneeling position with their hands in the air. This was a position that Penny too had been required to adopt in times past and on more occasions than she had in fact been hit.
101. All of those matters were, to a greater or lesser extent, referred to in some of the prior accounts Penny had given and therefore could offer clear examples of consistency. However there are two significant caveats to attach to that statement.

102. Firstly, there is a significant degree of inconsistency between what was said in the ABE interview and earlier accounts given to school staff or social workers. The Gym incident, apparently dated by Penny as having occurred on 8 October 2023 provides a good example. The Gym incident is not referred to in the account given to SJ, instead what Penny recalls is David being hit on his birthday (28 September) even though Penny was speaking with SJ only 5 days after the date later given. The Gym incident is referred to on 19 October but is only noted by DCS as it does not feature at all in the note prepared by AB and CD. DCS has noted it being described as the most recent incident of assault but involving only the boys and Penny not staying to fully witness what occurred as she left to get a shower. On the same occasion the note prepared by AB and CD reports Penny as having said that no one leaves when another child is being hit as this would only make matters worse. On that day the boys were hit with a belt several times according to DCS. When the same incident is recounted to PR on 23 October both boys were hit with a stick which F had retrieved from another part of the house, where he keeps sticks, however in the same interview only Penny is hit by a stick which is taken from the garden but not on that occasion whilst the boys are hit with belts except that a stick has been used on one occasion for one of the boys. The stress position is not referred to at all until 24 October when it is noted by FH but in her interview it is now deployed as part of the Gym incident, having never previously been included when that episode has been described, and Penny recalls seeing the boys adopting that position on that occasion, either before or after being a belt, not a stick, is not made clear save that previously they were hit, cried and were sent to their rooms so the extended use of the stress position may not fit with that earlier narrative.
103. Discrepancies in accounts are only to be expected, particularly when multiple accounts have been given and the recording of those accounts has been so variable in quality. However this is one significant example of multiple discrepancies and is far from an isolated case.
104. Of equal importance as a caveat is how Penny gave her evidence. This is not an issue about demeanour and whether veracity can be inferred from how she sat, spoke or moved. I draw no inferences from the physicality of Penny in the interview suit. What was clear from the interview was how hard the interviewer had to work to extract from Penny the information which she did. During submissions counsel for the father highlighted a number of occasions when the interviewer, clearly an experienced and trained individual according to her qualifications and experience set out in the report filed, appeared to be deploying suggestive questioning. It is perfectly proper to make that submission given the importance of adherence to the ABE guidelines, of which see below, but having reviewed the interview on more than one occasion it is clear to me that what the interviewer was seeking to do was not to lead the witness but to attempt to coax from her any information at all. The interview is a painful watch of a young person either deeply reluctant to say anything or feeling highly unsure of what she was going to say. The stress position reference above is a good example. But for the prompting provided by the interviewer I am reasonably confident that this detail would not have been mentioned. The interview was over halfway through and had proceeded at a very

slow pace as Penny was frequently confusing both herself and the interviewer with what she meant. It was the interviewer, as noted in the report, who said that Penny had referenced being made to kneel by both of her parents before then adding it to her description of the Gym Incident.

105. I do not expect a young person to be fulsome in their description of difficult, emotion-wracked events or to be gushing about the details they are providing. However given that it was Penny who has raised these matters and Penny who has been consistent that these were frequent, regularly occurring punishments which caused hurt it is not unreasonable to expect that they would be matters she felt able to explain without what appeared to be significant hesitation, confusion and reluctance. This view is only underlined by the numerous previous accounts given and is not affected by the quality of how those occasions were recorded. If Penny has had multiple opportunities to explain these matters and has done so on several occasions, sometimes to individuals with whom she was wholly unfamiliar, it is surprising the degree of reticence and unfamiliarity she demonstrated in her ABE interview.

#### *The law*

106. These proceedings are care proceedings and so ultimately governed by the operation of the Children Act 1989 with its focus upon the welfare of the subject child/ren. However in order to establish that welfare jurisdiction it must first be proved that the threshold for state intervention has been crossed. That threshold is set out in s.31 of the Children Act and is that a child either has suffered or is likely to suffer, without such intervention, significant harm which is attributable to parental care (whether by commission or omission). Therefore the primary issue is an evidential one and the question is whether the Local Authority, who must establish the necessary evidential foundation, can prove on the balance of probabilities that the children (or any of them) have suffered significant harm because of what their parents have done or failed to do. It follows that initially any focus on the law must be upon the legal principles involved in the determination of factual matters. Fortunately there is considerable assistance available from settled and familiar authorities which allows for a succinct summary in respect of general principles.

107. The starting point is the distillation of fundamental evidential principles set out in *Re J (A Child) [2015] EWCA Civ 222* which draws from both *Re A (Application for Care and Placement Orders: Local Authority Failings) 2015 EWFC 11* and *Re A (a child)[2015] EWFC 11*:

- a. If the local authority's case on a factual issue is challenged, the local authority must adduce proper evidence to establish the fact it seeks to prove.
- b. The general rule, often neglected by advocates in the family court, is that where a party witness provides an appropriately verified written statement of her evidence, and is willing to attend for cross-examination, the court cannot be invited by other parties to disbelieve

that evidence on a matter within her personal knowledge, unless it has been tested in cross-examination.

- c. Findings of fact must be based on evidence (including inferences that can properly be drawn from the evidence) and not on suspicion or speculation
- d. Hearsay evidence about issues that appear in reports produced on behalf of the local authority, although admissible, has strict limitations if a parent challenges that hearsay evidence by giving contrary oral evidence at a hearing. If the local authority is unwilling or unable to produce a witness who can speak to the relevant matter by first-hand evidence, it may find itself in 'great, or indeed insuperable' difficulties in proving the fact or matter alleged by the local authority but which is challenged;
- e. When a judge considers the evidence, he must take all of it into account and consider each piece of evidence in the context of all the other evidence, and, to use a metaphor, examine the canvas overall.

108. I take from *Re P* (supra) the following formulation of principles:

- a. the court must resist the siren call of what has been termed the "the child protection imperative" (see *Oldham MBC v GW and PW* [2007] 2 FLR 597 at [97]). The need for caution in this regard in the context of cases of alleged sexual abuse was articulated eloquently by Hughes LJ (as he then was) in *Re B (Allegation of Sexual Abuse: Child's Evidence)* [2006] 2 FLR 1071 at [43] when he observed that:

"...the fact that one is in a family case sailing under the comforting colours of child protection is not a reason to afford to unsatisfactory evidence a weight greater than it can properly bear. That is in nobody's interests, least of all the child's." (at para.240)

- b. A failure to find a fact proved on the balance of probabilities does not equate, without more, to a finding that the allegation is false (see *Re M (Children)* [2013] EWCA Civ 388 at [17]). Having heard and considered the evidence it is open to the court to conclude that the evidence leaves it unsure whether it is more probable than not that the event occurred and, accordingly, that the party who has the burden of proving that the event occurred has failed to discharge that burden (see *The Popi M, Rhesa Shipping Co SA v Edmunds, Rhesa Shipping Co SA v Fenton Insurance Co Ltd* [1985] 1 WLR 948). (at para. 243)
- c. There is no obligation on a respondent to provide, much less to prove, an alternative explanation for the allegations made. (at para. 245)
- d. The evidence of the parents, carers and family members is of utmost importance and it is essential that the court forms a clear assessment of their credibility and reliability. The court is likely to place considerable

reliability and weight on the evidence and impression it forms of them (see *Gestmin SGPS SA v Credit Suisse (UK) Ltd Anor* [2013] EWHC 3560 (Comm) at [15] to [21] and *Lancashire County Council v M and F* [2014] EWHC 3 (Fam)) (at para. 250).

- e. With respect to the evidence of, and impression the court forms of the parents, it is however important to bear in mind the observations of Macur LJ in *Re M (Children)* [2013] EWCA Civ 1147 at [11] and [12], noting that:

“Any judge appraising witnesses in the emotionally charged atmosphere of a contested family dispute should warn themselves to guard against an assessment solely by virtue of their behaviour in the witness box and to expressly indicate that they have done so”. (at para. 251)

- f. The court’s impression of a parent, and its assessment of the credibility and reliability of that parent, should coalesce around matters such as the internal consistency of their evidence, its logicity and plausibility, details given or not given and the consistency of their evidence when measured against other sources of evidence (including evidence of what the witness has said on other occasions) and other known or probable facts. The credibility and reliability of that parent should not be assessed simply by reference to, as it was termed historically, ‘the cut of their jib’. (at para. 254)
- g. Where the evidence of a child stands only as hearsay, the court weighing up the evidence must consider the fact that it was not subject to cross-examination (*Re W* [2010] 1 FLR 1485) (at para. 260)

109. The standard of proof is the ‘unqualified civil standard of proof’ – the balance of probabilities, no more no less (*Re B (Care Proceedings: Standard of Proof)* [2008] UKHL 35).

110. A witness who has been proven to have lied is not automatically a witness of no further evidential value as a lie can be told for many reasons, not all of which obviate the integrity of their testimony. The fact of a lie may be capable of amounting to corroboration provided four conditions are met: the lie must be deliberate, it must relate to a material issue, the motive for the lie must be a realisation of guilt and a fear of the truth, the fact of the lie must be established by admission or evidence unconnected to that which is to be corroborated: (*Re H-C (Children)* [2016] EWCA Civ 136).

111. Unlike in the criminal courts the Family Court will admit evidence from those who are not themselves directly before the court but whose evidence is then reported by others. However even the generous ambit of discretion afforded by Family Judges to the admission of hearsay evidence must have some boundaries beyond which litigators must not trespass. This is particularly the case with the evidence of children. When dealing with the evidence of children who are not giving their own evidence directly before the court and which evidence therefore is capable of being scrutinised and challenged through cross-examination and all which that process offers in terms of challenge, scrutiny and check the importance of compliance with the statutory guidance as to how that evidence was obtained,

recorded and preserved is clearly set out by Baker LJ in *Re JB (A Child)(Sexual Abuse Allegations)* [2021] EWCA Civ 46 :

"11. The importance of complying with the ABE guidance, which is directed at both criminal and family proceedings, has been reiterated by this Court in a series of cases including *TW v A City Council* [2011] EWCA Civ 17, *Re W, Re F* [2015] EWCA Civ 1300, *Re E (A Child)* [2016] EWCA Civ 473, *Re Y and F (Children) Sexual Abuse Allegations* [2019] EWCA Civ 206 and in the judgments of MacDonald J in *AS v TH and others* [2016] EWHC 532 (Fam) and *Re P (Sexual Abuse: Finding of Fact Hearing)* [2019] EWFC 27.

112. Whilst it does not follow that any failure to follow that guidance will result in the inadmissibility of that evidence neither is it the case that any failures so to do will be ignored. Its evidential value must be considered in the light of any failures to comply with the requirements set out:

"The ABE guidance is advisory rather than a legally enforceable code. However, significant departures from the good practice advocated in it will likely result in reduced (or in extreme cases no) weight being attached to the interview by the courts." (*Re P (Sexual Abuse: Finding of Fact Hearing)*), *supra*, paragraph 856)

113. Finally, I should acknowledge the work undertaken by counsel for the father to prepare a much more focused summary of the relevant principles than I have managed even in this truncated fashion. I do not append it to this judgment but no issue was taken with its contents by the experienced advocates before me and I am confident that the legal principles are readily understood by all.

#### *The Threshold Document*

114. In accordance with good practice the Local Authority provided a Threshold Document which set out with clarity those matters relied upon in seeking to establish that the criteria required to be proved as set out in s.31(2) were met and enabled the court to give consideration to the making of public law orders. Upon reviewing that document I have sought to slightly re-arrange the matters asserted to put them into clearer focus. That amended document is appended to this judgment as Appendix 1 and so I will not repeat its contents here save to say that the allegations levelled by the Local Authority are now grouped into four categories:

- a. Physical abuse;
- b. Dishonesty;
- c. Emotional harm;
- d. Neglect.

#### *Decisions and reasons*

115. At this point in a judgment there is often to be found the heading '*Discussion*' under which is a detailed exegesis of the evidence, the application of the law, the

resolution of disputed factual issues through the making of findings and then their application to the subsequent welfare analysis. For reasons which will be clear as this judgment proceeds this case is slightly different and therefore instead of following that familiar structure I have set out the decisions I have reached in respect of each of the factual matters in dispute and then the reasons for those decisions.

### *Physical Chastisement*

116. The first paragraph of the Threshold Document sets out the following:

#### **Physical Abuse:**

- a. The Mother and Father have regularly physically abused Penny, Alan and David by beating them to the hands with a belt, stick or hanger.
- b. In September 2023, the children became separated from the Father at Liverpool One. Upon returning home, Father beat the children on their hands with his belt.
- c. The Father has physically abused Alan and David by hitting them to the hands with a belt after an incident over a treadmill at the gym.
- d. The Mother and Father have physically abused Penny by on occasion hitting her to the face with her hands.
- e. The Parents have made Penny sit in the stress position for excessive periods of time.

117. I have reached the clear conclusion based upon consideration of all of the evidence that I have read and heard that the allegation of physical chastisement is not proven in respect of each of the particular relied upon. I have arrived at that view for five principle reasons, each of which I shall set out below but which can be summarised here:

- a. The overall reliability of the evidence in support of physical chastisement having occurred.
- b. My view of the ABE interview.
- c. The premium placed by Penny upon confidentiality from her brothers.
- d. The consistency of the evidence of Alan and David.
- e. My impression of the parents.

### *The state of the evidence*

118. The evidence in support of physical abuse is what was said by Penny on the various occasions charted above. Against that evidence is the evidence of Alan and David which, like Penny's, was compiled by others, as well as the evidence at the

final hearing given by M and F. When subjected to hard scrutiny it is my clear conclusion that the evidence relied upon by the Local Authority as originally provided by Penny but mediated through the processes of collection referred to above is entirely inadequate for the purpose of enabling such a finding to be made.

119. The starting point for that scrutiny is to look at what should have been done, what can reasonably be termed as the 'gold standard' of full compliance with the jointly prepared guidance entitled *Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and Guidance on Using Special Measures* (the ABE Guidance), and then to look at what actually happened.

120. There can be no doubt that the ABE Guidance is applicable, particularly in situations as here where so much of the evidence relied upon was initially collected outside of the formal setting of a structured ABE interview. It is unnecessary to set out large tracts of the Guidance in this judgment but specific reference should be made to the following excerpt from the ABE Guidance

#### Initial Contact with Victims and Witnesses

- 2.4 The need to consider a video-recorded interview will not always be immediately apparent, either to the first police officer or member of police staff who has contact with the witness or to other professionals involved prior to the police being informed. Even where it is apparent, the need to take immediate action in terms of securing medical attention and making initial decisions about the criminal investigation plan might be such that some initial questioning is necessary.
- 2.5 Any initial questioning 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. Such a brief account should include where and when the alleged incident took place and who was involved or otherwise present. This is because this information is likely to influence decisions made in respect of the following aspects of the criminal investigation plan:
- Forensic and medical examination of the victim;
  - Scene of crime examination;
  - Interviewing of other witnesses;
  - Arrest of alleged offender(s); and
  - Witness support.
- 2.6 Some initial questioning may also be needed to obtain enough information to formulate a risk assessment for the witness and to take whatever action is necessary to remove or reduce any risks that are identified.

121. It is sufficient hereafter to rely upon the authoritative summary provided by Baker LJ in *Re S (supra)*:

- (2) 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).

(3) In these circumstances, any early discussions with the witness should, as far as possible, adhere to the following guidelines.

(a) Listen to the witness.

(b) Do not stop a witness who is freely recalling significant events.

(c) 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.

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

(e) 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).

(f) 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.

(g) 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, see also *AS v TH*, supra, paragraph 42).

(4) 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).

(5) 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). The rapport phase must be part of the recorded interview, even if there is no suggestion that the child did not know the difference between truth and lies, because "it is, or may be, important for the court to know everything that was said between an interviewing officer and a child in any case" (per McFarlane LJ in *Re E*, supra, paragraph 38).

(6) In the free narrative phase of the interview, the interviewer should "initiate an uninterrupted free narrative account of the incident/event(s) from the witness by means of an open-ended invitation" (paragraph 3.24).

(7) When asking questions following the free narrative phase, "interviewers need fully to appreciate that there are various types of question which vary in how directive they are. Questioning should, wherever possible, commence with open-ended questions and then

proceed, if necessary, to specific-closed questions. Forced-choice questions and leading questions should only be used as a last resort" (paragraph 3.44).

(8) Drawings, pictures and other props may be used for different reasons – to assess a child's language or understanding, to keep the child calm and settled, to support the child's recall of events or to enable the child to give an account. Younger children with communication difficulties may be able to provide clearer accounts when props are used but interviewers need to be aware of the risks and pitfalls of using such props. They should be used with caution and "never combined with leading questions". Any props used should be preserved for production at court (paragraphs 3.103 to 3.112).

(9) "The fact that the phased approach may not be appropriate for interviewing some witnesses with the most challenging communication skills (e.g. those only able to respond "yes" or "no" to a question) should not mean that the most vulnerable of witnesses are denied access to justice". It should not be "regarded as a checklist to be rigidly worked through. Flexibility is the key to successful interviewing. Nevertheless, the sound legal framework it provides should not be departed from by interviewers unless they have discussed and agreed the reasons for doing so with their senior managers or an interview advisor" (paragraph 3.2).

(10) 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" (per Sir Nicholas Wall P in *TW v A City Council*, supra, at paragraph 53)."

122. Against that framework has to be considered what happened in this case in respect to how Penny's allegations were obtained, received, recorded and preserved against contamination.

123. With the two exceptions of SJ and those working for Triangle, it is not unfair to conclude that the process of collecting information involved serial and successive errors which cumulatively created significant difficulties at final hearing. SJ deserves commendation in several respects: for her conspicuous attention to following the proper process in ensuring that Penny and Chris could give her their information; how she set herself to receive it; her notation of the same, how she ensured that she played as little a role in the mediation of the information as possible; her record-keeping in immediately uploading it to CPOMS and the separate but swift uploading of her notes. In addition, having properly discharged her safeguarding responsibilities she resisted the temptation to involve herself further but maintained a professional but appropriate manner towards a clearly unhappy child. Penny could not have had a better foundation for the matters she wished to raise.

124. The only cloud on that otherwise unblemished horizon was the fact that it was not just Penny's voice which was involved in providing the account but Chris' as well and in enabling both girls to speak on the same occasion the process of subsequently disentangling the two streams of information was made quite difficult. Although it could be said that Penny 'owned' the record which was produced through her continuous presence, her active participation in the conversation and her apparent willingness to guide or even correct Chris in her own comments, some blurring of the lines was an inevitable consequence of Chris' participation. Had Chris simply been present for 'moral support' as (mistakenly) stated by DD then this would not have been the case. However if the alternative option of silencing Chris would have resulted in either no record of occurrence or a very limited one if Penny, without Chris' assistance would have been unlikely to say anything, then SJ undoubtedly made the right choice in deciding that something is better than nothing, even if that something then comes with blurred lines. In my judgement SJ was right to allow the girls collectively to talk and she is not to be faulted in how she coped with that situation.
125. Unfortunately that very helpful beginning also marked the end of anything approaching an acceptable standard for the management of evidence thereafter. From then on every professional who engaged with Penny fell short of the standard that had been set and in so doing left in their wake what amounted to a catalogue of errors.
126. Taking matters chronologically.
127. The first problem arose later the same day. Given that SJ had spoken only with Penny (and Chris) and a detailed record taken of all that had been said two matters should have been immediately apparent. First it was clear that nothing had been said by Alan and David so it should have been obvious to CK later in the afternoon that she needed to ensure that nothing was said to Alan and David until a situation could be arranged where a planned and prepared conversation could take place. Secondly, Penny having spoken at length it should have been a headline thought for CK that any further conversation with Penny should be avoided if at all possible and certainly nothing should be allowed to happen whilst Penny was in the company of either of her brothers. In fact in each case the converse happened when CK together with LB spoke with the children together that very afternoon. That error was then magnified in two respects. Not only did CK raise the wholly inappropriate issue of whether any child had evidence of injury on their body but having done so she failed to make any note of the subsequent conversation, let alone a full one, on the unacceptable ground that she had nothing to hand with which to write. These were fundamental errors. Having listened to her evidence I must be fair to CK and add that she undoubtedly approached matters from a pastoral point of view and in the belief that she was following appropriate instructions provided to her from Careline via DD regarding the possible presence of injuries. Given the importance of pastoral care to CK her errors have some mitigation. Unfortunately CK's actions were far from the worst example of information mismanagement in the case given what was to follow.

128. A strong contender in what regrettably must be regarded as a keenly contested competition for that dubious honour was DD who made a multiplicity of errors from the outset. DD spoke with Penny in relation to the information which she had provided when there was both no need to do so and every reason not to. The information had been harvested appropriately by SJ and DD had no reason to traverse that ground again. The obvious steps for DD to take in order to assert control over the process would have been to introduce herself to Penny, to emphasise that what Penny had said was being acted upon and to invite her not to discuss these matters further with anyone else but to come only to her if there were further developments or if she needed to say anything else. It was similarly obvious that clear record-keeping of any subsequent conversation which had to take place was essential and swift preservation of any information provided was equally necessary to ensure a full and reliable record could be created for any future action which was required by any relevant agency. In fact DD's record-keeping was poor, not only by allowing there to be unaccountable delays in putting information on the system but in the making of inaccurate and limited records which offered confusion where there should have been clarity. Furthermore it is important during the process of information gathering to retain objectivity even whilst offering sympathy and during cross-examination of this witness it was suggested to her that she had come to take not just a professional but also a personal interest in the allegations Penny was making in that she appeared to not only acknowledge them but also to accept them and even seek to champion Penny's cause as a child who had been physically and emotionally abused. DD strongly refuted straying beyond her professional responsibilities and in my judgement this never became a personal issue for her. However what is also clear to me is that DD lost objectivity in how she viewed Penny's situation which caused her to go far beyond what was known and understood.

129. The clearest example of this was on 19 October when DD attended the Strategy Meeting convened by social services and thereafter recorded the following comment on CPOMS '[DD] shared concerns from School POV Boys current unwillingness to disclose.' In my judgement this entry encompasses a number of problems. Firstly, DD had clearly formed a view about the veracity of Penny's allegations at a point when there was insufficient information for any settled view to fairly be formed. All that had occurred by that point was that Penny had raised allegations and Alan and David had not. Secondly, DD appears to have felt able to speak for 'the School' which may have caused other professionals now involved to assume, wrongly, that DD's particular view reflected the agreed view of all professionals within that school when that was not the case. Thirdly, phrasing a view that Alan and David were 'unwilling to disclose' is indicative of an understanding that (a) something had occurred. (b) which was known, understood and accepted by Alan and David but (c) were reluctant to speak about what they knew. At that point in time (and in fact as it turned out at any point in time) there was no evidence upon which to form such a view. It is not clear when or even if DD had any interaction with Alan and / or David and therefore to suggest that she knew their minds was simply wrong.

130. Consistent with this view was how DD in the Strategy Meeting opined, speculated and hypothesised in a way which was simply not open to her do so as a professional or as a person responsible for safeguarding armed with the information she in fact held as opposed to her own personal theories of what was lurking beneath what Penny was saying. This had two consequences in that not only did it overbuild a very unclear situation into a clear case of multiple physical abuse but by so doing it accelerated a response which should have been more measured and which then created even further problems.
131. Having reflected on the evidence as a whole I do not conclude that DD deliberately exaggerated the picture which was forming but I do find that in her dealings with social services DD failed to check the accuracy of her statements or in any way to caveat to other professionals that she was speculating as opposed to reporting and in so doing therefore overstepped the limits of her knowledge and inaccurately communicated to others what she *knew* to be the case. By doing so DD not only made poor judgments about what might be happening as opposed to what the available information allowed her to conclude but presented an inaccurate and therefore inadvertently misleading position to others whose statutory responsibilities meant that they were likely to act upon the information she was providing.
132. The outcome of the Strategy Meeting on 19 October was to send out social workers to the school as part of a section 47 investigation with the primary aim of capturing the voice of the child.
133. At this point it is helpful to quote from *AS v TH and others [2016] EWHC 532 (Fam)*, a second decision of MacDonald J and a case which can be taken to be within the canon of seminal authorities in relation to the treatment of the evidence of children in respect of allegations of abuse. At paragraph 39 is to be found the following:
- with respect to initial contact with alleged victims, discussions about the facts in issue in respect of an allegation *as distinct* from whether and what allegation is being made and against whom, should be rare and should not be a standard practice.
- (my emphasis underlined)
134. It is not unfair, in my judgement, to consider that in this case that cardinal principle was ignored completely. From the beginning discussions with Penny about her allegations were commonplace as opposed to rare, barely a working day went by between 13 October and 24 October when these matters were not merely the subject of conversation but in fact of interrogation. That this was so was because of the fact that it appeared to be 'standard practice' (to quote from AB and CD) by social services to focus upon obtaining either 'the voice of the child' or 'the child's lived experience' in successive waves as a matter of routine frequency.
135. The social workers duly dispatched to SEC were AB and CD. I have no difficulty in holding that each social worker was undoubtedly honest in their self-assessment that she did not view her actions as being part of an interview process when they went together to meet with the children on 19 October. That honesty is matched

only by their ignorance of what the proper process in fact was and, as a consequence, the magnitude of their errors. The evidence of both was that they were undertaking what CD referred to as a "47" and it was clear to me in listening to each of them that they regarded a "47" as a routine aspect of social work practice which could be undertaken without planning, preparation or thought. I was left with the clear impression that it never crossed either of their minds to query whether it was appropriate to obtain the voice of a child in a situation where that child had already of their own volition made serious allegations of physical abuse. Over ground which should have had a large forensic 'Keep Off' sign firmly planted on it they, like DD before them, immediately trod all over it and on that first occasion were joined in their actions by DCS.

136. It was in the unnecessary revisitation of that terrain which had been so carefully curated by SJ that the most wholesale mistakes were made.
137. Firstly, the decision to secure 'the voice of the child' may have been a sensible one had a conclusion been reached based upon a review of what was then known that the account provided on 13 October was deficient, confused or simply insufficient. If that had been the decision then what should have occurred would be a thorough and planned exploration of matters in appropriate detail which would be sensitively undertaken in circumstances where it could be properly and fully recorded and so preserved as a record of value. This was far from what happened. In fact there is no evidence that any thought was given to how this exercise would impact upon what had already been done. The response was almost a kneejerk reaction, perhaps due to the pressure coming from the school in the form of DD, that something needed to happen. Sending AB and CD on a routine "47" was the least helpful step which could have been taken in the circumstances. It should have been obvious that in making the decision to talk to Penny again the odds of a problem occurring were quite short as all Penny had to do was to not the same thing as she had had SJ write down the previous week. By opting for a VOC / "47" response Penny was inadvertently given the opportunity to sow confusion in what had been a relatively well-ordered landscape. Unfortunately for Penny she not only took that chance, albeit no one understood that this is what had happened at the time, but did so quite significantly.
138. In her discussion with AB, CD and DCS on 19 October Penny made her first reference to what I have referred to as the Gym Incident which she has consistently stated occurred as recently as 8 October, only eleven days previously. That incident was not recorded by SJ and although DD referred to 'new disclosures' in her follow-on conversation on 16 October she provided no detail as to what they might have referred. On 19 October DCS noted down an occasion within the preceding eleven days when Alan and David had gone to the gym and had been excluded after fighting with each other, that F was screaming at them and when they got home was angry with them. As a result they were both hit several times on their hands with a belt, although Penny did not see it all as she went to get a shower. That was undoubtedly the Gym Incident.

139. Whether the incident occurred or not it must have been referred to during the time when Penny was being questioned on 19 October because there is no way that the police officer would have known about it unless Penny mentioned it. Even had DCS had the opportunity to read in advance all that Penny (and/or Chris) had previously said to SJ, which she was clear had not happened, that incident had not been mentioned. It was new information. However being new was not necessarily a problem provided it could be confirmed that this was a supplemental detail and not a developed add-on as a reaction to any mistaken but perceived need for further information. Unfortunately this did not happen. In order to achieve any sort of cogency with what had already been provided the person exploring the content now being provided would have had to have been aware that it was new and then to be able to tease out why it had not been referenced before when it would have been even more fresh in Penny's memory on 13 October when she spoke with SJ, just five days after its alleged occurrence.
140. The result was that Penny had now added something which might have been expected to have been raised previously, particularly when that original account had gone back beyond 8 October and referenced a date in late September as the date when David had most recently been hit. This new information clearly contradicted that and some attempt at clarification was needed. However DCS, AB and CD were all approaching this without that essential knowledge and, if they were not entirely blind then they were certainly acting on very limited information, and so had no possibility of recognising this issue let alone being able to explain its previous absence but now sudden presence.
141. Secondly, and in contrast to Penny, when Alan and David were spoken to on 19 October they effectively confirmed their previous position that nothing had happened which caused them any concern and that they were happy at home. This was also important in the context that this was not just the second occasion when they offered this identical narrative but it was a further occasion when it could not be suggested that they were acting in self-interest or out of fear. There was no suggestion that anyone had been alerted to the possibility that there was a problem and therefore Alan and David could not be assumed to have taken a particular line on the instructions of a parent or because of fear that they would be punished. Unless it could be suggested that the parents had already been drilling into the children that they must never speak about matters going on at home, which was not an allegation that Penny had made, then the absence of evidence of chastisement was far more likely to be regarded as the evidence of absence of chastisement. It was clear, again appreciated more so with hindsight, that in maintaining their stance the boys attained a double consistency in that they were in agreement not only with their previous evidence but also with each other. The further discussion on 19 October resulted in Alan and David presenting what has to be accepted was a solid united front.
142. Thirdly, any decision to revisit ground previously covered required clarity of purpose, advance planning, effective partnership with any other agency involved and clear leadership on the ground at the time in order to avoid making matters worse. This was not what occurred, in fact the opposite was true. AB, CD and DCS

met for the first time in relation to Penny at 15:30 and within 20 minutes had started to speak with Penny. There is no record of agreement as to their purpose, no delineation of responsibilities and no creation of a working hierarchy. Such evidence as is available suggests that it was actually something approaching, if not a free-for-all, then a fogged operation lacking any vision or direction. In their evidence at the final hearing all three individuals confirmed who they considered to be taking the lead and they gave three different answers. DCS said it was AB, AB said it was CD and CD said it was all three of them. Three different approaches were simultaneously deployed in the same time and space. In fact, no one was leading but everyone appears to have believed that either someone else had shouldered that responsibility or that they were all working together. A more confused picture is difficult to imagine and one which is unable to inspire any confidence in what was produced.

143. Fourthly and separately from the lack of clear leadership was the quality of notetaking. As is now clear no one complete note was taken by any individual. Unfortunately this did not mean that between the three of them the whole ground was covered but only that key details were missed as the absence of an organised structure rendered that possible. The details captured by DCS on the one hand and by AB and CD on the other are different in material respects. One clear example, as noted above, is DCS's noting of what I have referred to as the Gym Incident but it's complete absence from what was finally produced by AB and CD. That absence creates two problems. Firstly, it renders suspect the accuracy of the entirety of the social workers' note because they missed an entire episode of chastisement and raises questions about their focus and what they were trying to achieve. Secondly when, as later occurred, there is a significant variation in the same account – by the substitution of a stick for a belt and the introduction of the use of the stress position – it raises questions about the accuracy of each account provided and which one is meant to be correct. Had it been the case that two accounts given on the same day were correctly noted it might have offered an answer to the question of how competing accounts could do other than cancel each other out.

144. It is appropriate at this point in the analysis to remind myself of the following, again taken from the judgment in *AS v TH & Others (supra)* where at para. 44 MacDonald J states

Within this context, it will also be important that, when recording an allegation, the child's own words are used and that those speaking with the child should avoid summarising the account in the interests of neatness or comprehensibility or recording their interpretation of the account.

145. It may have been assumed that the events of 19 October represented the nadir in terms of successively revisiting with increasingly degrading effects the ground first covered by AW on 13 October. Unfortunately not. The allocation of PR as the social worker on 23 October appears to have been no more than a press of the reset and repeat button in the organisational mind of social services.



146. The repetition of this scenario on 23 October now with PR in attendance and her questioning Penny combined with both PR and FH respectively re-attending and attending on 24 October served only to compound all of the problems which had already been created on 19 October. To continue the gardening analogy a little further. The ground which had been so properly treated on 13 October by SJ had then been roughed up on the ensuing days before being thoroughly trampled all over on 19 October by AB and CD was finally wrecked on 23 and 24 October when Penny re-described the Gym Incident and how it had resulted in F hitting both boys with a stick which he had retrieved from a different part of the house. On this occasion Penny described the stick's length and thickness and described how the boys had had to stand to be hit. Yet on 24 October the note made by FH refers to Penny having said that she was hit with sticks from a tree whilst it was only her brothers who received the belt, which - again - contradicts what she has already said earlier. To further complicate an already confused picture the stress position allegation was introduced on 24 October for the first time.
147. In contrast, yet again, Alan and David continued to offer no support to Penny's allegations so enabling them to maintain their solid, singular but united line that all was well. Whilst it could now be argued that Alan and David had seen the anger of their parents towards Penny and wanted to avoid the same fate they did not simply avoid questions about their parents but continued to offer positive perspectives about life at home which were either true or were being fronted up by the boys as cover for their harsher reality.
148. In my judgement the above criticisms, however excoriating they may feel for those professionals involved are both proportionate and justified. The procedures for interviewing children are clear, well-established and were developed and have been refined over many years by considered and reflective work of expert. They are also with depressing frequency highlighted in judgments from the senior judiciary when practice falls far short of what can reasonably be expected.
149. It follows that it is itself is a reasonable expectation that all social workers and police officers will be aware of the Guidance, have received at least basic training in its contents, have received supplemental as well as refresher training in accordance with their responsibilities and experience and **will therefore apply both the principles and the practices set out in that Guidance automatically but not mechanically when a situation requires them to do so** (emphasis added). In this regard there was a collective failure after AW had undertaken her own work which, in my judgement, has compromised such evidence as was available and degraded it to a point where I can have no confidence that what is being articulated as Penny's evidence is not a compound of inaccurately recorded assertions, pressed ideas and jumbled notions which cannot be identified as actual memories or even genuine experiences.
150. That this is so is no reflection upon Penny.

151. I have already set out in some detail both my understanding of the content of Penny's ABE interview and of the impression it made upon me. I remind myself of the limitations of correctly reading the demeanour of any witness, to say nothing of inferring from it any assessment of veracity, and this must particularly be so with a young person dealing with the conflicting emotions of separation from family, having made serious allegations against her parents, suffering from a deteriorating relationship with her siblings whilst still dealing with the trials and tribulations of school and everything else what comes with being a young teenage woman in the twenty first century, to say nothing of the additional trials and tribulations of being a person of colour.
152. Even with that self-warning firmly given I was left with a very clear impression of a young person who was as far removed from a proper engagement with the interview as she could be. Penny appeared to me to be reluctant to step into the conversation with the interviewer but too polite and probably too dutiful to simply say that she wanted no part of it. The interviewer struggled to engage with Penny to the point where she had to prompt and suggest in order to evoke a response. As already referenced above in my judgement this was not the failing of the interviewer being casual about the proper limitations of her role and being unaware of the importance of working at all times to enable the interviewee to give their own evidence through their own voice. Insofar as there were criticisms levelled at the process during the trial I do not align myself with them. This was a difficult interview to conduct because the interviewee was attempting to distance herself from what was expected of her. The result was that Penny appeared confused, unsure and even at times perplexed. That affected the questioner too who was also confused at times about what she was being told. With one exception, to which I will return, there was the equivalent of a forensic fog which hung across the interview making it very difficult to penetrate and see the core of the issues which were trying to be elucidated.
153. That appearance of being a reluctant participant was to some extent reflected in the time which was taken before Penny could be focused upon the matters about which the interview had been directed. Although it is not disputed that the transcript carries a number of errors in terms of what was actually said it is sufficiently accurate to note that it is not until the end of the thirteenth page of the transcript that Penny says anything which is not positive about her parents. I accept of course that Penny may be demonstrating significant loyalty to her parents and family in not rushing to say something negative about them until there had been a fair amount of conversation about them in positive terms; but it only serves to underline to me that Penny was someone who was reluctant to engage in a conversation about having been repeatedly assaulted.
154. Moving away from the picture which I saw presented to me by Penny such answers as were drawn from her, dragged is probably too strong a word although not inapt, appeared to be contradictory to other information available.
155. The first allegation Penny made was that all three children would be hit by their parents using their hands, that a hangar was once used and one brother, she could

not recall which one, was once hit with a stick. Then Penny stated that when hands were used to hit with it was to the victim's face but that it happened to a brother and not Penny before then saying that it happened to her too and that it was both brothers and not to any other part of her body. Within two pages of the transcript Penny was asserting that her M did not hit her to the face.

156. Penny recalled being hit with a hanger on a Thursday in June, previously the use of a hanger whilst only ever attributed to M was used – or recorded as being used – on more than one occasion. She confirmed that she had been hit with a belt by M on more than one occasion but could not recall any specific occasion when this had occurred. When prompted to think about the last time this had happened Penny said it was in September but was unable to recall any detail about it. Previously in earlier recorded narrations Penny had identified the occasion when she had been hit most recently with either a belt or a stick as having been in Liverpool One when she had become separated from F. Later in the interview when being taken back to the issue of when she had most recently been hit Penny continued to indicate that she could not recall when this was, even though she was reminded that it was on a Sunday, save that she suggested that it had been neither that year nor the year before. However then on the forty-second page of the transcript Penny recalled being hit with a belt following the Liverpool One incident
157. Penny continued to diminish her previous allegations by denying that she had ever been hit with a stick and now saying that being hit on the face by M was not something which had happened frequently at all.
158. Turning to Penny's allegations against F she stated that he had hit her with a belt. Penny demonstrated how she was required to hold her hands in order to receive a blow to them. Watching the video it was clear that Penny adopted a stance of placing her right hand under her left hand. This was unexpected for two reasons.
159. Firstly, it only effectively offered up one hand to be struck as one was nestling upon the other. If it was the case that after a point the victim would be instructed to move the hands so that the lower hand was nestling into the upper hand this was not explained by Penny.
160. Secondly, what Penny demonstrated, whilst unknown to the interviewer, was a stance which will be familiar to anyone who of the same religious persuasion as the family. In that tradition children are taught a particular way of participating in reception of a sacrament which mirrored what was being demonstrated by Penny. It struck me as being unexpected that parents who are undoubtedly devout in their faith would, were they so minded to assault their children, have them adopt a posture associated not just associated with their faith which is of particular significance to be point of being sacral. It does not follow, of course, that this cannot be the case but in my view it renders it less rather than more likely.
161. Notwithstanding that the procedures for the ABE interview were undertaken correctly and competently I found myself unpersuaded of the veracity of what Penny was alleging by reason of the manner in which she gave her evidence and

the detail she provided. The provisional view I had formed during the final hearing is only strengthened having now reviewed the totality of Penny's evidence.

162. During the course of submissions counsel for both the Local Authority and for the children invited me to accept that Penny's accounts were given cogency by both the consistency with which they were given and the details which they included. However in my judgement factual findings depend upon more than a superficially well-crafted tale frequently told. It cannot be assumed that simple repetition of an account is itself evidence of veracity. The mere fact that someone tells the same tale on more than one occasion or even on every occasion does not of itself automatically equate to a reason why they should be believed. Similarly, the inclusion of details such as a particular location, the presence of a specific individual or of chronological details such as a day or even a date cannot of themselves amount to evidence that it must have happened that way. Concocted stories require some detail in order to give them any form of credibility and a lie once told must be repeated on each occasion thereafter if the original purpose of the lie is to be sustained. The provision of detail can only be regarded as a factor in determining credibility if at least some of those details can thereafter be corroborated. For example, I have no issue in basing a view as to veracity upon matters asserted which are then shown to be true, such as the presence of an individual in the place where s/he was alleged to have been at the time or the occurrence of an event on a date claimed which turns out to be true but mere expression of a detail alone is not of particular assistance, certainly in this case.
163. The exception to the need for some form of corroboration, of course, is where the evidence given is experiential, of having had to be something which, to be understood or described, had to have been experienced by reason of it being generally accepted as being beyond the expected understanding or likely experience of the individual so describing it. Evidence which includes experiential detail may well incline a questioning mind towards a finding that it occurred. I was unable in Penny's interview to discern any evidence of that nature but instead saw all of the difficulties identified above.

#### *Penny's urge for confidentiality*

164. In the early stages of her narrations it was a constant theme of Penny that her brothers should not find out that she was making her allegations. It was a sufficient concern to her that she raised it on every occasion that she spoke prior to the evening on 19 October and on 13 October itself it such a concern to her that she returned to speak to CK after she and her brothers had been allowed to leave just to press this point.
165. It was a point Penny returned to with gusto the following week when she approached SJ. I thought it was telling that on 17 October Penny sought out SJ, who had already been identified as being a kind and sympathetic individual whom she felt she could trust, after DD had told her that a visit by social workers to her home would be made. Penny was clearly troubled by this. What followed in the CPOMS entry made by SJ and therefore very likely to be an accurate recitation of what was

said, was that Penny set out some very clear reasons why a home visit would not be a good idea. It struck me that Penny was possibly there trying to articulate reasons to persuade a decision-maker from making the home visit and so maintain as much distance between her allegations and the rest of her family as possible.

166. If it would be understandable for Penny to be troubled at the thought of her parents discovering that their secret ill-treatment had been disclosed I was unable to make the same connection in relation to not telling Alan and David. If, as Penny was asserting, all three children were being assaulted it may well be expected that all three would want it to be stopped. It would sense for Penny to want her brothers to know that she had been brave enough to speak out for all of them, particularly if they did not feel able to speak up themselves. However the lengths to which Penny went to try to keep the secret from them, including wanting to sit apart from them, did not fit with the idea that this was true, that it was something which was impacting upon all three children, that none of them wanted and which needed to be stopped.
167. The only conclusion I could draw from Penny's desire to ensure that neither her brothers nor her parents discovered that she was the source for the allegations against them was that she had a vested interest in no one knowing that it was her. That was most easily explained if the allegations were not true but were being promoted for some other reason.

#### *Alan and David*

168. To some extent I have dealt with this point already. I am confronted with a clear conflict in the evidence of Penny, that all three children were regularly beaten, against Alan and David's evidence that nothing of the kind occurred. Insofar as the multiple failings in the recording and reporting of Penny's evidence may account for its variability the same flawed process applied, albeit with less frequency, to Alan and David's too and contradictions and confusions were not the result.
169. The boys' evidence was consistent as to the absence of assaults and contained many positives about their parents. But it is not the case that the boys have only made positive comments about their parents or about life generally. Each made their own complaints about life at home, getting punished, what they did not like and what happened when things went wrong. Neither made any allegation of physical assault. As stated at the outset of this judgment this is a case as much about Alan and David as about Penny. Courts make decisions based upon the relevance and cogency of the evidence, not according to its quantities. A judge does not weigh evidence the way a teller counts votes and decides that there is more of it in favour of an outcome rather than against. Courts are not democratic institutions whereby simple majorities are the basis for a decision. Simply because I have two children who have steadfastly refused to join in the allegations made by their older sibling no more means that Penny cannot be correct as it does that she must be disbelieved because she is outnumbered. It is not a 2 v 1 situation. What is relevant here is not that there are two children who are not agreeing with a third but that those two children have had several opportunities to break their code of silence and

also complain about the treatment which they have allegedly been receiving for an extended time and thereby put a stop to the assaults. They have never taken it.

170. As said previously there is no basis for holding, as DD apparently chose to believe, that Alan and David's were unwilling to disclose for some reason that remains hidden. I can only assume that they are not disclosing saying anything because they have nothing to speak about. Their monosyllabic exchanges in mid-October were being interpreted as them being guarded or wary about what was happening. There is another explanation. Little was being said by them not just because that is their style but also because they were unable to comment on matters about which they knew nothing. Neither child took any opportunity to disclose body marks, to indicate some unhappiness or give any professional any reason to believe that there was something which they needed to say. Either two senior school age children successfully stonewalled a series of professionals or the position they have maintained over now several months that they have never been assaulted is the only truth that they can say. On their own evidence alone I am inclined towards that conclusion.

*The parents' evidence on this point*

171. My final point on this topic is an important one. I listened to the parents' evidence over multiple days and came to a clear conclusion that they had not hit any of their children.

172. During their evidence each parent was subjected to thorough cross-examination and it is right to say that neither parent had answers to every question put to them. That is not unexpected. It is also right to say that M, in particular, did not assist herself by demonstrating just how reserved, private and fixed she is in relation to what she considers to be matters beyond the proper remit of the court. This was most neatly demonstrated not in answers to questions but in relation to the necessity for her to have to return to court to conclude her evidence when time simply ran out on the day earmarked for her evidence. M was clear that she could not return to court by reason of her work commitments and even stated that she would miss a family funeral rather than rearrange her professional commitments. M appeared to be demonstrating either an apparent unwillingness or ability to accept that sometimes despite best efforts plans do not hold up and changes have to be made. It appeared to demonstrate remarkable inflexibility and to some of the advocates this was also taken as a clear indication of a lack of respect to the court.

173. It was only when F gave his evidence that light was shone on her situation.

174. M is currently working as a locum in her profession. She works through at least one agency who place her for specific periods. A significant amount, if not all, of her work flows via an agency or agencies. It is how the system works. F, when he was giving evidence, explained that on a previous occasion when M had cancelled a work day to attend court an agency had responded in a disproportionate manner by then cancelling not only that particular day of work but multiple days as well,

some several weeks away which would have been entirely unaffected by a one day cancellation.

175. I had no difficulty in accepting that M was concerned that a late cancellation of availability might result in a large hole in her work diary and therefore her earning opportunities. The problem was not with M but with that agency. What I failed to understand, as I tried to explain to the mother when she did return to court as she had said she would, was why she herself had not felt able to explain that difficulty. My only conclusion is that M is a very private person who prefers to keep herself to herself and engages only when necessary.
176. That this is so is hinted at in her decision-making in relation to an issue of inconsequential importance to the proceedings but of great importance to the children, the concept of the sleepover. The issue arose in the context of M having indicated that her children did not engage in sleepovers unless she (and presumably F) not only knew with whom the child was staying, where the child would be staying, neither of which are unreasonable, but also what were the morals, characters and values of the family in question. Unless it was the case that other children were raised in families which shared the parents' views and values then a sleepover would not happen, either at another house or with those other children coming to their house. M was not unyielding, as was suggested, but certainly inflexible to the point of near rigidity.
177. However despite those negative impressions of M I was unable to conclude that either parent's denials of having hit any of their children were false. It was a combination of a number of factors. There was the obvious point of the absence of any evidence in support of Penny's claims. The undisputed evidence of the children's excellent educational records, including faultless attendance, which brings with it significant opportunities for professional scrutiny of the children and the care being afforded to them. There was the clear record of engagement with school which would not have been expected had they been regularly ill-treating their children as they would have had every reason to hide beneath the parapet and not raise their heads above it.
178. In addition, it is important to acknowledge what the parents said about Penny's allegations. Neither sought to suggest that this was all some misunderstanding but instead firmly set their store against what their daughter was saying to be true, despite the uneasy position that put them in. In refuting what their daughter was saying neither parent sought to portray themselves as perfect and M, in particular, acknowledged the issues she had been having with her teenaged daughter who was seeking autonomy in difficult, potentially high conflict areas such as the use of make-up and the interest in boys. Neither parent was blind to the possibility that Penny might wish to rebel against rules and values which hitherto she had accepted.
179. In a situation where I am forced by the absence of any other evidence to support a particular view where two possibilities cannot co-exist a choice must be made and I concluded that the parents were not lying about what they had not

done. I came to this conclusion despite my conclusions about emotional harm referred to below.

*Dishonesty / Failure to work with professionals*

180. The second heading under the Threshold Document was dishonesty.

**Dishonesty / Failure to Work with Professionals:**

f. The Parents have lied to the Local Authority and Court in relation to the physical chastisement of the children.

181. It follows from the finding made above that this is not proved.

*Emotional Harm*

182. The third heading was emotional harm.

**Emotional harm:**

- a. The Children have suffered emotional harm as a result of the physical abuse they have suffered.
- b. Following the Local Authority becoming involved with the Family, the Parents:
  - i. put pressure upon [Penny] to retract her allegations and told Penny she had ruined / destroyed the family.
  - ii. Upon being made aware of [Penny]'s allegations, the Parents removed [Penny]'s phone and sim card to punish her.
- c. Following [Penny]'s allegations, the Parents made [Penny] watch documentaries of people being abused in foster homes and adoptive homes as a way of trying to intimidate her.
- d. The Mother and Father refer to [Penny] as fat. They show her pictures of when she was younger and tell her how "good" and "healthy" she looked. As a result Penny worries about her weight and struggles to eat.

183. By reason of my earlier findings that physical abuse has not occurred (a) above falls away as not proved.

184. The second sub-paragraph related to what Penny said happened to her on the evening of 19 October after F had been spoken to at school and M on the telephone. Penny wrote two emails relevant to this issue, particularly one written and sent to AW around midnight that night and received at 00:23 on 20 October.



185. I have read that email several times. In my judgement it sets out a situation of a very bemused but angry father who was trying to understand what had been going on and why he was suddenly finding himself having to deal with social services concerned about physical chastisement which he knew was not happening. Without wishing to descend into colloquialisms the impression that I received from reading both this email and the one Penny sent on Saturday 21 October at 18:13 was of a father who had gone 'ballistic' when he had sat his daughter to understand what had happened. It was not helped by the fact that Alan and David had probably without concern or care simply told their father on the way home what had been happening in school and the conversations they had had with the social workers. Whilst I must accept that I am speculating it seems clear to me that it was not difficult for F to quickly understand that his sons knew nothing about anything which left Penny as the oldest and most articulate in the best position to clear up what he assumed had been a big misunderstanding. When he found out that the source was Penny he was initially a very angry and unhappy father who initially having difficulty in coming to terms with a very serious matter which his daughter had generated without any thought as to the consequences.
186. M's own evidence on this point was unhelpful in that she sought to play matters down, that she was upset, too tired to talk and preferred a shorter private conversation with her husband rather than tackling N. I am unpersuaded that this happened in as low key manner as M set out. I do not think she lied. In keeping with my stated view of her as a person who seeks self-control I think she is playing down the reaction which went on.
187. This is supported in my view by the second email in which Penny describes now fuming parents, particularly F, who is in the fed-up stage with Penny and preferring to keep his distance. Nowhere is it suggested that either M or F laid a finger, belt, stick, hanger or any other implement on Penny. Had matters been as Penny described it is difficult to understand why such inflammatory behaviour failed to trigger the otherwise standard reaction of several years. The fear of being accused of hitting your child was not one the parents needed to trouble themselves with because they were already accused of it.
188. In their evidence to me both parents described how phone confiscation was a high point of punishment. Not unlike multiple families in this day and age. I do not doubt that Penny's phone was confiscated, probably on the spot. More perplexing until F gave his evidence was the reference to watching videos about foster children's negative experiences. F explained that he did some research on the evening of 19 October to properly understand the consequences of being in foster care. I have no doubt that he did that but I am equally sure that having identified some unattractive information about some children's experiences he was only too willing to share that with (in his eyes) wayward daughter who at that point in time was far from the apple of his eye. Neither parent was seeking to intimidate or threaten Penny but they wanted to show her just what sort of a hornets' nest she had managed to stumble into and to do so in a way which would encourage her to shut this matter down as soon as possible. The email of 21 October records that view as part of the conversation F was now having with Penny.

*The failure to meet needs*

189. The fourth paragraph of the Threshold Document sets out the following:

**Failure to meet needs:**

Alan and David are both considered by school to present with additional needs. The Parents have refused to allow the Children to be assessed for any additional needs.

190. Of the matters set out in the Threshold Document all have been covered or at least touched upon save for the final point that the parents have refused to allowed the children to be assessed for any additional needs.

191. Through DD, who was not a teacher at the school, it was asserted that the school had sought to have David assessed for SEN as they considered that this might be an issue for him. In her letter / court report DD referenced two letters which had been sent and not responded to. Those letters were never attached and have never formed part of the evidence before the court. Even though D was noted as having told RP that a letter had been sent from the Headteacher on 22 September no document has been produced. Despite the best efforts of the Local Authority it has not been possible to have the school, which alone holds the evidence, to produce the same.

192. The issue is on all fours with the legal principle of proof cited earlier:

If the local authority is unwilling or unable to produce a witness who can speak to the relevant matter by first-hand evidence, it may find itself in 'great, or indeed insuperable' difficulties in proving the fact or matter alleged by the local authority but which is challenged;

193. This is not merely a technical point. Child protection is a public imperative and is not to be derailed by arid technical or procedural points, it deserves to be elevated above evidential pedantics. However it is also the case, again as noted above, that the 'siren call of the child protection imperative' does not allow even the Family Court to disregard basic rules of evidence. The matter would fail in any event simply on the basis that the Local Authority has been unable (through no fault of its own) to adduce the necessary evidence but to leave the matter at that point would be wholly unfair to the parents in the light of further evidence which they gave and which I accept.

194. There is clear evidence which is not disputed that Alan does have educational needs which were diagnosed whilst he was primary school and which has resulted in assessments of him taking place and he receiving additional support and assistance, all supported by these parents. Further the parents have demonstrated a record of supporting him in his education and being engaged with his needs. There is positive evidence, therefore, that these parents do allow a child of theirs to

be assessed and, if such assessment reveals that support is needed, to allow such support to be provided.

195. In the case of David the parents each gave evidence to the effect that they were invited into school in the first few weeks of David being a pupil there to discuss the issue of whether he needed to be assessed but heard nothing thereafter and never received any letter. In the absence of evidence that any letter was sent it cannot be proved that there has been a failure to respond. When allied to their obvious commitment to the education of all their children as evidenced through the emails which M in particular has written to raise issues with various teachers in SEC I reject the assertion that they have deliberately ignored an issue pertaining to David and refused to engage. It does not sit with the clear evidence to the contrary.

196. It follows that that issue is not proved.

197. Having now reflected upon all of the evidence in relation to the issues of physical chastisement and emotional harm I have reached clear conclusions as to what has been proved. For ease of reference I have underlined those paragraphs / parts of them of the Threshold Document appended to this judgment which I have found to have been proved on the balance of probabilities.

198. In short I have found only three matters to be proved and even then only in part:

a. That the Parents:

- i. put pressure upon [Penny] to retract her allegations and told Penny she had ruined / destroyed the family.
- ii. Upon being made aware of [Penny]'s allegations, the Parents removed [Penny]'s phone and sim card to punish her

b. Following [Penny]'s allegations, the Parents made [Penny] watch documentaries of people being abused in foster homes and adoptive homes [but *not* as a way of trying to intimidate her]

199. In my judgement as this is all that now stands as factual matters upon which the Local Authority can base their application for any sort of public law order I do not consider that it meets the test of significant harm having either occurred or now likely to occur. Whilst there is no definition of 'significant' in the Children Act 1989 there is ample authority that it must be more than harm and be a matter which justifiably allows intervention by the state into private family rights. What has happened in this case is that parents have reacted to discovering a tale that their teenage daughter had told, whether all of her own invention or with assistance, for reasons which would require too much speculation and when faced with the reality of professional involvement and significant concern being expressed have reacted badly but neither disproportionately nor in any way which threatened Penny or made her objectively unsafe. That is clear from how she concludes her second email sent on the Saturday night. Having set out how her father has been treating her and how her brothers have wasted no time in piling in on their sister's presence in their parents' bad books she concludes it with 'Other than that this weekend has

been okay I guess ☺ (I can see she was attempting to create a Smiley Emoticon)' which is both a credit to her resilience and a fair reflection of the reality of life in the household at that point in time.

200. Finally in this part of the judgment there are three issues which require some specific focus. The first two were two topics pertinent to the parents' evidence: allegations of racism and of being hide-bound by biblical teaching. The third is in relation to the use of the terms 'allegation' rather than 'disclosure' and the extent to which that in fact betrays a bias towards unjustified belief in what is being said.

### *Racism*

201. The issue about racism was raised by M. In her final statement it was no more than hinted at when M asserted that 'They seem to think that as we are an African family the allegations of child abuse must be true.' However in her oral evidence M was far more direct. The family as a whole had been treated differently by this local authority because they were black (M's own description) and by different M was clear that she meant unfairly. The basis for this assertion is that M claimed to be aware that different local authorities have acted differently in terms of either not removing a child or not imposing the stringent supervision they had had to accept. Furthermore M felt that the level of supervision which had been posed and the closeness with which it had been applied were directly as a result of negative racial overtones.

202. I have no doubt that all members of this family have experienced differential treatment in their lives. Their lived experience in a range of day-to-day activities, whether at work, in school, in some social gatherings or simply in fulfilling the requirements of daily life, will have been mediated through the colour of their skin and the perceptions, whether arising from prejudice, ignorance, falsehood or simply lack of appreciation, which flow from that obvious visual difference. To assume otherwise is to ignore the reality of life even in times now removed from decades where racism was both more public, more popular and more tolerated. However despite accepting the fact that racial discrimination, however subtle a form it may take, is regrettably and unacceptably alive and kicking in twenty first century England I have no doubt that this Local Authority has not been practicing it in this case. Although I am highly critical of much of what this Local Authority has done by way of evidence-gathering, I am in no doubt that no social worker has added racial discrimination to the list of failings already demonstrated. M's allegations are wholly unevidenced and baseless. It is no surprise that someone who has had to deal with prejudice on a recurring basis will see it in unfavourable actions of an emanation of the state to which they are subject. Goethe's famous phrase "*One only sees what one looks for. One only looks for what one knows*" is as applicable when considering the consequences of racism as it is about the limitations of familiarity. In this case, despite my innate sympathy stemming from an acceptance of the reality of unfairness which this family will undoubtedly have experienced in their lives, it is not right that this charge should be allowed to stand.

## *Faith*

203. The second point was in relation to the parents' faith and the potential that it may have been a causal factor in any mistreatment of their children. These parents are not just people of West African heritage but devout in their faith and its precepts. The values which they imbue from their religious convictions not only form the bedrock of their lives but also inform and infuse their actions with regard to how they choose to bring up their children. There can be a tendency to assume (erroneously) that because some cultures, especially those of Afro-Caribbean origin, have traditionally placed a premium upon respect, obedience and authority and so sanctioned corporal punishment as a means by which to ensure compliance with those values, that all those of such heritage will follow in that fashion. Similarly, it can be all too easy for some to assume that for those for whom Biblical teaching is important then the full remit of such teaching is equally valued and accepted without question, irrespective of any unpalatability it may present. Put simply, just as being of West African heritage does not make a person likely to inflict corporal punishment upon a child so being a devout Christian does not mean that one without question follows every point of biblical teaching. At one point during the final hearing counsel on behalf of the child, demonstrating either a commendable knowledge of Scripture or a facility with an appropriate search engine, queried whether M was familiar with the Book of Proverbs Chapter 23, verse 14 wherein it is written: *Do not withhold discipline from a child; if you punish them with the rod, they will not die. Punish them with the rod and save them from death.*<sup>ii</sup>

204. M, to her credit, merely confirmed that she was not in fact familiar with this particular passage of scripture but that, even had she been, it did not nor ever would represent her style of parenting. The obvious retort, which would have been entirely merited, would have been to remind her interrogator of the even more well-known quotation from *The Merchant of Venice*, Act 1, Scene 3 when Antonio in his aside to Bassanio comments upon Shylock as follows:

*The devil can cite Scripture for his purpose!  
An evil soul producing holy witness  
Is like a villain with a smiling cheek,  
A goodly apple rotten at the heart.*

205. I am satisfied that neither cultural heritage nor any modern understanding of Scripture was a factor in any assault by either parent upon their children. Rather, I am wholly satisfied that such assaults never took place and remained matters within the claims of Penny but without factual foundation anywhere.

## *Disclosures v. Allegations*

206. The final point is in relation to the use of the words 'disclosure' and 'allegation' during the final hearing.

207. It is well understood, within the legal profession at least, that the term 'disclosure' can suggest as assumption that what has been said should be taken to be factually accurate and therefore evidentially solid, something requiring disproving rather than proving. In contrast to use the word 'allegation' makes it clear that what has been said is not to be assumed as being correct but must still be proved. Given that a prerequisite of legal proceedings is reliance upon the maxim 'he who asserts must prove' it follows that the word 'allegation' is preferred because it reflects that importance in proving an assertion as opposed to disproving a statement. Confusion, not least as to the burden of proof, can follow when a statement is labelled as a disclosure and the assumption is made that it is therefore true.
208. In the final hearing it became something of a mantra during the evidence to hear witnesses, particularly from the school, use the word 'disclosure' when speaking about what Penny had said during her various conversations only to be picked up on this by the advocates for the parents. One by one each witness was asked a series of questions about why they were using that particular word, whether they understood that the word 'allegation' was the preferred term and why that was the case.
209. The advocates were not wrong in taking this line of questioning, if only to reinforce the point as to the necessity of proof over an assumption of truth. However sitting listening to these exchanges it became clear to me that for those professionals in the school at the material time that they were engaged with the child their clear need was to focus upon enabling the child to say whatever it was that she wanted to say to them. At the point of origin of the information which may, in due course, come to be used as evidence at a trial, whether in the criminal or family jurisdiction the undoubted focus of any professional is and should be simply capturing what is being said. In the case of SJ by focusing simply upon letting the two girls speak she did an admirable job in ensuring there was material about which a debate could later take place in the appropriate venue as to the reliance to be placed upon it. It was clear that each teacher who gave evidence before me considered it to be their responsibility to simply capture what was said as opposed to attempting to sift it or score it as being truth or less.
210. Taking that, in my view entirely appropriate, approach will undoubtedly lend itself to the use of the word 'disclosure' and in my view it is incorrect to criticise them for it. The use of the word 'disclosure' by these several teaching professionals did not indicate that there was an automatic assumption of truth, it was merely a term with which they were familiar. In my judgement a distinction can properly be drawn between those operating at an early stage of a process of information collection process where the sole responsibility is to simply capture what is being sent and allow the child to say it and those attempting to decipher whether information is capable of being evidence to be considered in an adjudicatory process and therefore engaged in a process of evaluation of veracity. Teacher after teacher was taken to task for not using the word 'allegation' when in fact it was never the school's role to decide or even take a position on what Penny was saying. The school was in the business of information collection, it would fall to others in

due course to scrutinise such material with a view to establishing the truth of it. I can see far greater difficulties if schools are required to take a sceptical view of the problems and issues their pupils want to talk about, often for the first time, and to approach matters on the basis that all pupils can only ever allege. The consequent chilling effect which would be the result of adopting a critical attitude would have clear repercussions on the likelihood of schools being safe spaces where children feel able to say what they wish.

### *Conclusions as to Welfare*

211. In the earliest version of this judgment prepared for the benefit of all parties which focused specifically upon the threshold issues now dealt with above I took welfare issues no further than a simple paragraph in order to allow the parties to reflect upon the findings I had made and to consider their respective positions in the light of my conclusions, not least because there were a number of different procedural avenues which could be travelled at that point.
212. In fact both the Local Authority and the Guardian have accepted the factual determinations which I made and merely indicated that the proceedings would benefit from the opportunity to allow the Local Authority to prepare appropriate plans for the swift removal of the supervisors and planning to ensure that Penny continued to be cared for in the event that she continued to express a disinclination to return home.
213. In the event whilst the supervision of the family dissolved on the same day as these findings were made thereby allowing the parents and their sons to achieve some privacy in their own home and to start to re-acclimatise to a private family life it was clear that at the time Penny wished to remain apart from the family for the time being. It was pleasing to be informed that a successful contact had taken place which offered the possibility of a route home being plotted for Penny and it providing a way back for her in due course. However the parents were accepting of the fact that such a route would not be travelled quickly, if at all, and that patience and acceptance were the surest means by which to aspire to a full and successful reunification.
214. The fact that the outcome is contrary to that asserted by the Local Authority is not to be viewed as failure of the system but of its working. I adopt the conclusion relied upon in *Re P (supra)*:

a decision by the court to make no findings, or only some of the findings sought by the local authority does not constitute a ‘failed’ or ‘unsuccessful’ outcome. As Baroness Hale observed in *Re S-B* [\[2010\] 1 FLR 1161](#) at [19]:

“We should no more expect every case which a local authority brings to court to result in an order than we should expect every prosecution brought by the CPS to result in a conviction. The standard of proof may be different, but the roles of the social workers and the prosecutors are similar. They bring to court those cases where there is a good case to answer. It is for the court to decide whether the case is made out. If every child protection case were to result in an order, it would mean either that local authorities were

not bringing enough cases to court or that the courts were not subjecting those cases to a sufficiently rigorous scrutiny.”

*Conclusions to be drawn from the evidence-gathering process*

215. Whilst I have been critical of much of the professional action which took place at the time of the allegations being levelled no one reading this judgment should be in doubt that my conclusion that these allegations did not occur is not by reason of the mismanagement of evidence to the point where it could not be relied upon. As unfortunate as the process of evidence-gathering was it remains my clear conclusion that there was both a lack of cogency about the central allegation levelled by Penny and too many competing factors in favour of a finding that such allegations did not occur.

216. As I wrote at the outset of this judgment I am in no position to make any general comment of weight or value about processes generally but to assist those professionals with specific knowledge of these events and who patiently gave their time to participate in the hearing at which these matters were considered I make the following points:

- a. The importance of all professionals, whether in education, school safeguarding or dedicated child protection roles, understanding even in general form the published guidance in relation to interviewing children cannot be overstated. The *Achieving Best Evidence in Criminal Proceedings* guidance is a readily available, if lengthy, document a copy of which should be on the hard drive of any professional with responsibility for safeguarding children. Not all of it needs to be read each time it is retrieved but it should be retrieved when a child is to be spoken to so that the relevant parts can be consulted and knowledge refreshed.
- b. Talking to a child about a safeguarding incident is an interview of a child both as a matter of fact and a matter of law. It is not a commonplace event, a simple, standard practice or, worst of all, a gaining of ‘the voice of the child’ in an unstructured, haphazard and ill-prepared fashion. Professionals tasked with speaking to a child who has already been spoken to should be doing so only where necessary, always with a clear purpose in mind and according to a plan which has been worked out in advance.
- c. Any non-spontaneous interview of a child requires preparation, planning and coordination, if more than one person is involved, and all interviews require recording and review in the following ways:
  - i. Preparation –
    1. understanding what has been said and documented to date;
    2. why it was said?
    3. how it was said?
    4. when it was said?



5. by whom it was recorded? and
6. with what consequences?

ii. Planning –

1. Understanding why a subsequent conversation is to be undertaken;
2. what is it that is going to be spoken about?
3. what issues are to be raised?
4. how any new or just different information is to be treated?

iii. Coordination –

1. Who is going to be present?
2. What is their role generally?
3. What, therefore, is their specific role in the discussion which is being set up?
4. What responsibilities will each individual undertake before during and after the discussion?
5. What issues or areas to be discussed are to be allocated to each individual?
6. What immediate post-discussion conversation or reflection is to take place to ensure comprehensiveness of record and clarity of information collation?

iv. Recording –

1. How is a record of the discussion going to be made?
2. Who is going to create that record?
3. Do they know that their purpose is to record as much of what is being said as it practicable?
4. That such recording should include not only the response elicited from the questions but the questions as well to give context to the answer?
5. That a contemporaneous record is best but as near to contemporaneous as possible is acceptable if it allows a more complete record to be made from contemporaneous notes.
6. Contemporaneous notes, even if superseded by a more full later account, will have a value by virtue of their proximity in time to the discussion and should be preserved in a permanent state and in a place readily accessible in the future.

v. Review –

1. To complete the process by which a child has been spoken to it should be common practice to conduct a review of what has occurred in order to capture any final information which may not have been initially noted and to ensure a clear conclusion is achieved as to the task which was to be undertaken.
2. That review should ensure a full record is created of the time and date of the interview, the persons present, their contact details if needed, the roles played / responsibilities taken, the outcome of the task, whether the aim was achieved, what steps are to be undertaken next, by whom and in what timeframe and to ensure that this record is available in the event of any change of personnel or any new individuals are brought in to enable a complete picture to be immediately available.

217. All of the points set out in the preceding paragraph should be regarded as the takeaways from the experience set out within the body of this judgment and should not be regarded as supplementing or countermanding more authoritative guidance developed by experts or handed down by senior judges. These are the points which arise from this unfortunate experience.

218. That is my judgment.

*HHJ Sharpe*

*31 October 2024*

- i All times are set out using 24 hour clock references
- ii New International Version