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Case No: LS18C00250

IN THE FAMILY COURT
AT LEEDS
[2019] EWFC 15

Civil Hearing Centre, Coverdale House,
Leeds. LS1 2BH.

Date: Friday 8th March 2019

Before:

MR JUSTICE HOLMAN

Between:

A METROPOLITAN DISTRICT COUNCIL

Applicants

- and -

(1) M

(2) F

(3) A

(4) B

(5) C

(6) - (8) D, E & F

Respondents

MISS GILLIAN IRVING QC and MRS KERRY BARKER for the Applicants
MR DAVID ORBAUM for the First Respondent/mother
MISS CHARLOTTE WORSLEY and MS CAROLINE SHIELDS for the Second
Respondent/father
MISS CLARE GARNHAM for the Third Respondent (by his guardian)
MR LEWIS DONNELLY for the Fourth Respondent (by his guardian)
MISS NATALIA LEVINE for the Fifth Respondent (by his guardian)
MR SAM MOMTAZ QC and MISS SEMAAB SHAIKH for the Sixth to Eighth
Respondents (by their guardian)
MR ANDREW SEARLE for the West Yorkshire Police

JUDGMENT

(As approved by the judge)

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MR JUSTICE HOLMAN:

Introduction, background and overview

1. This case concerns a family of six children. It has apparently generated over 9,000 pages of documents. The selective bundles prepared for the hearing are less than half that number but are still considerable. The case occupied 10 days of hearing time, plus today. At the start of the hearing there was a wide range of issues in relation both to the facts and to the outcome. During the hearing the parents have reacted bravely and responsibly to the weight of the professional and expert evidence. The outcome, namely the making of full care orders, is now completely agreed, and there is now consensus as to many of the threshold grounds for making those care orders. It remains a multi-faceted case, but the central issue which I now have to decide is how undoubted genital injuries to the fourth child, a girl, were caused; and specifically, whether the eldest child, a boy, caused them. The date of those injuries was 2 April 2018, which was Easter Monday.
2. On that date the father was aged 51 and the mother 33. The father had been previously married and has two daughters from that marriage, now adult, with whom he has little communication or contact. These parents first met in 2000, when the mother was aged 16, and they soon began living together, as they still do. Their relationship was characterised by considerable violence and aggression by the father towards the mother, exacerbated by his heavy drinking at that time. Police were frequently called to the home. It does appear that the father has more recently learned to curb his drinking and that the relationship is apparently now more stable.

3. By 2011 the parents had four children, namely, A, who was born on []; B, who was born on []; C, who was born on []; and D, who was born on []. The eldest three are boys. The fourth is a girl. At that time the family were living in X.
4. In May 2011, when D was only about four months old, she was taken to hospital with a serious scald burn on her elbow. There had been a delay in seeking medical treatment. The parents colluded and lied about the cause of that burn, which they sought to blame on A, then aged eight. The four children were removed from home. The parents later admitted that it was the mother who had neglectfully caused the burn by permitting very hot milk to spill onto D's arm in her crib. Full care orders were made, placing the children in the care of the X local authority on a plan of rehabilitation. After about 13 months in care the four children were returned home in July 2012, and the care orders were later discharged.
5. Although I have so briefly summarised those events, they form an important part of the background to the present proceedings. They evidence the parents colluding and lying about the cause of serious harm to one of their children, and, indeed, expressly seeking to blame another child, A, who was completely innocent. These events had the effect that the parents, and also certainly A, then already eight, had an experience of the care system, fostering and the involvement of social workers. That may have influenced the attitudes, behaviour and reactions of the parents and A to the events on and after 2 April 2018.

6. The fifth child, E, was born on [], and the sixth child, F on []. They are both girls. The six children were thus aged respectively just 15, 10, just nine, seven-and-a-quarter, four-and-a-half and just three on 2 April 2018; and are now aged almost 16, 11, nine, eight, five and four.

7. In September 2017 the family moved to a large, three storey (plus a cellar) rented house in Z. Whilst the mother laboured for long hours and struggled to do her best to parent the children, a picture has clearly emerged of a chaotic, unstructured, little disciplined and introverted life in the home. The family kept to themselves. The children did not go out much, or socialise much with other children or families. For periods, all or some of the children did not attend schools. They appear to have spent inordinate amounts of time watching television, or films on computers, or playing computer games A, although still only 14 (he became 15 in []) claims to have spent most of his time closeted in his room on the top floor, either sleeping until very late or playing computer games, or downstairs watching horror films with his father. The family did not, however, come to the attention of the Z local authority in whose area they were now living.

8. On the evening of Monday 2 April 2018 at around 21:00 the mother attended at the [] Infirmary A&E with D. The mother said, as was the case, that D was bleeding from her vagina, and asked whether (although only aged just 7) she could be menstruating very early. After triage, D was examined at about 22:30 by a consultant paediatrician, Dr JS, MRCPCH, who observed clear internal genital injuries within the labia majora. As no convincing account was given of an accidental cause, an abusive act was inevitably suspected as a

possible cause, and social workers and police were called. D was detained in the hospital that night. Around 02:15 in the early hours of the morning of Tuesday 3 April 2018 the police assumed statutory police protection powers, and at about 03:00 they removed the other five children from the home and later arrested the father on suspicion of rape (an offence of which he was never later charged). The five children were taken to a children's home, where they seem to have slept or lain on sofas or on the floor of a large room under the supervision of a social worker.

9. On 5 April 2018 the local authority issued the present proceedings and applied for interim care orders which were granted in relation to all six children. None of the children have since been returned home. Currently, A is living at a children's home in the Z area. B and C are living together at a different residential home, also in the Z area. The three girls are living together in an agency foster home in the Y area. These accommodation arrangements are currently costing the local authority the staggering aggregate sum of about £10,000 per week, or the equivalent of over half a million pounds in a full year.
10. All the children have contact with their parents. There is inter-sibling contact between A and B and C, and inter-sibling contact between B and C and the three girls. A has not been allowed to have any contact with the girls since D stated in August 2018 that A had penetrated her with his finger or fingers.
11. Each boy is separately represented in these proceedings by a different guardian, and the three girls are separately represented by a fourth guardian. The local authority and all four guardians agree that both parents love their

children very dearly and would like all of them except A to be returned home. The local authority and the respective guardians also all agree that all six children, including A, wish to return home. However, the parenting capacities of the parents have been very thoroughly assessed, not only by social workers and the respective guardians but by an independent social worker, Miss ISW, and a psychologist, Dr CP. The upshot is that there is in this case what I described during the course of the hearing as a wall of professional and expert evidence which is, sadly but firmly, all to the same effect. Both these parents experienced very difficult and dysfunctional childhoods and upbringings. The level of cognitive functioning of the father is in the low average range. That of the mother is at the upper end of the extremely low range of functioning. Neither of them currently have the capacity (whether separately or as a couple) to provide consistent parenting to any of these children, let alone five of them, to even a minimally acceptable level.

12. During her oral evidence Miss ISW summarised it as follows. She said that both parents struggle to meet the needs physically and emotionally of the children. They try their best. The mother has an over positive view of her abilities. The father struggles in terms of discipline and authority. He wants to be a friend to the children. The mother is a very vulnerable woman who has suffered great loss herself. The parents can tell you about the parenting programmes they attend, but they do not have the ability to put into practice and sustain those improvements. Miss ISW said that the picture that the mother and father present of family life before April 2018 is at odds with all the other information in the bundles. The documents indicate struggling, and what was happening with A was having a negative effect on all the children.

Miss ISW said that A has experienced poor parenting from a very early stage. He witnessed domestic violence. He has seen his father under the influence of alcohol for many years. The mother struggled with A from the age of about four or five. A experienced good parenting in foster care in X and there is evidence of his progress at that time. Since his return home and hitting puberty they have struggled to manage him, and blame him and his time in foster care.

13. Miss ISW later said that on a spectrum of 0 to 10 she puts the firmness of her view that the children cannot return home at 10. Her view is as firm as it can get. It is a very firm view and not a marginal view. She said that she feels very concerned for all the children. The parents cannot meet the needs of any of them.
14. During the course of the hearing the position and proposals of the local authority evolved in reaction to the evidence and to a meeting at court between the four guardians and the social worker's team manager on Tuesday 26 February 2019. As a result, the local authority submitted final revised and substituted care plans for each child on Monday 4 March 2019, namely, at the beginning of this week. The passage which I now read out has been expressly approved and agreed on behalf of the local authority, each parent and all four guardians:

“After the conclusion of all the evidence, and after the meeting with the guardians at court on 26 February 2019, and after due consideration with their counsel last weekend, the local authority have submitted substituted final care plans in respect of all six children, each dated 4

March 2019 and signed afresh by the current social worker. Those substituted care plans were themselves circulated to the guardians in draft for any further observations earlier on 4 March 2019. In the upshot, all four guardians expressly say that they are in complete agreement with the substituted care plans in relation to the respective child or children whom they respectively represent. Very understandably and humanly, the parents would have wished that all or most of their children could return home and, if not, that the children should have as much contact as possible with their parents and with each other. However, their counsel, Mr David Orbaum, on behalf of the mother, and Miss Charlotte Worsley, on behalf of the father, have told me that the care plans now have a sufficient degree of flexibility built in to them and that the parents and their advisers (and indeed the local authority themselves, the guardians, and I myself) all recognise that it is impossible to be prescriptive at this stage about contact. All or most of the children are likely to move to new long-term settings, and the local authority must necessarily be responsive and reactive to future developments. Thus, while it cannot be said that the parents agree the care plans, they do accept them; and I have not been asked, by order, or even by indication, to impose any substituted terms or provisions or wording for the care plans, whether by an express order as to contact or otherwise. I therefore endorse all the final care plans dated 4 March 2019 and will in due course make full care orders in relation to each of the six children upon them.”

The events at the home on 2 April 2018

15. So far, the facts and matters that I have narrated are essentially agreed or accepted, or are beyond dispute. Where I state or find facts in the narrative which follows, I do so on the ordinary civil standard of the balance of probability. Insofar as the local authority or the guardian for the three girls assert a positive case, the burden of proof is upon them to prove it to that standard.

16. The only adults who have any first hand knowledge of what took place in the home during Monday 2 April 2018 are the parents, who are thus each very important witnesses in this case. I regret to say that neither of them impress as reliable witnesses. Each of them have said many inconsistent things to doctors, police, or social workers, at the time and in their written and oral evidence in these proceedings. I stress that that is not necessarily to say that either is deliberately lying, although they may be. On their own accounts of the facts, this was a perfectly normal day in the family household until it was apparent that D was bleeding and obviously needed medical attention. Until then, no one went out except the mother and B to go to the supermarket, and everyone seems to have been largely absorbed in watching films or playing computer games, as they routinely did. Because of its sheer ordinariness and eventlessness, it is not necessarily surprising that, when the events of the day became the subject of later intense scrutiny, the parents give some confused or conflicting accounts. They may not be lying, but they are unreliable.

17. The mother says that D was in the habit of bathing twice a day and that when she bathed D on the morning of 2 April 2018 she was perfectly normal and unharmed. I accept that evidence as probably true. The mother says, and

mobile telephone records evidence, that she, the mother, left the home in a taxi at about 13:40 and went to Asda supermarket. She took B with her. The other five children and the father all stayed at home. The mother says, and I accept, that D was fine when she left, although both parents say that D had complained of a “bellyache” that morning.

18. At about 15:15 (a time also evidenced by ‘phone records) another taxi picked the mother and B up from the supermarket and they returned home. The mother says that she would have arrived back at about 15:30. We now know from computer download records that soon after the mother had left the house the father began to download pornographic material with relatively hard, rather than soft-sounding titles. During his oral evidence the father admitted doing so. The mother professed to being very shocked to learn that and said that she was unaware of his ever accessing pornography in the home. Whilst there is always a first time for everything, it does seem a surprising coincidence if the one day which later came under the spotlight and was the subject of computer interrogation by the police was the first time that the father, who did download pornography that day, had done so. But there is no actual evidence of his having done so on previous occasions.

19. The father has given inconsistent accounts as to the whereabouts of himself and the children in the house while he was watching the pornography. He said in his oral evidence that he watched it on the couch in the living room and that E and F were on the other side of the couch but did not actually see the pornography. He said that D and C were in the dining room on the other side of the hallway watching something on a laptop and that he was nipping across

to the dining room to check that they were okay. D was fine. He did not know where A was, but he was normally in his room on the second (top) floor. The father said that D was fine when the mother returned from Asda and he did not hear D crying or upset while the mother was out. He said that he was not aware of the children doing anything.

20. This account is not consistent with what the father told the police in interview under caution around 14:00 on Tuesday 3 April 2018 (see now bundle G page 428). He said then that he was watching the pornography in the dining room (compare the living room in oral evidence) and that no one else was in the dining room while he did that. He said in that interview that the children were either playing upstairs or in t'room, which appears to be a reference to the living room, since he repeated that he did not watch the porn in front of the kids.
21. The truth about where anyone was, or what they were respectively doing while the mother was out at Asda remains obscure. However, the mother did say that D was fine when she got back and that they had tea (viz; an evening meal) together at about 16:00. In a case which is brimful of possibilities and speculation, it is possible that D had already been hurt by then and that both parents are covering up, but I find on a balance of probability that D was still unharmed and fine at teatime. If indeed D was already hurt and vaginally bleeding when the mother got back from Asda, it seems unlikely that the mother, who did later take her to hospital, would have waited so long to do so. The mother said that tea lasted about an hour, and I hold, on a balance of probability, that D was still unharmed at 17:00.

22. The next well-evidenced anchor point is 19:10 at which point began the first of a series of Google searches under the titles: “What age does a girl start periods?” and “Could a little girl start periods at only eight years old?” Patently, the searcher, said to have been the father, would only have started those searches at that time on that day if he already knew that D was bleeding from her vagina. The searches are unlikely to have begun in the first instant after she began to bleed, so I conclude and hold on a balance of probability that between about 17:00 at the earliest and about 19:00 at the latest on 2 April 2018 D suffered the injuries which I will later describe.
23. Telephone records establish that a taxi was first ordered shortly after 20:00 to take the mother and D to the hospital. The taxi finally arrived at about 20:25 and the mother and D left for the hospital. I accept the evidence of the mother that she could not leave as soon as she became aware of the bleeding, for she needed first to get the younger children to bed and settled, a task which, it seems, could not be left to the father.
24. It is a curious feature of the case that, even before she left the house that evening, the mother contacted a solicitor who apparently gave her advice from time to time and who acts for her now. This seems a surprising first response, ahead even of taking the child to hospital, and tends to indicate that the mother already sensed or knew that there was trouble ahead. This may, however, be explicable by the history of the earlier care proceedings and care orders and/or simply that the solicitor was somebody to whom this socially isolated mother felt she could turn for help and advice.

25. The evidence as to what happened and in what order between 17:00 and 19:00 is confused and contradictory. The mother said in oral evidence that D called out from upstairs that she was weeing blood. The mother went upstairs and saw D sitting on the lavatory and saw the blood in the pan. The mother said that she did not see what had caused it and did not hear what had caused it. She realised that she would have to take D to hospital. First, she gave her a bath to clean her up, although in fact D continued to bleed and was still bleeding when they went to hospital.
26. The father's account was that after tea D showed him blood on her finger. She was in the hallway at the bottom of the stairs. He said that the father and the mother were in the living room with E and F. D just shouted and was crying. She had blood on her finger. He went to get a plaster from the kitchen but he wiped the finger and there was no wound there. He said that he then shouted to the mother in the living room because the blood was not from the finger but from her bum. D was at the bottom of the stairs. The mother took her up to the bathroom. These two accounts cannot both be correct and, frankly, I have no idea how, or when, or in exactly what circumstances each parent became aware that D was bleeding from her vagina. The inconsistencies may be because the parents are covering up for something, or may simply be due to faulty recollection. But they have the effect that I simply have no reliable account from either parent of events between 17:00 and 19:00, although I do accept that at some point the mother gave D a bath.

The injuries and medical evidence

27. I heard oral evidence from Dr JS, who first examined D at the hospital around 22:30 on 2 April 2018. She was examined again at about 12:30 on Tuesday 3 April 2018 by Dr MA MRCPCH, a consultant community paediatrician. His examination was in the supine frog-leg position using a colposcope. His report, now at bundle page E28, lists the “multiple injuries” to her genital area. The hymen itself was closed, annular and normal, with no injuries. However, there were a number of internal bruises, including to the posterior fourchette, and blood was oozing from the area between the right side of the meatus and the upper inner part of the labium minus. The anus and peri-anal was intact. There was a large bruise on the upper and inner part of the right thigh extending towards the external side of the right labium majus. The doctor described this as blue in colour over an area of 1.7 - 2.2 centimetres.
28. The colposcope video was later viewed by the jointly instructed expert, Dr LA FRCPCH, who is a consultant paediatrician. She did not personally examine D. She agreed, on the basis of the colposcope video, that all the injuries as described by Dr MA were present. The only area of divergence between them (of no relevance to any disputed issue I have to decide) is that Dr MA referred to evidence of “vaginal” penetration. Dr LA preferred to say evidence of “genital” penetration since the hymen appeared normal and intact so that any penetration did not extend into the vagina itself. There was nevertheless evidence of penetration beyond the labia and therefore into the internal genital area. Dr LA could not herself see blood oozing near the labia minora on the colposcope video but she said that that does not mean it was not there.

29. I wanted to be clear about the shape, extent and position of the bruise reported (rather imprecisely) as on the upper and inner part of the right thigh and extending towards the external side of the right labium majus, which I will call for shorthand “the external bruise”. I therefore viewed the colposcope video with (and only with) the five front row counsel for the local authority, each parent, A and the three girls. No other person at all apart from those five counsel was permitted to see it, being highly invasive of D. I and counsel were uncertain as to whether the described bruise was a reference to a vivid purple/blue bruise very close to the right labium majus, or to other areas on the thigh further away from the labia majora themselves but which appeared as bruising or shading.

30. As a result, Dr MA and Dr LA both very kindly attended at court again the following week, and I and the same counsel viewed the colposcope video again, together with the two doctors. Both doctors agreed and clarified that the apparent areas of bruising on each upper and inner thigh outside and beyond the perineal area are shadows on the video, or possibly areas of normal hyperpigmentation on the child, and definitely not bruises. The apparent small round bruise way to the right of the perineal area (to the left as one views it on screen) on the inner thigh is not a bruise at all. The described large bruise (the external bruise) is a bruise which is clearly visible very close to the right labium majus and extending into the right labium majus. Both doctors, and indeed also Dr JS, who first examined D, all agree that the constellation of observed external and internal injuries must have had a traumatic cause (i.e. they have not occurred spontaneously in the child) but are equally consistent with penetration by an object, whether a penis, a finger or some other inserted

object, or with what is known as a straddle injury. A typical example of a straddle injury which could cause this range of injuries is falling onto the crossbar of a bicycle, provided there was sufficient force.

31. As I will later describe, D has given an account of falling upon the stabiliser of her bike while carrying it on the stairs, and A has described (in various differing versions) seeing her fall, or being aware of her falling, with, or on, her bike. The doctors say that if such an event occurred it could account for this range of injuries, including the observed internal injuries inside the labia majora. The medical evidence is, accordingly, equivocal as to causation.

32. Dr LA said during her oral evidence that the injuries are consistent with digital touching or penetration. She said it is a possibility that the injuries were caused by falling on the stabiliser. Any straddle injury can cause the observed injuries. There would need to be a straddle injury. These types of straddle injuries do happen. They usually involve falling on a crossbar. She said that she had also seen one from falling on a plant pot. However, Dr LA also stressed what she had said at internal pages 12 and 13 of her written report dated 13 November 2018, now at bundle pages E220 and 221, viz:

“Straddle injuries from bikes are usually seen with the child sitting/standing astride the bicycle, falling down against the crossbar directly on the genitalia with the full impact of the weight of the body hitting these midline structures. In D’s case, she does not describe sitting on the bike, but falling onto it after it had slipped down the stairs. The only area to be injured was her genital area, and therefore to cause this, she would require to fall landing with her legs apart,

impacting her genital area and only the genital area, on the stabiliser. This is hard to envisage, as the stabiliser would have to hit the midline genital region only as there are no signs of grazes to the inner thighs or any other injury. I would also envisage this event would have caused a degree of noise (as she and the bike fall downstairs) and a shout of pain. Therefore, whilst a straddle injury from a bike may cause the injuries that were found, the description of how it happened in this case makes it very unlikely that this was the true explanation. It is possible that D did indeed fall, along with the bike fell downstairs and she fell against the bike, and has attributed the bike as having caused injury. However, for the reasons outlined above, I think this is unlikely to be the explanation of these injuries.”

33. Both Dr MA (see at bundle page E30) and Dr LA say that if D did suffer a straddle accident so as to cause these observed injuries she would be likely to have experienced pain straightaway, and at the age of seven to have shouted out or cried for a long time (see Dr MA at page E30) such that any carer nearby would immediately know there had been an accident.

The accounts given

34. Both parents claim that they did not see or hear, or immediately become aware of, anything happening to D in the home on 2 April 2018 until she presented with a bleeding vagina. The mother says that until she was alone in a room with D at the hospital after Dr JS had examined her, she, the mother, had no idea what had happened to D or what might have caused the injuries. A police

officer, PC HA, states at paragraph 8 of a witness statement dated 6 December 2018, now at bundle page C422, as follows:

“A was spoken to between 10:00 hours and 11:10 hours (on 3 April 2018). A said that yesterday his dad had gone shopping with two of the children, he thinks D and B. He said when they got back D was playing with her bike and was trying to take it upstairs on her own, when she fell down the stairs backwards and landed on her hip on the banister. He said he saw this happen, and her mum went to her to comfort her. She was holding her left-hand side above her hip crying. He said that later that day (maybe two hours later) D came downstairs saying she was weeing blood. Her mum initially dismissed it but she was quite upset so she started to listen to her.”

35. That passage was put to the mother in cross-examination. She categorically denied that she had seen D fall downstairs, or been aware of her falling downstairs, or had gone to comfort her.
36. Until and during the examination by Dr JS at about 22:30 on 2 April 2018 neither D nor her mother gave any account or explanation as to how D had been, or might have been, injured. Dr JS said that she asked the mother whether D had had any falls or accidents and that the mother was clear that there was no history of trauma. D herself was very quiet. She sat on her mother's lap and did not say anything during the assessment, and did not mention her bike.
37. After the examination the mother and D were left alone in a room for about 45 minutes. The mother says that during this period D drew two pictures, one of

them depicting a bicycle. The police officer who was later present, PC SC said that she does not recall seeing a drawing of a bike, and any drawings which D did do at the hospital are now lost. Also during those 45 minutes there were telephone conversations between the mother and the father. It is of course entirely appropriate that the mother and father should have kept in contact that evening so she could report to him what was going on with their child. The mother says that the father told her on the 'phone that A had told him that he had seen D fall on her bicycle on the stairs earlier that day. The upshot was that when a nurse, a social worker and the police began to speak to the mother, the mother told them, in the presence of D, that D had fallen on the stairs with her bike and that that had caused, or may have caused, the injuries. This is an account which, in general terms, D has subsequently often given herself. The mother herself was adamant during her oral evidence that the sequence of events was: first, that D drew a picture of a bike; second, that the father told her on the 'phone that A had seen D fall with her bike on the stairs; and third, that she, the mother, then informed police and medical staff about this. At all events, an account that D had fallen in some way with her bike on the stairs certainly became current at the hospital that night. An obvious question is whether it first arose spontaneously from D as the mother claims; or was relayed to the mother by the father and then implanted by the mother in D; or, indeed, was fabricated by the mother herself and then implanted by the mother in D. Frankly, I have no idea; but insofar as the local authority allege or suggest that the whole bike story was fabricated and planted in D's mind by the mother that night, they have not discharged the burden of proof.

38. The mother was arrested at the hospital on suspicion of child neglect and had no further contact with D before the ABE interview with D the following day, Tuesday 3 April 2018. That took place in the same premises as the physical examination and colposcopy by Dr MA and immediately after it. I have carefully viewed the CD of the interview. It took place between 13:00 and 13:19. It is possible to criticise aspects of the interview by reference to the published ABE guidance. In particular, the guidance stresses the importance of prior planning, but there was little or no planning for this interview. The interviewing police officer explained, however, that the police considered that there was a degree of urgency in case other children were at risk. At all events, although given every opportunity to do so, D gave no account or explanation as to how she had got hurt. When asked, now at bundle page G197, whether anybody hurt her she said: “No”. When asked whether anybody had told her not to say anything she said: “No”. She said at page G201 that she weed out blood six times in the toilet and then told mummy. She was asked at page G202 whether she hurt herself yesterday at all and said: “No”. She was asked whether she had a bike, and she described it. At page G203 there is a somewhat confusing passage, in which she says that she last played on her bike the “day after yesterday”. In an undoubtedly leading question the officer asked: “Have you ever fallen off your bike?” She replied: “Only once” and said it was on “day after yesterday”. When the officer asked: “And what happened when you fell off your bike?” she replied: “I didn’t hurt myself ... no”. On the next page at page G204, in answer to a question: “Did you fall off?” she said, inconsistently: “No”. In answer to a question: “When you got up yesterday did it hurt then?” D said: “Yeah”. The officer asked: “So

you know that part there where it hurts, has anybody ever touched you there?”

She replied: “No”.

39. At pages G205 and 206 D gave an account of playing Scarecrow Tig with C and said that that was when it started hurting. She said on page G206 that she never plays with A because he is always asleep. She was asked again at page G207: “Has A ever hurt you?” and she replied: “No”. Thus, in that interview on the day following the injuries, D makes some reference to falling off her bike when prompted to do so, although she later says that she did not. She denies that anyone has touched her there where it hurts or has hurt her, and denies specifically that A has hurt her.
40. A was also ABE interviewed on 3 April 2018. I have also viewed the CD of that interview. In a passage now at bundle page G274 A said: “... I think that ... when she urinated blood it was ‘cos she fell down the stairs earlier on. She didn’t actually ... fall down the stairs, like roll continuously down. It was about two or three steps when she were lifting her bike up and she somehow hit her, er, one of her thighs or hip, whatever, on the side of the banister when she was trying to take the bike upstairs to her room. It’s just a little play bike for kids really.” If that is an accurate description of what happened, it does not describe a straddle type accident which might cause straddle injuries.
41. At page G281 A states that it was his dad who went shopping. That may have been no more than a slip or a misunderstanding by A. At page G283 he does say that he is usually up very late at night or “all night” so that he is getting out of bed “at mid afternoon”. On page G284 he said that yesterday [viz; on 2 April] he woke up “about 12ish”. He “just put a film on, snoozed around ...

just generally be a bit lazy”. At page G285 he again described an incident with the bike after his dad got back from shopping which he timed as about “half 12-ish maybe”. He continued: “Everything were all right for an hour or two and then after ...D got bored of staying downstairs so she wanted to take her bike upstairs ... I came downstairs and I saw her lifting the bike up the stairs. I asked her if she wanted a hand and she said no, and then I saw her just slip and hit the side of her, er, right side, I think it were, on the banister ‘cos she was struggling, but she didn’t ask for any help so I thought she were all right.”

42. Pausing there, this, too, is not a description of a straddle type accident. Further, A says: “I thought she were all right.” The doctors very clearly say that, if indeed D did injure herself to the extent that she did by a sudden straddle type trauma, she would have been in pain and is likely to have cried out or started crying immediately. It should be noted, too, that in that answer A clearly states that: “I came downstairs and I saw her lifting the bike up the stairs.” On the next page, at page G286, A says: “She sort of just sat there crying for a minute or two complaining that it hurt. Mum said: ‘It’ll be all right’, just, y’know seeing what she can do about it.” A was asked: “Did she say where it hurt?” and replied: “Yeah, she said it were on the hip.”

43. On page G288, A said that when she fell “I was just sort of on the top of the banister. I had saw it downwards...” He said: “I saw her foot trip and she, I saw her hit the side of the banister.” On page G288, A again says that D started complaining to mum that it hurt “and then mum said she’ll try and make it better and see what she can do and then about a couple of hours later

... maybe three hours later ... she said that she weed blood to mum.” A said at page G289 that when D told mum that she had weed blood she was downstairs with mum near the kitchen area-ish. This may be consistent with the father’s evidence but is not consistent with that of the mother.

44. A was not being interviewed under caution or as a suspect, and he was not asked whether he had done anything himself to D. In that interview there are internal inconsistencies, in particular as to where A was when he saw D fall with the bike, and inconsistencies with the adamant account of the mother that she was completely unaware at the time of D falling on the stairs with her bike. The accounts given by A in that interview do not describe a straddle type accident, and his statement that he thought she was all right does not fit with the medical evidence that if she had suffered a straddle accident causing these injuries she would immediately very obviously not be all right.
45. In the ensuing months D made references to social workers and others as to what had hurt her. They are not consistent. At my request a detailed “chronology of complaints made by D” was prepared and agreed by all counsel and I now incorporate it into this judgment by reference. On 27 April 2018 she gave an account to social workers and police (not in ABE interview) that she hurt herself because she was wrestling with C and her own foot bent back and touched her bits. She did also say that C had sat on her tummy with his pants down and had his bum in her face. C had asked if he could look at her bits and she had seen his bits. On 8 May 2018 D made reference to being hit with a stick once by B but it was not on the day that she bled. On 23 May 2018 she made reference to falling on a dragon ornament (I believe a

doorstep) but it was not on the day that she was bleeding. At a contact on 16 June 2018 D said: "I just want to go home." The contact supervisor, Miss NA, is recorded as saying (now at bundle page F3) "we just need to find out what happened when you hurt yourself and went to the hospital, as we all want you to be safe" and D replied by saying: "I was carrying my bike up the stairs and this hurt me and I went to the toilet and I was bleeding and that's what happened." She later repeated substantially the same account.

46. Miss SE was the allocated social worker between mid April and mid October 2018. She was undertaking an assisted year in supported employment (AYSE). She was very inexperienced and had had no ABE training. She was not properly managed and had an excessive case-load. The local authority should not have allocated this complex and difficult case to her and it was unfair to her, and indeed to the children, to do so.

47. Miss SE was a very fair and frank witness, who frankly admitted her several mistakes in her handling of this case. Miss SE visited the three girls at a respite foster carer's home on the morning of 9 August 2018 between about 10:00 and 11:00. Her handwritten notes are now at bundle page G608 to 611 and typed notes at G612 and 613. D said she just wanted to go home. Miss SE "explained to her that we didn't know how she hurt herself and we need to keep her safe ... I explained again that until we know what happened we don't know how to protect her or how to stop it happening again. I explained to D that she had given me a lot of reasons how she had hurt herself, including falling off a bike, falling off a toy box, and falling on an ornament and that this confused me that there were so many reasons..." Miss SE said that she tried

to reassure her that she was not in trouble and that she would not go to jail and that Miss SE would make sure she was safe and happy. D then told her that A would ask her to go to his bedroom. “D said that A would say don’t tell mummy. But afterwards D went to get a glass of milk and told mummy and mummy grounded him [viz; A] for 10 days. D wrote this in her diary and it’s now filled up.”

48. Pausing there, no such diary has ever been found or produced. Miss SE’s note continues “D said A would ask her to have sleepovers. He would lay her on the bed and take her pants off. He used to touch her bits with his fingers and his nails. It used to hurt and scratch her. I asked if A took his clothes off and she said no... I asked if A asked her to touch his bits and she said no. I asked if A touched his own bits and she said no. D stated that her cheeks would feel hot and red and that she was sad because it was dirty. I asked how many times this happened and D said 20 to 30 times... It always happened in A’s bedroom and always happened at night-time... I asked D if this happened before she went to hospital or on the same day and she said on the same day...”

49. Inevitably and appropriately, Miss SE notified the police, and a further ABE interview was conducted (by the same WDC as on 3 April) the following day, Friday 10 August 2018. I have viewed the CD of that interview and there is a verbatim transcript starting at bundle page G615. At page G616 the officer said: “...SE says you’ve got something else that you want to tell me. Do you want to tell me about it?” D then launched, apparently very spontaneously, into the following account at page G617 to 618:

“Well, A, yeah, he, he told me to come in his room to have a sleep, to like come in his room, yeah, and he said: ‘Lie down on the bed’, so I lied down on the bed and then he, he played with my bits so I thought: ‘Why are you playing with my bits?’ and then he licked, started to lick them and like mess about with them and it hurt and it tickled, but I didn’t, I didn’t like it when it tickled, and so then, em, he said: ‘Don’t tell mum. Go get some milk.’ So I went to go and get some milk, but I just wanted to tell mum, so I told mum it and then mum grounded him, so then he asked me to sleep in his bedroom, so I slept in his bedroom but in the middle of the night, he kept on doing it as well when I was asleep ‘cos we was both sleeping together in the same bed and next to each other.

Officer: Okay, anything else?

D: Yes.

Officer: Go on then.

D: On, on the log at school, I hurt myself. It came up with a big bruise, but now there’s a little bruise now and then, and then it, then the bike at home, em, it, em, in the between it, there’s like a sharp bit and I fell onto that and then it started to bleed.

Officer: Yeah? Anything else?

D: Then A, while I was still asleep on the other night, he started to do it again on the same day that I bleed, bled, and I said: ‘Ouch!’ but

we, it, it was the bike. It, it could have been A, but it wasn't A, it was the bike.

Officer: Okay. Is that everything?

D: Yeah.”

50. Pausing there, in that account D clearly says that she told her mum and that she grounded A. The mother adamantly denies that. D appears to describe more than one occasion when it happened. She does spontaneously refer to falling on a sharp bit on her bike and then it started to bleed. She concludes the passage by firmly saying it was the bike that caused her to bleed, it was not A but the bike.
51. At page G618 to 619 D said it was on the same day that she was bleeding from the bike, but before the bike. It was dark time, about 10 or 11 o'clock. If that refers to the events of 2 April 2018 it would have to mean 10 or 11 o'clock in the morning, since it could not have happened later than 19:00, as I have described. Later D referred to her bits or her tuppence, which she indicated as her vaginal area on a drawing of a body. She said at page G627: “He licked them and started to mess about with them ... [with] his nails ... it felt a bit, a bit hurty and my face went all red ... I thought I was hot but I wasn't hot. It's because A was hurting me...”
52. She said at page G628 that he touched the inside of her tuppence. She said that mummy grounded him for about 10 days. She repeated at page G629 that she told mummy “she was at Asda and then she came back” and then she told her. She repeated that mummy then grounded A for 10 days. At pages G631

to 632 D seems to describe, as she originally had done, that this happened not once but on other nights. She said that when he was doing it at night “I didn’t wake up. I was still asleep.” But at page G633 she describes waking up and “A was like doing that and then licking it and then like doing that to me ...” licking her tuppence with his tongue.

53. At page G635 to 636 D repeats and elaborates what happened with the bike. She said: “Like it’s like that and then there’s the wheels and then I went like that [and banged] and I think it was the stabiliser.” She said at page G637 that no one saw her fall and that she showed daddy the blood first, then mummy came “then I showed her and she goes: ‘Oh, my gosh!’”. D then describes her mother giving her a bath.
54. At page G638, in contrast to what she had said earlier, D says that it happened just one day and that was the first time that A did anything. At page G640 D says that A said: “Don’t tell mum please and don’t tell dad so I don’t get arrested and neither will you.” However, she says that she did tell mum and at page G641 that “she [i.e. mum] called him downstairs and didn’t, didn’t let him out of his bedroom for 10 days.” She said that he had his meals upstairs in his bedroom for 10 days.
55. At page G648 the officer asks whether anybody told her not to tell the police about A She says “no”. The officer asks: “Why didn’t you tell me that day?” clearly referring to the recorded earlier interview with the same officer on 3 April, and D says: “Because I forgotten.”
56. This interview is the key evidence against A. Miss Gillian Irving QC, on behalf of the local authority, and Mr Sam Momtaz QC, on behalf of the

guardian for the girls, submit that the initial account is very spontaneous. D gives a description and detail of A using his nails and scratching her, and licking her with his tongue, and of it tickling, and of her going red in the face, which a girl of seven could not have made up. They submit that she must be describing, even with many inaccuracies, a real event that she personally experienced and which she very clearly attributes to A. There are, however, many inconsistent and confusing aspects to the interview, in particular as to whether this occurred on one occasion, namely on the day on which she hurt herself (viz; 2 April 2018) or on several or more occasions at night. She expressly says several times that she told her mother, which her mother denies. She expressly says, more than once, that her mother grounded A for 10 days and that A had to have his meals in his room. If D is describing an event on 2 April 2018 there was no opportunity for A to be grounded, since the family was immediately split up. The account does also repeat accounts of hurting herself on the bike, and D herself says that it was the bike, not A which caused her to bleed.

57. A was interviewed by the police about three weeks later on 3 September 2018. This was not an ABE interview. He was interviewed under caution as a suspect. The interview is audio recorded but not video recorded. I have listened to it on an audio CD. I cannot view it. The transcript is now at bundle page G652. A repeats at page G659 that he actually saw D fall on the bike and that he was at the top of the landing at the time. Later, at G660, he says that he just caught it right at the back of his eye as he was leaving. When asked whether he actually saw her fall, he said: "No. I just saw her on the floor with the bike when she fell. She's clearly hit her hip or whatever it is

that she's supposed to have hit." This is at odds with A's earlier account on 3 April 2018 in which he clearly says more than once that he actually saw her hit her hip on the banister.

58. At page G661 A does repeat, consistently with his earlier account, that D started crying and their mum said: "We'll sort it out." However, at page G662, inconsistently with his earlier account, he says that he did not actually see his mother with D. He says that D went into the dining room where their mother was and he merely heard her mother speak to her. A expressly denied any sexual activity with anyone, and expressly denied that he had touched or licked D or done anything like that. The detail of D's account was put to him and he denied it all. He said at page G672: "Not a word of that is true" and that "she knows that I don't let anybody go in my bedroom." At page G675 he denied that his mother had grounded him.

59. As I have indicated, this interview is not wholly consistent with A's earlier ABE interview on 3 April 2018, but allowance must be made that five months had elapsed between the events of 2 and 3 April and the date of this interview in September. Essentially, A maintains the same account of seeing D fall with the bike on the stairs, and he resolutely denies any inappropriate or abusive touching of her.

60. In a session with Dr CP on 5 September 2018, D told her that she had fallen on her bike, and later that A had touched her tuppence. On 6 September 2018, on a visit by SE, D said that C also touches her. She said that C liked her to open her legs so he could smell her bits. He would open her bum and look at it and smell it. She said that A had also touched her bits. On 20, and again on 21

September 2018, D told Mrs. SC, a learning mentor at her school, that she fell on her bike and hurt herself on her bike, see bundle page C658, but on 3 October 2018 D told Mrs. SC that “what happened was that my big brother A and C touched my private parts and put their fingers into my private parts. It scratched me and it hurt and bled and I yelled out.” But when Mrs. SC asked her where she was when it happened she said, inconsistently with any previous statement, that she was in the living room and her mum came down. It can be seen, therefore, that D has, over many months, made a number of statements to different people, which are not consistent with each other, and some of which say that A hurt her and others of which say that it was a fall with her bike that hurt her.

61. D has now been fostered for nearly a year with Mrs. LI. She appears to be very attached to Mrs. LI. Mrs. LI said that when D first came to her she was always talking about her bits. She said that her bits had got hurt but she didn't know how. Mrs. LI said that since last summer D has stopped discussing it. Strikingly, Mrs. LI said that D has never said to her that A hurt her bits. Never. That is striking, as one might expect that Mrs. LI might be the person in whom D had the most confidence to confide. However, Mrs. LI unlike Miss SE or Miss NA, has never said to D that she, or they, need to know what happened to her before she could go home.

Analysis and findings

62. The law requires that I make findings on the balance of probability, no less than that but no more than that. A finding made only on a balance of probability may be inherently fallible. Judges do not express themselves in

percentages. I do not express myself in percentages, and I do not think in percentage terms in this or any case. But notionally (and not addressing the facts of this case) a finding must be made on a balance of probability if a fact is 51% likely to have occurred. That carries with it a 49% risk that it did not occur and is thus fallible and, frankly, may be wrong.

63. It is not in issue or in doubt that D did suffer the described injuries. For reasons which I have already given, I have already held on a balance of probability that they must have occurred between about 17:00 and 19:00 on 2 April 2018. On the medical evidence, which I accept, they are only explicable by either some form of traumatic penetration or a midline straddle type trauma. In my view, they are highly unlikely to have been caused by a fall with the bike of which any description has been given, for the following reasons. First, it is true that D has said on many occasions that she did have a fall with her bike and she herself has often attributed her injuries to such an event. I do not exclude that she may have had a fall with her bike on or around that day. She liked to carry her bike upstairs as she thought it was safer in her bedroom, but, in my view, any described fall is highly unlikely to have caused these injuries. It is not described by A, nor suggested, that D was astride her bike on the stairs, but that she was carrying it on the stairs. As Dr LA stressed in a passage which I have already quoted, these were what doctors call midline injuries entirely confined to the midline, internal to D's labia majora and the one external bruise just, but only just, to the right of her right labium majus and essentially also on the midline. I find it hard to conceive how, if she was carrying the bike up the stairs and fell, she should have fallen so precisely on her midline onto the stabilisers with sufficient force to generate

these external and internal midline injuries but no other marks or injuries. The whole scenario is completely different from a fall or slip from a saddle directly onto a midline crossbar, or a straddle accident over a bar in a playground or a gym.

64. Second, the medical evidence is clear that if D had suffered these injuries in a sudden traumatic event, such as a straddle fall on the stairs, they would have been painful and she, at the age of seven, would have inevitably cried or screamed out and continued for a period (Dr MA says for a long period) to have cried. An adult or older child might grit her teeth and be more stoical; a seven-year-old would not. If she did have a fall with the bike, it would only have been on the first flight of stairs between the ground floor and the first floor where her own bedroom is, and no one suggests a fall on the second flight of stairs. The first flight of stairs is close to the living area in this house. If D did have such an accident and did cry out and then cry, it seems inconceivable that one or other of her parents, however engrossed they might be in watching television, would not hear it and become aware of it. A says that his mother did indeed hear it and that she came and comforted D, but the mother categorically denies that, and both parents adamantly say that they neither saw nor heard, nor at the time became aware of, any such accident.

65. Third, while D herself certainly refers to, and describes, falling with her bike and hurting herself, the only other witness to this alleged incident is A. As I have already identified, there are many inconsistencies in his accounts, and most notably it is integral to his accounts that his mother comforted D, which the mother strongly denies. In any event, the descriptions which A gives are

not of a straddle type incident or injury, but, rather, of hurting her hip or thigh against the banister. It follows that the injuries must have been caused either by some other accidental straddle type event, or by a non-accidental and abusive act. Apart from one or two of D's own more far-fetched explanations, such as accidentally kicking herself with her own foot (given on 27 April 2018) there is simply no evidence or suggestion at all in the evidence of any accident other than the alleged fall with the bike on the stairs. Any accident must have occurred within the home, since D did not go out between 17:00 and 19:00 that day. It would have to have been a straddle type event since the injuries are so midline. The same point arises that if D suffered any accidental straddle type trauma, with the force required to cause these injuries, she would have cried out or shouted and cried and it seems inconceivable that her parents would not have become aware of it. The injuries are wholly consistent with abusive penetration, and for these reasons I am forced to conclude on a balance of probability that such an act took place. Digital insertion wholly explains all the observed injuries.

66. The next question is: is it proved on the balance of probability that it was A who did it? The following preliminary observations are very important. First, the burden of proof is entirely upon the local authority and the girls' guardian, who have submitted that I should make such a finding. A does not have to prove or disprove anything at all. Second, although I have decided (on a balance of probability) that the injuries were caused by abusive penetration, I must not, and do not, fall into the trap of concluding that it therefore must have been A who did it. Even if the two youngest girls are excluded, and D herself, there were five people in the house who might have caused them: both

parents and the three boys. A recital to the order made on 8 February 2019, now at bundle page B204, recites that: “It is not alleged that the father, the mother, B or C have sexually abused D.” That may not be alleged, but in considering whether or not I am satisfied on a balance of probability that A did so, I must not myself ignore the possibility that one of those other people did so.

67. Third, paragraph 12(f) of that same order of 8 February 2019 recited or recorded that A is aware that the court can draw adverse inferences if he fails to give evidence, and the consequences of his refusal to do so have been explained to him. Miss Irving drew my attention to that recital and suggested, if not positively submitted, that I should draw adverse inferences. I resolutely and expressly decline to do so, and I do not do so. A is still only 15. He has had a highly dysfunctional childhood and upbringing. He is immature and he must be frightened and bewildered by these proceedings. I perfectly understand entirely innocent reasons why he may not wish to give oral evidence, and I draw no inference whatsoever from the fact that he has chosen not to do so. It does, nevertheless, mean, of course, that I am deprived of the advantage that I might have had of hearing from him personally.

68. Fourth, I must and do direct myself in Lucas terms in relation to A and his accounts. As I have identified, there are numerous inconsistencies and there may be lies or fabrication. However, an innocent person may lie, either through fear, loyalty or other emotions, or to seek to bolster a good defence. As I stressed at the outset of this judgment, it is an important part of the background to this case that the four elder children were taken into care for

about 13 months in 2011. A is likely to remember that experience very well. He is likely to remember that it had resulted from an injury to D. When his mother was again taking D to hospital after she had weed blood, A may have been very fearful that once again he and his siblings might end up in care. He may have felt a need to try to put forward as an explanation the sort of accidental event (falling with a bike) that can happen in any home and would not result in care. Even if he has told lies about the bike, it does not at all follow that he himself harmed her.

69. Fifth and finally, even when making findings on the balance of probability the court must have regard to the degree of inherent improbability of the matter in issue. Most teenage boys do not finger and penetrate their younger sisters, for if it were otherwise hospitals would be awash with sexually injured young girls. There is a significant degree of inherent improbability that A interfered with D, and I take that into account.

70. Although D has now said on several occasions that A touched her bits and hurt her, the key evidence has to be her ABE interview on 10 August 2018. The evidence has many weaknesses. The account came four months after the event. In her immediate ABE interview on 3 April 2018 D had said in terms that no one had touched her. When asked in August why she had not referred to A touching her in April she said that she had forgotten it. If she remembered it in August, it is not credible that she could have forgotten it on 3 April, the day after the alleged event. The account given in the August interview is in places confused and internally inconsistent, particularly with regard to the number of times that A had touched her. She herself in August

repeats the bike story and says that it was the fall from the bike and not A who caused her to bleed. Further, she only gave the account of A touching her bits after both NA and SE had told her that she could not go home until they knew how she had been hurt. The pressure on her may have been enormous, and implicitly her explanation of the fall from the bike was being rejected. For all these reasons, it is no surprise to me at all that the police abandoned any attempt to prosecute in this case. No jury, properly directed, could possibly be sure that A had caused the injuries. I, however, am required to apply a lower standard of proof. Despite all the above weaknesses which I have identified and which I fully recognise, I am satisfied on a balance of probability that A is the person who did cause these injuries by penetrating D with his finger or fingers. In my view, there is a spontaneity and vividness about D's account on 10 August 2018 which she could only have given if she was describing an experience which had actually happened to her, even if she very imperfectly and unreliably remembered much of the detail. I accept and agree with the submissions of both Miss Irving and Mr Sam Momtaz QC on behalf of the girls' guardian, that when D speaks of A using his fingernails and of it hurting and tickling and of his licking her with his tongue, she is describing things which would be beyond the imagination of a seven-year-old girl and which she is highly unlikely to have picked up from another source, unless, as to which there is not a shred of evidence, some much older person had tutored her. Further, she twice referred to her face going red, which, I agree with both leading counsel, is not a detail she would be likely to fabricate or fantasise.

71. For these reasons, I am satisfied on a balance of probability that on 2 April 2018 between about 17:00 and 19:00 A did penetrate the labia majora of D with one or more finger and did cause all the injuries observed and reported by the doctors.
72. I have already referred to the evidence of Dr AL and her preference for the phrase “genital penetration” rather than “vaginal penetration”. The hymen was intact and unharmed. D referred to A scratching her with his fingernails. The reference to fingernails may also have been a reference to his fingertips. A may not have inserted his finger or fingers very far or very deep. He claims to have been, and probably was, completely sexually inexperienced. He may not have had any appreciation of the physical harm he might cause and did in fact cause, which Dr MA said was the worst abusive damage he had ever seen. What A did was very wrong and totally inexcusable and he must have known that it was wrong, but the extent and gravity of what he did needs to be borne in mind.
73. I wish to follow those findings by the following immediate observations or comments. First, it is a finding made on the balance of probability and only after considerable thought and hesitation. As I have already explained, such a finding is fallible and I acknowledge that it may be wrong. Second, as the above reasoning shows, it is firmly premised on the evidence of both parents that they neither saw nor heard, nor at the time became immediately aware of, D suffering an accident that day, whether on the stairs with her bike or otherwise. I have already said that much of the evidence of each parent is inconsistent and unreliable, although not necessarily fabricated or lies, but on

this point, namely, whether they saw or heard or immediately became aware of some accident, they cannot be mistaken. Their evidence that they did not is either true or a lie. If they have lied and left A carrying the can, as they sought to do in 2011, then that must weigh heavily on their consciences for the rest of their lives. Third, my finding casts A as a perpetrator. I have not heard from him or seen him (save on the 3 April 2018 ABE video) but my provisional impression is that he, too, should be treated, not as a perpetrator but as a victim of his highly dysfunctional childhood and upbringing. Although he said in his interview on 3 September 2018 that he had had some sex education at school, he was brought up in an undisciplined household with few boundaries and very lax standards. He was still young (just 15 in April 2018) and immature. A needs help not reproof. Although it will be entirely a matter for decision-making in the future, I stress that this judgment does not at all mean that A should later necessarily be regarded as unsuitable or unsafe to parent children, including girls. He may be capable of learning from his juvenile mistake.

The threshold criteria

74. I will attach a copy of “The facts finally relied upon by the local authority in support of their assertion that the threshold criteria are met” dated 4 March 2019 to the approved transcript of this judgment. It follows from the above that I find paragraph A proved (but with a slightly earlier start time of 17:00) and paragraphs B, C, D, E and F proved. Paragraph G may be technically true, in that immediately before she was removed into care D had had an inappropriate sexual experience, but it adds nothing to A - F and is confusing,

so I delete it. Paragraph H must follow from the findings and is proved. The first sentence of paragraph I is proved, but, in my view, the example given, although it may be true, should be deleted. Any penetrative behaviour as done by A upon D is always completely unacceptable. Some exploratory behaviour between young siblings of different sexes, or looking at each other's genital areas, does not necessarily, in my view, cross the threshold boundary for taking children into the care. So the first sentence is in; the example is out. Paragraphs L - O are, as I understand it, accepted by the parents.

75. That leaves K. This relies upon the evidence of Dr JS as to the condition or state of all the children except D when she examined them on 3 April 2018. The parents do not dispute the actual observations recorded by Dr JS of the general state of cleanliness and tidiness of the children, but they do make the point that the children had been removed from their home at about 03:00 that morning and had not been able to have a proper night's sleep in beds, nor showers or baths. They were wearing whatever clothes were hurriedly seized for them to wear. The social worker, Mr DS, who had supervised the children overnight, said, in answer to questions from Mr Momtaz, that he could not recall whether he had had any concerns about the children's physical presentation. They did not appear dirty or grubby. Nothing stood out about their appearance. In these circumstances, it is, in my view, unfair to the parents that paragraph K should form part of the threshold grounds. The observations of Dr JS were not the real reason why the children were taken into care at that time, nor are they the essential reason why the children cannot return home now. Paragraph K should be deleted.

76. With those deletions and amendments, I find the pleaded threshold criteria proved and I now make full care orders placing all six children in the care of the Z Metropolitan District Council, on the basis of the final care plans.
77. I conclude this judgment by expressing my thanks to all counsel, and especially those in the front row who bore the brunt of the case, for their restrained but thorough testing of the evidence and for their cogent written and oral closing submissions.
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ATTACHED THRESHOLD DOCUMENT

THE THRESHOLD CRITERIA ARE MET PURSUANT TO SECTION 31(1) CHILDREN ACT, 1989.

1. At the time protective measures were taken, namely on the 3rd day of April 2018, the children A, B, C, D, E and F were suffering and were at risk of suffering significant harm. The harm and risk of harm was attributable to the care that they were receiving and likely to receive from their parents, such care not being what it would be reasonable to expect a parent to give to them.
2. Specifically all the children were suffering significant physical and emotional neglect with the consequence that their social, emotional, behavioural and physical development had been impaired.

PARTICULARS IN SUPPORT

- A. On the 2nd April 2018, not earlier than about 17.30 nor later than 19.00 hours D sustained significant physical harm, namely traumatic penetrative injury to her genital area. The injuries were both external to and internal of the genitalia, namely:
 - (i) A blue bruise to the upper and inner part of the perineum extending toward the external side of the right labium majus.
 - (ii) The posterior fourchette was bruised.

- (iii) The area between the right side of the hymen and the lower inner part of the Labium Minus was bruised and red.
 - (iv) The area between the hymen and the urethral orifice was bruised.
 - (v) The area around the meatus was inflamed.
 - (vi) The area between the right side of the meatus and the upper inner part of the Labium minus was bruised and blood was present at the site of the abrasions.
- B. D experienced pain and discomfort as a consequence of her injuries and she was distressed and frightened.
- C. The injuries were not a consequence of any known medical condition or disease.
- D. The injuries were caused by her brother A inserting his finger or fingers into her vagina and “playing with her bits”.
- E. The injuries were not caused by her falling off a bike on 2/4/2018 shortly before the bleeding commenced or at all.
- F. A frightened D and told her that if she told anyone what he had done to her she would be taken away and put into care.
- G. Before she was removed into care, D had acquired age-inappropriate sexual knowledge and language which can only have arisen either from direct personal experience or inappropriate exposure to sexual conduct or material.
- H. The parents failed to supervise and protect D, either adequately or at all. This was the second significant injury D had suffered since birth and the second occasion when she was placed in the care of the local authority. The parents denied any personal knowledge of the circumstances in which the injuries had arisen. The parents deny and continue to deny any personal knowledge about the injuries to D occasioned in April 2018.
- I. The parents failed to implement appropriate sexual boundaries between the children; for example, C asked D on one occasion if he could see “her bits” and would, in play, lift her with his hand under her bottom [G40-41]. On one occasion he put his bottom in her face.

- J. The father risked exposing all the children to inappropriate sexual images, sexual knowledge and language. He watched pornography on his phone in the living area on the 2nd April 2018, when children were present and the mother was absent from the home.
- K. All the children were examined by Dr JS on the 2/4/2018 and 3/4/2018. They were dirty, their hair was matted, the teeth of some were in poor condition. Some were also mal-odorous. [E 14-20]. For example:
- a. A was dirty and smelly generally. He did not appear to have had a bath for a few days. He had not cleaned his teeth due to a lack of toothpaste. [E19]
 - b. B – presented as grubby and also smelly.
 - c. C – presented as grubby with some holes in his clothes. He had evidence of dental caries. [E17]
 - d. E – presented as dirty with smelly feet and dirt under fingernails. Her hair was a little matted at the ends. [E16]
 - e. F – presented as wearing very grubby clothes. She had dried matted hair with bits of food in the ends. Her face was dirty and sticky. She had extremely smelly feet.

L. All the children have evidence of multiple bruising/lesions some of which the parents cannot explain and which are indicative of a failure on the parents to protect and supervise the children properly. The failure to supervise exposed the children to a risk of further physical harm.

M. A would not go to school and his relationship with his parents had broken down. On 29/4/2017 the Police were called to the home to a domestic incident, an argument between A and his parents resulted in A causing damage to a wall. He was distressed and angry. His social, emotional and educational development was clearly at risk of harm [G19]

N. A behaved aggressively towards his parents in front of his siblings. This caused the children distress and they were put in fear of him. The parents report that A has assaulted both of them on many occasions. He threw a TV at his mother causing an injury to her foot for which she required hospital treatment. He hit his father with a guitar and broke one of his father's fingers. In February 2018 he kicked his father in the ribs and assaulted his mother in front of his brothers. As a consequence his siblings suffered significant emotional harm and were at risk of suffering further emotional harm.

O. The parents have not, despite professional support over many years, been able to consistently and adequately parent the children. Their insight into their

parental deficits has been partial and their own life experiences deprive them of the ability to meet the needs of their children who now all require better than good enough parenting.

4th March 2019
Gillian Irving QC
Kerry Barker