



Neutral Citation Number: [2024] EWFC 35

Case No: TR21C50014
TR23P00076

IN THE FAMILY COURT

Date: 28/02/2024

Before :

MRS JUSTICE JUDD

Between :

A LOCAL AUTHORITY

Applicant

- and -

M

1st Respondent

-and-

SF

2nd Respondent

-and-

O and A

3rd & 4th

(by her children's guardian, Adele Stanbridge)

Respondents

-and-

F

5th Respondent

-and-

SM

Intervener

Samuel Castlehouse (instructed by A Local Authority Legal Services) for the Applicant

Yvonne Sutherland (instructed by Coodes LLP) for the 1st Respondent

Rawdon Crozier (instructed by Stephens Scown LLP) for the 2nd Respondent

Charlie Barrass-Evans (instructed by Walters & Barbary Solicitors) for the 3rd & 4th Respondents

Emma Favata (instructed by Nalders LLP) for the 5th Respondent

The Intervener appeared in person

Hearing dates: 5th – 9th February 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 28th February 2024 by circulation to the parties or their representatives by e-mail.

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MRS JUSTICE JUDD

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

Mrs Justice Judd :

1. This is a fact finding hearing in conjoined public and private law proceedings involving two children. They each have the same mother but different fathers. The proceedings have been very long and drawn out for a variety of reasons, not least because this is a retrial following an appeal last year.

The background

2. The allegations relate to the oldest of the two children, a girl (A) who is now 9 but was only 6 at the time of the original allegations. There are four adults who are relevant to the proceedings, the mother, the father, the mother's partner (who I shall refer to as SF) and the father's partner (who I shall refer to as SM).
3. The mother and father were married but separated in 2018 when A was about 4, something that the mother found very difficult. She is somewhat vulnerable, having borderline learning difficulties, but has capacity to instruct solicitors and counsel directly. A remained living with her mother, but spent time with her father. The father began a relationship with SM in about 2019. The relationship between the parents was very difficult with the father reporting the mother to the police for harassment because she visited his house and sent him so many text messages. She was cautioned for this but it is important to say that whilst she harassed the father and SM she was not threatening to them in any way.
4. There were a number of concerns about the mother's care of A. The records state that she took A to school late, used a pram and a dummy when she was too old for such things, and exposed her to her own distress at the breakdown of the relationship. Despite a lot of work with her the mother found it difficult to move on. A was developmentally delayed.
5. In about March 2020 the mother met SF at a social event and shortly after that contacted him on Facebook. A relationship developed quite quickly. As a vulnerable child A attended school throughout the pandemic. Not long after the start of the relationship the school began to express worries that A was talking about SF, albeit in positive terms, saying that he took her out by herself 'for treats', that he had given her a cuddle or cuddles. He also picked up A from school on occasion. When spoken to, the mother rejected any suggestion that she should be more cautious about SF or that he could pose any harm.
6. Added to this, in June A was thought to be somewhat withdrawn. There were occasions when she wet herself, and was diagnosed with a urinary tract infection. For Father's Day she drew a card which appeared to be of a figure with a large penis. In August the father reported that A had what he thought was a red mark on her bottom. A was visited by a police officer and social worker but said nothing of concern about SF, saying that he was fun and he made her laugh. A s47 investigation was commenced by the local authority and in September by agreement A moved to live with her father during the week, spending weekends with her mother.
7. In October the father took A to the doctor because of redness in the vaginal area. The GP referred to the father being 'candid' about A's care in the mother's home. The GP thought A's vaginal area looked unusual and referred her to the SARC. She also

asked A directly whether anyone had touched or played with her and she said no. The paediatrician at the SARC told the GP in a phone call that the diagnosis was likely to be vulvo-vaginitis.

8. Over the next few weeks A appears to have continued to suffer from soreness and redness in the vaginal area for which she was taken to the doctor. The father and SM believed it to be worse when A was returned from her mother's house. Swabs and blood tests were carried out but nothing of note was found.

The allegations

9. On 22nd December 2020 A was taken to the GP, having returned from her mother the day before. The problem, yet again, appeared to be redness/soreness in the vaginal area. That night the father and SM called NHS 111, the local authority out of hours service and 999 to report that A had said SF had put his finger into her bottom.

10. The recordings of the calls made that night show the father and SM variously saying:

“[SF] has been going near her arse”

“My daughter has just said that my ex wife's new partner has been playing with her bum”

“A has said that her bottom has been touched by this person”

“[SF] has touched her in the bottom”

“A just said [SF] touches my bum hole and puts his fingers in my bum hole”

“[SF] has been going near her bum section”.

In the transcripts the father stated that A was trying to pass a stool and indeed she can be heard at times crying in the background.

11. In his statement to the police in 2022 the father said A had made the allegation when she was trying to pass a stool and was being assisted by SM. He said that he had been outside the door of the toilet and heard A say ‘it hurts like when [SF] does it’ which led him to feel that SF had sexually abused her. This was an account that he maintained at the first trial and also before me, although in the light of the transcripts that are now available he said she had also said the other things attributed to her.
12. In the SARC records the father is recorded as saying that A had made the allegation when she had been asked by SM why she was sore down below.
13. On 24th December A was visited at her father's home by a duty social worker and police officer. The social work record (that was reported verbally to a supervisor after the visit) stated that the home was messy and unclean throughout, that SM's boys were lovely but there was a lot of rough play going on. She thought that the parents did not seem very caring and that she had the impression that ‘they almost wanted there to be something’. A is reported to have said ‘it hurts when the poo won't come

out' and 'don't like it when [SF] does it, did it in the bathroom when mum there' and that 'it was not as bad when F and SM do it'.

14. The social worker thought that the incident was being related to constipation as opposed to a sexual incident. The police officer's note is similar (it was also recorded later) save that it records A as saying that SF had 'put his finger up her bum', and then that she had been in the bathroom with SF and mum and it was hurting because 'the poo would not come out'. Both professionals recorded that SF had not shown any fear of SF and indeed she said he was her favourite of the adults.
15. When visited on the same day the mother and SF denied that SF had any intimate care of A or that he had ever been involved in toileting. Arrangements were made by the local authority and agreed by the parties that there would be no contact between SF and A. When she visited her mother he would not be there. On 8th January the father found out that SF had been seen at the mother's property whilst A was there. The police visited immediately. The mother lied to them and said SF was at a Travelodge, but when the police went into the garden they found SF hiding.
16. Thereafter contact at the mother's home was stopped and it was all supervised. A made no further allegations to the professionals until 25th January, although the father and SM state that she did repeat what she had said to them. On 25th January she told her teacher that she really missed her mother, and that she was not allowed to see her because she had done something wrong. She said that she was sad because '[SF] touches my private parts and I don't 'like it' and 'I ask him to stop but he won't'. On 27th January she told the same teacher 'I miss mummy and I want to see her. I don't like [SF] poking me down there (pointing to her vaginal area)... I do tell him to stop... but he doesn't'.
17. On 28th January A was seen by the police officer and social worker. There is no contemporaneous note although there is a later recording saying that 'A disclosed that [SF] touches her private parts and she doesn't like it because it hurts. He doesn't say anything. Her mum is present and it happens in her bedroom. It has happened twice. She confirmed the part he touches is the part she uses to wee'. There is no record of the questions she was asked.
18. An ABE interview took place on 2nd February which I have watched. A appears unwilling to engage with the questions, fixing her attention very firmly on some colouring she was doing. There does not seem to be any rapport building. The police officer made a number of attempts to get A to repeat things she has said before, in the end asking a number of leading questions which led to A saying that SF had touched her with his finger under her dress. She said that he had done it twice and that her mother was there. A does not seem upset at any point, only reluctant to engage.
19. In the days and weeks that followed, A said a number of things to her teachers. I will not set them all out here, but they included saying 'I want to go home to mummy's.. I don't want [SF] to be there. I want him to go back to his house and never come back... I don't like him touching me', 'the two ladies are helping me to stop [SF] from touching my private parts'. She variously says that SF pokes her and touches her, that he follows her around into the garden and in the bedroom under her duvet and on the trampoline doing it and that he would not stop. At one point she said that he had told her not to tell anyone and that she would get into trouble, and also that he

told her when she asked him to stop that he liked doing it. On another she asked the person she was telling to write what she had said down and ‘to tell the two ladies’.

20. Another ABE interview took place in March 2020, which is very similar to the first. A appears unwilling to engage despite considerable efforts on behalf of the interviewers, trying to prompt her about being kept safe, and about what she said to others about SF. Towards the end of the interview the questions become very suggestive and in response to these A said she did not want SF to be at mummy’s. She did not seem to want to say anything else about him. There is a marked contrast in A’s demeanour when she is asked about neutral topics such as her garden and toys. She was patently relieved when the interview came to a close.

Subsequent events

21. A continued to make allegations in very much the same way throughout the first part of 2021. She frequently stated that she could not live with her mother because SF had touched her private parts.
22. Later that year the mother became pregnant and gave birth to a baby by SF. Care proceedings were commenced. A, who had made significant progress during the year, began to deteriorate, beginning to soil in her room and becoming clingy at school.
23. A fact finding hearing took place in late 2022, which was followed by a successful appeal to the Court of Appeal. The matter was remitted to me for rehearing in relation to the allegations so far as SF were concerned, the Court of Appeal having overturned the findings about the mother. Following the case being remitted it has still been dogged by delays caused by numerous problems including late disclosure of primary evidence, illness, difficulties with obtaining legal representation and a decision by the CPS to assess A for another ABE interview (this did not in fact take place). Private law proceedings in relation to A have been issued and the proceedings consolidated.

Findings sought

24. The local authority seeks findings that SF penetrated A’s anus and vagina with his finger on at least one occasion between 1st March 2020 and 22nd December 2020. It is also alleged that he touched her vaginal area in the same time frame but on a separate occasion. It is alleged that there is no innocent reason for SF to have touched her genital area and therefore that the motivation was sexual.
25. These allegations are denied by both SF and the mother.
26. No other party has filed a schedule of allegations although the mother and SF have alleged in their evidence that the father and SM have coached A to make the allegations whilst knowing that they are not true. This is denied by the father and SM.

The law

27. In determining issues of fact, the standard of proof is the balance of probabilities (Re B [2008] UKHL 35). The burden of proof lies upon the person or body that makes the allegations.

28. Findings of fact must be based on evidence and not speculation (Re A (A Child)(Fact Finding Hearing: Speculation) [2011] EWCA Civ 12. Evidence must not be looked at in separate compartments and a judge must have regard to the relevance of each piece of evidence to other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion as to whether the allegations are made out to the appropriate standard of proof (Re T [2004] EWCA Civ 558).
29. If a court concludes that a witness has lied about one matter, it does not follow that he or she has lied about everything. A witness may lie for many reasons, for example, out of shame, humiliation, misplaced loyalty, panic, fear, distress, confusion and emotional pressure R v Lucas [1981] QB 720. The application of this principle should go beyond the court merely reminding itself of it in broad terms; Re H-C (Children) [2016] 4 WLR 85.
30. In Lancashire County Council v C, M and F (Children; Fact Finding Hearing) [2014] EWFC 3, Peter Jackson J (as he then was) stated:
- “in cases where repeated accounts are given of events..., the court must think carefully about the significance or otherwise of any reported discrepancies. They may arise for a number of reasons. One possibility is of course that they are lies designed to hide culpability. Another is that they are lies told for other reasons. Further possibilities include faulty recollection or confusion at times of stress or when the importance of accuracy is not fully appreciated, or there may be inaccuracy or mistake in the record-keeping or recollection of the person hearing and relaying the account. The possible effects of delay and repeated questioning upon memory should also be considered, as should the effect on one person of hearing accounts given by others. As memory fades, a desire to iron out wrinkles may not be unnatural – a process that might inelegantly be described as "story-creep" may occur without any necessary inference of bad faith”. These words echo the words of Leggatt J in Gestmin SGPS v Credit Suisse (UK) Ltd [2013] EWHC 3560 as to the fallibility of human recollection, and the limitations of memory”.*
31. The principles to be applied in relation to the evidence of children have been set out in numerous authorities. In AS v TH [2016] EWHC 532, MacDonald J noted that the courts have endorsed a number of the general principles set out in the ABE guidelines. “It is desirable that interviews with young children should be conducted as soon as possible after any allegations are made (Re M (Minors)(Sexual Abuse: Evidence) [1993] 1 FLR 822). MacDonald J made a number of similar points in Re P (Sexual Abuse: Finding of Fact Hearing) [2019] EWFC 27. Where a child has been interviewed on a number of occasions the court may attach diminishing weight to what is said in the later interviews (Re D (Child Abuse: Interviews) [1998] 2 FLR 10). The court will wish to see responses from the child which are neither forced nor led (Re X (A Minor)(Child Abuse: Evidence) [1989] 1 FLR 30). It is normally undesirable for a parent to be present during an interview with the child (Re N (Child Abuse: Evidence) 1996 2 FLR 214 and see the Cleveland Report para 12.35). In Re S (A Child) [2013] EWCA Civ 1254 Ryder LJ confirmed that the guidance set out in

the Cleveland Report at paragraph 12.34 with respect to interviewing children remain good practice.

32. In the case of SR [2018] EWCA Civ 2738, Baker LJ set out a number of points about ABE guidance, which is relevant to the evidence of children both within and outside the formal process. These are all very pertinent to this case, and so I will set them out in detail.

Starting at paragraph 30, he stated:

“The importance of adhering to the guidance has been recognised repeatedly by this court – see for example Re B (Allegation of Sexual Abuse: Child's Evidence) [2006] EWCA Civ 773, [2006] 2 FLR 1071, TW v A City Council [2011] EWCA Civ 17, [2011] 1 FLR 1597, Re W, Re F [2015] EWCA Civ 1300, and Re E (A Child) [2016] EWCA Civ 473, [2017] 1 FLR 1675. Those four cases all concerned investigations in which interviews had been conducted in ways that purported to comply with the guidance but which, in various respects, manifestly failed to do so. The principles underpinning the guidance are, however, relevant to all investigations which include interviews of alleged victims of abuse, whether or not the interviews purport to have been conducted under the guidance.”

After setting out the guidance in some detail, he said at paragraph 41:

“The failure to comply with the ABE guidance will often have a decisive effect on the weight to be attached to evidence obtained as a result of the investigation. This is well illustrated by the four Court of Appeal cases cited above.”

At paragraph 42, he quoted from Hughes LJ In Re B (Allegation of Sexual Abuse: Child's evidence):

“34. ... Painful past experience has taught that the greatest care needs to be taken if the risk of obtaining unreliable evidence is to be minimised. Children are often poor historians. They are likely to view interviewers as authority figures. Many are suggestible. Many more wish to please. They do not express themselves clearly or in adult terms, so that what they say can easily be misinterpreted if the listeners are not scrupulous to avoid jumping to conclusions. They may not have understood what was said or done to them or in their presence.

35. For these and many other reasons it is of the first importance that the child be given the maximum possible opportunity to recall freely, uninhibited by questions, what they are able to say, and equally it is vital that a careful note is taken of what they say and also of any questions which are

asked. All this and many other similar propositions, most of them of simple common sense, are set out in nationally agreed guidelines entitled Achieving Best Evidence.

40. There is no question of this evidence being inadmissible for failure to comply with the ABE guidelines, and that has not been suggested in argument for either parent. In a family case evidence of this kind falls to be assessed, however unsatisfactory its origin. To hold otherwise would be to invest the guidelines with the status of the law of evidence and it would invite the question: which failures have the consequence of inadmissibility? Clearly some failures to follow the guidelines will reduce, but by no means eliminate, the value of the evidence. Others may reduce the value almost to vanishing point.”

At paragraph 43, he cited Sir Nicholas Wall P In TW v A City Council:

“52. ... the Guidance makes it clear 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. We regret to say that we were left with a clear impression from the interview that the officer was using it purely for what she perceived to be an evidence-gathering exercise and in particular to make [the child] repeat on camera what she had said to her mother. That, emphatically, is not what ABE interviews are about and we have come to the view that we can place no evidential weight on it.

53. ... [I]t is not sufficient for a judge to rely primarily on the fact that the child is able, when being interviewed, in a thoroughly unsatisfactory manner and contrary to the Guidance, to make a number of inculpatory statements. A clear analysis of all the evidence is required and the child's interview must be assessed in that context.”

Finally, at paragraph 45:

“In Re W, Re F, I said (at paragraph 79):

"I have sympathy for officers and social workers entrusted with the difficult task of speaking to children about allegations of this sort. The ABE Guidance is detailed and complex. But those details and complexities are there for a reason. Experience has demonstrated that very great care is required when interviewing children about allegations of abuse. The Guidance has been formulated and refined over the years by those with particular expertise in the field, including specialists with a deep understanding of how children perceive, recall and articulate their experiences. It would be unrealistic to expect

perfection in any investigation. But unless the courts require a high standard, miscarriages of justice will occur and the courts will reach unfair and wrong decisions with profound consequences for children and families.”

33. Many similar points were made in Re JB (A Child)(Sexual Abuse Allegations) [2021] EWCA Civ 46.

The hearing

34. I read all the documents in the bundles provided to me, including the transcripts of the evidence given at the first fact finding hearing last year. I watched the ABE interviews. I listened to the recordings of the various calls made by the father and SM on 22nd December 2020. I heard oral evidence from the police officer, the duty social worker on 24th December, the father, SM, the mother and SF.
35. As the proceedings before me were a rehearing, there were several witnesses who were not called, as they had given oral evidence previously and been cross examined. These included A’s class teacher, her teaching assistant, and a number of other support staff. I had the transcripts of all this evidence as well as the statements and records that were filed. There was no challenge to the fact that A made a number of allegations, particularly to her teachers in late January 2021 and thereafter. These witnesses also gave evidence about things that A had said about SF the previous year and how she had become withdrawn at school. Although I did not hear from these witnesses I make it clear that I have treated this evidence in the same way as I would have done if they had given evidence before me.
36. The police officer and duty social worker were asked a number of questions about the visit to the father’s home on 24th December. The social worker was challenged about a number of things that she said about the state of the father’s home and the attitude that she thought they demonstrated about what A had said. I appreciate that the social work note we have of the visit is not the social worker’s own but that of her supervisor who spoke to her on the phone immediately afterwards, but it was a full and careful note of what must have been a reasonably long conversation. The social worker had no dealings with the family before or since, and so her observations are helpful in that they come from someone without any views about one side of the family or another. I accept what she said about the physical state of the father’s home, although it does not have any bearing on the findings I am asked to make. I also accept that it was a very busy household seen at a very busy time of the year, with other, boisterous children. She was obviously struck by the attitude of the father and SM. Her thoughts about them seeming almost to want there to be something (i.e. in relation to the allegations) are speculative but they are a helpful guide to their demeanour at the time, fitting with the transcripts of the calls to the agencies on 22nd. There were a number of things that the police officer did not notice which the social worker did but it does not lead me to the conclusion the social worker’s recollection was faulty, quite the contrary. The two professionals had different roles.
37. What is clear from the evidence of both professionals is that they were both left questioning whether A was more likely to be referring to something involving constipation rather than something sexual. The police officer’s note does not record

whether A's statement that SF had put his finger in her bottom was made in response to a specific questions and if so, what that was.

The evidence of the father

38. In his evidence it was clear that the father had been somewhat suspicious of the mother's new partner, particularly when it appeared he was picking up A from school when the relationship was still very new. To some extent this is understandable given the mother's vulnerabilities but I formed the clear impression that he found the concept of another man being involved in the life of his daughter difficult. Before the mother's relationship with SF began he was suspicious of a friend of the mother's who babysat A during the evening, suggesting that, as he did not know him from Adam, he could be a paedophile.
39. The suspicion and hostility towards SF and also the mother came across in many of the documents although the father was reluctant to accept this in his oral evidence. The GP was told that A was neglected in the care of her mother, and noted that the father was 'candid' in his description of the mother in an appointment where A would have been present. The father was angry about a red mark which he saw on A's bottom which he thought showed the shape of a hand, not particularly because he thought she had been hit, but (as he told the court) because he thought she had been hit by SF. A was asked straight away how she had got the mark (she is said to have said she fell out of bed) and then her bottom was photographed there and then in the bathroom. Even at her young age it seems likely she would have been conscious of her father's concerns. He says that he took two photographs of this injury, one of which showed the handprint that he says was there. Unfortunately he has not been able to find the clearer of the photos (the one which we do have is not clear enough to see anything significant at all).
40. Although A had a history of suffering from vaginal soreness well before she came into contact with SF, when it flared up in 2020 the father and SM were quick to attribute it to possible sexual abuse. In the call to the police on the night of 22nd December the father stated that 'I've been saying it for months that he's been doing it but I couldn't prove it until tonight'. This was a telling remark.
41. I thought that the father tried to distance himself from having carried out any intimate care of A, in the first part of his oral evidence suggesting that he would leave matters such as toileting and bathing to SM. He went as far as to say that he did not enter the bathroom while A was having a bath even though she was only five years old at the time. His evidence about this did not sit well with the evidence that he had done such things as take a photograph of A's bare bottom whilst she was bent over the side of the bath and put lubricant or baby oil onto her bottom by using a type of balloon syringe.
42. I acknowledge the significant difficulties for the father (and indeed all the parties) in a situation when he is being asked to recall events which took place so long ago. His first statement to the police was not given until March 2022. The last trial took place

in 2022, and this one in 2024, over three years after the events in question. Not only will memory have faded but it will have been affected by all the accounts and questions that will have happened along the way.

43. Even making all the allowances I can for the difficulties, there are a number of features of the father's evidence, especially about the events of 22nd December 2020 which are contradictory, particularly in relation to the central issues. I was left quite unclear as to when or how A was said to have made the very specific allegation that SF had put his finger into her bottom.
44. In his police statement the father said that what he had heard A say to SM as he was listening outside the bathroom door was that 'it hurts like when [SF] does it'. He said that he had opened the bathroom door and SM had told him to call the police. He said he did so, and that he 'felt she had been assaulted by [SF]'. He did not say anything about the other very striking statements that A was said to have made, namely that SF had put his finger 'in her bottom' and that he 'touches my bum hole and puts his fingers into my bum hole'.
45. At this hearing I have had the advantage of a number of contemporaneous records which were not available at the original fact finding hearing. The father made a call to NHS 111 whilst A was clearly in the background, at times crying. This recording shows him saying 'my daughter has just said that my ex-wife's new partner has been playing with her bum'. In a different but almost contemporaneous call to social services he stated that SF had been 'going near her bum section'. When asked to be more specific he spoke to SM who said that A said '[SF] touched my bottom'.
46. To the police at 22.01 he is reported as saying that A announced to SM that SF had 'touched her in the bottom'. The audio recording states that 'she's stated her bottom has been touched by [SF]'. When the call handler repeats the allegation the father corrected her to say that J had said she had been touched in rather than on the bottom. Later in the call, he said that A had said that SF 'touches my bum hole and puts his fingers in my bum hole'. In one part of that call the father stated that A was currently downstairs, recuperating.
47. At an appointment at the SARC a few hours later the history is recorded as follows:- '[SM] asked why her bits were sore and she said that mum's boyfriend has put his finger in her bottom'.
48. During the course of his oral evidence the father's account of the events was difficult to follow. When asked when it was that A had said that SF had put his finger(s) into her bottom, he said first that it was when she had calmed down and they had asked her about it. He then said that all the allegations had been made whilst she was sitting on the lavatory.
49. Added into all of this is the evidence he gave, previously alluded to but never in such detail, of the father putting some lubricant onto A's bottom to help her pass a stool that very evening. It was in some ways an extraordinary account. The father said that he had used baby oil that was put into something which looked rather like a balloon syringe or some sort of an enema device with a tube at the end. He suggested that he had used this device to pour the oil down the crack of her bottom but was adamant that he had not put anything into or near the anus itself. Like the evidence he had

given earlier about not involving himself in A's intimate care I thought he was dissembling. The device would have taken a little time to set up and using it in the way the father described did not seem at all likely. The event was obviously traumatic for A and whether it was the constipation, the use of the device or both, she suffered from pain in her bottom that night.

50. The descriptions that night show that the events were somewhat drawn out with the father becoming increasingly concerned and angry. He presented as a man with strong and fixed views, quick to jump to conclusions. Whilst he said that adult discussions were not held in front of A she can be heard in the background on 22nd December when the father was on the phone. It is not a big house. I think it highly likely that both the father and SM failed to keep their views about SF hidden from A and that she was well aware of the hostility towards him.

SM's evidence

51. SM explained in her evidence that 22nd December was 'a fluster of an evening'. There were about six children in a small house, and it was very close to Christmas. She said that the phone calls to the agencies had been made in a panic and 'once the disclosures were made'. It was clearly (and understandably) difficult for her to remember events that took place so long ago, but she said that A had said something 'along the lines of' or 'something about' fingers going into her bottom. The contemporaneous account from the recordings is that SM said that A had said it as clear as day, and in her oral evidence SM remained of that view. She said that it seemed from what A said as if everything had slotted into place.
52. Other matters of note in SM's evidence was that they had child friendly petroleum jelly (that was used for one of her other children for constipation) which they squeezed onto the outside of the bottom with the squirter/spray device. She also confirmed that Canesten cream had been used on A's genitals when they were sore. SM stated that she had not done this herself but had directed A, saying that she did not get involved in such intimate care.
53. SM came across as a somewhat forceful person, and abrupt in her manner, although this does not mean she is unkind or uncaring. With several children in the household she had a lot on her plate. The father made it clear that he expected a household run on traditional lines, with the mother being primarily responsible for the children and home, and the father for going to work and supporting the family financially.

The mother

54. The mother has borderline learning difficulties. She gave evidence from behind a screen, and was accompanied by an advocate who was encouraged to intervene if the mother became tired or the questions were too complex. In many instances it was necessary to break down the questions she was being asked in order for her to understand them. In fact the mother was confident enough to ask for questions to be rephrased or repeated, and she often did so.
55. The mother accepted that she had been very distressed when the relationship with F came to an end and that she had not been able to hide her feelings from A. As was the case with all the witnesses, she was hampered in her recollections by the passage of

time and I thought she sometimes erred on the side of caution when she was asked questions by saying that she did not remember when perhaps there was more that she could say. Sometimes when she was questioned more directly she was able to give more detailed answers. It took a long time for her to accept that SF could have had the opportunity at least to touch A inappropriately, because she did not believe that he had. She gave an account of one occasion when SF had used the lavatory when A was in the shower, and she said that she had put a towel around the cubicle and that A was looking the other way. I thought that this account was somewhat contrived and defensive albeit understandable in the context of the allegations made. The deceit in relation to the events of 8th January shows that she is capable of being dishonest with those in authority.

SF's evidence

56. SF gave evidence last. He met the mother at a pub or club, and shortly after that she contacted him on Facebook and their relationship went on from there. He explained that he had lied to the judge at the last hearing about breaching the written agreement because he was nervous. He said that the mother was slow, but that did not mean that she is stupid or daft, nor did he accept that it would be easy to take advantage of her.
57. SF did not accept that the pace of the relationship was unduly fast, saying at various points that he and the mother had done nothing wrong. He denied being involved in any of A's intimate care, and said that he had got on well with A.
58. SF's denials have always been the same. He and the mother acted dishonestly and covertly by breaching the written agreement in January 2021 but there does not seem to be any other evidence of dishonest behaviour, or major discrepancies in anything that they have said. SF works on a farm, and before meeting the mother had limited experience of caring for children albeit he has nephews and nieces that he sees. He had other relationships before he met the mother but told me that he is not on bad terms with any previous partners.

Discussion

59. In considering any allegations of this nature made by a child, it is vital to assess the surrounding circumstances carefully.
60. In this case the first allegation was made by A on 22nd December 2020. By this point she was living with her father during the week and her mother at weekends. The relationship between the parents was very difficult, so much so that they had no direct contact with each other. They were arguing about child maintenance. The father was sensitive about other men being involved in the care of his daughter, and was by this time very suspicious of SF. In harbouring anxieties about SF he was not alone, for some teachers at school were worried too. A started talking about SF early in the relationship and the mother said that he took her out alone 'for treats'. When making cards for father's day, A drew a picture of a figure with a large penis and did not respond when asked about it. In the summer of 2020 when the relationship had started she had become withdrawn and was wetting herself. The school deputy safeguarding lead said that A told her that SF went into her bedroom and that the mother had been defensive about this. The records suggest that the school were

worried because SF picked up A from school (albeit there seems to be no evidence he did this more than once).

61. The father's suspicions about SF were made worse by A suffering from redness in her vaginal area, although these problems pre-dated SF's arrival on the scene. The father was also suspicious and angry when he saw a mark on A's bottom which he thought meant that SF had hit her.
62. In October 2020 the GP asked A directly in front of the father whether anyone had touched or played with her. Although she said no, it seems that the fact that the GP questioned A made the father more suspicious still.
63. By 22nd December A had been questioned by professionals on two previous occasions in relation to her bottom and her vaginal area, the implication of this being that adults around her were concerned that she was being touched and chastised inappropriately at her mother's home. She had been present when the father told the GP that she had been neglected by her mother. She had been questioned by her father or SM more than once about a mark on her bottom and required to bend over with no bottoms on for the mark to be photographed. Her father already believed SF was sexually abusing her. A had had her attention drawn to her genital area because she had been examined on a number of occasions and was being encouraged to apply cream to her vagina. Then on 22nd December she suffered from pain in her bottom when she was trying to defecate.
64. In their police statements and original evidence to this court the account that the father and SM gave of A's allegation was very brief, as if the events had happened within a very few minutes and the allegation was spontaneous. Of course I note that this evidence was given a very long time later and it may have been that they either did not remember much of what happened that night or they thought they should keep the account short. At this hearing I have had the advantage of having recordings from a number (albeit not all) of the calls made to the agencies that night, in addition to the notes from the police officer, social worker and the SARC. The picture painted by all of these records is of a much longer and more drawn out series of events.
65. The history that was recorded when A was examined at the SARC was that she made the allegation in response to being asked about why she was red or sore in her vaginal area. The transcripts of the various calls contain accounts of several things apparently being said by A and also reveal efforts being made to relieve her constipation. At one point A is described as being on the lavatory and at another recovering downstairs. None of this could have happened in just a few minutes. In his oral evidence about what was contained in the transcripts the father spoke of A making some of her allegations when she settled down and they could 'get some sense' out of her.
66. It is not either surprising or sinister that the father and SM do not have a clear memory of everything that happened that night and I have very much in mind the dangers of recollection in these circumstances. The best guide to what happened is from the contemporaneous records but it is also instructive that in his police statement the father's account was that A had made a remark which led him to feel that she had been sexually abused.

67. I do find that A said something to the effect that ‘it hurts like when [SF] does it’ when she was in pain from trying to pass a stool. It chimes strongly with what she said to the police and social worker two days later, and it also fits with the father saying things like ‘he’s been going near her arse’ to the call handler. It explains what the father said to the police. What I cannot find is that this comment was made spontaneously for it seems to me just as likely that it was made in response to a question. That was the background explanation recorded in the SARC report.
68. No doubt the statement by A was interpreted by the father as the allegation of sexual abuse which he believed had been happening all along. He was plainly very angry indeed, making a series of calls to the authorities within a short time. Neither the father or SM are reliable historians as to what they said to A, or she said to them, and in that context I think it very likely that the interpretation that each gave to what A said, and to what she said in response is likely to have been strongly affected by the views they already held. This applies to everything that A is recorded by them as having said that night.
69. The effect upon A of the events of 22nd December are likely to have been profound. She could have been in no doubt that the adults in charge of her believed she had been hurt by SF. Nonetheless, when she told the police officer and social worker on 24th December that SF had put his finger up her bottom she described it in the context of toileting. The social worker was right to be cautious as to whether A was in fact making an allegation of sexual abuse. It is notable that what A said that day about her mother and SF was very similar to what had actually happened with her father and SM, and that all three adults deny having touched her anus at all, in any context.
70. The evidence and surrounding circumstances raise very significant question marks as to the reliability of anything that A said on 22nd and 24th December. She was a young and vulnerable child, very dependent upon both the father and SM.
71. Between 24th December and 25th January there were no further allegations to professionals. But the circumstances affecting the reliability of her accounts remained. She was living with her father and SM. After 8th January she was no longer able to see her mother at home, something which upset her and needed to be explained. She was repeatedly seen and spoken to by professionals. Between 24th December and 25th January A was seen five times by a social worker with two of these visits also being attended by the police. She was encouraged to share any worries she had and it was explained to her that she needed to be kept safe. Whilst I understand that A needed some sort of an explanation as to what was going on it is unfortunate that all this happened in the absence of an early ABE interview.
72. The allegation made by A on 25th January shows she has an awareness of the views of adults that her mother had done something wrong although she said she did not know what that was. In the same conversation she then said that SF touched her private parts. She was then seen again by a social worker on 27th, then on 28th January she was seen for a pre ABE discussion (which it plainly was, however labelled) by the police officer and the allocated social worker. There are some notes of this discussion albeit they are not contemporaneous. The questions were not recorded in breach of ABE guidance but given that the same officer asked such leading and suggestive questions in the recorded interview a few days later it is not difficult to infer that the same happened here. It is recorded in the notes that A said that SF

poked her in the vagina over her dress when her mother was in the room, and that it had happened twice. On 2nd February, after a lot of prompting by the interviewers A stated that SF touched her with his finger on her vagina under her dress. She said her mother was not there and that it had happened twice.

73. In the days following this interview A made a number of further allegations to her teachers, in particular her class teacher and the classroom assistant. She told another teacher that the 'two ladies' were helping her to stop SF touching her private parts and that she lived with her father because her mother's boyfriend had hurt her.
74. Another ABE interview followed. It is very similar to the first, with A unwilling to engage and the questions getting progressively more leading.
75. In my judgement the allegations made on 25th January and thereafter are all affected by the same issues of reliability as those which were made on 22nd and 24th December. With the passage of time in her father's home, the fact she could no longer see her mother at home and the intensive involvement of professionals would have been likely to embed in A's mind the belief that it was not safe to go to her mother's home because of SF, and that SF was a risk to her. A was surrounded by adults who believed she had been sexually abused and it is hardly surprising that her accounts of SF became more negative and anxious, and that she repeated to teachers that he had hurt, touched and poked her. As Hughes J (as he then was) recognised in the paragraph of *Re B* cited above, past experience has told us that children in these circumstances can be suggestible, eager to please and poor historians whose words can easily be misinterpreted by adults. Once this has happened the damage is hard to undo.
76. I also find that A's accounts lack contextual detail. There is no account of SF saying anything to her before or during an act of assault, or otherwise behaving in a sexual way in front of her, something which is sadly a feature of some cases. She talks of being followed around, and being touched and 'poked'. Whilst I do not think much turns on the discrepancies between being touched on the bottom or the vaginal area, the accounts of where it has happened and whether or not her mother was there have changed as have her views of SF himself.
77. There is very little other supportive evidence. The examination on 23rd December was normal, meaning that there is no medical evidence to support or refute the allegation. A suffered from redness in the vaginal area both before SF came on the scene as well as afterwards, and from some of what is written in the medical notes there may be a physical explanation for this. The GP referred A to the SARC in October 2020 but the paediatrician believed she was likely to be suffering from vulvo-vaginitis (albeit this diagnosis was made over the phone). A still continues to have some problems with redness, soreness and urinary tract infections although she has had no contact with SF for a considerable time.
78. There are some signs that A was unsettled and/or withdrawn during the course of 2020, but such observations are very non-specific and could be explained by a number of things, for example the tension between her parents, the arrival of a new boyfriend, or even problems in her father's home (there seem to have been some problems involving SM's children by a previous partner). A was unwell with a urine infection in June which could account for the wetting. She had a red mark on her bottom for

which there was no clear explanation but she never suggested that SF or indeed anyone else was responsible. The father and SM state that the mark was clearly a handprint but the photograph he produced does not show it and he cannot find the photograph which he says is clearer. In any event the father is so fixed in his views about SF that I find his recollection and interpretation of what he saw is not reliable.

79. There are no accounts of A demonstrating sexualised behaviour apart from one occasion when it is said she drew a picture of a figure with a huge penis. This happened around the time of father's day (which would have been in June 2020). It is difficult for me to place any reliance on this in circumstances where the picture was not retained by the school and there is no evidence specifically to connect it with SF. She could have seen SF naked in her mother's home, but equally there were a number of males sharing one bathroom with A and SM in her father's home.
80. None of the surrounding features either individually or taken together add any material weight to the case against SF.
81. I acknowledge that the mother and SF lied about the written agreement and went as far as to deliberately disobey it. I also thought that they each tried to minimise the number of times SF might have gone into A's bedroom or used the bathroom when A was in the shower. Nonetheless breaking orders or lying about these matters does not make the allegations of sexual abuse true, or even more likely to be true. In my experience people who are innocent do sometimes break agreements that they do not think are necessary, tailor their evidence or lie to try and cast themselves in the best possible light. There is no evidence about SF which suggests that he has a sexual interest in children or, aside from these allegations, that he has behaved in a sexually inappropriate way with anyone.
82. Therefore, taking into account all of the evidence I have heard and read, I am not satisfied on the balance of probabilities that A has been sexually abused by SF or at all. It is more likely than not that her allegations have been brought about by the influence of the adults around her which in turn is likely to have affected her own perception of what had happened to her. It is important to be clear that in saying this I am not for one moment saying that A is lying. In a case such as this involving a young and vulnerable child the proposal by anyone that that the only alternative to the allegations being true is that the child is lying is misleading and unhelpful. Young children, especially children like A, are easily influenced by those in charge of them, and suggestible.
83. The mother is undoubtedly a vulnerable adult and the alarm of professionals at the arrival of a new partner was entirely understandable, although there is some force in Ms Sutherland's submissions that the professionals seemed to be quick to criticise the mother and accept what the father was saying at face value. Nonetheless I would not wish to castigate the professionals' concern about A and what she was saying, as vulnerable women with young children can, very sadly, be a target for paedophiles. Allegations made by children in the context of bitter parental disputes are particularly complex, however, and the importance of professionals keeping careful records and an open mind cannot be over-emphasized. Nowhere is this more important than when a child is being spoken to by a social worker and/or the police. The ABE guidelines are there for a reason, and it is profoundly worrying that, notwithstanding numerous judgements from the family courts, that there are still so many cases where they are

not followed. The risk of contamination of evidence leading to an unjust result either way is grave for everyone concerned, most importantly of all for the children involved.

84. I do not find that this father or SM deliberately coached A. Rather it is my view that they developed a fixed belief that she had been abused and that this underpinned all of their views and responses from the time that SF came onto the scene. I do not blame the father for being concerned that the mother might be taken advantage of but there is a fine line to be drawn between being concerned and being overbearing. In his views about SF he has been dogmatic and opinionated from the beginning.
85. The length of time that this case has taken before and after the appeal is greatly to be regretted. A has now been living with her father for over three years with limited contact with her mother. It is very difficult to know what effect this will have on their relationship in the future, especially as she is likely to believe she has been hurt by SF. There is evidence that A has found the arrival of her maternal half sibling and the fact that she lives with the mother full time very difficult, and this is hardly surprising. These are all matters which will need careful handling in the future.
86. The outcome of these proceedings will also have an important impact so far as A's half sibling is concerned, albeit I will await further submissions before saying any more about the future of the care proceedings.
87. I wish to record my grateful thanks to counsel for their very hard work in this case. It has been very difficult to manage for a variety of reasons, particularly with respect to disclosure. I have been provided with the greatest of assistance by all, with detailed submissions on the facts and the law, a very detailed and helpful chronology and excellent advocacy throughout.