



Neutral Citation Number: [2023] EWFC 196 (B)

Case Number: RG23C50043

IN THE FAMILY COURT SITTING AT SLOUGH

The Law Courts
Windsor Road
Slough
SL1 2HE

Heard on 1-2 and 6-8 November 2023
Judgment given on 8 November 2023

Before

HIS HONOUR JUDGE RICHARD CASE

Between

WOKINGHAM BOROUGH COUNCIL

Applicant

and

THE MOTHER (1)
THE FATHER (2)
THE CHILDREN (3-4)

Respondents

Representation

For the Applicant: Mr Kirkwood counsel instructed by the Applicant Council

For the Respondents: Ms Wickham counsel instructed by the First Respondent Mother
Mr Wraight counsel instructed by the Second Respondent Father
Mr Pearman counsel instructed by the Third to Fourth Respondent children by their Children's Guardian, Guy Brazil

This judgment was delivered in private. The judge has given permission 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.

JUDGMENT

This judgment is deemed handed down electronically by email on 8 November 2023 at 10.00

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Summary of Findings

1. I have made the following findings:
 - a) Allegation 1.1: On 18 February 2023 the Mother assaulted CD by beating him on the feet with a cane approximately 86 times over the course of 1 hour and 5 minutes.
 - b) Allegation 1.2: On 18 February 2023 the Mother instructed CE to fetch “strong nice sticks” to beat CD.
 - c) Allegation 1.3: The Mother continued the assault despite CD weeping, crying and screaming and pleas for her to stop.
 - d) Allegation 2: On 18 February 2023 the Mother assaulted CE by beating her with a cane over a period of approximately 1.5 hours.
 - e) Allegation 4: In 2021-22 the Mother assaulted CE by beating her 48 times as a result of her not meeting expectations at school.
 - f) Allegation 7: On 5 or 12 March 2022 the Mother made the Children eat spoonfuls of paprika and has threatened to apply pepper to their eyes, mouth and ears.
 - g) Allegation 8: The Mother threatened the Children with a kitchen knife including threatening to kill them on an unknown date.
 - h) Allegation 10: On multiple occasions before 2018 (the date when the Children moved from Nigeria) the Father assaulted the Children by beating them on the hands, legs and feet with a cane.
 - i) Allegation 11: In September 2022 or January 2023 and in relation to CE’s social media use the Father beat CE to her legs and feet with a cane whilst making her kneel down.
 - j) Allegation 13: The Father subjected the Children to stress positions in the form of being made to hang upside down from a shelf and in an inverted V with their heads on the floor. This was intended by the Father to be a painful punishment and the Children crying soon after being put in that position evidences it was in fact painful. On occasions, if the Children moved from the positions, the Father would beat them with a cane.
 - k) Allegation 14: The Children have each suffered emotional harm by being assaulted and witnessing their siblings being assaulted.
2. I have not made findings on allegations 3, 5, 6, 9 and 12.

Parties

3. I have set out the parties above. The children with whom I am concerned are CD (mid-teens) and CE (early teens). I will refer to them collectively as the Children and the parents as the Mother and Father and mean no disrespect in doing so. The social worker describes the Children as black British of Nigerian heritage. Prior to removal to foster care they lived with their Mother and adult sister, CC. The Father visited for up to 3 months at a time but his main residence was in Lagos. There are 2 other older siblings, CA who is reported to live overseas and CB who lives in the UK.

Background

Chronology

4. It is apparent from the police body worn video (BWV) that the Children and CC were visited by the police on 7 March 2023 someone having made an online report of abuse (the social work chronology says it was CC at [C28] although CC did not admit to doing so during the visit. The report is at [F5]. Although no allegations were made in the course of that visit the social work chronology indicates that a referral was made to Children's Social Care by the police on 8 March and on 10 March the social worker spoke with CC and following a strategy meeting on 13 March the Children were visited at school on 14 March. Although the Local Authority do not seek to rely on the hearsay evidence of what they reported in that meeting the chronology is important. The Children were then police protected on 15 March 2023 after another strategy meeting that day.

5. The following further background is set out by the Local Authority in their position statement:

1. The court is concerned with CD aged 15 and CE aged 13. They are currently placed in foster care pursuant to an EPO granted on 17th March 2023 and an ICO granted on 21st March 2023.

2. The children were placed in foster care by the police on 15th March 2023 after making allegations against their parents of very serious physical abuse spanning several years. Those allegations included being hit with wooden sticks on their hands, feet, arms and head and also of being hit with a metal rod on their hands. The children also described being made to put in stress positions by their father whilst being hit with a stick. They have also described being made to eat spoonfuls of hot pepper. Both children have previously described their fear of returning home.

...

7. The Local Authority issued proceedings on an emergency basis and an EPO was granted on 17th March 2023.

8. Interim care orders in respect of both children were granted at a subsequent hearing on 21st March 2023.

9. The parents have now been charged with a number of offences including 8 charges of assault and threatening a person with an offensive weapon.

6. The matter is listed for an Issues Resolution Hearing on 18 March 2024.

Current living arrangement

7. The Children are in foster care pursuant to Interim Care Orders

Parental responsibility

8. Parental responsibility is shared between the parents and the Local Authority.

Positions

9. I have set out the individual allegations and the parents' response to the same below.

Evidence Summary

10. I have had the benefit of a trial bundle, in particular the following documents:

- a) Composite Schedule of Allegations [Z72];
- b) Child protection medicals [F26a and F26g];
- c) Police photos of items seized from the family home [I5-I6];
- d) Social worker's witness statement 17 March 2023 [C4] (although the Local Authority do not seek to rely on the hearsay reports of what the children alleged as reported in this statement);
- e) Pre-interview assessment of CD [I44];
- f) Pre-interview assessment of CE [I47];
- g) Mother's witness statement 31 July 2023 [C94] signed without amendment on 23 October 2023 [C178]; and
- h) Father's witness statement 26 July 2023 [C93a].

11. I have listened to/viewed:

- a) An audio recording of an alleged beating of CD by the Mother dated 18 February 2023 (incorrectly 18 March 2023 in the bundle) [I4] partially transcribed by the police at [I102] and by counsel for the Local Authority [Z77];
- b) BWV of a welfare visit to the home [I1] and [I64] on 7 March 2023;

- c) Video Recorded Interview (VRI) of CD [I13] and transcript [I189] from 22 March 2023;
- d) VRI of CE [I12] and transcript [I165] from 22 March 2023;
- e) BWV of the Father's arrest [I14];
- f) VRI of the Mother (in 4 parts) [I3] and transcript [Z15] and [I2] and transcript [Z43] from 16 March 2023 and [I16] and transcript [Z24] and [I17] and transcript [Z61] from 15 May 2023; and
- g) VRI of the Father [I15] and transcript [Z1] from 1 April 2023.

Law

Fact Finding

12. I remind myself of the fact-finding self-directions that I must give myself adapted from the helpful summary of Munby P in *Re X (Children) (No 3)* [2015] EWHC 3651:

20. ...The principles are conveniently set out in the judgment of Baker J in *Re L and M (Children)* [2013] EWHC 1569 (Fam), to which I was taken. So far as material for present purposes what Baker J said (and I respectfully agree) was this:

“First, the burden of proof lies at all times with the local authority.

Secondly, the standard of proof is the balance of probabilities.

Third, findings of fact in these cases must be based on evidence, including inferences that can properly be drawn from the evidence and not on suspicion or speculation ...

Fourthly, when considering cases of suspected child abuse the court must take into account all the evidence and furthermore consider each piece of evidence in the context of all the other evidence. The court invariably surveys a wide canvas. A judge in these difficult cases 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 whether the case put forward by the local authority has been made out to the appropriate standard of proof.

...

Eighth, it is common for witnesses in these cases to tell lies in the course of the investigation and the hearing. The court must be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear and distress, and the fact that a witness has lied about some matters does not mean that he or she has lied about everything (see *R v Lucas* [1981] QB 720).” [I address this further below]

13. Munby P continued:

21. To this admirable summary I add three further points.

22. First, that the legal concept of proof on a balance of probabilities “must be applied with common sense”, as Lord Brandon of Oakbrook said in *The Popi M, Rhesa Shipping Co SA v Edmunds*, *Rhesa Shipping Co SA v Fenton Insurance Co Ltd* [1985] 1 WLR 948, 956.

23. Secondly, that the court can have regard to the inherent probabilities: see Lady Hale in *In re B (Children) (Care Proceedings: Standard of Proof) (CAFCASS intervening)* [2008] UKHL 35, [2009] 1 AC 11, para 31. But this does *not* affect the legal standard of proof, as Lord Hoffmann emphasised in the same case (para 15):

“There is only one rule of law, namely that the occurrence of the fact in issue must be proved to have been more probable than not. Common sense, not law, requires that in deciding this question, regard should be had, to whatever extent appropriate, to inherent probabilities. If a child alleges sexual abuse by a parent, it is common sense to start with the assumption that most parents do not abuse their children. But this assumption may be swiftly dispelled by other compelling evidence of the relationship between parent and child or parent and other children. It would be absurd to suggest that the tribunal must in all cases assume that serious conduct is unlikely to have occurred. In many cases, the other evidence will show that it was all too likely.”

24. Thirdly, that the fact, if fact it be, that the respondent ... fails to prove on a balance of probabilities an affirmative case that she has chosen to set up by way of defence, does *not* of itself establish the local authority's case. As His Honour Judge Clifford Bellamy recently said in *Re FM (A Child: fractures: bone density)* [2015] EWFC B26, para 122, and I respectfully agree:

“It is the local authority that seeks a finding that FM's injuries are non-accidental. It is for the local authority to prove its case. It is not for the mother to disprove it. In particular it is not for the mother to disprove it by proving how the injuries were in fact sustained. Neither is it for the court to determine how the injuries were sustained. The court's task is to determine whether the local authority has proved its case on the balance of probability. Where, as here, there is a degree of medical uncertainty and credible evidence of a possible alternative explanation to that contended for by the local authority, the question for the court is not ‘has that possible alternative explanation been proved’ but rather it should ask itself, ‘in the light

of that possible alternative explanation can the court be satisfied that the local authority has proved its case on the simple balance of probability’.”

14. In his President’s Memorandum on Witness Statements dated 10 November 2021 MacFarlane P said:

14. Parties should understand that the court’s approach to witness evidence based on human memory will be in accordance with CPR PD 57AC, Appendix para 1.3.

This states that human memory:

- a. is not a simple mental record of a witnessed event that is fixed at the time of the experience and fades over time, but
- b. is a fluid and malleable state of perception concerning an individual’s past experiences, and therefore
- c. is vulnerable to being altered by a range of influences, such that the individual may or may not be conscious of the alteration.

15. I also direct myself to the judgment of Peter Jackson J (as he was) in *Lancashire County Council v The Children* [2014] EWHC 3 (Fam):

9. To these matters I would only add that in cases where repeated accounts are given of events surrounding injury and death 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 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 which might inelegantly be described as “story creep” – may occur without any inference of bad faith.

16. That should be borne in mind when considering perceived differences between accounts over time and generally when considering a witness’ recall.

Lying

17. I remind myself of the *Lucas* direction from *R v Lucas* [1981] QB 720, elaborated on by Macur LJ in *Re A* [2021] EWCA Civ 451:

54. That a witness's dishonesty may be irrelevant in determining an issue of fact is commonly acknowledged in judgments...in formulaic terms:

“that people lie for all sorts of reasons, including shame, humiliation, misplaced loyalty, panic, fear, distress, confusion and emotional pressure and the fact that somebody lies about one thing does not mean it actually did or did not happen and/or that they have lied about everything”.

But this formulation leaves open the question: how and when is a witness's lack of credibility to be factored into the equation of determining an issue of fact? In my view, the answer is provided by the terms of the entire 'Lucas' direction as given, when necessary, in criminal trials.

55. Chapter 16-3, paragraphs 1 and 2 of the December 2020 Crown Court Compendium, provides a useful legal summary:

“1. A defendant's lie, whether made before the trial or in the course of evidence or both, may be probative of guilt. A lie is only capable of supporting other evidence against D if the jury are sure that:

(1) it is shown, by other evidence in the case, to be a deliberate untruth; i.e. it did not arise from confusion or mistake;

(2) it relates to a significant issue;

(3) it was not told for a reason advanced by or on behalf of D, or for some other reason arising from the evidence, which does not point to D's guilt.

2. The direction should be tailored to the circumstances of the case, but the jury must be directed that only if they are sure that these criteria are satisfied can D's lie be used as some support for the prosecution case, but that the lie itself cannot prove guilt. ...”

18. What I have said above in relation to memory applies equally to a consideration of whether a person is lying.

Evidence of Children

19. In *Re P (Sexual Abuse: Finding of Fact Hearing)* [2019] EWFC 27 (Fam) MacDonald J summarised matters to consider when assessing the memory of children:

577. That said, and considering the authorities set out above, the Report of the Inquiry into child abuse in Cleveland 1987 Cm 412 and Report of the Inquiry into the Removal of Children from Orkney in February 1991 among others and the contents of the current ABE Guidance, I am satisfied that this court can take judicial notice of the following matters:

- i) Children, and especially young children, are suggestible.
- ii) Memory is prone to error and easily influenced by the environment in which recall is invited.
- iii) Memories can be confabulated from imagined experiences, it is possible to induce false memories and children can speak sincerely and emotionally about events that did not in fact occur.
- iv) Allegations made by children may emerge in a piecemeal fashion, with children often not reporting events in a linear history, reporting them in a partial way and revisiting topics.
- v) The wider circumstances of the child's life may influence, explain or colour what the child is saying.
- vi) Factors affecting when a child says something will include their capacity to understand their world and their role within it, requiring caution when interpreting children's references to behaviour or parts of the body through the prism of adult learning or reading.
- vii) Accounts given by children are susceptible to influence by leading or otherwise suggestive questions, repetition, pressure, threats, negative stereotyping and encouragement, reward or praise.
- viii) Accounts given by children are susceptible to influence as the result of bias or preconceived ideas on the part of the interlocutor.
- ix) Accounts given by children are susceptible to contamination by the statements of others, which contamination may influence a child's responses.
- x) Children may embellish or overlay a general theme with apparently convincing detail which can appear highly credible and be very difficult to detect, even for those who are experienced in dealing with children.

Police Interviews

20. The following is an extract from Family Court Practice summarising the law at para 2.338[2]:

Video-recorded interviews with children are hearsay evidence but may be admitted as evidence

of truth of the statement in family proceedings. Such interviews should be conducted in accordance with the detailed guidance in Achieving Best Evidence in Criminal Proceedings (ABE) (latest edition 2022) although this guidance is non-statutory. The court can make findings based on ABE evidence so long as it is alive to the hearsay nature of the evidence and the age of the children at the time of interview (*Re M (Sexual Abuse: Evidence)* [2010] EWCA Civ 1030). In *TW v A City Council* [2011] 1 FLR 1597, CA, the Court of Appeal found that the inadequacies of the ABE interview were so manifest, even allowing for a broad margin of latitude to anyone conducting such an interview, that no evidential weight could be placed on it. In particular, it was not sufficient for a judge to rely primarily on the fact that a child might be able to stand up to and overcome a thoroughly unsatisfactory interview; rather, a clear analysis of all the evidence was required and the child's interview had to be assessed in that context. In *Re W; Re F (Children)* [2015] EWCA Civ 1300, the forensic value of the ABE interviews was found to be minimal such that the trial judge had been wrong to attach any weight to them. Whether the flaws in ABE evidence are so fundamental as to render the interviews wholly unreliable is a matter for the trial judge who must analyse the process thoroughly to evaluate whether any of the allegations made in such interviews can be relied upon (see *Re E (A Child) (Evidence)* [2017] 1 FLR 1675, CA, *Re M-Y (Children)* [2019] 1 FLR 79, CA and *Re C (A Child) (Fact-Finding)* [2022] EWCA Civ 584 where the Court of Appeal dismissed a father's appeal against findings in care proceedings where criticisms were made of ABE interviews).

21. In *JB (a child)* [2021] EWCA Civ 46 Baker LJ said:

11. The importance of complying with the ABE guidance, which is directed at both criminal and family proceedings, has been reiterated by this Court in a series of cases including *TW v A City Council* [2011] EWCA Civ 17, *Re W, Re F* [2015] EWCA Civ 1300, *Re E (A Child)* [2016] EWCA Civ 473, *Re Y and F (Children) (Sexual Abuse Allegations)* [2019] EWCA Civ 206 and in the judgments of MacDonald J in *AS v TH and others* [2016] EWHC 532 (Fam) and *Re P (Sexual Abuse: Finding of Fact Hearing)* [2019] EWFC 27. It is unnecessary to repeat at any length the extensive comments set out in some of those judgments. For the purposes of this appeal, the following points are of particular relevance. (Save where indicated, the paragraphs cited are from the ABE guidance.)

(1) "The ABE guidance is advisory rather than a legally enforceable code. However, significant departures from the good practice advocated in it will likely result in

reduced (or in extreme cases no) weight being attached to the interview by the courts." (*Re P (Sexual Abuse: Finding of Fact Hearing)*, supra, paragraph 856)

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

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

(a) Listen to the witness.

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

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

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

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

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

(g) Fully record any comments made by the witness or events that might be relevant to the legal process up to the time of the interview (paragraph 2.6 [now paragraph 2.7], see also *AS v TH*, supra, paragraph 42).

(4) For all witnesses, interviews should normally consist of the following four main phases: establishing rapport; initiating and supporting a free narrative account; questioning; and closure (paragraph 3.3) [now paragraph 3.4].

(5) The rapport phase includes explaining to the child the "ground rules" for the interview (paragraphs 3.12-14) [now paragraph 3.14-3.16] and advising the child to give a truthful and accurate account and establishing that the child understands the difference between truth and lies (paragraphs 3.18-19) [now paragraph 3.20-3.21].

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

(6) In the free narrative phase of the interview, the interviewer should “initiate an uninterrupted free narrative account of the incident/event(s) from the witness by means of an open-ended invitation” (paragraph 3.24) [now paragraph 3.29].

(7) When asking questions following the free narrative phase, “interviewers need fully to appreciate that there are various types of question which vary in how directive they are. Questioning should, wherever possible, commence with open-ended questions and then proceed, if necessary, to specific-closed questions. Forced-choice questions and leading questions should only be used as a last resort” (paragraph 3.44) [now paragraph 3.51].

(8) Drawings, pictures and other props may be used for different reasons – to assess a child’s language or understanding, to keep the child calm and settled, to support the child’s recall of events or to enable the child to give an account. Younger children with communication difficulties may be able to provide clearer accounts when props are used but interviewers need to be aware of the risks and pitfalls of using such props. They should be used with caution and “never combined with leading questions”. Any props used should be preserved for production at court (paragraphs 3.103 to 3.112) [now paragraph 3.119 onwards].

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

their senior managers or an interview advisor" (paragraph 3.2) [same paragraph numbering in new version].

(10) Underpinning the guidance is a recognition "that the interviewer has to keep an open mind and that the object of the exercise is not simply to get the child to repeat on camera what she has said earlier to somebody else" (per Sir Nicholas Wall P in *TW v A City Council*, supra, at paragraph 53).

22. I would add that paragraph 2.73 of the guidance indicates there should be clear objectives for the pre-interview assessment and interviewers "should avoid encouraging a child to talk about the alleged offence".

Hearsay evidence

23. Hearsay evidence of children is admissible pursuant to the Children (Admissibility of Hearsay Evidence) Order 1993 but I must assess the weight to be attached to it.

24. In *Re W (Minors) (Wardship: Evidence)* [1990] 1 FLR 203 Neill LJ at 227 said:

Hearsay evidence is admissible as a matter of law, but...this evidence and use to which it is put has to be handled with the greatest care and in such a way that, unless the interest of the child make it necessary, the rules of natural justice and the rights of the parents are fully and properly observed.

25. Butler-Sloss LJ (as she was) said this at 214:

In considering the extent to which, if at all, a judge would rely on the statements of a child made to others, the age of the child, the context in which the statement was made, the surrounding circumstances, previous behaviour of the child, opportunities for the child to have knowledge from other sources, any knowledge, as in this case, of a child's predisposition to tell untruths or to fantasise, are among the relevant considerations.

26. And at 218:

The reliability of the person relating what the child said is of vital importance.

27. Although the Civil Evidence Act 1995 does not apply the provisions of section 4 may be helpful:

4 Considerations relevant to weighing of hearsay evidence.

- (1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.
- (2) Regard may be had, in particular, to the following—
 - (a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;
 - (b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;
 - (c) whether the evidence involves multiple hearsay;
 - (d) whether any person involved had any motive to conceal or misrepresent matters;
 - (e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;
 - (f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight.

Allegations

28. I have considered the specific allegations below. Before considering them in detail I have set out the more general evidence below and commented on credibility generally.

29. For clarity the purpose of this hearing is not to determine the parents' understanding of appropriate discipline (save in the case of the Mother where it goes to her credibility); I am not assessing their understanding against a backdrop of their cultural experience; I am not assessing the parents' capacity to change if change is needed. What I am determining is whether the specific allegations are proved on the balance of probability. If I make findings it will form part of the factual matrix against which capacity to parent is assessed, that is for a future welfare analysis.

Generally

30. Dr Hughes prepared Child Protection Medical reports for both Children dated 20 March 2023. She records of CD:

[F26b]

I asked what he meant by discipline; he told me that she "beats us and stuff". He told me "We have a garden with plants and strong sticks.....She beats our feet and if we cry too much she beats our body". I asked him to tell me more about the sticks: "She makes my siblings (get them) or she cuts them - if they don't pick good ones, they will get hit too".

31. She identified 6 marks "suggestive of inflicted injury" on CD:

[F26d]

4. On his left forearm, over the proximal ulnar on the lateral side, there is a 2.5cm long, thin brown scar.

5. On his right forearm, over the radius, there is a 1cm long thin brown mark.

6. On his right forearm, over the distal ulnar, there is a 2cm long brown mark.

7. On his right hand there were two fine white scars. One was diagonally across the top of his right 4th finger measuring 1cm and the other was overlying the 4th Metacarpal bone measuring

1.5cm.

...

9. On his left shin, on the medial aspect, there was a small, under 0.5cm brown mark.

10. On his back, on the right side only, were a collection of linear brown pigmented marks. These

were between 2 and 6cm in length, all very slim. Two of them appeared to have some curvature to the medial end of the mark. These were highly unusual.

32. On CE she identified 4 marks consistent with inflicted injury:

[F26j]

2. On the left upper arm, inside, above the elbow, there was a 1.5cm slim scar.

...

4. On dorsum of her right hand, at the base of the thumb were 2 small slim linear pale scars.

5. On the base of her left foot, under the ball of the big toe, there was a small dark slim linear scar.

6. On the base of her right foot, near the 3,4,5th toes, there were three small dark slim linear scars, measuring about. [sic]

Credibility

Mother

33. The Mother says:

[C94]

3...I do accept that on occasion I have hit the children across with canes (which are usually branches from the garden). I did this as a method of discipline when they were badly behaved. I would hit them around 6-12 strokes. Usually this would be broken up by me explaining talking to them about what they had done wrong so the overall punishment could last around 20-30 minutes.

34. The Mother denies using a metal rod or phone charger [C95/6]. She admits hitting the Children on their hands and feet and “on their buttocks” when they were younger but denies hitting them “across the head” [C95/7].

35. When the Mother was interviewed she initially denied beating the Children [Z18] and denied using sticks of any kind [Z19]. She acknowledged tapping CE’s hand or slapping “on her hand or on the bum” [Z20]. She was unable to think of a reason for the Children fabricating allegations although wondered if they were being manipulated (I think by CC) [Z21]. In the second interview on 16 March 2023 she said that each slap would be “Just once” [Z46] and again denied the use of a metal pole, sticks and cables [Z47]. The photo of the stick and metal pole were shown to her and she denied seeing either before [Z48], she said that the stick could have come from the garden, from the Children playing with sticks and she never used sticks to hit the Children [Z49]. I note that she now accepts the use of a cane (in response to the allegations) and that the pole the Children “must be referring to is pole we usually keep next to the shoe rack” [C95/6]. Neither was admitted in either of the interviews on 16 March 2023.

36. The Mother spoke to the Guardian on 7 April 2023. There seems to have been a denial of that which is now admitted. He records meeting the Mother by video that day [E3] and her saying (my emphasis):

[E5]

14. The Mother denies the allegations that have been made against her. She denies hitting CD with sticks and rods but admits she has used a small cane to physically chastise him in Nigeria and in the UK. She said this has not happened for some time since she learned that it was against the law in this country. She could not recall the last time she used a small cane to discipline CD.

15. The Mother could not explain the mobile phone recording that was provided to the police from the children.

37. In oral evidence the Mother could not remember the content of the conversation and could not confirm this was an accurate account. In the absence of any other written record and the Mother's lack of recollection I accept it as accurate. It is inconsistent with her evidence now (that she only learned it was not acceptable in this country after the Children were removed) and given the incident on 18 February was recent it is inconsistent to the extent she said there had been no incident "for some time". She was not able to say if the incident alleged on 18 February 2023 actually happened then but aside from saying it was some time ago she could not be more specific.

38. In the second interview on 15 May 2023 when the Child Protection Medical report was put to the Mother she was asked if an injury to CE's hand was caused by being hit with a cane. Rather than denying the use of cane the Mother answered that she "can't remember to be honest" [Z29] and later said "it's been a long time that I use the cane on her feet" implying she had used a cane [Z30].

39. When she gave oral evidence she admitted the sticks shown in the police photo at [15] were in fact similar to the ones she used on the Children, she continued to deny use of the rod to discipline the Children but did not remember using the rod as a pointer to show CD where he had failed to clean the toilet bowl after using it. It was put to her she had lied to the police, she said she was anxious, distressed and confused but "when I came to court I pondered over everything and had to put things straight". Since that appeared to be an admission of lying previously rather than just being confused I asked her if she was accepting she had lied and she agreed she had "in some aspects" but went on to claim she was really anxious and stressed. Whilst I can understand that might have been the case (her whole world had been turned upside down) it is not entirely consistent with being able to give lucid and clear answers to questions at other points in the first 2 interviews on 16 March 2023: for example [Z21] and [Z22] and specifically in relation to where the sticks and rod were found she gave a very long and detailed explanation of how the bed was fitted, "you can't go behind it" [Z48] and it is "almost permanent" [Z49].

40. The Local Authority also challenged the truth of what she was now saying: she had earlier said that she became aware that physical chastisement in the UK was not acceptable as a result of attending church conference(s) and the Triple P parenting course but this was after proceedings started and it was put to the Mother there was no reason to lie on 16 March 2023 if at the time she

did not know what she now accepts she did was unacceptable. She again relied on the humiliation, shock and distress of being arrested.

41. I have to consider if the earlier lies to the police are probative of guilt rather than evidence of confusion or mistake. Given the Mother's admission she lied I find they were deliberate untruths. I have to consider if they relate to a significant issue. Clearly they did, they were central to the allegations of beating. I have to consider if they were advanced for a reason that does not point to guilt i.e. because of shock, pain, humiliation and feeling overwhelmed. There are two reasons I reject the Mother's explanation for the untruths: first because she gave lucid answers to other questions in interview. Second, by the time of the interview with the Guardian it is hard to envisage the shock continuing and by that stage the Mother had legal advice. I do not find this explanation a credible explanation for the inconsistency and her evidence about what did or did not happen has to be seen against that backdrop.

Father

42. The Father gave a no comment police interview but a pre-prepared statement was read out in which he said:

[Z3]

I believe that CC is behind the allegations due to differences between my wife and I and her over the lifestyle she is choosing.

43. He also makes specific reference to this at [C93b/4] which I set out below. The theme was developed in his oral evidence and I address it below when considering the credibility of the Children.

44. In relation to allegation 9 (that the Mother assaulted an older sibling and this was witnessed by CE) he said that CC must have heard an incident where he disciplined CA by putting her in the hanging position (legs on a shelf and head on the ground) and because she was fat she fell and he "gave her a few canes". Not only did his account come late (it was not in the response to the allegations or in his statement and he did not avail himself of the opportunity to file a further statement) but it was internally inconsistent: he initially seemed to be implying that somehow CE used this incident to fabricate allegation 9 but then in cross-examination said that CD and CE were not in the room and did not see the incident, then that CC and CB must have been standing by the door and seen, then that CD and CE could have been standing by the door, then that there was a

curtain at the door so they “must have heard” and then finally that “CC must have told them, she must have heard it, CC didn’t see it”.

45. The Father’s case also developed in relation to the specific allegations against him:
- a) In relation to allegation 10 he admitted possessing a whip (koboko) in oral evidence when he had not done so previously;
 - b) In relation to allegation 13, having described the stress positions as “not a serious punishment” in his response to allegations in his oral evidence he accepted they were “designed to be a painful punishment”; and
 - c) In relation to allegation 14 he accepted the children did suffer emotional harm having previously denied it.

46. As with the Mother, the Father’s evidence must be seen against this backdrop.

The Children generally

47. The Mother says that “the allegations they have made are extremely exaggerated and some are simply untrue” [C95/5]. She says the Children’s motivation to lie is that they were trying to get away from home and “CC is behind a lot of what has been said” [C95/5].

48. The Father gives further details as to the motivation of the Children to tell lies:

[C93b/4]

... The allegations, I believe are mastermind by CC because she believed that she would get housed for free if the children we[r]e removed and, it would afford her the benefit of staying at the care home expenses free and not having to take care of them or cook for Them. . It would also afford her the time to go to out whenever she likes without any person questioning her whereabouts. The difficulty now is that the children have lied about their treatment and exaggerated issues and are now stuck in those lies. [sic]

49. I note that when the police attended for a welfare visit on 7 March 2023 the Children and CC appear to suggest that an online report may have come from a neighbour, the social work chronology says it was from CC. When they were asked by police if they had any concerns about child abuse there was nervous laughter between them. I observed to counsel that whilst it is difficult to be certain it did appear to be in the manner of there being concerns but them not being sure if they wanted to share them. Two things arise from this, first if they were nervous to share something it is consistent with there being something to share and second, more importantly, it is not

consistent with a plot masterminded by CC to get the parents in to trouble. If that were the case then this was the opportunity for the Children to start their lying about what was going on in the home. Counsel for the Father suggested there may be two other alternatives: that there was a plot but the Children were having second thoughts or that CC had made the report online intending to involve CD and CE in the fabrication but had not yet had time to discuss it with them. Whilst there is merit in that submission it does not sit easily with the Father's evidence in cross-examination that "long ago, CC had this in mind and that's why I believe most of the scenarios the Children setup were provocative to the Mother to beat them" and later "CC must have been preparing their minds before the social work visit". If that is the case (i.e. this was not only a plot to fabricate what happened in the past but a plot to provoke actions which could then be relied upon) it seems extremely unlikely that neither of the Children would go on to make the allegations when they had the opportunity to do so when the police visited on 7 March 2023.

50. Even so, I accept the principle of the submission, I should be very cautious about attaching weight to the Children's demeanour as recorded in the BWV.

51. Counsel for the Father also points out the absence of any report of the allegations to school which he says is "unusual".

52. Stepping back though there is no evidence at all of a plot between CC and the Children save that the parents, to some extent, deny the allegations as the Children allege. CC has not given evidence, there is no evidence from the foster care logs of collusion, the Children have not been called to give evidence for this to be put to them and neither parent has advanced any reason why CC would want the Children to fabricate the events except in the vaguest of terms as set out above. On the balance of probabilities I dismiss this hypothesis.

CD

53. When the Mother gave oral evidence she said that "CD didn't used to lie...he is not a good liar" and after lying he "will come and say well mummy I'm sorry that thing I said was a lie".

54. The Father points to one occasion within the foster care logs that appears to suggest CD had not told the truth about taking another child's shirt [J61] although the context is not really very clear and there has been no direct evidence of this incident. In any event a lie about taking another child's shirt is in really quite a different category from sustained lying about abuse from your parents. I cannot sensibly place any weight on this small piece of evidence.

55. In the course of the VRI CD's recollection (of being beaten and his sister being sent to get sticks) accords with the audio recording.

CE

56. When the Mother gave oral evidence she said that "CE lies a lot...she is the last person I would ask if I wanted to know the truth" but later in cross-examination when asked by me she could not think of any reason why CE may have fabricated the allegations.

57. In the course of the VRI and as I note below in relation to allegation 2, CE does not appear to have exaggerated the length of the beating she says she sustained on 18 February 2023 and accurately records the length of CD's beating.

58. There is some limited evidence of general untruthfulness by CE in the foster logs:

- a) It is recorded that CE said she had showered but had not in fact done so [J8]; and
- b) It is recorded she told the school she did not have lunch when in fact the foster carer had made her a packed lunch each day [J34].

1.1: 18 February 2023 Mother assaulted CD to the feet, back and head with a cane or stick in excess of 100 times over a period one hour

59. The Mother accepts hitting CD on the feet but denies hitting on the head or back; she denies it was over 100 times. In her oral evidence she said CD moved his hand or jumped up and she missed with the cane hitting the wall or ground. She says she hit "about a dozen" times.

60. The principle evidence is an audio recording [I4]. The context for this is described by CD in his police interview. He says the "house wasn't clean enough in her point of view" [I191] and she made him rest his hands and knees on the wall with his feet together and "then she hit them" [I192] but if he moved "she might hit my back or my head a lot" [I192], he thought she was "using her full strength because they hurt a lot on my feet" [I193]

61. Having listened to the audio recording that CD made I counted 86 strikes in 1 hour and 5 minutes. It is not possible to identify from the audio recording alone which, if any, parts of the body were hit.

62. The Mother says that whilst the audio recording "sounds as though the cane hit him around 79 times...that is not what happened". She says:

[C96/8]

...I accept that I did hit CD with the cane that day however not nearly as many times as it sounds like. I believe I hit him around a dozen times on his feet. When I went to hit him he kept moving his foot out of the way and the cane hit the floor instead. Then he would scream as if I had hit him. I couldn't understand what he was doing at the time and did ask him why he was screaming although I cannot pick this out on the recording as it is so muffled. He was clearly trying to make it sound like he had been hit far more times than he had.

63. Having listened to the recording it is quite hard to visualise CD fabricating responses to what sounds like him being hit repeatedly. It would require sustained, consistent acting over a long period and, as the Mother concedes, there is nothing on the recording to suggest she challenged his alleged acting.

64. Further, although CD told the police that "I might move a lot" [1193] there is only one recording of the Mother telling CD not to move: at 6:30 she can be heard saying "keep your head/leg [not clear] here". Otherwise there is no evidence that I could detect of her telling him to stop moving out of the way when she was trying to hit him. I accept that there are times when the apparent sound of a cane hitting him is not followed by louder noises of crying from him which would potentially be consistent with the strike missing but given the sheer number of times she would have had to have missed (she only admits 12 strikes in her oral evidence so in the region of 70 misses) I find it difficult to credit there were only 12 successful strikes.

65. I also take into account the mismatch between the audio recording of apparently 11 strikes before the Mother telling CE to "cut me strong, nice sticks" at 5:40. There are then a further 21 before another request for "Nice long cane...long not short...strong" at 24:24. If the assault was as limited as the Mother makes out why would she have needed to request further sticks?

66. On balance I find it highly unlikely that if CD had been fabricating his responses (which are more than mere whimpers) there would not have been some audible response from the Mother challenging that or her demanding he stayed still.

67. Bearing in mind the absence of good evidence for CD to lie, the corroborative evidence of CE that CD was beaten for around an hour and the Mother's lies to police in the first interview and the Guardian on 7 April 2023 and my own assessment of the audio recording as set out above I find the allegation proved as follows:

On 18 February 2023 the Mother assaulted CD by beating him on the feet with a cane approximately 86 times over the course of 1 hour and 5 minutes.

1.2: 18 February 2023 Mother instructed CE to fetch “strong nice sticks” to beat CD
68. The Mother accepts this and I confirm I find:

On 18 February 2023 the Mother instructed CE to fetch “strong nice sticks” to beat CD.

1.3: 18 February 2023 Mother continued the assault despite CD weeping, crying and screaming and repeated pleas for her to stop

69. The Mother accepts this but says CD was “doing this when he had not been hit”. It is not clear what point the Mother makes with the rider. It is clear from the audio recording that for much of the recording CD was in distress, there are specific instances when, after what appears to be the sound of a cane hitting him, he cries out or weeps more loudly. There are times when the apparent sound of a cane hitting him is not followed by louder noises from him but if the Mother is asserting he was fabricating distress in response to a trivial tap I reject that. His sounds of distress are entirely convincing, they are kept up throughout the recording and I find it highly unlikely he would have been able to fake his distress for the extended period of the recording. Accordingly taken with my finding above I find on the balance of probabilities that:

The Mother continued the assault despite CD weeping, crying and screaming and pleas for her to stop.

2: 18 February 2023 Mother assaulted CE by beating her with a cane or stick over a period of one and a half hours

70. The Mother accepts hitting CE with a cane “but only around 3 times over a minute”. Her admission is consistent with the audio recording but that recording is a snapshot of the day only. In her statement the Mother accepts hitting CE with “a cane a few times when she brought the twigs back” because she felt CE had deliberately brought back “tiny twigs” [C96/9].

71. In CD’s VRI he says:

[I194]

My sister got hit before I came back from school the same amount. I think my sister was a little bit longer than me but I didn’t, I couldn’t record that cos CE doesn’t have a phone.

[I195]

But she said that it took, like, one hour 30 minutes so a lot longer than mine.

72. CE appears to be speaking about this incident at [I177] (see refers to “when the recording was” at the top of the page and to the recording at the bottom of the page). She describes the incident occurring because she had not folded her clothes and her brother is meant to tell her to. She describes her Mother starting to hit her “hands again” before her brother came back from his paper round and then says “after she’s beaten me, like, at least 80 or something, she goes to my brother”. She says that the duration was “an hour or two” and then “one hour and 30 minutes” [I178] and her recollection that the beating of CD was more or less accurate (“she beat my brother for, like one hour and a couple of minutes”). Both her un-prompted correction and the accurate recollection of CD’s beating lends credibility to her account of her own beating.

73. Noting that CE is saying this was before CD returned home it must follow that CD’s evidence is multiple hearsay.

74. The Local Authority also rely on the apparent lack of exaggeration by reference to CE saying only that she had been hit to the hands even when asked if it was “anywhere else?” [I178].

75. Having found against the Mother on the principal allegation and noting CE’s allegation is broadly consistent with the beating of CD both as to duration and number of strikes I find this allegation proved on the balance of probabilities:

On 18 February 2023 the Mother assaulted CE by beating her with a cane over a period of approximately 1.5 hours.

3: Mother has previously frequently assaulted the Children by repeatedly hitting them with implements including canes, sticks, a metal rod... The frequency has been daily at times and the duration up to 30 minutes

76. The Local Authority rely on allegations 4, 5 and 6 as examples. In closing submissions the reference to the Children having been hit with “canes, sticks, a metal rod and cable” was amended to remove reference to a cable.

77. The Mother accepts hitting with canes but not other implements and accepts the event would last around 30 minutes in total including “talking to the children about what they had done wrong”; she denies it could be daily.

78. In CD’s VRI he says he had been beaten with a cane:

[I195]

Maybe a few times before but normally it should take, like, 20 minutes

...

And that can be every two days, every day, well, there was a time that she used to do it every day. She literally said it herself. Like, every little thing that makes her a little bit angry, she's gonna beat us for it and she used to beat us in, like, rounds. A round is, like, 12 strokes and two rounds is, like, well, before, a round used to be 24 strokes but she reduced it to 12 and then that means that she can beat us, like, three rounds or two rounds sometimes.

79. When he was later asked how long it lasted he said:

[I196]

Maybe 15, 20 minutes. Wait, yeah, 20 minutes, 15—

80. And as to the implement:

[I197]

DC SH: —has she ever used anything other than these canes to beat you with?

CD: She used... she has used iron and wire before.

DC SH: Okay. What [inaudible 00:15:33], can you describe to me the iron?

CD: Er, well, it was the iron I gave you, she used it on our hand. She only gave us, like, a few strokes, maybe, like, four or three

81. My inference is that the “iron” being referred to is the black rod that is seen alongside two twigs in the photo at [I5] and CD refers to it being black at [I198]. There is reference to this in the Pre-Interview Assessment at [I45-46] there is no metadata but the exhibits they show appear to have been seized on 15 March 2023 (see the statement of DC Haselgrove [I114-5]).

82. CE was rather vaguer saying beatings happened “often enough” [I172] and it had been going on for as long as she could remember [I174].

83. In the absence of specific allegations (save as below) it is very hard to make this finding on the balance of probabilities and I do not do so.

4: 2021-22 Mother assaulted the Children by beating them in excess of 100 times as a result of them not meeting expectations at school

84. The Mother denies this. When she gave oral evidence she said that it is a “big lie” and she would respond to poor results by setting a timetable for reduced playing time and more reading (work?) time.

85. This allegation appears to derive from CD's VRI:

[I202]

So I think... me and CE's results wasn't good enough so that day, she beat us, like, 100 and something strokes [inaudible 00:25:52], yeah. Yeah, I couldn't count that day because she didn't repeat a lot of times but this time, she just kept starting it again and she was, like, she stopped counting in her head but I think she never counts. We just count ourselves how many strokes she gives us but the time about our results, she gave us, like, twice because of our results. It was, like, over 100 strokes.

86. In her VRI CE is more specific:

[I174-I175]

DC SH: Yes. Okay, and is there, like, a normal pattern that happens with this beatings? How they normally happen?

CE: Yeah, erm, if you did something mild she'd beat you six. If you do something, erm, bad, she'd beat you 12. You do something really bad, she'll beat you 24 but I don't know why she started increasing that to 48 for some reason but, yeah.

DC SH: Okay. Has she ever beaten you 48 times?

CE: She's beaten me than 48 times once, cos I came back with, like, bad results from school cos, erm, I don't think I was taking school as seriously because it was the start of Year 7 and everyone was just getting to know each other, erm, but yeah, she beat me for that, like, a lot more... or was that Year 6? I don't know, I think it was in Year 6 but, yeah.

DC SH: Okay. Tell me about that time then when she beat you.

CE: Erm, I came back from school and I saw the envelope open, it was, like, addressed to the parents of CE and I was, like, "Oh my god," cos they already said they were gonna send the results home, but I didn't know they were gonna be that efficient—

DC SH: Yes?

CE: —so they... like, she called me up to her room and normally, erm, she was just chatting to me about it, like, er, like, a normal person and, erm, then she decided to be, like... she now started raising her voice. I was, like, "Oh my god," and then she told me to kneel down and I was, like, "Okay, she'll beat me 24 and I'll get away with it," but no, she told me that she was gonna beat me til her arms start hurting.

...

She was hitting my hand and, erm, obviously I was, like, carrying the stuff and then she... after, like, 24 and she decided to start hitting my legs again. I'm, like, "You just said you weren't gonna hit my leg," and she's, like, "Okay." She keeps hitting my leg and then, like, I start making, like, a lot of noise cos obviously I'm... at this point, I'm really, like, crying and, erm, she, like, she hits, like, my thigh a little bit, like, be... my, like, behind my thigh...

...

DC SH: Okay. How long did that happen, that beating?

CE: That was, like, one hour long.

DC SH: Okay, and what was she beating you with?

CE: With, erm, a wooden cane.

87. As to 48 impacts the Mother says that is very specific and that does not have the ring of truth to it. I disagree, the Mother's evidence and both Children's evidence is of multiples of 12 being used to discipline and 48 is a multiple of 12. The specificity CE uses lends weight to her allegation that this was two rounds of 24.

88. Against the background of my findings against the Mother above I find CE's report is credible and find the allegation proved although limited to 48 strikes to CE not 100 and not to CD:

In 2021-22 the Mother assaulted CE by beating her 48 times as a result of her not meeting expectations at school.

5: Undated Mother assaulted the Children by hitting them on the hand with a metal rod

89. This allegation was amended at the outset of the hearing to remove reference to the date (previously said to be March 2023) and an injury to CD (previously said to be to his hand).

90. The Mother denies this. She admits picking up a metal rod and pointing at CD "on the occasion when CD left the toilet dirty" [C96/10] although says it was not meant as a threat she would hit him.

91. When she gave oral evidence she said:

I didn't use the rod, it's something we used to put across the shoe rack and put church hats on top, the shoe rack was falling so got the rod out to arrange the shoe rack and one of them left it by the bathroom door, only time I was holding rod was when CD used the toilet and didn't flush it and I came and I said CD and CE who used the toilet and didn't flush it so CD came and this was just by the toilet door and I used

it [mimes using it as a pointer to point into the toilet bowl] whilst I was talking to him I was pointing to the toilet
He may have got impression I was threatening to hit but I didn't

92. It is difficult to see why, in the circumstances, she would have picked it up at all if it was not a threat. However, I do accept a threat can be made without an intention to carry through on it.

93. She also denies hitting CD's hand until it bled saying he "had a cut on his finger but he got this from gardening", cutting it on a thorn [C96/11].

94. In his VRI CD says the worst injury was when the Mother "hit my hand and, like, it cut a bit of my skin but it left a little bit of a scar on my hand" [I199]. He had previously referred to the Mother using "iron and wire before" [I197] (see above) and says this was in Nigeria.

95. In her VRI CE describes the last time anything physical was done and she said it was on Monday [I169]. She described the Mother going in to the bedroom and hearing "something, like metal" hitting something; she goes on:

[I170]

So, erm, she told my brother to come back and then she hits my brother first for being, like, for going the other way. So she beats my brother first and, like, she's, she beat him, like, six strokes. As she's beating, you can actually, like, hear the, the sound of the cane and I was, like, "Oh, my god. That cane's actually really hard." So I try and be a [inaudible 00:15:04] now, like, just be, like, like, screaming if she hits me so she'd be, like, "Oh, this actually really hurts, I shouldn't do it," but no, she hit me, like, six times and then she's trying to go hit my brother because that's her round, she's trying to go hit my brothers again and, erm, she hits him, like, once, twice and then he just starts bleeding and his, on his, like, hand and she's, like... she doesn't really care [inaudible 00:15:32] he's literally saying, "Mum, I'm bleeding,"

...

She was, like, ["What did mum hit you guys with?" 00:16:05] and I was, like, "She hit us with this, erm, cane from a shoe rack, like, this metal thing from my shoe rack," and then, yeah, that was pretty much it.

96. I do not find the allegation proved. CE talks of a cane not a rod and the injury being recent to implicitly in the UK and CD talks of the rod being used in Nigeria.

6: Undated Mother assaulted CE by hitting her on the legs 48 times over 40 minutes with a cane after finding her sleeping not showering

97. The Mother denies this. She makes reference to an incident which she describes as follows:

[C97/15]

CE has alleged that there was an incident when I hit her in the shower. This is not true. It was a Sunday and we were getting ready for church. CE went into the bathroom and was in there for around 15 minutes. She was clearly trying to pretend she had showered but when I went into the bathroom after her I noticed the shower was still dry. I called CE back in and told her to have a shower. I stood at the door and waited until I heard her turn the water on. I did not hit her.

98. In support the Mother relies on a foster care log which records CE having said she had showered but not in fact having done so [J8].

99. She elaborated in her oral evidence saying that this incident occurred on a Sunday morning and there simply would not be time for a 40 minute beating before the bus came at around 9am to take them to church.

100. In her VRI CE describes the incident in this way:

[I172-I173]

I was about to, like, put on my clothes without showering cos she... she only told me, like, "Oh, we're going to church, hurry up and do everything like putting your clothes," so I was, like, "Okay," cos I just woke up from bed, erm, cos I, I slept in a little bit and she just came cos I thought she was gonna come in the afternoon after church cos, like... yeah, and then, so she came in, she caught me sleeping. She was, like, "Okay, you know, get dressed, we're leaving in, like, a couple of minutes." I was, like, "Okay," so I was getting dressed now and then she barges into my room again and she's, like, no, she didn't barge, she was, like, "Why is the shower not on?" I was, like, I'm changing. She was, like, "I thought I told you to go to the shower." I was, like, "You told me to dress up." She said, like, "Are you talking back?" Like, and then she says, "Okay, wait there." So I stayed there and she comes in with, like, erm, a cane and I'm, like, [inaudible 39 00:23:13] well, [inaudible 00:23:13] we know how strong the cane is by looking at it and, like, was, like, I'm, like, "Oh my god, that's gonna hurt," so she stays there, I thought she was gonna, like, beat my hand and stuff but then she starts beating my leg. My leg, and then, like, she beats me, like, [48? 00:23:13] on my leg cos... well, she's done that before on my leg but, like, it's not that serious.

101. She describes the incident lasting “like...40 minutes” and on 48 occasions [I173] (see above in relation to the use of this number).

102. I do not find this allegation proved. There is no exploration with CE as to how there would be time for a 40 minute beating before church and no corroborative evidence from CD.

7: 5 or 12 March 2023 Mother made the Children eat spoonfuls of pepper and has threatened to apply pepper to their eyes, mouth and ears

103. The Mother accepts getting the Children to eat a small amount of hot pepper residue on a dinner plate but denies the allegation to the extent of spoonfuls and threatening to apply pepper to their eyes, mouths and ears. In her oral evidence she explained the hot pepper being referred to was paprika in powdered form. I could not understand how there could be a residue on the plate for the incident to occur as the Mother said but she explained it was used as a condiment on the side of the plate to dip food into. When asked she could not remember what the punishment was for.

104. The incident is dated from CE saying in her VRI it happened on a Sunday “two weeks ago” [I169], the interview being on 22 March 2023 and the preceding 2 Sundays being 5 and 12 March.

105. In his VRI CD says:

[I200]

CD: Erm, well, I can... I don't think we've talked about the night that she made us, like, kneel down in a room and made us, like, eat pepper and then we just... knelt down there for a while until they called us [that? 00:22:23] she had night work and she decided to let us go, cos that same night, she was talking about us, like, taking pepper, putting it in our eyes, our nose, our mouth and our ears and I was just sitting there til the next morning and then she continues and we don't go to school but then that all ended when they told her that she had work booked for

the next day so she told us that we're lucky that she has work because she was gonna tell us not to go to school because of that.

DC SH: Okay.

CD: Yeah.

DC SH: So did you get pepper put into your—

CD: Oh, no, she was about to put it in our eyes and nose until she remembered that we also had school the next day so she let us go but then when my sister, I think that... I don't know what's happening because she said that she couldn't breathe well and my mum got angry cos

she thought she was lying. So she took, like, a 2 laptop wire... not a lap... yeah, a laptop wire and started just, erm, beating her around her body.

106. This seems to be an occasion where there was a threat; later there is the following exchange:

[I201]

DC SH: Can you tell me about this pepper that she put [inaudible 00:23:55]?

CD: It's, like, you know grounded pepper, right?

DC SH: Yes.

CD: In a... she made us, like, take spoons and like it up with it. Erm, I took four spoons but, but the others took, they took three spoons and she basically said that we weren't crying enough so we were gonna keep taking it or she was gonna put it in our eyes to make us cry more. She was just saying that it was not entering us enough for us to understand, like, how much... what we've done.

107. That description is entirely consistent with CE's in her VRI:

[I167]

CE: ...she was talking to us and she told my brother to go, erm, give her, like, go downstairs and get the pepper...then, like, she started saying, "Okay, so CD, you take the first one," and I was, like, er, cos obviously before, after CD [it was? 00:06:49] gonna be me cos I was staying right next to CD. I tried to, like, move away from there and she was, like, "CE, come up," and then... so I took the pepper as well and then my sister took the pepper and I remember mum saying, like, "Oh, you guys know that I don't want to do this, right?" and me and my siblings just started, like, kind of looking at each other and my mum was, like, "Why are you guys looking at each other? You guys should be looking at me," and we were just getting really scared and my sister was, like, "Oh, my god," and then I think after, like, two more rounds of that, she went to, like, lie down and she was, she took, she, like, locked us inside the room and she was, like, the key was under her pillow and if we try and get it then she's gonna kill us.

...

[I168]

DC SH: Okay. When you say you took the pepper, what does that mean?

CE: Like, eat it, like... it's powdered pepper, it was just [inaudible 00:08:48].

DC SH: Okay, and you say... did you say there was a spoon?

CE: [Nods]

DC SH: So tell me about what happened there?

CE: Erm, she would, like, make us dish a spoon of pepper for ourselves and if it was too small, she could add more to it and stuff.

DC SH: Okay. How many spoons of pepper did you have?

CE: Well, I had three, my brother had four because he decided that, oh, he was gonna just do everything quickly and give my mum... she was... I could tell she was tired so I just stalled and my brother, he just wanted to get it done with so he just decided [inaudible 00:09:27] "I'll take my other spoon, yeah." So he can finish quickly and leave, cos he had school tomorrow and my mum was, like, "You guys aren't going to school tomorrow, the punishment gonna continue after." That's when her work called her and she... and they were, like, "Okay, you're coming for a long day tomorrow and stuff."

108. What I find particularly interesting is the consistency in relation to CD eating 4 spoons of pepper. It would be an irrelevant fact for the purpose of making up the event which lends their evidence credibility.

109. Both parents invite me to take judicial notice that the Children simply could not eat 3 or 4 spoons of paprika. I do not find I am able to do this. It would depend on the spoon size, the strength of the paprika and, perhaps, the gaps between spoonfuls. The Mother also draws attention to the fact that when CE was asked by the police "How did it make you feel" she did not say her mouth was burning or that she felt unwell [I168/29-30]. In fact she seems to have either misunderstood the question or evaded it saying if she acted "really sad, she'd, like, stop". Given this possible misunderstanding and the imprecise nature of the question I do not find I can place weight on the non-response in the way I am invited to.

110. Given the findings against the Mother above and the consistency between CD and CE's accounts I find the allegation proved:

On 5 or 12 March 2022 the Mother made the Children eat spoonfuls of paprika and has threatened to apply pepper to their eyes, mouth and ears.

8: Undated Mother threatened the Children with a kitchen knife including threatening to kill them.

111. This is denied. The Mother does recall a specific incident in this way:

[C97/14]

I was in the kitchen chopping some vegetables for dinner. CE had just been eating some rice and poured the contents of her uneaten food into the sink rather than the bin. I told her not to do it again and I accept that I did point towards the sink with the knife in my hand but I was not threatening her, I was just pointing and happened to have the knife in my hand. I do not believe that the children would have thought I was threatening CE with a knife.

112. I note that this explanation was not given to the police on 16 March 2023 [Z51-Z54] when she was given an extensive opportunity to think how something may have happened that had been misinterpreted by the Children. When she gave her oral evidence she said that she was “feeling fear and I was anxious”. The Mother said the incident she now describes occurred to her after the police interviews when she came to reflect on it.

113. In his VRI CD says:

[I198]

So any time she's close to, like... she's in the kitchen and stuff, we sometimes try to take the knives away in case she throws at us because she's always saying one day that she might mistakenly kill us. It's just weird, what she says but she says sometimes that, “Oh, you guys should not trigger me or one day I may mistakenly kill you or something.” It's just weird.

...

Erm, the knife, in the kitchen, she picked up the knife and, like, she came close to us with it and she was, like, “Oh, you guys should stop annoying me,” or “You guys should kept this area clean,” or something like that. She basically just threatens us a lot with it but I hope... I'm happy that she never actually used it on us.

114. In her VRI CE said the Mother was “waving the knife around” [I178] and said “”You guys...” she just [gave me some random stuff? 00:40:55], I don't remember what she was talking about and... but, like...” then she continued:

[I179]

DC SH: Okay. What was your mum doing with the knife?

CE: She was just waving it around and threatening to, like, erm, give us marks and stuff.

...

I can say she was fairly close to my brother and I think my brother was really bawling cos he thought he was gonna die. He told me he thought he was gonna die and I was, like, "Then why did you go in front of me? You dumb boy," and then, yeah.

DC SH: Okay. What was your mum saying? Can you remember?

CE: She was just threatening to kill us and, like, stab us or something.

115. The Mother invites me to take account of the fact notwithstanding this must have been a frightening incident as described CE could not remember when the incident was when she was asked in the VRI [I179/31-32]. Given her age I do not find this particularly surprising and can well imagine the event itself sticking in the child's mind without being aware of when it actually occurred.

116. Given the corroborative evidence of CD and CE and the Mother's failure to mention what she now says happened when asked about it extensively on 16 March 2023 I find the allegation proved:

The Mother threatened the Children with a kitchen knife including threatening to kill them on an unknown date.

9: Undated Mother assaulted older sibling witnessed by CE

117. This is denied.

118. In his VRI CD makes some reference to an incident which he appears to say he witnessed involving CC:

[I201]

...my mum got angry cos she thought she was lying. So she took, like, a laptop wire... not a lap... yeah, a laptop wire and started just, erm, beating her around her body.

DC SH: Okay. Which sister was this?

CD: CC

119. He also refers to an incident in Nigeria (my emphasis):

[I197]

Er, well, it was the iron I gave you, she used it on our hand. She only gave us, like, a few strokes, maybe, like, four or three but, like, it just, it might have just come round a little bit but yeah, she stopped it in Nigeria when she hit my sister, when my dad hit my sister on the back

and she, like, fainted. So I thought that they will stop using iron from what happened back then.

120. CD seems to be referring to the Father hitting a sister and causing her to faint so it is not entirely corroborative of what CE says in her VRI. Further, she makes reference to CA rather than CC (my emphasis):

[1176]

Erm, my sister burnt the pot and, erm, my mum, my mum was beating, erm, my sister and she's beating her with this, like... metal thing. It's like this...mm, like the thing of a metal broom. You know the, erm, brooms that are metal...

...

Erm, so she was beating my sister with that and she's, like... my... she was hitting my sister's back in, like, all my sister's sides and like my, er, sister's hands. My sister was, like, [inaudible 00:32:53] this time my sister, she was... I could literally tell that my sister was gonna pass out so I'm, like, "Mummy, stop, stop, stop." Erm, I was a kid so she wouldn't, like, dare hit me with that kind of thing and so she was, like, "Come on, [move aside? 00:33:05] now," and, like, I just, I just seen my sister kind of, like, blanking out, like a... her eyes are closing for way too long and I'm just crying cos... I'm not even crying that she's beating my sister anymore, I, I was actually... thought my sister was gonna die. So, like, I was, like, "Mum, just stop, stop, look at CA," and then she does stop for a bit now and CA was, like, "Mummy" and then she passed out and I just, er, ran downstairs. I thought my mum had killed my sister.

121. She describes the incident occurring in Nigeria.

122. When it was put to the Mother in cross-examination she said that CA did not cook so it could not be a true allegation.

123. When the Father gave oral evidence he said that he thought CE was lying because the incident she was referring to was him hitting CA in Nigeria in 2013 when CE would have been 3 years old (see above). For the reasons given above I do not find this attempt at linking what CE is reporting to an incident event in 2013 is credible in the circumstances and do not consider it exonerates the Mother in any way. However, there is no consistency between CD and CE's accounts and I note especially that CD refers to the Father hitting a sister in Nigeria and her fainting but CE refers to the Mother. I do not find the allegation proved.

10: Undated Father repeatedly assaulted the Children by beating them on the hands, feet and head with a cane and whip when in Nigeria

124. The Father admits occasionally he “hit the children across the hand with a small cane...as a method of discipline”. In cross-examination he admitted to having a koboko (cow whip) but did not use it for discipline although he admitted threatening to bring it to the UK when talking to the Children over the phone or by video.

125. In his VRI CD says:

[I197]

It was, like, it was, like, flexible, it has, like, multiple, like, edges and it was, like, easier to, like, whip cows when they don't like or want to move but he brought it, he brought it and brought it home to use on us and I think he's, like, when one of us lost something and we didn't, like, tell them where it was or we just didn't remember it, he called us individually upstairs to come and get beaten and they called us individually into the room and, like, whipped us with the cane on our hands, on our feet, on our head and stuff—

126. This is an allegation of being whipped with a cane not with a whip so it is difficult to see how the Local Authority can make out this allegation save to the extent of the admission and the admission that the Father now makes in relation to allegation 11 (beating CE to the legs and feet). I make the finding that:

On multiple occasions before 2018 (the date when the Children moved from Nigeria) the Father assaulted the Children by beating them on the hands, legs and feet with a cane.

11: On more than one occasion the Father has assaulted CE by beating after discovering her using social media and in January 2023 he assaulted her by making her kneel down and beating her on her feet, the assault lasted 30 minutes

127. The Father admits once caning her “a few strokes on her feet” “on social media issues in September 2022” when CE was “talking about her being bisexual that was vexing for a child of her age”. He denies causing wounds shown in the police disclosure saying they are “very fresh and can only be a very recent occurrence” so “CE must have self-harmed in order to buttress her point of allegation” and the “angle of these fresh scar[']s are not practically possible from a beating position”. In the course of cross-examination he accepted making CE kneel down and beating her legs and feet but again said it was in September 2022.

128. Dr Hughes' Child Protection Medical report records (my emphasis):

[F26i]

During the examination: CE told me that the scratches under her feet were from being hit with "something". She told me "Dad found out I'd got snapchat". She thought that had happened in January.

129. The Father says that CE was "posting inappropriate videos in Tic Tok. Engaging in sexually explicit discussions in chat groups and using a Snapchat avatar with Devils horns [*sic*]" [C93c/6] and he denies having "beaten any of my child to bring out blood before" [C93g/37].

130. CE gives the following description in the VRI:

[I180]

Erm, so he found out that, erm, I had social media and, erm, he's beat me for having social media before but, like, erm, last time I think he was beating me for just having social media.

...

I'm not meant to have social media, nothing, until I'm, like, 13 and, erm, he's... he's just going on this whole rampage saying, "So you decided to disobey me about what I said last time?" and then, erm, he told me to go kneel down near the sofa. Erm, and he stands on my leg, he literally stands on my leg and I'm, like, [inaudible 00:46:34] my leg so I'm kneeling down and he's just standing behind here [indicates calves? - video unclear due to zoom] and, erm, he's hitting the back of my leg so I can't move, I'm just there, innit?

[I181]

DC SH: How long was he stood on the back of your legs for?

CE: 30 minutes.

DC SH: 30 minutes?

27 CE: Yeah.

...

DC SH: Okay. What was he beating you with?

CE: A cane, like, a wooden cane.

[I182]

CE: Like, the back of my legs. Like heel... not my heel, like, not the front side but not [inaudible 00:49:06]. He had the pictures and stuff [inaudible 00:49:07]. It's actually not healed from, erm, this, it's not healed from January.

DC SH: Okay. So is that when this happened?

CE: Yeah.

DC SH: Okay. Do you remember when in January?

CE: Mm, no. I could say the... mm... just after my mum's birthday so it would be, like... the 10th? January the 10th.

131. Curiously, although CE told the police in the VRI that she deleted Snap Chat before her Father looked at her phone and the assault was because she had WhatsApp and because of messages on WhatsApp in the Pre-Interview Assessment she appears to say the incident arose because she had Snap Chat [I48] and this is what she told Dr Hughes.

132. There is a foster care log reporting CE saying "her dad beat her from 8.00pm till 3.00am" i.e. for 7 hours when she was caught by him on social media [J28] and it is said that goes to her credibility given that in the VRI she seems to suggest the whole period of discipline was 30 minutes. The foster carer has not been called to give evidence, had she been I would have asked whether those were the exact words used or whether CE might have been saying that there was anger or on and off discipline over the course of that period rather than a sustained period of beating for 7 hours. In any event the description of duration by CE in the VRI is imprecise as the question was "How long was he stood on the back of your legs for?" not how long was the period of discipline.

133. As to the number of incidents there is very little evidence of an incident before that described in detail by CE in the VRI. In the absence of further detail I cannot find on the balance of probability that CE was "assaulted...by beating" as alleged on the previous occasion.

134. So far as the substantive allegation is concerned CE's evidence corresponds to Father's save for the date: a beating to the feet and legs whilst CE was kneeling. I make that finding. I do not consider there is sufficient evidence to find the assault lasted 30 minutes in circumstances where there is possible inconsistency between what CE told the police and what is reported in the foster carer's log. I find:

In September 2022 or January 2023 and in relation to CE's social media use the Father beat CE to her legs and feet with a cane whilst making her kneel down.

12: January 2023 Father assaulted CD by beating him to remind him not to disobey the Mother

135. This is denied.

136. In his VRI CD says:

[I206]

DC SH: Okay. So do you remember when you were last hit? Like, what date that was, roughly?

CD: Yeah, he spent the New Year's with us. It might have been, like, January something.

137. Earlier he had said:

[I203]

DC SH: Okay. When was the last time that he beat you?

CD: Oh, probably, like, the day before he left.

DC SH: Okay.

CD: Yeah.

DC SH: Tell me about what happened that time.

CD: I think he was just talking about all the stuff that we've been doing to my mum and... maybe just to, like, remind us that we should never, like, make our mum angry again or maybe final, final beatings before he left but he just wanted something to stick in our heads before he left because he's always to bring meaning to his beatings, like, "Oh, this is to tell you guys that you should never, like, do this again," or, "You know, you should always listen to what your mum says,"

138. Father says this is very limited evidence in support of the allegation, there is no real description of the particular incident, I agree and do not find the allegation proved.

13: Undated Father made Children adopt painful stress positions as punishment and would beat them if they moved from those positions

139. The Father accepts using "hanging/handstand, press-ups and other exercises" as punishments but says they were "not a serious punishment" and were to "build their body frame" which they "enjoyed...rather than being caned" so much so that when he was overseas the Children "would often show me their progress with these exercises on video calls and show off how much they could do". He denies beating whilst the positions were adopted.

140. That explanation is corroborated by the Mother in her statement at [C97/16] and the Mother also says:

I accept that he did also get them to hold positions such as “hanging”. They would do this for around 2 to 3 minutes. I never saw my husband hit any of the children while they were doing any [of] the exercises or positions.

141. In his VRI CD says (my emphasis):

[I203-4]

...every time but every time he comes, his beatings hurt a lot and the difference between him is that he gives us punishments a lot more than he beats so it hurts a lot more because he was in the military. He said that they never beat him there so he will just use, like, military punishments that he got from Nigeria.

So a few of them is, like, us, like, hanging. Like, that's when we, like, stay in, like, an incline. Our leg is on the table or on the shelf while our hand is, like, on the floor and he actually stops when he sees us crying or when our face is, like, red. Not red, like, when, like, our face is sweating because you know when blood comes to your head, like, you sweat a lot? So he says that the point of that is so that it made blood come to our head or for us to, like, scream a lot with this. He doesn't stop until he hears us, like, screaming loud and if he's very annoyed, he just comes and beats us on our, like, backside when, when I was screaming too much.

DC SH: Okay. How long are you in that position for?

CD: Mm, I don't really count but sometimes maybe 30 minutes or 25 minutes because it just hurts a lot. It feels like blood is actually in your head when you do it. Maybe 20 minutes cos I don't know long it takes blood to reach your head but it used to feel like blood is actually about to come out from face when he does it. So, or when we're, like, resting on our head [holds his right hand on top of his head and his left hand underneath his chin] with our hand on our back and our feet, it's kind of like a V position but, like, our backside is in the air while our head is on the floor and our feet is on the floor too and we're, like, in a V position.

...

[I205]

DC SH: When was the last time that this happened?

CD: Erm, he kind of started taking it as a joke but it was not a joke. When it's punishment, we have to do it until his heart content but, like, sometimes he just used to do that every day or every, like, two days or every time we'd make our mum scream a lot, he makes, erm, them do it or me do it.

142. In her VRI CE says that hanging “is the one that hurts the most” [I184].

143. When he gave oral evidence the Father admitted that in 2013 he had given CA “a few canes” after she fell from a hanging position when he was disciplining her (see above) which is consistent with the second part of the allegation. That is also consistent with what CE is reported to have said to the foster carer in relation to the incident forming the basis of allegation 11 (“She said she had to do a hand stand and when her legs dropped her dad would whip her.” [J28]). However, counsel for the Father drew my attention to what CE said in the VRI (my emphasis):

[I182]

Erm, [because he'll go? 00:49:47] “Kneel down, like, and raise your hands up,” cos at the point, at... if you do that for a long time, it, like, nothing will hurt at the start, you just think, like, “Oh, this is so... a reasonable punishment,” and your hands will start hurting really, really badly and you can't drop it down because, well, if you drop it down, he's just gonna make you do it for longer cos my dad, my dad is a really busy man. He, he can't be bothered so he, he will make you do that with your hands up and if you start dropping your hands down, he'll be, like, “Okay, one more minute” and then, yeah.

144. CE does not at that point allege she will be beaten for dropping her hands but I note that the stress position being described is different from those she is reported to have talked about in foster care and that which the Father admits in relation to CA.

145. The Father also admitted using the hanging position as described by both Children but not for more than a minute and once in a while used the inverted V position with both Children. In respect of CE he said about using a position where she knelt on the floor with her hands in the air “maybe I've done it as to beat her on the legs she'd kneel down”. He denied the duration alleged by the Children saying “can't stay even for 5 minutes”.

146. In a change of position from that set out in response to the allegations the Father accepted the positions were “designed to be a painful punishment” and accepted that they would “naturally start crying to come down” seconds after being put in the position. It goes to his credibility that he did not make that admission earlier as it tends to suggest he was seeking to minimise the effect of and extent of his behaviour. I have considered if an alternative explanation could be applied but by the time he drafted his response to the allegations he had legal advice and some time had passed since the shock of being arrested. I can think of no credible alternative explanation than that he was seeking to mislead the court in his response. Taking that into account and the Father's admission to using a “few canes” when CA dropped from the hanging position during a previous punishment I find

on balance the Father would, on occasion, beat the Children if they did not hold the stress positions he required them to adopt.

147. In closing submissions counsel for the Father invited me to consider that common sense dictates you cannot stand in the positions for the length of time alleged by the Children. I am not sure I can reach that conclusion on common sense grounds but I do find that the person subjected to the punishment may well feel it lasted longer than it actually did and the allegation does not in fact specify a time.

148. On the Father's admissions I find:

The Father subjected the Children to stress positions in the form of being made to hang upside down from a shelf and in an inverted V with their heads on the floor. This was intended by the Father to be a painful punishment and the Children crying soon after being put in that position evidences it was in fact painful. On occasions, if the Children moved from the positions, the Father would beat them with a cane.

149. I make no finding on the duration of the punishments.

14: Children have suffered emotional harm by reason of any proved allegations

150. This is accepted by the Mother but was initially denied by the Father.

151. I confess I could not understand the basis on which the Father denied this allegation given the admissions by the Mother to some of the other allegations but in any event in his oral evidence he accepted that the Children did suffer emotional harm when assaulted by him and the Mother and from witnessing each other being assaulted.

152. Accordingly I find:

The Children have each suffered emotional harm by being assaulted and witnessing their siblings being assaulted.