



**IN THE UPPER TRIBUNAL  
ADMINISTRATIVE APPEALS CHAMBER**

**Appeal No. UA-2021-000535-V  
[2024] UKUT 401 (AAC)**

On appeal from a decision of the Disclosure & Barring Service

**Between:**

**MM**

Appellant

- v -

**Disclosure & Barring Service**

Respondent

**Before:** Upper Tribunal Judge Mitchell  
Upper Tribunal Member Heggie  
Upper Tribunal Member Turner

**Hearing:** 10 January 2024

**Venue:** Hearing conducted remotely using Cloud Video Platform

**Representation:**

*Appellant:* Libby Anderson, of counsel, instructed by Olliers Solicitors

*Respondent:* Dominic Bayne, of counsel, instructed by DBS Legal Department

**DECISION**

**The decision of the Upper Tribunal is to DISMISS the appeal.**

The decisions of the Disclosure and Barring Service (ref. 00929482397) to include the Appellant on the list of persons barred from working with children, and the list of persons barred from working with children, maintained under the Vulnerable Groups Act 2006, involved neither an error of fact nor of law. Under section 4(5) of the 2006 Act, the Upper Tribunal **CONFIRMS** the DBS' decisions.

**ORDER UNDER RULE 14 of the TRIBUNAL PROCEDURE (UPPER TRIBUNAL)  
RULES 2018**

**Under rule 14(1)(b) of the 2018 Rules, the Upper Tribunal makes an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the Appellant’s daughter (referred to in these reasons as ‘D’), or to identify the Appellant (referred to as MM), as persons connected to these proceedings.**

**REASONS FOR DECISION**

**Background**

*Brief chronology*

1. The Appellant’s daughter, whom we refer to as ‘D in these reasons’, was born in 2003. D’s parents separated in 2009 and subsequently divorced. D remained living with her mother, the Appellant. Both parties agree that in 2014, when D was aged about 11, her behaviour deteriorated. In June or July 2015, D left her mother’s home and lived with her father for 17 months before returning to reside with her mother. In April 2017, a few weeks after returning to live with her mother, D was admitted, on a voluntary basis, to a secure mental health facility. D resisted returning to live with her mother and was instead placed in foster care. This was a voluntary placement, under section 20 of the Children Act 1989, rather than under a care order. D remained in foster care and did not return to either her mother’s or father’s care.

*D’s allegation that she was sexually abused by her mother (the Appellant)*

2. A Children’s Services ‘Record of Meeting’ document dated 5 April 2019 reported “[D] had been acting quite differently with...(foster carer) indicating that she wanted to disclose but was finding it difficult hard how to actually say what happened...”.

3. When D was living in foster care, she disclosed to her foster carer that she had been sexually abused by her mother when aged 11 and/or 12. The circumstances of the disclosure were described in a police witness statement given by the foster carer on 13 February 2020, the relevant parts of which are reproduced in the Annex to these reasons. Briefly, the foster carer described D’s aversion to physical contact,

how her behaviour and well-being would deteriorate following indirect contact with her mother, D's very gradual disclosure to the foster carer that something 'had happened' to her when living with her mother and, finally, D's written description (recorded on her iPad) of sexual abuse by her mother when aged 11/12.

4. On 7 May 2019, police officers visited D at her foster placement. D did not wish to discuss her allegations in any detail but reportedly confirmed her written iPad description of what happened. The police report of this visit is set out in the Annex to these reasons.

5. On 23 or 24 May 2019, D's foster carer sent an email which reported details of a discussion with D on the evening before an ABE (Achieving Best Evidence) police interview. This recounted D's anxiety about the interview and D's description of when she knew that what her mother did was wrong. The email is reproduced in the Annex to these reasons.

6. The first of two ABE interviews with D took place on 24 May 2019, in the presence of her social worker. The relevant parts of the interview transcript are set out in the Annex to these reasons but, briefly, D was very reluctant to speak but did confirm that the 'incidents' involved her mother, took place in a bathroom and that her mother dried her after D took a bath/shower. The interview ended once D became upset. It was clear that D did not wish to answer questions about the detail of what happened in the bathroom or anywhere else in the home that she shared with her mother. Given the very limited information provided by D during this interview, police officers decided to arrange a second ABE interview at which D would be assisted by a registered intermediary.

7. Officials in the local Children's Services Department spoke to one of D's brothers in the light of D's allegations. A note of the discussion was included in police records dated 24 May 2019:

"...[Brother] spoke about [D] growing up and that from the age of about 11 she started to be quite difficult at home and to have a difficult relationship with their mother. [Brother] was not negative about [D] and said that he felt that something significant had happened for [D] but that he was unaware what this was. [D] began to present as quite angry towards their mother although she continued to have a positive relationship with their father...[Brother] described his mother as the perfect mum and reported no concerns at home..."

8. On 4 June 2019, the Appellant was interviewed by the police under caution in the presence of her solicitor. The DBS case papers supplied to the Upper Tribunal do not include a transcript of the interview, but they do include a summary of the interview within police records, which is reproduced in the Annex to these reasons. Briefly, the Appellant denied ever having sexually assaulted D, that she ceased being involved in her children's bathing at age 8/9, D may have made up the allegations because the Appellant was the only person never to have rejected D and D knew that the Appellant would always love and support her no matter what.

9. On 16 June 2019, police officers spoke to the Appellant's ex-husband (D's father). The police note of the discussion included:

“...[Father] has described how he was shocked to hear of how [D] had implicated her mother in a sexual offence matter and described he has not at any time witnessed anything that he thinks will be pertinent to the investigation. He does however, describe how he will be able to “give lots of insight into manipulative behaviour etc...”.

10. On 3 October 2019, police officers conducted a second ABE interview with D. The interview was also attended by D's social worker and a person described by the interview transcript as an 'appropriate adult' but who appears in fact to have been a registered intermediary whose role was to assist D to communicate with interviewing officers. Communication aids were used, a body parts grid and 'gingerbread doll', and D listened to music through a single earphone during the interview. The interview transcript states that the interview lasted for 90 minutes. The transcript of the second interview is reproduced in the Annex to these reasons but, briefly:

- D said the incidents all occurred while she was in Primary School;
- D said that, in the bathroom, the Appellant first dried her top half with a towel. D could not verbalise which body parts were rubbed but indicated her breasts on the body part word grid;
- D could not verbalise which body part on the bottom half of her body was rubbed by the Appellant using a towel but indicated 'vagina' on the body part grid and gingerbread doll. Using the doll, D indicated that her mother dried between her legs and the front of her vagina;

- D stated that the Appellant used both a towel and 'fingers' although she initially would not answer the police officer's questions about what the Appellant did with her fingers;
- Following a short break in the interview, which was requested by D, she answered 'inside' when asked whether her mother's fingers touched outside or inside her body or somewhere else;
- D said these things happened in the bathroom more than several times;
- When asked whether these things happened anywhere apart from the bathroom, D said 'the living room'. When asked how often, D answered 'loads';
- When asked if the events in the living room were the same or different than in the bathroom, D answered 'same'. She nodded her head when asked if her mother touched her vagina in the living room. When asked where on her vagina she was touched, D answered 'inside';
- D stated that the living room incidents took place under a blanket on a sofa on which she sat with the Appellant;
- When asked if she could recall the longest gap between living room incidents, D answered a week.

11. The Appellant's ex-husband gave a police witness statement on 5 October 2019. The statement said nothing of direct relevance to D's allegations of sexual abuse but did make allegations of controlling and manipulative behaviour against the Appellant. Relevant parts of the statement are reproduced in the Annex to these reasons.

12. On 15 May 2020, the police reviewed the evidence related to D's allegations. The review report noted:

"based on what is known at this stage we have a one on one allegation, the complainant...may not even be willing to attend court....school records show the complainant was troubled girl, however no disclosures were made.

The key evidence is...where the complainant made an entry on her iPad. She mentions what happened this is her first disclosure to Foster Care as she was unable to verbalise what happened.

...If no other information/evidence is secured I still see this as a one on one allegation which would not need the threshold of taking to CPS.”

13. On 8 June 2020 the police decided that no further action would be taken in relation to D’s allegations. Accordingly, the Appellant was not charged with any criminal offence.

*DBS’ decision-making*

14. On 8 June 2021, the DBS wrote to the Appellant to inform her that they were minded to include her on the list of persons barred from working with children and the separate list of persons barred from working with vulnerable adults. The DBS’ proposal was based on provisional findings that the Appellant sexually abused her daughter, D, and “showed manipulative and controlling behaviour” towards her. The Appellant was invited to supply written representations, which she did.

15. The Appellant’s written representations to the DBS began with an extensive account of her relationship with her ex-husband, her perception of her daughter’s mental health problems and her ex-husband’s unwillingness to provide effective support. The representations went on to assert that, when D returned to live with her after spending 17 months with her father, “life started to settle down”. She and the, by now, 14-year-old D slept in the same bed “for comfort”. D’s mental health was poor, and she was admitted to hospital. When D was ready for discharge, her father refused to take her in, and the Appellant believed that D’s feeling of abandonment led her to attempt suicide. The Appellant’s attempts to establish an effective relationship with the foster carer with whom D was placed were simply those of a concerned parent. It was D’s foster carer who interpreted the ‘s’ that D wrote on her iPad as a reference to sexual assault. D’s first police interview, in which she largely refused to speak, was conducted oppressively. Questions were repeated in an attempt to coerce a response. D’s health had deteriorated in foster care. If the Appellant was at fault, foster care should have led to an improvement. And no one ever investigated what happened during the 17 months that D lived with her father.

16. In responding to the sexual abuse allegation, the Appellant's representations criticised various aspects of the police investigation, detailing its effect on her welfare and finances, but without directly addressing the allegations themselves save that they were 'categorically denied' and noting that they were made only after years of failures by public bodies to provide D with the help she needed.

17. The Appellant's representations were accompanied by a number of references. References were provided by: the Appellant's local MP; a worker at a charity established by the Appellant; the Appellant's psychotherapist; the Appellant's brother; the Appellant's sister; a fellow charity volunteer; the Appellant's two sons; a counsellor at a charity established by the Appellant; a longstanding friend (retired teacher); a fellow member of a local business network; and a former employer.

18. The Appellant's referees all painted a positive, in fact very positive, picture of her character. While many referees expressed the view that the Appellant posed no risk to either children or vulnerable adults, none directly expressed a view on the likelihood of the Appellant having sexually abused her daughter. The Appellant's written representation to the DBS assert that the referees were aware of the "incident giving rise to the allegation" but none of the references expressly mention an allegation of sexual abuse although the reference provided by a charity worker recounts having read a text message from D making allegations against the Appellant, and the brother's reference stated that he was "aware of allegations that [D] has made" but his view was that allegations of "inappropriate behaviour" were without foundation.

19. The DBS' final decision, taken on 10 August 2021, was to include the Appellant on the list of persons barred from working with children and the list of persons barred from working with vulnerable adults.

20. The DBS' principal finding of fact was that, on dates prior to 1 April 2019, the Appellant sexually assaulted her daughter D by touching her breasts and vagina and that this occurred "on multiple occasions and different locations" when D was aged 11 or younger. The DBS also found that, on dates prior to 3 May 2019, the Appellant "showed manipulative and controlling behaviour" towards D by attempting to control how foster carers cared for her, seeking weekly updates while D was in care, stating that D has mental health problems despite knowing "that this has not been diagnosed", chasing D at school and through a shopping centre, and texting D's

friends, having obtained their contact numbers from D's phone bill, and questioning them about D.

21. DBS' decision letter explained their evaluation of the evidence:

"Your representations have challenged the findings made by us. We have considered them alongside the information we already hold. Upon assessing your representations against the information that we already held, it was established that [D], your ex-husband and the foster parents were deemed to be more credible. Your explanation that the accusations of sexual assault had been fabricated between your ex-husband do not appear to be credible as these accusations were made whilst [D] was in foster care, also you stated within your representations that [D] was prompted by the foster parents to say that the allegations were sexual, and that the police used oppressive techniques to gain the complaint from [D]. As [D] gave a detailed account of the allegations against you, describing, when, where and how the sexual assaults took place, she was deemed to be credible, and this level of detail, consistently recalled appears unlikely to have been fabricated.

It is also acknowledged that you challenged the DBS' secondary findings...The DBS have no reason to question the credibility of [foster carer], and she appears to have been credible in her recollection of the events.

The DBS also assessed your representations of you stating that [D] had mental health problems...within the information received by the DBS it is stated that [D] did not have mental health concerns, and that her behaviour was likely due to her home life, due to this information being received from professional organisations, your explanation has not been deemed to be credible in this instance.

Also whilst assessing the context that you gave in relation to contacting [D's] friends by using her phone bill and chasing her through town and her school awards ceremony, these behaviours led to complaints by the parents of other children and have been reported by your ex-husband, who has previously been credible in his recollection and the DBS do not hold any information to suggest why he would fabricate these incidents."



22. The DBS found that the Appellant had “a sexual interest in pre-pubescent females” and “demonstrated a callousness / lack of empathy on various occasions and in various ways towards your daughter”. The Appellant’s supporting references “do not alter the DBS’s findings and they do not reduce our initial concerns”.

23. The Appellant’s inclusion on the children’s barred list was probably, it seems to us, inevitable in the light of the DBS’ findings. However, the DBS also included her on the vulnerable adults’ barred list. Their rationale for doing so was as follows:

“It is acknowledged that these incidents do not appear to have involved vulnerable adults and that this behaviour did not occur in regulated activity, but you appear to have demonstrated that you are willing to transgress legal boundaries to satisfy your own sexual needs regardless of the harm that this causes to those in your care. If you were to demonstrate this type of behaviour whilst caring for vulnerable adults, then this is likely to endanger them, as such we are also satisfied that it is appropriate to include you in the Adults’ Barred List.”

### **Grounds of appeal**

24. Following a hearing before Upper Tribunal Judge Hemingway, the Appellant was granted permission to appeal against DBS’ barring decisions. The judge’s permission determination read as follows:

“3. I grant permission to appeal on the basis that the DBS arguably made mistakes of fact with respect to all of the factual findings it relied upon...As to that, I take account of the fact that the appellant has (at least on the face of it) previous good character; that she has been able to provide impressive references which might have some relevance to the question of her credibility; that notwithstanding the nature of the sexual assault allegations against her no criminal proceedings have been pursued (though I appreciate of course that the standard of proof in criminal cases is significantly higher than it is in cases such as this) and that there is, at least on one view, a lack of corroborative evidence with respect to those allegations. I am satisfied, in light of all of that and having heard oral argument, that the appellant has a realistic prospect of demonstrating that such errors of fact have been made.

4. As to proportionality, on the assumption that the DBS did not make a mistake of fact with respect to its findings concerning the sexual assaults, I see no realistic prospect of the appellant being able to demonstrate that the decision to include her in the Children's Barred List was disproportionate. The seriousness of the conduct (if it did take place) and the consequent risk to female children very comfortably underpins that decision. I refuse permission with respect to that particular argument.

5. As to placement on the Adults Barred List and its proportionality or rationality, even if there has been no mistake of fact, I consider it to be arguable that the DBS erred in the manner suggested. In particular, with respect to rationality, the findings related to sexual assaults said to have taken place when the relevant child was eleven years old or younger. It is unclear how any sexual interest in female children of such a young age will translate into a risk to vulnerable adults. Further, the justification for placement on the Adults Barred List as contained in the decision letter is vague and relies only upon an alleged willingness "to transgress legal boundaries to satisfy your own sexual needs". Whilst, if the factual findings have been soundly made, the appellant has demonstrated such a willingness, there does not appear to be any obvious risk if her sexual interest lies in pre-pubescent girls. I am satisfied, therefore, that with respect to the Adults Barred List, the appellant has reasonable prospects of showing that the decision to include her in that list is irrational or disproportionate."

### **Additional documentary evidence**

25. Following the grant of permission to appeal, the Appellant's solicitor supplied 59 pages of evidence in the form of correspondence between the Appellant and D's school and various reports and plans for D produced by the local Children's Services Department. This evidence was generated from 2015 to 2017 that is before D made her allegations of sexual abuse. The solicitor did not provide submissions on how this evidence was said to support the Appellant's case. We note that the Children's Services evidence demonstrates D's consistent refusal to have contact with, or return to live with her mother the Appellant, but that the Appellant, whilst retaining a close interest in arrangements for her daughter's care, did not place any pressure on D to change her mind about contact or living arrangements.

26. Subsequently, a further 352 pages of evidence were supplied by the Appellant's solicitors. This evidence was in the form of correspondence, reviews, plans and reports related to D's education, health and care arrangements. This evidence largely told the same story as the 59 pages of evidence previously supplied although we note that the report of a detailed Children's Services assessment of D stated:

"There remain gaps in our understanding and questions about the extent of [D's] behaviours as a result of the above. There is a feeling that there is more that has impacted on [D] that we have not identified as of yet."

### **Legal framework**

27. A person included in a barred list maintained under the Safeguarding Vulnerable Groups Act 2006 ("2006 Act") may appeal to the Upper Tribunal against the DBS' barring decision (section 4(1) of the 2006 Act). An appeal may only be made on the grounds that the DBS made a mistake on any point of law, or in any finding of fact on which the barring decision was based (section 4(2)). Section 4(3) provides that "the decision whether or not it is appropriate for an individual to be included in a barred list is not a question of law or fact". In other words, there is no right of appeal against the DBS' decision that it is appropriate for a person to be included in a barred list.

28. The DBS errs in law if it does not give sufficient reasons for a barring decision. The required standard of reasoning was addressed by the Court of Appeal in *Khakh v Independent Safeguarding Authority* [2012] EWCA Civ as follows:

"23.... I would accept that the ISA [now DBS] must give sufficient reasons properly to enable the individual to pursue the right of appeal. This means that it must notify the barred person of the basic findings of fact on which its decision is based, and a short recitation of the reasons why it chose to maintain the person on the list notwithstanding the representations. But the ISA is not a court of law. It does not have to engage with every issue raised by the applicant; it is enough that intelligible reasons are stated sufficient to enable the applicant to know why his representations were to no avail."

29. In assessing the adequacy of DBS' reasons, its decision letter must be "read fairly and as a whole" (*Disclosure & Barring Service v AB* [2021] EWCA Civ 1575 at [46]).

30. While the 2006 Act provides for no right of appeal against a DBS decision that it is appropriate to include a person in a barred list, that does not exclude a right of appeal on the ground that barring a particular person is disproportionate. However, in assessing proportionality the Upper Tribunal must accord appropriate weight to the decision of the barring authority “as the body particularly equipped to make safeguarding decisions” (*B v Independent Safeguarding Authority* [2013] 1 WLR 308).

31. In *AB* the Court of Appeal held, at [43], that, absent a legal or factual flaw in a barring decision, “the assessment of the risk presented by the person concerned, and the appropriateness of including him in a list...is a matter for the DBS”. This was echoed in the Court of Appeal’s decision in *Disclosure & Barring Service v JHB* [2023] EWCA Civ 982 where it said, “there is a distinction between the assessment of the evidential material on which a finding of fact is or might be based, and an assessment or value judgment, such as an assessment of risk, which is based on findings of fact which have already been made”. A disagreement about the evaluation of the evidence is not an error of fact, and if the DBS makes a finding of fact that was open to it on the balance of probabilities it does not make a mistake of fact (*JHB* at [93]).

32. Regarding the credibility of evidence given in proceedings before the Upper Tribunal (typically evidence given by the barred person themselves), in *Disclosure & Barring Service v RI* [2024] EWCA Civ 95 the Court of Appeal, at [29], approved the following formulation:

"The Upper Tribunal is entitled to make a finding that an appellant's denial of wrongdoing is credible, such that it is a mistake of fact to find that she did the impugned act. In so doing, the Upper Tribunal is entitled to hear oral evidence from an appellant and to assess it against the documentary evidence on which the DBS based its decision. That is different from merely reviewing the evidence that was before the DBS and coming to different conclusions (which is not open to the Upper Tribunal)."

33. In *AB*, the Court of Appeal ruled, at [55], in relation to the Upper Tribunal’s oversight of DBS fact-finding, that the Upper Tribunal “will need to distinguish carefully a finding of fact from value judgements or evaluations of the relevance or weight to be given to the fact in assessing appropriateness”. A conclusion that a

certain matter is likely to reduce the risk of inappropriate conduct is a value judgement rather than a finding of fact.

34. In *PF v DBS* [2020] UKUT 256 (AAC) a Presidential Panel of the Upper Tribunal said, at [43], that, on appeal, the Upper Tribunal could hear evidence that was not before the DBS. If the Upper Tribunal heard no new evidence, the DBS' decision "might well be the starting point" [49]. If the Upper Tribunal heard significant new evidence, the DBS' evaluation of the evidence would probably be 'overtaken', so that "the only appropriate approach for the UT would be to start afresh" [49]. *PF* was applied by the Court of Appeal in *JHB* in which it held, at [90] that, in a case where the Upper Tribunal heard "very limited evidence" so that the DBS' decision was the 'starting point', the Tribunal was not free to make its own assessment of the written evidence unless and until it found an error of fact or law.

35. In *JHB*, the Court of Appeal said:

"95...the UT understood the DBS's reliance on paragraph 2 of *Volpi v Volpi* [[2022] EWCA Civ 464] as a submission that, in order to show that there has been 'a mistake of fact' it is necessary to show that there was no evidence to support that finding, or that it was irrational. I agree with the UT that if that were the position, section 4(2)(b) would be redundant. But, in my judgment, that is not the position on an appeal such as this, for two reasons. First, a finding may be 'wrong' for this purpose, even if there was some evidence to support it, or it was not irrational, as the reasoning in *Indrakumar* and *Subesh* shows. Second, a finding may also be 'wrong' for the purposes of section 4(2)(b) if it is a finding about which the UT has heard evidence which was not before the DBS, and that new evidence shows that a finding by the DBS was wrong, as the UT itself explained in *PF* (see paragraphs 63-65, above)...".

36. In *RI*, the Court of Appeal was of the view that the *ratio* of *JHB* was "difficult to discern'. Bean LJ said:

"33...I venture to suggest that it [*JHB*] may be authority for the proposition that if the UT has exactly the same material before it as was before the DBS, then the tribunal should not overturn the findings of the DBS unless they were irrational or there was simply no evidence to justify the decision. The same rule may apply where, as in the *JHB* case itself, oral evidence is given but not on matters relevant to the decision to place the appellant on one or both of the Lists."

37. Within Part 1 of Schedule 3 to the 2006 Act, paragraph 3 requires the DBS, once it has given an individual the opportunity to make representations against barring, to include the individual on the children's barred list if satisfied that the individual has engaged in "relevant conduct", has reason to believe that the individual might in the future be engaged in regulated activity relating to children and is satisfied that it is appropriate to include the individual in the list. The definition of "relevant conduct" in paragraph 4 of Schedule 3 includes conduct which endangers a child and "conduct of a sexual nature involving a child, if it appears to DBS that the conduct is inappropriate".

38. Part 2 of Schedule to the 2006 Act enacts, in relation to the vulnerable adults' barred list, similar barring provisions to those just described in relation to the children's barred list. Part 2's definition of "relevant conduct" includes "conduct which, if repeated against...a vulnerable adult, would endanger that adult or be likely to endanger him" (paragraph 10(b)).

### **Evidence given at the hearing**

39. The Appellant gave extensive oral evidence at the hearing of her appeal before the Upper Tribunal.

#### *Examination-in-chief*

40. The Appellant's examination-in-chief began with her adoption of her written witness statement and her confirmation that it remained true and accurate. Apart from that, the examination-in-chief only involved the Appellant giving evidence that, since she prepared her written statement, she had had no contact with D.

#### *The Appellant's witness statement*

41. The Appellant's written witness statement, as adopted at the hearing:

- states that she founded a charity providing peer support to parents and carers whose children "are affected by mental health issues". She adds that her work includes no direct involvement with children;
- recounts the Appellant's long history of work in the charitable and caring sectors;

- describes the breakdown of her marriage to D's father stating that, following their breakup, her three children reported his physical abuse during overnight stays and that he tried to drive over her in a vehicle. However, the Appellant decided not to involve the police to "spare the children from further emotional damage";
- states that, when D was 11, she reported being shouted at when staying with her father and that she wished to return home. At this time, "[D's] behaviour became noticeably different. She became violent, angry and abusive towards both myself and her brothers". D told the Appellant that she felt her brothers were more loved than her;
- describes how, having sought assistance from her local authority, D was advised that she could use restraining techniques and "I was shown how to apply appropriate restraint techniques to cause minimal harm to [D]";
- states that D's behaviour deteriorated further in 2015, and an urgent referral was made to CAMHS, but D's father refused to become involved and "left me to deal with [D's] extreme and volatile behaviour". At this time, D refused to stay with her father and the Appellant had to plead with him not to bring family proceedings (presumably contact proceedings) because of the trauma that would cause D;
- records that, in 2016, following an argument D left the Appellant's home and went to live with her father for 17 months;
- states that the allegation of sexual abuse is "categorically denied" and describes the impact on the Appellant of D's allegations. The Appellant's statement does not elaborate on her denial save to state that "despite the allegations made against me, I would happily have my daughter back living with me at home and would provide her with any and all support she required";
- disputes the findings relied on by the DBS in concluding that her behaviour was manipulative and controlling. We have of course read the entire statement but there is no need to describe these parts of it here.

#### *Appellant's cross-examination*

42. During cross-examination by the DBS' counsel, Mr Baynes, the Appellant said:

- at no point did she admit throwing a book at D, although she accepted that D was hit by a book thrown by her;
- the deterioration in D's behaviour around 2014 was not witnessed by her ex-husband because it only manifested in the Appellant's home;
- when D reached puberty in 2014/15 she 'shut down' and became very angry;
- she did not think it was unusual that, upon D returning to live with her after spending 17 months with her father, they slept in the same bed because, 'I'm her mum, she needed comfort';
- she denied ever having said that she did not want D to live with her;
- she did not accept that D's exhibited mental distress was linked to her home environment rather than a recognised mental illness; CAMHS' view was that D was struggling with depression;
- asked to comment on a social worker's view that there were gaps in Children's Services understanding of D and there was 'more to be identified', the Appellant said that the issue was not raised with her;
- D went into foster care in 2017 because her father refused to have her. The Appellant wanted D to live with her, with suitable support, but D refused;
- the Appellant had no contact with D following her move to foster care, save for them both attending two Looked After Child (LAC) review meetings. In response to further questioning, the Appellant accepted that D did not want the Appellant to attend review meetings. The Appellant complained that she was given very little information about D's progress in foster care;
- DBS' counsel put it to the Appellant that the statement in her written representations to the DBS that she was "prevented from attending LAC reviews" was incorrect. The Appellant disagreed, replying that '[D] did not want me there';



- asked how she knew that D's condition deteriorated while in foster care if she had had no contact with her, the Appellant replied by stating that D took two overdoses while in foster care;
- the Appellant was taken to the foster carer's witness statement of 13 February 2020 in particular: that social services' suspicion of the Appellant's controlling behaviour had been borne out; that D could be "very distressed by anything to do with sex or touching or any kind of intimacy; any indirect contact with the Appellant precipitated a 'massive' deterioration in her behaviour and her "self-harming would escalate"; and D's great difficulty in disclosing a history of what the foster carer took to be sexual abuse. The Appellant was asked if she had any reason to think that the foster carer was dishonest. The Appellant replied that 'I can't speak for someone else'. The question was repeated, and the Appellant said she 'can't answer';
- the Appellant was again asked to comment on the foster carer's statement that contact with the Appellant was followed by a 'massive deterioration' in D's behaviour. The Appellant said she had no contact with D while she was in foster care. DBS' counsel asked if she sent her letters to which the Appellant responded by saying she was encouraged to do so;
- the Appellant was asked why she claimed that D's condition deteriorated in foster care when there was no evidence to support the claim. The Appellant said she just knew that D took two overdoses while in foster care but, on further questioning, could only recall the date of one overdose in April 2019;
- the Appellant was asked to comment on statements in D's 3<sup>rd</sup> LAC review report (2018) that D self-harms when 'in contact' with her mother and there were 'no issues' with D's placement. The Appellant said that she lacked detailed knowledge of the placement but if D overdosed in foster care that must mean she was not doing well. At this point, the Appellant became upset, and the hearing was adjourned for five minutes for her to regain her composure;
- the Appellant was asked why her daughter, two years after their last contact, would make allegations of sexual abuse against her. The Appellant replied that she could not answer that, and she did not know where the allegation came from;

- the Appellant was asked again about her statement that she shared a bed with D following her return after living with her father for 17 months. The Appellant said that D had been 'shunned' at her father's home, the Appellant asked D when she had last been hugged and her motherly instinct was to protect her. D embraced this when previously she was completely 'shut down'. The Appellant added that she did not know what had happened to D during the 17 months that she lived with her father;
- the Appellant's attention was drawn to the foster carer's statement that D was very disturbed by sexual references, such as on TV programmes, and asked if this was the case before she was in foster care. The Appellant said that she would not have watched programmes like that. She was asked if she observed any untoward reaction to the odd sexual reference and replied, 'none at all';
- the Appellant was taken to safeguarding meeting notes dated 17 May 2019, which said that D had recently washed her hair for the first time in four months. The Appellant was asked if hair washing was a problem when D lived with her. She replied that she encouraged D to keep clean especially when she was having her period;
- the Appellant was taken to the transcripts of D's ABE interviews. She was asked about D's statement that the Appellant would be present in the bathroom when D took a bath or shower. The Appellant said she would be present when D was 'little' but 'no, not at all' after they moved to their home near the seaside (when D was still in primary school). The Appellant gave the same response, and did so forcefully, when asked to comment on D's allegation that the Appellant sexually abused her when supposedly drying her. The Appellant also denied that any sexual touching took place in the living room, saying 'no it's not right';
- the Appellant denied having been aware, before seeing the foster carer's witness statement, that she was viewed as manipulative and controlling. Asked whether the foster carer made up that the Appellant sought "total control" over how [the foster carer] supported [D] in her placement, the Appellant replied 'Yes, I didn't do it';
- it was put to the Appellant that the foster carer, like D, had no motive to lie about the Appellant. The Appellant replied that she had tried to meet the foster carer but no one explained the position to her;

- having been taken to the father's / ex-husband's witness statement in which he reported D saying that "Mum was trying to control her too much", the Appellant was asked whether it was just a coincidence that both D and the foster carer saw her as controlling. The Appellant replied that he was her ex-husband and 'won't say anything nice about me';
- the Appellant was asked to comment on the foster carer's statement that the Appellant "bombarded the head and the teachers with demands and wanted weekly updates". The Appellant disagreed with the statement, saying that she just acted like any concerned mum. She could not explain why the foster carer described her contacts with the school as a bombardment;
- the Appellant was taken through some of her correspondence with staff at the school attended by D before she entered foster care. She was asked if it was just a coincidence that she thought both schools failed to communicate with her in the way that she felt entitled to be dealt with. The Appellant said that she had not made unreasonable demands and simply sought support and open communication;
- the Appellant was asked to comment on her ex-husband's statement that she "has the capacity to overstate things about the children especially [D's] healthcare". The Appellant said that her ex-husband's statement had only told half the story concerning D's sprained ankle. Her actions were those of a concerned parent responding to a child who could not walk. Regarding the statement that, when D was with her father, there was no sign of the 'severe asthma episodes' for which the Appellant had sought medical help, the Appellant said that D was diagnosed with asthma and there was an occasion on which no inhaler was available when D had an attack while staying with her father. The Appellant replied 'yes' when asked if the ex-husband's witness statement was completely wrong regarding asthma;
- it was put to the Appellant that, in reality, D's mental health problems were in very large measure caused by the upbringing she experienced with the Appellant. The Appellant's view was that D's problems were caused by her parents splitting up;

- the Appellant denied her ex-husband's statement that she had tried to talk to D when collecting her two sons from school, when they attended the same school as her. She also denied that statement that, at a school merit award ceremony, she "ended up running up and down the rows of seats chasing her". The truth, according to the Appellant, was that D ran off and the Appellant left her to it. She also had 'no idea' why her ex-husband stated that D reported that the Appellant "chased her through the Arndale centre trying to talk to her";
- the Appellant was asked whether she used D's mobile telephone bill to contact D's friends. The Appellant said she already had contact numbers for D's friends but accepted that, initially, when D was staying with her father she did contact her friends. The Appellant was asked whether she had asked D's friends what D had been saying to which the Appellant replied she probably asked them how she was;
- the Appellant was asked if her ex-husband was telling the truth when he stated that he had received at least two calls from unhappy parents regarding the Appellant's calls to their children. The Appellant said she had no conversations with parents along the lines described in her ex-husband's witness statement;
- it was put to the Appellant that the reason why she had no relationship with her daughter was because she abused her at age 11/12 and had tried to manipulate and control her life. The Appellant replied, 'No, I've never abused, I'm not perfect, nor is my ex-husband. I've never, ever abused my daughter. I'm not manipulative. I'm a human being. I say here categorically no';
- it was put to the Appellant that her daughter's self-harming and refusal to eat was a mechanism to get people to listen to her and remove her from the Appellant's care. The Appellant rejected this, saying that D started self-harming when living with her dad, no one had ever asked her she self-harmed in her father's home, and 'only D knows why she self-harmed and what happened to her'. Yes, it was a cry for help but no one knows why, and 'the self-harm started when D was staying with her dad'.

### *Re-examination*

43. In re-examination by her counsel, Ms Anderson, the Appellant:

- accepted that the foster carer's witness statement referred to a single overdose while D was in her care. The Appellant maintained that she knew of a second overdose from her ex-husband. When asked how she replied, 'probably just telephone';
- was referred to her witness statement in which she 'talked about a suggestion' that, during the 17 months that D lived with her father, D stole and lied. The Appellant was asked how she knew this and replied that D told her;
- was asked about D's mental state when she returned to her after living with her father for 17 months. The Appellant said that D was very upset and sad. At times D did not want to visit her father saying no one talked to her there and no one cares.

## **Arguments**

### *DBS*

44. Mr Baynes, for DBS, submits that ground 1 (all findings of fact arguably mistaken) is purely factual. Under Court of Appeal authority, if a finding of fact is open to DBS on the evidence there can be no mistake of fact. The DBS' findings of manipulative and controlling behaviour involved a combination of pure finding of fact and value judgement. The Upper Tribunal's attention is drawn to the distinction, in this context, between findings of fact and value judgements, as demonstrated by the caselaw authorities. The DBS reject the argument that their decision was based on any mistake of fact, arguing that all of their findings of fact were permissible and reasonably open to it on the evidence.

45. Mr Baynes notes that the Upper Tribunal has before it evidence that was not before the DBS in particular the Appellant's witness statement, her oral evidence at this hearing and social care records. Nothing in the new evidence undermines the DBS' findings. The Appellant continues to maintain her bare denial of wrongdoing in relation to the sexual abuse allegation, as she did before the DBS. In fact, the social care records support the DBS' findings and are inconsistent with the Appellant's case that D deteriorated while in foster care. They portray a girl who was very troubled in her mother's care but not particularly so in school or with her father.

46. It is telling, submits Mr Baynes that, after D left her mother's care, her self-harming recurred whenever the Appellant re-emerged in her life in some form, and that her final suicide attempt in 2019 was 'hot on the heels' of her disclosure of sexual abuse.

47. The Appellant's oral evidence described a second suicide attempt while D was in foster care. It is astonishing, argues Mr Bayne, that there was no mention of this in the social care records. The claim that the information was provided by the Appellant's ex-husband 'over the telephone' is also inconsistent with his witness statement.

48. Apart from one documented overdose, in Mr Bayne's submission the evidence does not support the argument that D was problematic in her foster care placement. And there is no medical evidence that D has ever been diagnosed with a recognised mental illness.

49. Mr Baynes submits that the issue before the Upper Tribunal is similar to that which often arises in family proceedings where reliance is placed on a child's hearsay evidence. By analogy with family court authorities, the Upper Tribunal should not compartmentalise the evidence. Corroborative evidence must be considered. Mr Baynes also submits that, in both ABE interviews, the interviewing officers took great pains not to lead D. Either D was a very good actor, or she was genuinely describing events as she perceived them.

50. The DBS submit that the lack of direct corroborative evidence, in particular witnesses, is an almost inevitable feature of offences of this type. It is hardly surprising. In any event, the DBS balanced the lack of corroborative evidence against other considerations including: the manner of D's initial disclosures and the surrounding emotional context; D's consistent ABE evidence; D's difficulty in speaking about her allegations; D's father's evidence that he observed a change in her behaviour around the time that she later said she was being sexually abused.

51. Mr Baynes argues that there is much evidence that something went wrong in D's family and the only suggestion of abuse relates to the Appellant. D's actions can only properly be interpreted as a cry for help. On numerous occasions, D voiced very serious reservations about living with her mother. By contrast, when apart from her mother, D's behaviour improved, and any deteriorations were associated with maternal contact. The evidential context also includes D's recorded aversion to being

touched and to sexual references. If the evidence is considered as a whole, it is very difficult to explain D's allegations unless they are true.

52. The Appellant emphasises D's poor mental health. But even if the Upper Tribunal accepts that D was mentally ill, that says nothing, argues Mr Baynes, about whether she has a propensity to lie.

53. The DBS submit that they did take into account that no criminal prosecution was brought, as well as the references supplied by the Appellant.

54. Mr Baynes accepts that, if the Upper Tribunal finds that the DBS mistakenly found that the Appellant abused her daughter, the remaining findings of manipulative and controlling behaviour would be unlikely to justify barring.

55. Regarding the second ground of appeal, Mr Baynes submits that it is difficult to see what is disproportionate about barring from the vulnerable adults' workforce an individual who sexually abused their 11/12 year old daughter. The DBS stand by the analysis in their Barring Decision Process document, which relied on the Appellant's propensity to transgress legal boundaries in order to meet her own needs, not only her sexual needs, and submit that the Appellant's conduct might equally well be repeated in future in relation to a vulnerable adult.

### *The Appellant*

56. In response to a question from the panel at the hearing, Ms Anderson, for the Appellant, said that she did not have anything akin to a letter of instruction for the Appellant's references but that those given by her sons were written in the presence of an appropriate adult. Ms Anderson submits that the Upper Tribunal should not attach less weight to the Appellant's references because there is no letter of instruction. Virtually all the referees describe the Appellant as honest, reliable, possessing integrity, kind, a good mother, and having a strong sense of justice. Significant weight should be given to the references provided by the Appellant's sons. The Appellant's witness statement describes her career in nursing followed by employment in the charity sector and culminating in her setting up her own charity to support parents whose children have mental health problems a history that is consistent with the views expressed by the Appellant's referees. The DBS gave insufficient weight to the absence of a criminal prosecution and the references provided by D.

57. Ms Anderson questions whether findings as to manipulative and controlling behaviour may properly be described as value judgements. These allegations were pleaded and instances in support identified. A finding of manipulative and controlling behaviour is akin to a finding of dishonesty which is clearly not outwith the Upper Tribunal's appellate jurisdiction under the 2006 Act.

58. The Appellant argues that the absence of corroborative evidence is a fundamental weakness in the DBS' case. In written submissions, the Appellant argues that D's credibility is undermined by her history of poor mental health and that her history of poor relations with the Appellant "may give her a motive to fabricate these allegations". The Appellant's skeleton argument submits that D is not a credible witness and "has a history of documented mental health difficulties...including self-harm and 'hearing voices'". The skeleton argument also argues that the sexual abuse allegations "have been fabricated by [the Appellant's] ex-husband...as well as her daughter". Overall, the finding of sexual abuse was not reasonably open to the DBS on the evidence before it, and the DBS failed to provide any adequate explanation as to why D's account was preferred to the Appellant's.

59. Ms Anderson submits that the Appellant's oral evidence significantly enhanced her credibility. She gave evidence at length and did so voluntarily. Oral evidence is the 'gold standard' of evidence and must be considered more valuable than simply written documents. The Appellant has not tried to gloss over her own failings, but she has highlighted steps taken to improve her parenting such as stepping back from LAC review meetings when it was clear that D did not want her to attend. The Appellant also told the Upper Tribunal if she could not remember a particular date. She did not try to make anything up.

60. Ms Anderson submits that, on the evidence before the Upper Tribunal, it cannot be said, on a balance of probabilities, that the Appellant sexually abused her daughter as alleged. The Appellant has always strongly denied the allegations and maintained that denial in her oral evidence. When the allegations were made in 2019, there were no pre-cursor allegations despite D's ongoing assessment and support from trusted professionals and other adults.

61. The DBS criticise the Appellant for what they describe as a 'bare denial'. However, the Appellant does not have to prove anything and, in the evidential circumstances, it is difficult to see what more she can do than deny the allegations.



62. In weighing up D's evidence, the Upper Tribunal should take into account that it has heard no live evidence from D as well as her documented mood / mental health problems. It should also take into consideration the poor quality of D's evidence. This all began when D wrote the letter 's' on her iPad which the foster carer interpreted as sexual abuse and, even then, D's supposedly confirmatory response was non-verbal and, Ms Anderson submits, elicited by the suggestiveness of D's foster carer. This climate of suggestiveness carried over to D's police interviews in which D's communication was, to a significant extent, also non-verbal.

63. While the evidence shows a deterioration in D's behaviour from around age 11, there were other possible triggers than sexual abuse. D's allegations must be viewed in the light of evidence of a very acrimonious marital split and the effect that this had on D. What, asks Ms Anderson, might explain the breakdown of the relationship between D and the Appellant if there was no sexual abuse? Before making the allegation of sexual abuse, D gave consistent reasons for not wanting to be around her mum: she told various professionals that her mum nagged and ignored her, she did not like being instructed by her mother, her mother never listened to her, and D felt she was treated differently and unloved in comparison with her brothers. These considerations are far more likely to explain D's behaviour than her mother's sexual abuse.

64. The Upper Tribunal must take into account that the police found that there was insufficient evidence to charge the Appellant with any offence.

65. The Appellant has consistently and plausibly denied that she unreasonably sought to control D's foster placement. Her actions can only be viewed as those to be expected of any concerned parent whose child enters state care. The same applies to her interactions with D's schools.

66. The DBS' reliance on the absence of D's formal diagnosis with a mental illness is simply semantics. D refused to eat, was referred to CAMHS and received significant clinical input. To a lay person, that describes a person with a mental health problem. The Appellant's interactions with professionals demonstrate no more than a desperate parent who felt let down by statutory agencies.

67. Regarding the allegation that the Appellant chased D at school and in a shopping centre, the Appellant's case is that D may have misinterpreted events. In any event,

the Appellant had the right to be at D's school and the shopping centre incident simply did not happen. Regarding the allegation that the Appellant contacted D's friends, the Appellant did not view this as abnormal and the evidence that the phone calls caused worry came only from the ex-husband and, even then, it was third hand evidence.

68. In relation to ground 2, Ms Anderson submits that, if the finding of sexual abuse stands, it cannot be relied on as evidence of a sexual interest in young adults or older children. There is no risk to be guarded against. Inclusion in the vulnerable adults barred list must therefore be disproportionate. Even if the DBS' findings of fact stand, it was irrational and disproportionate to include the Appellant on the vulnerable adults barred list. The alleged misconduct was of a very specific type involving sexual interest in young female children. That sort of deviance cannot properly be considered to pose a risk of harm to vulnerable adults.

69. If the Upper Tribunal were minded to find that D's mental health difficulties are explained by sexual abuse, it should pause to consider the above matters as well as D's reaction to her parents' divorce and her difficulties in school.

## **Conclusions**

### *Our approach to the DBS' findings of fact*

70. This is not a case in which the Upper Tribunal, on appeal, is merely reviewing the evidence before the DBS. The Upper Tribunal has before it evidence that was not before the DBS, in particular the Appellant's witness statement and her oral evidence. The Upper Tribunal is entitled to find that the Appellant's denial of wrongdoing, in particular her denial that she sexually abused her daughter, is credible, so that it was a mistake of fact to find that the Appellant sexually abused her daughter (*RI*). Since this is not a case in which we have the same material as was before the DBS, we are not precluded from overturning the DBS' findings unless they are irrational or there was 'simply no evidence to justify the decision' (*RI*).

71. We are conscious of the need to distinguish findings of fact from value judgements (*AB*). However, the key finding made against this Appellant, that she sexually abused her daughter, involves in our judgment matters of pure fact.

*D's disclosure of sexual abuse*

72. In our analysis, which is informed by the experience of the specialist members of the Upper Tribunal panel, we find that the manner in which D revealed her allegations of sexual abuse against her mother had certain features which are often seen in a child's disclosure of sexual abuse. We recognise that each child is different and there is no set format, but certain features of D's case are commonly seen in a child's disclosure of sexual abuse, especially where the sexual abuse is inflicted by a close family member. For instance:

(a) multiple sources of evidence described a significant change in D's behaviour around the time that she subsequently said she was being sexually abused, but before any allegation was made;

(b) multiple sources of evidence showed D's extreme reluctance to have any contact, even indirect contact, with her mother;

(c) D's disclosure was not made until she had established a relationship with a trusted professional outside the family (the foster carer);

(d) D's disclosure was not made until she had moved to what may fairly be considered a place of safety (foster carer's home)

(e) the evidence clearly described the painstaking way in which D slowly, reluctantly, and in apparent distress, disclosed details of the alleged sexual abuse;

(f) D's ABE interviews demonstrated her difficulty in verbalising the most intimate aspects of the alleged sexual abuse and her preference for explaining these matters with the aid of props.

73. None of the evidence referred in the above paragraph was seriously challenged by the Appellant. What she disputed was that D's documented behaviour was indicative of a child disclosing genuine sexual abuse.

74. Many of the above features of D's disclosure history match those identified in official government guidance about dealing with children who have or might have been sexually abused. For instance:

(a) *Working Together to Safeguard Children: 2023 Statutory Guidance* (HM Gov, 2023) includes advice for practitioners on possible indicators of abuse short of a direct allegation of abuse. These include “children whose behaviour changes”; “children with consistently poor hygiene” and “children who make strong efforts to avoid specific family members...without an obvious reason” (p.6). All of these indicators are reflected in the evidence before us;

(b) *Learning for the Future: Final Analysis of Serious Case Reviews, 2017 to 2019* (DfE, 2022) refers to how difficult it is for children to talk about abuse (5.4.2), that disclosure of abuse often follows a child establishing a ‘trusting relationship’ (5.5), that some children are only able to disclose abuse after moving to a place of safety and there is a pattern of behavioural problems preceding verbal disclosure in a place of safety (6.3);

(c) *Achieving Best Evidence in Criminal Proceedings* (Ministry of Justice, 2022) notes that children who have experienced a traumatic event may need breaks when being interviewed about those events (2.235), the assistance of a registered intermediary may be necessary for a child to communicate about particularly traumatic events (2.264), children may be particularly reluctant to talk freely and openly about allegations of sexual abuse (3.38), it can be less traumatic for children to explain sexual abuse by reference to a prop rather than their own bodies (3.124), psychologically disturbed and traumatised children may present as very reluctant interviewees (E.3.4).

75. In our judgment, D’s behavioural history and the manner in which she disclosed sexual abuse were consistent with, or characteristic of, the behaviour of children who disclose real sexual abuse by a close family member.

76. Other aspects of the evidence case also lend weight to the credibility of D’s disclosure of sexual abuse:

(a) there are no significant inconsistencies in the accounts given by D at different times (on her iPad, to the foster carer and during the two ABE interviews). Indeed, the Appellant does not argue that D made inconsistent disclosures;

(b) during the second ABE interview, which generated the most detailed account of D’s alleged abuse, there was an identifiable pattern to the way in which D made her disclosures which, in our judgment, added to her credibility. When discussing

particularly intimate aspects of the alleged abuse, D's disclosures tended to be non-verbal, but this was not the case when D was asked to describe the wider context. For example, when discussing alleged sexual abuse in the bathroom, D was unable to say the words 'breast' and 'vagina'. She used props instead or just nod or shook her head. When discussing frequency and location, however, D was able to respond verbally to the interviewer's questions. The same pattern was evident when the ABE interview turned to alleged sexual abuse in the living room. D was unable to say the word 'vagina' but gave verbal answers when asked what she was wearing and when the alleged abuse occurred.

77. We also take into account that the Appellant has, at different times, given different explanations for what she says are D's false allegations:

(a) in her police interview, the Appellant said D may have made the allegations because the Appellant was the only person never to have rejected D;

(b) in her DBS representations, the Appellant seemed to suggest that the allegations were linked to years of failure by public bodies to provide D with the help she needed;

(c) in written submissions, the Appellant argued that her history of poor relations with her daughter may have given her a motive to fabricate the allegations;

(d) the Appellant's skeleton argument submits that the allegations were fabricated by D and her ex-husband;

(e) in oral submissions, the Appellant's counsel suggested that the allegations may have been elicited by the suggestiveness of D's foster carer, and that 'climate of suggestiveness' was carried over to the ABE interviews.

78. Viewed in isolation, we find none of the explanations for what the Appellant says are fabricated allegations of sexual abuse persuasive:

(a) we have tried, without success, to identify any possible rationale for the argument that D made false allegations against the Appellant because she is the only person never to have rejected D. The argument seems to assume that D set out to test the Appellant's commitment to her by making up an allegation of sexual abuse in order to see if that commitment withstood D doing something horrendous (fabricating sexual

abuse) that would ordinarily rupture the relationship between parent and child. In our view, such behaviour is so aberrant as to be inherently unlikely. It becomes even more unlikely if considered alongside the evidence that D found the experience of making her disclosure extremely distressing. We think it is fanciful to suggest that D both devised a cruel plan to test her mother's commitment and, in putting the plan into effect, simulated signs of extreme distress;

(b) even if the Appellant correctly asserts that D was not given adequate help by statutory agencies, it makes no sense for D to have reacted to that by fabricating allegations of sexual abuse against her mother. If D knew that public bodies had failed her, why take that out on her mother? If D did not know that she had been let down by public bodies, and simply experienced levels of distress that would have been mitigated had public bodies done their jobs properly, why should that distress have manifested itself in the form of fabricated allegations of sexual abuse against D's mother? We cannot think of any plausible answer to these questions;

(c) the argument that D was motivated by some misguided attempt to take revenge on her mother rests on the assumption that D hatched a cold-hearted plan to damage her mother. This assumes that the abuse allegation and the apparent associated distress, including at least one suicide attempt, were simulated by D. If D's aim was revenge motivated by a history of poor relations between D and the Appellant, why did she not fabricate an allegation of even more serious sexual abuse? Regrettably, and without in any way wishing to diminish the significance of sexual abuse of the type described by D, many children experience far more severe sexual abuse than that described by D. And, again, this argument implausibly assumes that D was able to manufacture symptoms of extreme distress during the disclosure process;

(d) the Appellant's ex-husband's police witness statement said that he "certainly didn't know why" his daughter refused to be discharged from hospital into the Appellant's care. Police records also state that, in a discussion with police officers in June 2019, the ex-husband "described how he was shocked to hear of how [D] had implicated her mother in a sexual offence matter and described he has not at any time witnessed anything that he thinks will be pertinent to the investigation". If, as the Appellant alleges, the allegations were fabricated by her ex-husband, for what possible reason would he pass up the opportunity to implicate the Appellant? We cannot think of any;

(e) in relation to the foster carer, the Appellant's argument must rely on the foster carer's witness statement evidence because there is no other evidence about the circumstances of D's disclosure to the foster carer. However, in that statement the foster carer describes how, in response to D writing 's' on her iPad, she first asked if she meant physical or emotional abuse. It was only once D responded negatively that the foster carer asked D if she meant sexual abuse. The argument that the ABE interviews were conducted in a 'climate of suggestiveness' is not supported by reference to any part of the transcript of either interview. We have read both transcripts with care but cannot identify this supposed 'climate of suggestiveness'. It seems to us that both interviews were conducted properly in accordance with the ABE guidance that we referred to above in these reasons. Yes, D was very reluctant to speak about the nature of the allegations but that is not unusual in the case of children who report sexual abuse, especially at the hands of a family member. The way in which the police officers responded to D's reluctance cannot fairly be described as suggestive and we see no obvious respect in which the ABE interviews departed from the ABE guidance.

79. Taken together, the Appellant's differing explanations of why D should fabricate allegations of sexual abuse weaken each other. The Appellant has not provided a consistent rebuttal of the allegations and some of her explanations are contradictory. For instance, if the reason why D fabricated the allegations was that the Appellant was the only person who had ever unconditionally supported her, how could the ex-husband have possibly featured in the fabrication? The Appellant's explanations are further weakened by her final assessment, given in oral evidence, that she could not explain why her daughter fabricated allegations of sexual abuse.

80. We turn now to the crucial question whether the DBS mistakenly found that the Appellant sexually abused her daughter. If the test that we are to apply in assessing the DBS' findings of fact is whether they were 'plainly wrong' or not 'reasonably open' to DBS, we are satisfied that the DBS did not make a mistake of fact. D's disclosure of sexual abuse was consistent with recognised features of true disclosure of familial sexual abuse and the Appellant's attempts to try and explain why D would fabricate such abuse were wholly unpersuasive. Both features demonstrate that the DBS' finding was not plainly wrong nor was it not reasonably open to the DBS on the evidence.

81. If we are required to make our own finding as to whether, on the balance of probability, D's allegations of sexual abuse were true, we find that the Appellant did

sexually abuse her daughter in the manner described by D. We do not find D's disclosure persuasive simply because the Appellant has provided inconsistent and implausible explanations for what she says are fabricated allegations. The principal reasons why we find D's allegations to be true are because her account remained consistent over time and her conduct was typical of a child who discloses sexual abuse by a close family member. On that latter point, we place particular reliance on the following considerations all of which are disclosed by the evidence:

(a) D's behaviour changed significantly, and for the worse, around the same time as she later alleged that she was being sexually abused by her mother. This is a recognised behavioural response to a child being sexually abused, especially where it is committed by a family member;

(b) throughout her teenage years, D showed an extreme reluctance to have anything to do with her mother and when she did, even if the contact was indirect, this was often the prelude to self-harm. This is another recognised behavioural response to familial sexual abuse;

(c) when D did return to live with her mother after spending 17 months residing with her father, it was because she felt that she was no longer welcome at her father's home. We do not consider that this act showed that D felt safe in her mother's care;

(d) within a few weeks of returning to live with her mother, D inflicted significant self-harm and was admitted to a secure mental health facility;

(e) D's initial disclosure to her foster carer came only after she had lived with her for some time, and it had become her settled placement. Government guidance recognises that a child is often only able to disclose sexual abuse when she feels that she is in a place of safety and to a trusted adult. The manner of D's disclosure was consistent with this;

(f) the process of disclosure was very difficult for D and caused her significant distress. It was a drawn-out process engaged with by D only with obvious reluctance. This was more consistent with D describing actual sexual abuse than fabricated abuse;

(g) the manner in which D described sexual abuse during her ABE interviews showed an inability to verbalise the most intimate aspects of abuse. She only described the



most intimate details once interviewed with the assistance of a registered intermediary. The way in which D described sexual abuse in her ABE interviews was more consistent with a child describing actual sexual abuse than fabricated.

82. We have considered the Appellant's supporting references. While the referees paint a uniformly positive picture of the Appellant's personality, that does not in our view undermine D's credibility. None of the references mention any history of fabrication on D's part and only two suggest that a referee might have been aware that the allegation was that the Appellant had sexually abused her daughter. When we take those considerations into account alongside the Appellant's inconsistent attempts to explain why D fabricated her allegations and the factors discussed above that lend credibility to D's account, the references do not persuade that D fabricated the allegations made against her mother. We are asked to attach significant weight to the references provided by the Appellant's sons, but these do not, directly or indirectly, offer a view on whether the Appellant was likely to have seriously mistreated her daughter.

83. The Appellant argues that the deterioration in D's behaviour from age 11 was far more likely to have been caused by something other than sexual abuse in particular the breakdown of her parents' marriage, her perception that her mother never listened to her, nagged and ignored her and that she was the least loved child. However, the alignment of the onset of D's behavioural problems with the time that she said she was being sexually abused is only one of a number of factors that persuade us that D's allegations were not fabricated. We do not doubt that D faced a number of challenges when growing up, including those identified in the Appellant's case. However, we consider it unlikely that D's behaviour was mainly due to her simply objecting to her mother's parenting style given the permanence and intensity of her antagonistic feelings towards her mother, as demonstrated by the evidence. We do not accept that D's behaviour was simply a function of her being nagged, ignored, and overly-instructed by her mother, and feeling less loved than her brothers, so as to call into question our finding that, on a balance of probabilities, D's allegations were not fabricated.

84. We do not accept the argument that oral evidence must be considered inherently more valuable than written evidence. Our task is to evaluate the evidence as a whole and, having done that, we are satisfied, on a balance of probabilities, that D's allegations against the Appellant are true. In relation to alleged sexual abuse, the Appellant's oral evidence was a bare denial and an inability to explain why her

daughter might fabricate allegations of sexual abuse. While the Appellant's oral evidence was given forcefully, it failed to persuade us. It was also inconsistent with the Appellant's written case and does not weaken the strong impression made on us by the circumstances of D's disclosure as explained above.

*Ground 1 – conclusions*

85. We find that the DBS' crucial finding of fact, that the Appellant sexually abused D in the manner described by D, was not a mistaken finding of fact.

86. The DBS' other findings of fact were relied on by the DBS as showing manipulative and controlling behaviour. These findings of fact were very much subsidiary to the finding that the Appellant sexually abused her daughter, and we agree with DBS' counsel that, on their own, would not have justified their barring decisions.

87. We do have doubts as to the correctness of these subsidiary findings of fact. In our view, it is quite normal for a parent whose child is in care to want to be as closely involved as possible in care arrangements especially where, as in this case, parental responsibility remains vested solely in the child's parents (D was not subject to a care order). The evidence shows that D exhibited serious mental distress, self-harmed on a number of occasions and was admitted to a secure mental health facility. All of that was consistent, at least to a lay person, with a child experiencing a mental health problem and the fact that a formal diagnosis of a mental disorder may have been absent cannot properly be relied on as the basis for a finding that the Appellant falsely claimed that her child had mental health problems. The 'chasing' evidence was second hand being found in the father's report of statements made to him by D and none of D's first-hand evidence mentioned these chases. In any event, even if true, we doubt that two instances in which a parent openly sought to communicate with a separated child are a proper basis for a finding of manipulative and controlling behaviour. The same evidential weakness apply to the finding that the Appellant contacted some of D's friends by telephone.

88. However, our doubts as to the correctness of the DBS' subsidiary findings of fact make no difference to the outcome. We do not consider these to have been findings of fact on which the barring decision was based so that, even if they were mistaken findings, they are not a ground for allowing this appeal (see section 4(2) of the 2006 Act). Even if the DBS had made no findings as to controlling/manipulative behaviour,

we are satisfied that they would have made the same barring decisions. We are certain that these findings did not ‘tip the balance’ in favour of barring so that, without them, the DBS would have considered the sexual abuse finding to be an insufficient basis for barring the Appellant. And, on their own, the findings as to controlling/manipulative behaviour, would clearly have not justified any barring decision.

89. To conclude, ground 1 is not made out. The DBS’ finding that the Appellant sexually abused her daughter was not a mistaken finding of fact. The DBS’ other findings of fact were not findings on which their barring decisions were based so that, even if they were mistaken, are not a ground for allowing this appeal.

*Ground 2 – conclusions*

90. This ground concerns the proportionality of DBS’ decision to include the Appellant on the list of persons barred from working with vulnerable adults.

91. In our analysis, the risk that the DBS thought needed to be guarded against was not simply that, as it found, the Appellant had a sexual interest in ‘pre-pubescent girls’. The risk was described with more precision in the DBS’ Structured Judgement Process document as the Appellant being “willing to transgress legal boundaries to satisfy her own needs regardless of the harm that this causes to those in her care”.

92. The DBS’ finding that the Appellant was willing to transgress legal boundaries to satisfy her own needs was in the nature of a value judgement. It was a judgement that was open to the DBS in the light of its finding that the Appellant had sexually abused her daughter. We say that because the finding related to a child whose vulnerability to exploitation was obviously heightened by her parents’ separation, which left her living in a household overseen by her mother with limited practical opportunities to seek protection elsewhere, and whose stage of development / age meant that sexual abuse was bound to be particularly damaging to her emotional well-being.

93. We remind ourselves that, while the Upper Tribunal is to determine the proportionality of barring for itself, in assessing proportionality the Upper Tribunal must accord appropriate weight to the decision of the barring authority “as the body particularly equipped to make safeguarding decisions” (*B v Independent Safeguarding Authority* [2013] 1 WLR 308).

94. We are satisfied that the Appellant's inclusion in the vulnerable adults' barred list is a proportionate response to the risks posed by a person who is willing to transgress legal boundaries to satisfy their own needs. While this case has involved sexual needs, the circumstances of the Appellant's sexual abuse of her daughter, involving a child particularly vulnerable to exploitation and taking place at a particularly damaging time in the child's development, demonstrate that the Appellant poses a risk, that cannot be considered insignificant, of transgression of legal boundaries in relation to other vulnerable people in order to meet the Appellant's own needs, whether they be sexual or otherwise. The Appellant's inclusion in the vulnerable adults list is not, in our judgement, a disproportionate act. If barring the Appellant from working with vulnerable adults is proportionate, it cannot be irrational. Ground 2 therefore fails.

### **Conclusion**

95. This appeal is dismissed. The DBS' decisions to include the Appellant in the children's and vulnerable adults' barred lists stand.

96. Finally, we apologise for the delay in giving this decision. Shortly after the hearing of this appeal, the judge suffered serious injuries in an accident and was absent from his duties while recovering, and, on returning to work was on limited duties. We are sorry for the frustration that we are sure that the Appellant experienced while waiting for our decision.

**3 December 2024**

Upper Tribunal Judge Mitchell  
Upper Tribunal Member Heggie  
Upper Tribunal Member Turner

**ANNEX**

*Police witness statement given by foster carer on 13 February 2020*

“My husband [redacted] and I have been foster parents for over 16 years and have fostered over one hundred children many of them with complex needs. The children are placed with us by East Sussex County Council (ESCC) and we work closely with Social Services.

...[D] was able to communicate with us and I was left wondering if her low moods and self-harming were environmental rather than organic. She did not present as I expected and engaged with us openly.

...Our role as foster carers is to make someone feel safe and secure from the experiences they have had and once they are settled and we have formed a relationship and the young person feels more secure and able to communicate with us. The issues with [D] started to surface. It became apparent that [D] was not washing and was noticeably avoiding any physical contact. She was at times very distressed by anything to do with sex or touching or any kind of intimacy. This could be on the television or by hearing other conversations. She struggled with anybody invading her personal space and was distressed with sexual references. The placement was extended. [D] regularly said that she did not want to return home to her mother and when [D] received messages or correspondence from her mother her behaviour massively deteriorated. I feel that the cards and letters acted as a trigger. Her self-harming would escalate and she would cut herself and make suggestions that she would overdose on pills. She presented as very anxious and her emotional wellbeing was affected. She was tearful and upset and could not function on a daily basis. She said that she felt unsafe and it would take a long time to settle down again...

I was mindful that [D] may disclose to me at any time as our relationship had developed and I felt that she was beginning to trust us. I would update my social workers as I felt was necessary and these were recorded on emails and by phone conversations...

I think [D] found it very, very difficult to tell me anything and it took a long time for her to say anything to me. We were patient but I knew from experience that she wanted to say something. We planned to have a family holiday to Center Parc's in Longleat and just before we went at the end of March 2019 [D]...said that things were not OK and then said 'something had happened' and it was mum and that it had happened a few times. She said that did not remember dad being around at the time but was scared of her dad found out. She knew that I would have to tell somebody and asked me who I had to tell. I told her that I had to tell her social worker who would then tell the police. I cannot emphasize how difficult this was for [D] she could hardly get the words out of her mouth. She did not say anything further but I had an appropriate conversation with her about the ways she could have been abused but it was not until we were at Center Parc's that we had another conversation. She repeated to me that it was her mum and I asked her what kind of abuse it was. She could not say anything but wrote the letters on her iPad. I took this to mean sexual assault and asked [D] if she meant physical or emotional abuse and she indicated that it wasn't. I then asked if it was a sexual assault and she burst into tears and she then allowed me to hug her which was very unusual.

On returning from holiday I passed the information to [redacted] by this time [D] wrote an account on her iPad.

On the 16<sup>th</sup> April 2019 [D] took an overdose of Paracetamol and refused to go to hospital but I managed to get her to [hospital] ...

Since the disclosure [D] has managed to obtain two GCSE's, she has a relationship with a boy and she has been promoted at work. Her work has reduced her isolation as she did not have any friends. She still struggles with what has happened but she is engaged with CAMHS where she is having trauma therapy. She still struggles with her personal care and she is very uncomfortable when any sexual terms or words are used in conversation. She cannot even say words like sex or vagina but she is having treatment which is ongoing. She has anti-depressants which are short time."

*7 May 2019, report of police visit with D at her foster placement*

"this afternoon at her h/a (foster carers address...[D] was provided with an opportunity to complete an initial account at the time of my visit but made it very

clear that she wasn't ready to do so at the time. Instead she somewhat reluctantly agreed to meet again...

when meeting with [D] this afternoon she confirmed that the written account she provided in which she disclosed the abuse by her mother...was completed within the 'notes' app on her iPad. She confirmed that she had shared this with her foster carer...knowing that [redacted] would share it with [social worker]...[D] explained that she fully anticipated an extreme reaction if/when her mother learns of the disclosure she has made...there was to be a Looked After Child review meeting for [D] at her home placement...with [D] having specifically requested that her father not be present in case there was any discussion re the disclosures central to this report...".

*Record of police visit to D at foster placement on 17 May 2019*

Police record of this visit read as follows:

"Further visit completed with [D] in the presence of her [social worker] at her h/a on 14/05/19.

[D] confirmed that she had thought carefully about the info regarding the investigative process...and stated that she was prepared for me to take an initial account from her.

During the initial account it quickly became apparent that it was extremely difficult for [D] to answer my questions and engage with anything like any kind of fluency over the matter. That said, [D] did provide a little detail such as how the incidents with her mother had occurred on multiple occasions, some at the address mum still lives at, some at their previous address...And [D] confirmed that only mum had been involved but wouldn't/couldn't tell me what actually happened. Instead she wanted me to read the notes she had written on her iPad about it. She has since forwarded these notes to me via email...

Whilst with [D] she told me that she thinks she wants to complete an ABEi [Achieving Best Evidence interview] and expressed how she would prefer for this to happen sooner rather than later."

Police records include a note of the discussion between police officer and [D] on 14 May 2019:

“Q. I understand that you were away with [redacted but probably refers to D’s foster carer] during the Easter holidays when you first spoke to her about this. Please tell me what you told [redacted].

A. I wrote the letter ‘s’.

Q. What did the letter ‘s’ stand for?

A. (No response).

...

Q. Can you remember what it was that caused you to write ‘s’?

A. (No response).

Q. If you had a piece of paper (meaning now) could you write down what the ‘s’ stood for?

A. No. We’d been talking for a couple of weeks and then we were talking about it again that night and I couldn’t say it so [redacted] said “just say the first letter”.

Q. How did [redacted] know what you were talking about from you writing down ‘s’?

A. (Nodded head).

Q. Was it because of other things that you had spoken about leading up to that?

A. (Nodded). Yeah.

Q. Are you able to tell me about the other things that led up to that?

A. (No response).

Q. As you know [D], it’s my understanding that all of this relates to a family member of yours. Can you tell me who?

A. My mum.

Q. When did this thing happen with your mum?

A. When I was younger.

Q. Do you remember how old you were at the time?

A. No.

...

Q. Where did it happen?

A. At home.

...

Q. So there were at least two incidents [one at the present and one at the mother’s former home] were there?

A. (No response).

...



- Q. Was anyone else involved in the incidents between yourself and your mum?  
A. (Shook head).
- Q. Are you able to remember over what time period the incidents occurred?  
From when the 1<sup>st</sup> was, and the last?  
A. (No response).
- Q. So again as you're aware [D] I understand that the incidents involved parts of your body. Are you able to tell me which body parts?  
A. (No response).
- Q. You can use whatever words you want, or you can write it down if you'd prefer?  
A. (No response).
- Q. Did the incidents with mum happen at a particular time of the day, or day of the week or time of year?  
A. (Shook head).
- Q. Did the incidents happen in a particular area of the house?  
A. The bathroom.
- Q. What it the same thing that happened each time or different thing(s)?  
A. (No response).
- Q. As you know [D], I'm aware that after first speaking with [redacted] about this you made some notes on an iPad. Do you think you would find it easier if I was to read those notes before asking you any further questions?  
A. (Nodded head).
- Q. Can I please do that then?  
A. (Handed me the iPad)  
(Notes read on the iPad)
- Q. [D] I see that the notes on the iPad are timed and dated 13:47, 27 April 2019. Is that when it was written?  
A. Bits. I couldn't write it, so I was writing it bits at a time.
- Q. Over what kind of a time period?  
A. Weeks.
- Q. And can you confirm who wrote it?  
A. Me.
- Q. Was anyone with you when you wrote it?  
A. No."

*Email sent by D's foster carer on 23 or 24 May 2019*

"she's really scared about this [ABE interview] and doesn't know if the words will come out. She's said a few things without prompting last couple of days...

*I first started thinking it was wrong when we did sex education in year 5/6 don't know which one.*

*They were all saying things about you don't know what they called it but your private bits – I thought that's not what happens in my house.*

*[redacted] was given the settee under the window and me and...had to sit on the other one next to mum.*

*She used to make us sit close to her.*

*When everything was really difficult at dad's and they weren't speaking to me I rang mum on the Wednesday or Thursday and asked to come home – I don't know why I did that – I was stupid to believe her sorry lies as they were bullshit.*

*...When I got home in the door she gave me a big hug and I hated it I was scared.*

*She tried to get me to sit on the settee next to her.*

*I used to try and disappear to have a shower without her seeing me.*

*She would knock on the door – I asked who it was and she would say only mum can I come in – I never opened the door.*

*I used to try and keep away from her – she was wanting me to sit next to her in the front room.*

*I started staying up in my own room to get away – she used to make me come down."*

*D's 1<sup>st</sup> ABE interview – 24 May 2019*

In the following, unless otherwise indicated all questions were asked by police officers:

*"[interview begins at 00.04 pm]*

*...*

Q. So you lived there two years ago, how long did you live there for?

A. I don't know, I lived there for a while and then moved to my dad's and then moved back there for like six months.

Q. So you lived there for a while, then you said you moved out and lived where?

A. My dad's.

Q. With your dad and then you moved back there. OK.

...

Q. Can you tell we how old were you when you were living there the first time?

A. I don't know how old I was when I moved in but I lived there 'til I was 12.

...

Q...So when you were at home living with them up until you were 12 things were good?

A. Mm, not really.

Q. What do you mean by 'mm'?

A. There was lots of stuff going on and we just didn't get on.

Q. There was lots of stuff going on. What sort of stuff was going on?

A. Just arguments.

Q. Arguments between who?

A. Me and mum.

...

Q. You and your mum. And what were the arguments about?

Q. Can you tell us about any of the arguments? [D] can you tell us about what you and your mum used to argue about?

A. I don't know.

Q. You don't know.

Q. And what happened when you would argue?

A. Sometimes get physical.

Q. Sometimes it would get physical. In what way?

A. Just hitting.

Q. What would happen?

A. She'd try and like drag me out my room.

Q. And what else?

A. Just throw stuff.

Q. Anything else?

Q. Where were you when you were arguing with your mum?

A. Anywhere.

Q. What would mum say to you?

A. I can't remember.

Q. What did you say to mum?

A. I can't remember, she'd just tell me that she hated me and all that so I just said it back to her.

Q. Can you tell us anything else about the arguments?

A. [Shrugs shoulders].

Q. What did you used to do when you were arguing?

A. Defend myself if I was getting hit.

Q. How did you do that?

A. Like kick her, get her away from me. Push her.

...

Q. What else happened when you were living at home? [D] did you want to take a little break?

A. [Nods head].

Q. Yeah, OK.

*[interview suspended for five minutes]*

Q. OK [D], we know that when you, you've spoken a little bit to us about something that happened with you at home and that was a very private thing that happened and we just, I just want to know whether you can tell us anything about that today. Would it help if you could write something down or draw us some pictures?

A. [Shrugs shoulders].

Q. The incidents that happened [D], who was involved?

A. Mum.

Q. Sorry?

A. Mum.

Q. Anyone else?

A. [Shakes head]

Q. So it involved mum, who else?

A. No-one else.

Q. Just mum.

A. [Nods head].

Q. Who else was there when the incidents happened?

A. No-one.

Q. Were you there?

A. [Nods head].

Q. Yes, OK, so you and mum. Anybody else?

A. [Shakes head].

Q. Where were you?

A. Bathroom.

Q. The bathroom, in which house?

A. Both. The house before.

Q. Pardon?

A. I said two.

Q. Both.

Q. Whereabouts in the bathroom were you? Could you draw us a picture of your bathroom?...Try and help us show what your bathroom looked like.

A. Bath and shower, toilet and, sink and toilet.

Q. The sink and the toilet and the bath.

A. It was like a bath/shower thing.

Q. Whereabouts were you in the bathroom? Do you want to mark it on the picture, where you were? Just in there. Show us again.

A. Just standing.

Q. Standing. So you were standing, where was mum?

A. In front of me.

...

Q. What were you wearing?

A. Nothing.

Q. What was mum wearing?

A. Clothes.

Q. Sorry [D]?

A. Clothes.

Q. What was happening? When you're standing in the bathroom and mum was in the bathroom, what were you saying?

A. Nothing.

Q. Nothing, was that 'nothing'?

A. [Nods head].

Q. What was happening? Can you tell me what you were doing before you were standing in the bathroom with mum?

A. Having a bath or shower.

Q. How did you get from the bath or the shower to be standing in the bathroom? That was a bit of a rubbish question [D] I think wasn't it?

A. [Nods head].

Q. Yeah. When you were in the bath or the shower was anyone else in the bathroom?

A. My mum.

Q. No?

A. Mum.

Q. Mum.

Q. Where was mum when you were in the bath or shower?

A. Just sitting there.

Q. Sitting down? When you got out of the bath or shower and you were standing in the bathroom what happened after that?

Social Worker. Do you want to write it down [D]? Do you want to write down what happened next?

A. [Shakes head].

Q. Can you tell us what happened? What was the first thing that happened when you got out the bath or the shower, you climbed out the bath? When you got out the bath and you were standing were you wet or dry or something else? You said you had no clothes on.

A. Wet.

Q. You were wet. What was the first thing you'd do when you get out the bath or the shower? [D] I can see you're jiggling your leg there, are you feeling OK? Do you need to stop? Do you need to have a break?

A. [Shakes head].

Q. Do you need, do you want to carry on? OK. Can you tell us what happened in the bathroom? Could you write it down? Would you like to write it down?

Q. What time in the day was this [D]?

A. Whenever I had a bath or shower.

Q. Whenever you had a bath or shower. OK. So how many times did this happen?

A. [Shrugs shoulders].

Q. When you're in the bathroom and you were wet, how did you, what did you do next? How did you get dry? How long were you standing in the bathroom being wet? Can you remember?

A. Mum would dry me.

Q. Sorry?

A. Mum would dry me.

Q. How would she dry you?

A. Towel.

Q. How would she do that?

Can you tell us what would happen next one you got out the bath and mum was in the bathroom with you? Can you tell us what would happen after you got out the bath?

[D] what can you tell us about that time in the bathroom? Today, what can you tell us?

Can you tell us anything else?

Q. [D] did you want to have five minutes and maybe think about if there's anything else you want to tell us today?

A. [Nods head (barely)].

Q. Yeah, get some fresh air and have a think.

[*interview suspended for ten minutes*]

Q. [D] before you had a break you were telling us that something happened in the bathroom, there was an incident with you and mum, you told us that you'd got out of the bath, the shower, and that mum dried you. Describe how mum dried you.

What would mum do?

A. She made me dry my like...

Q. [D], she, she made you dry your back?

A. No, I said she made me dry it like, I can't say it.

Q. OK, could you write it down?

A. [Shakes head].

Q. Would you like some tissues?

A. [Shakes head].

Q. When you're ready, tell us a little bit more.

[D]?

Describe to us how mum dried you. You started to tell us.

Q (social worker). I can tell you're getting quite distressed [D] so maybe if I come back to that in a moment OK? Was it usual for mum to be in the bathroom?

A. [Nods head].

Q (social worker). How often would mum be in the bathroom with you?

A. Quite often.

Q. (social worker). Did she ever tell you why?

A. [Shakes head].

Q (social worker). How often would she dry you?

A. Quite often.

Q (social worker). So when she didn't who would dry you?

A. Me.

Q (social worker). You?

A. [Nods head].

Q (social worker). And on the times that she would dry you, how would she do that?

Q. [D]? How would mum dry you?

Q (social worker). Do you want to tell us about anything else that happened in the bathroom today?

A. [Shakes head].

Q (social worker). No. What about in any other part of the house?

Q. Do you want to tell us about anything that happened in the other part of the house today?

A. [Shakes head].

Q. OK.

Q (social worker). [D] I think it's very clear that it's very difficult for you to talk about what happened today and it's very clear you're very anxious and distressed to us. [D] I'm just wondering what, how has this impacted you?

A. It's ruined my life.

Q (social worker). It's ruined your life. OK. How else has it affected you?

A. I can't be a normal teenager.

Q (social worker). Can't be a normal teenager. OK. Anything else?

Q. Maybe [D] we can just go over what you have told us and if you want to tell us anything else you can and we'll go from there OK?

A. [Nods head].

Q. Do you want to stop talking to us yet?

A. [Nods head].

Q. OK. So what you have told us is that something has happened but you're not able to tell us yet what and we understand that, it's difficult for you. And what we do know is that it's had an effect on your life and we know that it's really hard for you to tell us exactly what's happened but something has happened at your house, is that a good summary? Can you summarise it any more than that?

A. [Shakes head].

Q. OK, is there anything else you want to tell us today?

A. [Shakes head].

*[interview concludes at 01.13 pm]*"

*Appellant's police interview under caution on 4 June 2019*

The police summary of the Appellant's interview read as follows:

"[interview] completed with suspect [with her solicitor in attendance]..."

In brief, [Appellant] described how [D] has experienced profound MH problems since reaching puberty at the age of 11. Since this time [Appellant] has relentlessly been trying to get [D] support to enable her to return to living anything like a 'normal' life. [Appellant] denied ever having sexually assaulted [D], stating that she hasn't had any involvement in the bathing / showering of any



of her three children since they reached the age of 8/9 when she felt that they were sufficiently independent to be able to bath themselves properly. She described how when the children had been younger she had supported them with their bathing – washing and drying them ‘as any parent would’, and denied ever having excessively dried her genital area / buttocks / anus, or ever having inserted her finger(s) or a towel into her vagina or anus. [Appellant] denies ever having been in the bathroom or shower with any of her children since they reached the age of 8 or 9.

...[Appellant] described how [D’s] MH difficulties led to her going to live with her father in June/July 2015 where she remained until she decided she wanted to move back ‘home’ with her mum and brothers in Nov. 16.

[Appellant] described how [D] suffered particularly with her MH once back at home with her, culminating in her spending a period of time as on a voluntary basis in the secure unit at Chalk Hill Hospital...in April 2017. And [Appellant] described how when [D] was discharged from Chalk Hill she expressed how she didn’t want to return to live at ‘home’ but had to as there was no other option, with [D] then very soon afterwards fleeing to Beachy Head threatening to kill herself. [Appellant] described how it was after this that [D] was taken into foster care (19/04/17) where she has remained since. And [Appellant] described how she has had no direct contact with [D] since that time as [D] has refused to have any contact with her...

[Appellant] described how she feels sick to have heard the details of the allegation made by [D]. She states that she has been the only person who has not rejected [D] and she feels that it is because of this that [D] has made the allegations, doing so knowing that [Appellant] will always love and support her no matter is said or happens.

“I’VE SAID FROM THE VERY BEGINNING THAT MY DAUGHTER IS ILL. SHE NEEDS HELP. SHE IS MENTALLY ILL. HOW DO YOU GET SOMEONE TO LISTEN IF THEY HAVEN’T BEEN FOR YEARS. WHEN IS SOMEONE GOING TO HELP MY DAUGHTER? HOW FAR DOES THIS HAVE TO GO? I DON’T HAVE A VOICE FOR HER ANYMORE.” “YOU HURT THOSE THAT ARE CLOSEST TO YOU & LOVE YOU THE MOST.”...”

*D's 2<sup>nd</sup> ABE interview – 3 October 2019*

The relevant parts of the transcript are as follows and, unless otherwise indicated, the questions were asked by police officers:

**“THE INTERVIEW PROCEDURE WAS EXPLAINED. PERSONS PRESENT INTRODUCED THEMSELVES.**

**INTERVIEWEE’S UNDERSTANDING OF THE DIFFERENCE BETWEEN TELLING TRUTH AND LIES ESTABLISHED.**

**DISCUSSION ABOUT [D] WEARING A BLUETOOTH HEADPHONE IN HER RIGHT EAR BECAUSE IT HELPS HER.**

**[D] HAS MUSIC PLAYING THROUGH HER HEADPHONE AND THE HEADPHONE IS ATTACHED TO HER PHONE AND YOUR PHONE IS ON THE TABLE. [D] HAS ENSURED HER PHONE WON’T GET ANY CALLS WHILST THIS INTERVIEW IS PROGRESSING.**

Q. [D] you and I have met a while ago, do you remember that, I’m sure you do because we have been talking about it before we got into the room about when we met back in May, earlier of this year and erm that we were with [redacted] was here as well in the room and [redacted] was around as well and you told me do you remember, you told me about there were some incidents involving your Mum and you

A. NODS HEAD

Q. Yeah if any of this isn’t correct as what you remember, this is what [redacted] and I remember okay, please tell me, do you remember you were able to describe some things surrounding those incidents but you asked them for the video to be finished and stop recording after quite a while

A. NODS HEAD

Q. Erm and you were beginning to give us a bit of detail but we stopped the video before you went into detail about what happened, yeah

A. NODS HEAD

Q. I know that you’ve met with [redacted] and with [redacted] before this interview and you’ve agreed to come along and tell us what’s happened between you and your Mum today, is that okay?

A. NODS HEAD

Q. You're agreeing with that?

A. NODS HEAD

Q. Fabulous, I'm just wondering if we should just start from there [D], can you remember when you came and spoke to me last time?

A. NODS HEAD

Q. Can you remember about the incident that you were talking about

A. NODS HEAD

Q. Yeah can you give me a bit of a summary of what you were talking about at that point?

A. The bathroom

Q. In the bathroom okay, what was happening in the bathroom?

A. I was in the shower or the bath

Q. You were in the shower, and who else was in the bathroom with you?

A. Mum

Q. Mum, okay so Mum was in the bathroom with you and you were in the shower, what was Mum doing in the bathroom?

A. Sitting there

Q. Can you tell me what happened next?

A. SAID NOTHING

Q. Was there any conversation happening while you were in the shower?

A. SHAKES HEAD

Q. What were you doing in the shower?

A. Washing

Q. Hmm, what happened when you'd finished washing?

A. I got out

Q. You got out

A. Of the shower

Q. Okay did you have to climb out or was it at floor level or is it a separate shower to the bath?

A. No you have to climb out

Q. You climbed out – what did you do first when you climbed out?

A. SAID NOTHING

Q. Can you remember what you were wearing when you climbed out the shower?

A. I wasn't wearing anything

Q. You weren't wearing anything that makes perfect sense when you were in the shower when you were washing and you climbed out over the side of the bath

A. NODS HEAD

Q. Okay and where was your Mum, was she in the bathroom or had she

A. She was in the bathroom

Q. Okay, can you remember what time of year it was

A. SHAKES HEAD AND SHRUGS SHOULDERS

Q. Was the bathroom warm or cold?

A. SAID NOTHING – SHRUGS SHOULDERS

Q. Okay, you climbed out of the bath, what happened next [D]?

A. SAID NOTHING

Q. What do you normally do when you get out of the shower?

A. SAID NOTHING

Q. [D] could you draw me a floor plan of what your bathroom looked like and where you were in the bathroom, could you do that for me?

A. NODS HEAD

Q. Okay, here you go, he's some paper here, do you want it over there or do you want to turn around to the table? Shall I pass it to you, okay do you need anything to lean on, no okay?

A. SHAKES HEAD

...

Q. And where was Mum? And where's the door? Is there anything else about the bathroom that you remember?

A. There's a mirror

...

Q. Okay, so you just got out the shower and you were wet I assume cos you'd been washing in the shower, is there any conversation that went on between you and Mum at that point, did Mum say anything to you?

A. SHAKES HEAD

Q. What did you do next?

A. Stand there

Q. You just stood there, okay, what did Mum do?

A. SAID NOTHING

Q. [D] had you had showers before when Mum wasn't there, and you were in the bathroom on your own or was Mum always in the bathroom with you?

A. Sometimes

Q. Sometimes, what would happen on days when Mum wasn't there, what would you do next once you got out of the bath or out of the shower, climbed out of the bath?

A. Get a towel and go to my room

Q. Go to?

A. Get a towel and go to my room?

Q. Okay, where do you keep the towels?

A. On the back of the door

Q. On the back of the door, so there was a towel on the back of the door that day

A. NODS HEAD

Q. Yeah, what happened next? Did you get the towel, did Mum get the towel or did something else happen?

A. SAID NOTHING

TALKING BETWEEN OFFICERS

Q. Did you collect the towel off the back of the door?

A. SHAKES HEAD

Q. No, did Mum get the towel?

A. NODS HEAD

Q. Okay, what did Mum do with the towel?

A. SAID NOTHING

Q. Okay so we're in the bathroom, you're in the bathroom and Mum's reached over and did she have to move or is the bathroom small enough for her to just reach over, did she have to

A. NODS HEAD – she got up and got it

Q. She got up and got it, can you remember the towel, can you tell me about the towel? What colour was the towel?

A. Different colours sometimes

Q. Hmm – can you remember a particular time when you had a particular colour towel?

A. Purple one

Q. Purple one okay, so Mums got up and reached over and got the purple towel, what were you doing?

A. Standing

Q. Hmm how were you feeling?

A. Scared

Q. You were scared, can you tell me about feeling scared, what did that feel like for you?

A. SAID NOTHING

Q. Do you want a take the paper back so that [D] can see [redacted]

Q. Hmm you can't see [redacted] shall we take the paper away, have you got anything else to add to that drawing?

A. SHAKES HEAD

Q. Okay, you were feeling scared at that point [D], can you tell me why you were feeling scared? It's okay if you can't, or if you think that's a silly question it's fine to say you think that's a silly question?

What were you scared about?

A. What was going to happen

Q. Okay, what did you think was going to happen?

A. SAID NOTHING

Q. Was that a difficult too silly question, yeah, can you tell me what did happen, Mum had got the purple towel and you were standing on the floor next to the bath, what did happen on that time when Mum had got the purple towel?

A. SAID NOTHING

Q. Did you say anything?

A. SHAKES HEAD

Q. Did Mum say anything?

A. SHAKES HEAD

Q. What did Mum do next, when she'd leaned across and got the towel?

A. She put it around me

Q. Okay, how did she put it around you, wrap it round you, put it over you, something else?

A. Put it over me

Q. Put it over you, what part of your body did she put it over?

A. My shoulders

Q. Over your shoulders, what way were you facing at that point were you looking towards the bath or towards the toilet or towards the door or the sink? Too many options, what were you facing, which direction were you facing, what could you see?

A. The toilet

Q. Facing the toilet, could you see Mum at that point?

A. NODS HEAD

Q. Okay so Mum got the purple towel and she wrapped it over your shoulders, she pulled it over your shoulders, what happened next?

A. SAID NOTHING

Q. [D] do you want to have a little bit of a break, do you want to stop thinking about what happened in the bathroom for now?

A. NODS HEAD

Q. Okay, shall we have a bit of a break

A. NODS HEAD

...

Q. Do you want to take a walk?

A. NODS HEAD

[*interview suspended for five minutes*]

Q. Hi [D]. can I just confirm that you didn't talk about anything you've been talking about in here with [redacted] out there?

A. No

Q. Could you help me understand where the bathroom was what house that was [D], could you tell me a bit about your house you were living in at the time, where was your house?

A. In [*a town*]

Q. In [*a town*] do you remember the address?

A. NODS HEAD

Q. What was the address?

A. [*redacted*]

Q. [*redacted*], who was living there with you at the time?

A. My mum and brothers

...

Q...how old were you when you were describing what you were describing to me earlier in the bathroom, how old were you at the time, any idea?

A. SHRUGS SHOULDERS

Q. Were you, can you remember which school you were at, at the time or was it before you were at school

A. Primary School

...

Q...when did you leave Primary School, how old were you?

A. Er eleven I think

Q. Hmm I would think that's probably right it's been a while since I've been involved in when children leave Primary School but I think it was about eleven so it was this, this happened in the bathroom some time before you were about eleven?

A. NODS HEAD

...

Q...when you were in the bathroom, were either of your brothers around, do you know where they were?

A. SHAKES HEAD – downstairs

Q. Okay downstairs, your brothers were downstairs and you were upstairs in the bathroom, you'd had a shower and Mum had put the towel around your shoulders, okay, what happened then?

A. SAID NOTHING

Q. Did you touch the towel, where were your hands?

A. By my side

Q. By your side, had your feelings changed then cos you said you were feeling scared before Mum put the towel around you, what were you feeling?

A. SAID NOTHING

Q. What happened next when Mum put the towel around what did Mum do next?

A. SAID NOTHING

Q. Tell me what happened next?

A. She started to dry me

Q. Okay, can you describe how she did that? How did your Mum start to dry you, what did she do?

A. SAID NOTHING

Q. Can you tell me what part of your body Mum started to dry you with first, dry you with, I don't think that makes sense, what part of your body did Mum dry first?

A. The top half

Q. Your top half, can you tell me how she did that, did she pat you, rub you, something else?

A. Rubbed

Q. Rubbed you and how did that feel?

A. Horrible

Q. Horrible, can you tell me why it was horrible?

A. SAID NOTHING

Q. In what way was she rubbing you, was she doing it gently, fast, hard or something else?

A. SAID NOTHING

Q. Do you remember how long it took to dry the top half of you?

A. SHAKES HEAD

Q. No, was that a no

A. NODS HEAD

Q. Was it all of the top half or was it particular bits of the top half of you?

A. Particular bits



Q. What particular bits is that? Are you having trouble saying it out loud, I've got a list next to me with body parts on would you find it helpful to look at that

A. NODS HEAD

Q. And then may be you can point or mark on it what part of your body Mum was drying first, alright so I've got a list here of as many body parts as [redacted] could think of, okay, is there anything on there that links in with what you, what Mum was rubbing and drying you first? Can you point again because it looked like you pointed between two, so you are pointing to what word there?

A. NODS HEAD

Q. Do you want me to say that out loud, yeah so you pointed to the word breast yeah, is that right?

A. NODS HEAD

Q. Good okay so Mum was drying that part of your body, you've told us was your breast, okay, how was she doing that?

A. SAID NOTHING

Q. What part of your body did your Mum dry next? I've got a pen here if you want to stick a dot on it, what part was it next?

A. POINTS TO PAPER

Q. Show me can you put a dot on it with the pen so I'm absolutely sure, vagina, so Mum started off rubbing your breast with the towel and then she started to dry your vagina, yeah – how did she do that? Did she use the towel or something else?

A. SAID NOTHING

Q. Okay, [D] you're scratching your hands again which I think probably means that you would like us to ask you whether you want another break, what do you think, would you like a break

A. SHAKES HEAD

Q. Okay, now I understand the word vagina meaning a certain area of a woman or girl's body but there's quite a lot of area involved in a vagina, do you think we could work on narrowing it down to what you mean, would you like some help with that?

A. NODS HEAD

Q. Okay, I'm just wondering if we could I'm wondering if you could draw a picture or whether [redacted] got some pictures that might help us I've only got these

Q. You've got some ones that are simple pictures which is good, I quite like simple pictures, they might be a good start, can we draw on these?

[redacted]. Absolutely yeah

- Q. Right I'm bringing over this picture of  
[redacted]. Pen on Panda's head I just saw your pen
- Q. Oh right, I'll be in so much trouble if I did a bit of a tattoo on [redacted] oh no  
this is [redacted]
- Q. Okay, so this is a pretty basic picture of a body isn't it, could you show me on  
this where you mean by vagina? Where was Mum drying first off? There, there  
you draw it the pen which part it was and is that on the front of your body
- A. NODS HEAD
- Q. Yeap, let's put a little face on her shall we put a face on her  
[redacted]. Just put front may be
- Q. I'll put front and a couple of eyes so that we know it's the front, my drawings  
not great is it, so did she start drying on the front of your vagina or was it inside  
or at the back? Just there
- A. No, oohh
- Q. No, that's fine, it's fine to say no  
[redacted]. Do you want me to get that
- Q. So I was pointing to the front and you said it wasn't the front
- A. It was and ohh  
[redacted]. We've got another doll, would it be easier to show sort of slightly on  
that one
- Q. Yes  
[redacted]. Loose leg that one I've got the loose leg attached
- Q. Okay so we've got another person here, okay  
[redacted]. I don't know which way round this should be, does that look, that  
looks about right
- Q. On the picture you were pointing to this area, can you show me on this  
model, wooden model where you meant cos I'd got it wrong hadn't I
- A. On there and there
- Q. There and there so you pointed on to more of the front and there yeah
- A. NODS HEAD
- Q. Yeah the part of your vagina that's between the legs, yeah, no?
- A. NODS HEAD
- Q. So two places on your vagina area the front and in between the legs, have I  
got that right this time?
- A. NODS HEAD
- Q. Okay, when Mum was drying the front of your vagina, how was she doing  
that, is she still using the towel or something else?
- A. NODS HEAD – both

Q. Both what do you mean by both

A. The towel

Q. The towel

A. SAID NOTHING

Q. So she was using the towel to dry the outside of your vagina is there anything else on there that would describe where else she was drying?

A. SHAKES HEAD

Q. No, when you said both was that she was using the towel to dry both bits or she was using something else with the towel?

A. Fingers

Q. Fingers okay, what was she doing with her fingers? Do you want me to move away?

A. NODS HEAD

Q. She's got the purple towel and was using that to dry the front of your vagina, where was she drying with her fingers?

A. SAID NOTHING

Q. Where were Mum's fingers?

A. SAID NOTHING

Q. [D] do you want to stop for a minute?

A. NODS HEAD

*[interview suspended for ten minutes]*

Q...can I confirm with you while you've been out getting some autumnal fresh air with [redacted] did you talk about what we've been talking about in the room?

A. SHAKES HEAD

Q. Okay, fantastic, [D] I'm going to ask you a few questions more okay, and we'll just carry on for a bit is that going to be okay, I'm assuming as you're back in the room you're happy to carry on for a bit

A. NODS HEAD

Q. Okay, so when you were in the bathroom and Mum has got the purple towel and you said she dried you at the front of your vagina was she touching you with the towel?

A. NODS HEAD

Q. Was she touching you with her fingers?

A. NODS HEAD

Q. At the front of your vagina?

A. SHAKES HEAD

Q. No, she was touching you with her hands but with the towel in between

A. NODS HEAD

Q. You also said that she was touching you between your legs, yeah in your vagina, was that the outside of your body or the inside or someone else?

A. Inside

Q. Inside and when she was touching you on the inside of your vagina was that with the towel?

A. Sometimes

Q. Sometimes with the towel and was that with her fingers?

A. Sometimes

Q. Was there any times that something else touched you on the insides of your vagina?

A. SHAKES HEAD

Q. No, when we've been talking about Mum drying you with the towel and touching you, I've got a sense that this has happened more than once

A. NODS HEAD

Q. Could you tell me, give me an idea of whether this did happen once or whether it happened more than once or several times

A. More

Q. More, how often did it happen?

A. I don't know

Q. Did it happen every day, every month, every week?

A. Not every day

Q. Pardon

A. Not every day

Q. Not every day, every week?

A. I don't know

Q. Don't know okay, and you've told me that it was in the bathroom of your address in [redacted]

A. NODS HEAD

Q. Did this happen anywhere else?

A. NODS HEAD – in the old house

...

Q. Do you remember when you lived there?

A. When I was younger

Q. When you were younger, can you remember when you moved out of the [old house] and moved to [new house]?

A. Erm I think I was in Year 5

Q. You were Year 5

...

Q. So that would have made you nine or ten

A. I'm not sure

...

Q...so you remember it happening when you were in the [old house] and was that the same thing was it different?

A. The same

Q. Can you tell us whereabouts in your [old house] that happened?

A. Bathroom

Q. In the bathroom

A. And the living room

Q. No

A. And my living room

Q. And the living room, tell me about the living room in the [old house], was this in the [old house]?

A. Both

Q. Both living rooms, okay, how many times did it happen in the living room of the [old house]?

A. I don't know

Q. Once, more than once or loads?

A. Loads

Q. Loads, what was happening before it happened in the when you were in the living room of the [old house], can you show me what the living room looked like, can you remember

A. I don't remember

Q. Can't remember, whereabouts in the living room were you?

A. On the sofa

Q. On the sofa, was there anyone else there?

A. Sometimes

Q. Okay, who else was there?

A. My brothers

Q. Your brothers, what happened in the living room on the sofa? Can you remember a time when that did happen a particular time?

A. NODS HEAD

Q. Okay can you tell me about what you were doing?

A. Sitting on the sofa

Q. Okay who was sitting on the sofa?

A. Mum

Q. Mum and you, where were your brothers?

A. On the other sofa

Q. Okay

A. Or on the same sofa

Q. So they may have been on the same sofa or the other sofa, and what are you wearing?

A. Clothes

Q. Clothes, day clothes, pyjamas?

A. Normally pyjamas

Q. Okay, when you told us about what happened in the bathroom and how that what happened beforehand, what happened before it happened in the sitting room? You were sitting on the sofa what were you doing on the sofa?

A. Watching TV

Q. Okay, can you remember what you were watching?

A. SHAKES HEAD

Q. Okay, what did Mum say?

A. Nothing

Q. She didn't say anything?

A. SHAKES HEAD

Q. What did you say?

A. Nothing

Q. Did your brothers say anything?

A. SHAKES HEAD

Q. Okay and what happened at that point when you were on the sofa, so you were wearing your pyjamas, what was Mum wearing?

A. Clothes

Q. Clothes, and she was sitting next to you on the sofa or somewhere else?

A. Next to me

Q. Okay, what happened, what changed from watching telly to something else happened? What did you do?

A. Nothing

Q. Okay what did Mum do? Do you want the word sheet back?...What about what happened on the sofa, you were sitting there with Mum, was it the same as what happened in the bathroom, can you show, or something different?

A. The same

Q. The same, was there a towel

A. SHAKES HEAD – no

Q. Was there anything else on the sofa, did you have any

- A. We had a blanket on us
- Q. You had a blanket, and where was the blanket?
- A. Over us
- Q. Over you, who else?
- A. It was just like a shared blanket
- Q. I was a shared blanket, okay, and you were watching telly and you told me that it was the same so did Mum touch your vagina?
- A. NODS HEAD
- Q. Yeah, did Mum touch anything else on your body?
- A. SHAKES HEAD
- Q. Can you tell me what part of your vagina? You said in the bathroom she touched the front and inside, what part of your vagina did she touch on the sofa?
- A. Inside
- Q. Inside, how long did that last for [D]?
- A. I don't know
- Q. Any idea
- A. SHAKES HEAD
- Q. Okay, how did you feel?
- A. Uncomfortable
- Q. Uncomfortable was that your feelings feeling uncomfortable or your body feeling uncomfortable?
- A. I don't know
- Q. Or was that a stupid question, I'm quite good at stupid questions this afternoon, what emotions were you feeling when that was happening?
- A. SAID NOTHING
- Q. Erm how did your body feel when that was happening?
- A. Horrible
- Q. Horrible okay, was it painful?
- A. Sometimes
- Q. Okay, so that happened in the sitting room of your [old house]
- A. And [new house]
- Q. And at [new house], was it different at the [new house] in the sitting room to the [old house]
- A. No
- Q. No okay, do you remember when the last time this happened?
- A. SHAKES HEAD – like I don't know
- Q. Do you know what school you were at when it happened for the last time?

A. [a primary school]

Q. You were at [the primary school] okay, and were you always at [the primary school]?

A. NODS HEAD

Q. Were you at [the primary school] when it happened at [the old house]?

A. NODS HEAD

Q. It happened throughout your time at [the primary school], yeah

A. NODS HEAD

Q. Okay, were there any times when it didn't happen?

A. NODS HEAD

Q. Yeah, when it didn't happen?

A. Whenever it was I don't know

Q. Can you remember how long it happened in between when it didn't happen, that's a silly question, I don't even understand that question sorry, can you remember the longest gap when it didn't happen?

A. Like a week

Q. About a week okay, so it was happening for about a week, the longest it didn't happen for was a week in the time that you were living in the [old house] and when you were at the [primary school], is that correct?

A. NODS HEAD

Q. Okay

...

Q...did it ever happen while you were at [secondary school]?

A. SHAKES HEAD

Q. No okay so from Year 7 this didn't happen?

A. SHAKES HEAD

Q. Okay, were there any other times it happened any other places? Did it happen anywhere else?

A. No

Q. No, so it happened in the bathroom of both of the houses and it happened in the sitting room of both of the houses and you were at [the primary school] throughout that whole time and it didn't happen after you left [the primary school] to go to Secondary School

A. NODS HEAD

Q. Is that a good summary, have I got that right?

A. NODS HEAD

Q. It's really important you tell me if I haven't got it right?

A. Yeah that's right



Q. That's right okay, I am going to go and talk to [redacted]. [D] is there anything else that you want to tell me about today, is there anything you want to tell [redacted] or [redacted]

A. SHAKES HEAD

Q. Do you feel like you've told us as much as you possibly can

A. NODS HEADS

Q. Okay

*[interview concludes]*"

*D's father's police witness statement, given on 5 October 2019*

"...[the Appellant] has the capacity to overstate things about children especially [D's] healthcare...

...in June 2015 [D] came to live with us...[D] told me that she couldn't live with Mum anymore and she couldn't cope with it. She said that Mum was trying to control her too much..

...[at a school award ceremony during the period that D lived with her father] [the Appellant] "tried to approach [D] and ended up running up and down the rows of seating chasing her...

...[D] reported seeing mum in [town] who then chased her through the [shopping] centre trying to talk to her...

...when [D] first moved in with us [the Appellant] made direct contact with a number of her friends via their mobiles. She asked each of them "what [D] had said about why she left the family home, and what had she said about her?" ([the Appellant]). I received phone calls from at least two of these girls parents who were extremely unhappy about [the Appellant] contacting their children...

...[D] "spent a week in a secure mental health facility [after returning to live with the Appellant for 4 or 5 weeks] where she was assessed but found not to be suffering from any mental illness, she was just a child who did not want to go home and at that stage I do not think anyone knew why. I certainly didn't know why...

...Since [D] has gone into Foster care...she has improved. She has started to settle down but there have been some incidents of cutting. [D] also took an overdose of 60 paracetamol in April 2019 which followed contact with her mum...”.