Neutral Citation Number: [2023] EWFC 211

Case No: YO22C50021

IN THE FAMILY COURT SITTING AT LEEDS

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26 October 2023

Before:

Mr Justice Poole

- -

A, B and C (Child Contracting Gonorrhoea)

Between:

A Local Authority **Applicant**

- and -

(1) M
(2) X
(3) Y
(4) to (6) A, B, and C
(By their Children's Guardian)

Respondents

- -

Will Tyler KC and **Iain Hutchinson** (instructed by the Local Authority) for **the Applicant**
Charlotte Worsley KC and **Ruth Philips** (instructed by Paul J Watson solicitors) for **the First Respondent**
Rachel Langdale KC and **Stephen Thornton** (instructed by Newtons Solicitors Ltd) for **the Second Respondent**
June Venters KC and **Michael Cahill** (instructed by Tilly Baker & Irvine LLP) for **the Third Respondent**
Mark Jarman KC and **Andrew Fox** (instructed by Jones Myers Ltd) for **the Fourth to Sixth Respondents**

Hearing dates: 12 and 16 to 26 October 2023

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FINAL JUDGMENT

This judgment was delivered in private. The Judge has given permission for this anonymised version of the judgment (and any of the facts and matters contained in it) to be published on condition always that the names and the addresses of the parties and the children must not be published. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court.

Mr Justice Poole:

1. The Applicant Local Authority issued these public law proceedings in March 2022 soon after the eldest of the three children with whom I am concerned, A, tested positive for gonorrhoea. The children's mother, M, was at that time in a relationship with Y who is the father of M's youngest child, C. The second respondent, X, is the father of M's elder children, A and B. He is now married to Z. The children, A, B, and C, are now aged 8, 6, and 2 respectively. Medical opinion is that when a young child contracts gonorrhoea, it is strongly suggestive of sexual abuse. A was in the care of M and Y, or of M alone, at the time when she probably contracted gonorrhoea. There is no suggestion that any other adult could have infected A. M and Y have suggested that A may have been infected accidentally by transmission of infective bacteria via an inanimate object such as a shared towel or during bathing.

2. The case has been listed before me as a final hearing. The reason why it has taken so long for the proceedings to reach a final hearing is that the Court of Appeal allowed the appeal of M and Y against findings made against them by HHJ Mitchell sitting in the Family Court at York in December 2022 and remitted the case for a rehearing - *A, B and C (Fact-Finding: Gonorrhoea)* [2023] EWCA Civ 437. I have adopted the same anonymisation used by the Court of Appeal. Shortly after the hearing before HHJ Mitchell, M and Y were married.

3. At the time of the first hearing and the appeal, A had denied that anyone had touched her inappropriately. She had no physical signs of sexual abuse on examination. M and Y had not previously come to the notice of children's services and there was no evidence that M or Y had any sexual interest in children. There has, however, been a significant development since the Court of Appeal handed down its judgment in April 2023. When sitting in a hot tub in the garden of the home of X and Z, A made a serious allegation that Y had put something in her "front bum" by which she meant her genital area. Very unusually, part of the discussion was secretly recorded by a neighbour without the knowledge of X and Z. A then made further statements in an Achieving Best Evidence (ABE) interview with the police in which she described the "thing" that Y had used on her. The Local Authority maintain that the object she described was a white, plug-in vibrator belonging to M.

4. I have received written evidence in four bundles which together run to over 7000 pages, 3000 of which are records of call logs, search histories, messages and videos downloaded from M and Y's mobile devices. I have heard oral evidence from M, X, Y and Z, from the ABE interviewing officer, two other investigating officers, the current allocated social worker, the Children's Guardian, and from two medical professionals giving opinion evidence: Dr Ghaly, Consultant Physician in Genito-Urinary Medicine, and Dr Teare, Consultant Microbiologist. I also had written evidence from Dr Ward, Consultant Paediatrician. I have benefited from very able representation and submissions on behalf of the parties.

5. At the close of the evidence, the Local Authority revised its Threshold Document containing allegations against M and Y. It is not disputed, as the Local Authority alleges, that,

> "1. On 21 February 2022 A was presented at the GP on the basis of having suffered soreness, itching and discharge in the

genital area for approx. one week. These were symptoms of the sexually transmitted disease, Gonorrhoea. A was subsequently tested on 4 March 2022 and received a positive diagnosis as suffering from vaginal and rectal gonorrhoea."

And …

3. There is no inherent medical or organic cause for the Gonorrhoea, the only cause is infection by Gram negative intracellular diplococcus Neisseria gonorrhoeae (Gonorrhoea).

6. The Local Authority invite the court to make further findings of fact which are disputed and which can be summarised as follows:

i) Y sexually assaulted A with a vibrator, as described by A in her ABE interview;

ii) A was infected with gonorrhoea by M and/or Y during an episode other than that described by A in her ABE interview which incident took place over or in the days following the weekend of 4 to 6 February 2022; or

iii) A was infected by Y during the incident she described in her ABE interview, and that incident happened over the weekend of 4 to 6 February 2022;

iv) In the event that A was infected by the actions of Y acting alone, M knows more about the true events of the weekend of 4 to 6 February 2022;

v) M delayed seeking medical attention for A's symptoms of gonorrhoea until 21 February 2022.

7. The Local Authority also invite the Court to make a post-threshold finding that the mother has continued to withhold from the court what she knows of the events of the weekend of 4 to 6 February 2022. In doing so she has prioritised her need for a relationship with Y over her daughters. It is likely that she will be unable effectively to protect the girls from future sexual harm, whether from Y or in future relationships.

8. Presently A and B live with their father, X, and his wife, Z, under an interim care order. C is cared for under an interim care order by foster carers, Mr and Mrs D. M seeks the return of all three children to her care. She and Y strenuously deny any sexual abuse or knowledge of abuse. The Local Authority's plans for the children are supported by the Children's Guardian. The plan for A and B is that, whether or not findings of fact are made, it is in their best interests to remain living with X and Z. If no findings are made, that arrangement can be made under a Child Arrangements Order. If findings are made a Supervision Order would be appropriate. In either case defined contact at least once a month with M would be appropriate, and regular sibling contact would also be planned. If findings are made against M and Y then the Local Authority plans that C will continue to live with Mr and Mrs D but under a Special Guardianship Order. If findings are made against Y but not M, or against neither, I have to consider whether C should return to M's care, or their joint care.

The Legal Framework

9. I have been provided with Counsels' agreed note of the law. The threshold criteria for making a care or supervision order are set out in s.31(2) of the Children Act 1989:

> "A court may only make a care order or supervision order if it is satisfied—
>
> (a) that the child concerned is suffering, or is likely to suffer, significant harm; and
>
> (b) that the harm, or likelihood of harm, is attributable to—
>
> (i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or
>
> (ii) the child's being beyond parental control."

In the present case there is no dispute that A suffered significant harm when she contracted gonorrhoea. The attribution of that harm is in issue and requires the court to make findings of fact. It has not been disputed that if A contracted gonorrhoea as a result of sexual abuse by M and/or Y, then B and C would be at risk of significant harm.

10. The judgments of Baker J in *A Local authority and (1) Mother (2) Father (3) L & M (Children, by their Children's Guardian)* [2013] EWHC 1569 (Fam) and Peter Jackson J in *Re BR (Proof of Fact)* [2015] EWFC 41 are of particular assistance in guiding the court's approach to a finding of fact hearing. More recently, MacDonald J summarised the principles to be applied in *Re A Local Authority v W and others* [2020] EWFC 68. I derive the following principles from those cases and the authorities that those judges reviewed many of which are set out in Counsels' agreed note:

i) The burden of proof lies on the Local Authority that brings the proceedings and identifies the findings they invite the court to make. There is no obligation on a respondent to provide or prove an alternative explanation.

ii) The standard of proof is the balance of probabilities, *Re B* [2008] UKHL 35. If the standard is met, the fact is proved. If it is not met, the fact is not proved.

iii) There is no burden on a parent to produce an alternative explanation and where an alternative explanation for an injury or course of conduct is offered, its rejection by the court does not establish the applicant's case.

iv) The inherent probability or improbability of an event should be weighed when deciding whether, on balance, the event occurred but regard to inherent probabilities does not mean that where a serious allegation is in issue, the standard of proof required is higher.

v) Findings of fact must be based on evidence not suspicion or speculation - Lord Justice Munby in *Re A (A child) (Fact Finding Hearing: Speculation)* [2011] EWCA Civ 12.

vi) The court must take into account all the evidence and consider each piece of evidence in the context of all the other evidence. As Dame Elizabeth Butler-Sloss, President observed in *Re T* [2004] EWCA Civ 558, [2004] 2 FLR 838 at paragraph 33:

> "Evidence cannot be evaluated and assessed in separate compartments. A judge in these difficult cases must have regard to the relevance of each piece of evidence to the other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion of whether the case put forward by the Local Authority has been made out to the appropriate standard of proof."

vii) The opinions of medical experts need to be considered in the context of all the other evidence. In *A County Council v KD & L* [2005] EWHC 144 Fam at paragraphs 39 to 44, Mr Justice Charles observed:

> "It is important to remember that (1) the roles of the court and the expert are distinct and (2) it is the court that is in the position to weigh up the expert evidence against its findings on the other evidence. The judge must always remember that he or she is the person who makes the final decision."

viii) The evidence of the parents and any other carers is of the utmost importance. They must have the fullest opportunity to take part in the hearing and the court must form a clear assessment of their credibility and reliability.

11. It is not uncommon for witnesses in these cases to tell lies in the course of the investigation and the hearing. The court must be careful to bear in mind that a witness may lie for various reasons such as shame, misplaced loyalty, panic, fear, or distress and that the fact that the witness has lied about some matters does not mean that they have lied about everything. Lies are not necessarily evidence of guilt of the matters alleged: see *R v Lucas* [1981] QB 720. In the recent Court of Appeal judgment in *A, B, and C (Children)* [2021] EWCA Civ 451, Macur LJ advised at [57],

> "I venture to suggest that it would be good practice when the tribunal is invited to proceed on the basis, or itself determines, that such a direction is called for, to seek Counsel's submissions to identify: (i) the deliberate lie(s) upon which they seek to rely; (ii) the significant issue to which it/they relate(s), and (iii) on what basis it can be determined that the only explanation for the lie(s) is guilt. The principles of the direction will remain the same, but they must be tailored to the facts and circumstances of the witness before the court."

Similar caution should be exercised in relation to a respondent giving unsatisfactory explanations or failing to give any explanation for the allegations made against them – the fact that they are unsatisfactory or missing may not be probative of the truth of the allegations or of the culpability of the respondent.

12. As observed by Dame Elizabeth Butler-Sloss President in *Re U, Re B* [2004] EWCA Civ 567 above, "The judge in care proceedings must never forget that today's medical certainty may be discarded by the next generation of experts or that scientific research may throw a light into corners that are at present dark". In *Re R (Care Proceedings: Causation)* [2011] EWHC 1715 Fam Mr Justice Hedley, developed this point further at paragraph 19:

> "… there has to be factored into every case which concerns a discrete aetiology giving rise to significant harm a consideration as to whether the cause is unknown. That affects neither the burden nor the standard of proof. It is simply a factor to be taken into account in deciding whether the causation advanced by the one shouldering the burden of proof is established on the balance of probabilities."

13. I adopt paragraphs [41] to [51] of Baker LJ's judgment in the Court of Appeal in the present case (above) as to cases of uncertain perpetrators. I also heed his warning that the identity of the perpetrator is not to be considered in a separate compartment from the use of whether sexual abuse has occurred at all – the issues should be considered together (see [54]). As set out in Counsels' note of the law, where there are two possible perpetrators, it is impermissible for the court to find, on the balance of possibilities, that X is the perpetrator but that Y nevertheless remains in the pool of possible perpetrators. *Re M (Fact-Finding Hearing: Burden of Proof)* [2008] EWCA Civ 1261, [2009] 1 FLR 1177.

14. I also adopt the principles and guidance from authorities set out in Counsels' agreed note in relation to ABE interviews and the importance of following guidance, I follow *Re JB (A Child: Sexual Abuse Allegations)* [2021] EWCA Civ 46 and am greatly assisted by the summary at [577] of MacDonald J's judgment in *Re P (Sexual Abuse: Finding of Fact Hearing)* [2019] EWFC 27 (Fam). In *Re P*, approved in *Re JB* (above) it was held that , "The ABE guidance is advisory rather than a legally enforceable code. However, significant departures from the good practice advocated in it will likely result in reduced (or in extreme cases no) weight being attached to the interview by the courts." (paragraph 856)

Chronology of Events

<u>Background and Events prior to the Weekend of 4 to 6 February 2022</u>

15. By way of background, M has suffered mental health problems for some years following physical abuse in her childhood perpetrated by her father, an episode of sexual abuse in childhood, relationship difficulties, and birth trauma. She was married

to X for 10 years before they separated in 2019. She then began her relationship with Y and they had C in July 2021. Y's work kept him away from the home where M lived with A, B, and C, for long periods at a time. By March 2022, when these proceedings began, M had not permitted X to see A and B for about six months. She says that was in accordance with the girls' wishes. The evidence establishes the following chronology of events from the end of January 2022.

16. Mobile device records reveal bitter messages from M accusing Y of ignoring her and preferring to spend time with friends rather than seeing her and the children. However, Y's messages in reply are affectionate and M climbed down very quickly and they then exchanged messages about getting married. On 31 January 2022 there were more very heated messages from M to Y and on Tuesday 1 February M said, "Just don't want u to end up shagging someone else on Saturday because we are fighting." In fact Y arranged to go home to M and the children that weekend (Friday 4th to Sunday 6th February 2022).

17. Y says that on the evening of Wednesday 2 February 2022 he went to a kebab shop to pick up food for himself and two others. Whilst waiting for his order he had a cigarette outside and encountered a woman he has called P with whom he had previously had brief sexual relations. He later told the police that P had a "reputation" by which he meant that she had had sex with a number of other men with whom Y worked. After talking for no more than five minutes they went down an alleyway near to the kebab shop and had sexual intercourse. He did not wear a condom. On the same day Y messaged M during the course of an argument, telling her that relationships need to be based on trust. On 3 February there were further messages exchanged about trust in the relationship.

<u>The Weekend of 4 to 6 February 2022</u>

18. Y claims that on 4 February 2022 he had symptoms of dark urine and a stinging sensation initially on micturition. He says that he sought informal advice from a "medic" at his work who told him that it was probably dehydration. Later that day Y arrived at the family home in the early evening. A and B went to bed about two hours later. They share a bedroom in which there was a camera that, M and Y say, would have recorded any~~thing~~ movement in the room. M and Y slept downstairs. On Saturday 5 February, M, Y, A, B and C went out for a walk in a nearby forest but it rained heavily and they returned mid-afternoon. They all watched films together for the rest of the afternoon and evening. M and Y slept downstairs again. M says that Y was never alone with A either on 4 or 5 February.

19. Late in the morning of 6 February, M and Y had intercourse in their bedroom lasting up to 20 minutes. I was told that the children remained downstairs and did not disturb M and Y. M told me that there was a child-gate across the door to her bedroom. M performed oral sex on Y, then they had intercourse and Y ejaculated inside M. They told me that they did not use any sex toys. M says that she then went to the toilet, urinated, and wiped herself. M's evidence to me was that between 2pm and 3pm she had a shower. She usually has a shower after the children have gone to bed, but she decided to have a shower early that day. M says that A and B were in their bedroom, upstairs near the bathroom. Typically they would come in and out of the bathroom.

They follow her everywhere. Y was minding C downstairs. She used a gathered plastic netting shower scrub, which she calls a loofah, to wash herself with body wash, over her body and then between her legs. She dried herself on a white towel belonging to Y which she then draped over a banister. Her usual towel, and the children's usual towels, were in the wash having been used to dry the dog after the wet walk in the forest the day before.

20. Y left the house to return to his work at some time prior to 5 pm on 6 February. M said in her statement of 30 September 2022,

> "At Around 5pm, I put A and B in the bath….
>
> I washed A's hair and then I put the soap and glory wash on my loofah for A to wash herself with … A stands up when she washes herself and always starts with her arms, then onto her chest and tummy area. When she washes her bottom (vagina and anus), she opens her legs slightly and squats a little. She cleans with the loofah forward to back and back to front a few times then she sits down to rinse the soap away….
>
> I got A out the bath first and dried her with Y's white towel. I towel dried her hair first. I then dried her arms, then tummy, then back, then her legs. She slightly opens her legs so I can dry her private area. While drying her private area we dab it rather than scrubbing it dry. While using Y's towel I remember that it was still a little damp from when I used it."

Events after the Weekend of 4 to 6 February 2022

21. On Monday 7 February 2022 Y called an online pharmacy and then used their online service to order some tablets that were recommended to him for the symptoms he had entered into the online form. He was concerned that he might have contracted a sexually transmitted infection (STI) from P. He took the tablets, presumably antibiotics, for seven days. On Tuesday 8 February, M and Y exchanged the following messages:

> "M : Whatever you've had you've passed it on to me because I've had a sore puss puss for last couple days xx
>
> Y: Ehh you have lost me babe x x x
>
> M: My fanny hurts when I pee x
>
> Y: Mine has gone off since I have been drinking more water and my pee is not dehydrated anymore x x x love you xxx
>
> M: Might of been a infection youve had but passed to me xx love yoi x
>
> Y: Fuck knows babe but since I have been drinking more water it's gone off xxx love you x x x"

In her first statement, M says that she was experiencing "slight itchiness" in the vaginal area by Friday 11 February 2022 and so ordered an online swab test. Text messages confirm that she ordered the test that day. The text exchange above suggests that she had symptoms as early as 7 February. On 13 February M messaged Y saying,

> "Why do I get the feeling your lying to me about something? I want u to tell me and u had blonde hairs stuck to u too and don't say the girls as they was shorter than there's."

M explained to me that although Y was not in the house at that time, but was working nearby, she visited him to pick up some laundry and saw a blonde hair on his top. Y replied,

> "Babe I promise you now I ain't lying to you and I don't have a clue with the hair."

22. At some point A began to develop symptoms. Her GP records confirm contact with the surgery on 21 February 2022 when it was recorded,

> "Clinical history and observations Soreness and itching over the vagina since a week. Slight discharge. Looked online and followed advice for vulvovaginitis. Soreness helped but still getting some green discharge. No dysuria or frequency. Passing good amounts of urine. Had fever 38c over the weekend and mild stomach pain."

That would suggest onset of symptoms on or about 14 February 2022. However, there is a message exchange between M and Y on 12 February 2022 in which Y asks, "how is A doing?". M replies:

> "The girls are ok, baby. A is a lot better. The redness has gone down and I can't wait to be your wife."

In her first statement in these proceedings, M said that A had come home from school on 8 February itchy and sore in the vaginal area and two days later she had to change her knickers several times complaining that they were wet. However, she then said that she had visited the GP and picked up a vaginal swab for A on 11 February when in fact the first attendance was on 21 February when a cream was prescribed. Antibiotics were later prescribed on 25 February when vaginal swabs were taken. When M spoke to police in March 2022, and on filing a further statement dated September 2022, M stated that in fact the first sign of A having symptoms was on return from school on 14 February. M had told Dr Young, the Sexual Offence Examiner on 4 March that A's symptoms began on 14 February and included a genital

rash associated with soreness and itching and three days later, a green-coloured discharge.

23. M's own swabs were reported as positive for gonorrhoea (vagina ~~and anus)~~ on 19 February 2022. Text exchanges on the same date include:

> "M: Well I don't understand how I've been negative at the start of pregnancy then all of a sudden I am now positive x … I am raging
>
> Y: Babe, that's what I don't understand how now and why now if neither of us have done out xxxx"

Y also wrote on the same day,

> "I can tell you now hand on my heart 100% on the kids life I have not done anything xxx love you xxxx"

24. M consulted A's GP about A's symptoms on 21 February as noted above. A cream was prescribed and a urine test arranged. The urine sample was reported as showing lots of pus cells and a vaginal swab was performed with antibiotics prescribed on 25 February after the swab was taken. On 1 March it was confirmed that the swab had revealed gonorrhoea infection. Referrals were made to the GP safeguarding team and social services and on 2 March 2022 police and social services made a home visit. M told them that A had started to have symptoms on 14 February and had been prescribed cream by the GP on 17 February, which was not accurate.

25. On 3 March 2022, children's social services visited the home and spoke to A and B. No allegations were made by them of sexual abuse or contact. In a number of other discussions that followed, including on 11 March 2022, neither A nor B made any allegations of that kind.

26. Y attended a sexual health clinic to be tested for gonorrhoea and on 4 March 2022 the test results were reported to be negative. On the same day A was subject to a medical examination. This revealed no physical signs of sexual abuse. The testing, including examination of her vulva was distressing and painful for her. Tests on B and C were negative for any sexually transmitted infection. It was noted during a case discussion involving social workers and the Deputy Sergeant that M was seen to be on the phone a lot to Y whilst in the hospital and that she presented as low in mood and at times upset. She believed that Children's Services were trying to break up her family and was suggesting that A had "contracted gonorrhoea harmlessly through of material contact. She trusts Y completely that he would not harm any of the children." Y was arrested and bailed with a condition not to have any contact with the children unless agreed by the police or social care.

27. After his arrest, Y was interviewed by the police. I have viewed body worn camera footage of his arrest and a video of his interview. He gave an account of the weekend of 4 to 6 February 2022 consistent with that set out above. He strongly denied having sexually abused A. He could not explain how gonorrhoea could have entered the

family home, saying that he wanted to know how just as much as the police did. He did not reveal that he had had unprotected intercourse with P on 2 February, that he had feared he might have a sexually transmitted infection as a consequence, or that he had obtained medication which he had taken before he was tested for gonorrhoea. Instead he used the negative test result as grounds for objecting to the police actions.

28. By 11 March 2022, a family friend had moved in to the home to assist M with the care and safeguarding of the children. On 25 March 2022, the Local Authority issued care proceedings. On 28 March 2022 sample results for A released that vaginal and rectal swabs were positive for gonorrhoea and the throat swab was equivocal for gonorrhoea.

The Proceedings

29. On 29 March 2022, the court was satisfied that the children could safely remain at home with M, with Y excluded, and chose not to make any public law orders. On 12 April 2022 Y made his first statement in which he denied having had gonorrhoea. Professional medical opinion evidence was directed. On 22 April 2022, the court made interim care orders with the children to remain at home, but the relationship between M and the family friend broke down. On 16 May, C was placed in foster care and A and B went to live with X and Z.

30. The finding of fact hearing began before HHJ Mitchell on 15 September 2022 when Dr Ghaly gave evidence. The hearing was then scheduled to resume on 29 September. The parties gathered at court on that day but Y asked to speak to M and then made a statement revealing his encounter with P in the alleyway, and his treatment with what are assumed to be antibiotic tablets which he ordered on 7 February 2022. On 30 September 2022 M filed and served a statement in response. Up to that point she had not mentioned having had a shower before A and B had their bath on Sunday 6 February 2022, in any of her statements or response to threshold. Dr Teare had given her written evidence on the understanding that M had showered the previous evening, 5 February, it being her routine to shower at about 7.00 to 8.00 pm after the children had gone to bed. In her statement of 30 September 2022, M said that she had in fact chosen to shower at about 2.00 to 3.00 pm. She set out details of her showering and then of the children's bathing two to three hours later that day. The hearing had to be postponed because of illness to Y.

31. HHJ Mitchell concluded the hearing before her and gave judgment on 2 December 2022 finding that A had contracted gonorrhoea through sexual contact over the weekend of 4 to 6 February and was infected by one or both of M and Y. M and Y successfully appealed the judgment to the Court of Appeal (above) who remitted the proceedings to the Family Court. Directions were given and the case was listed before me. However, a significant development occurred in late May 2023, after the Court of Appeal judgment was handed down, and prior to the hearing before me.

A's Allegations about Y

32. On 29 May 2023, just over a year after A and B had started living with X and Z, together with two of Z's other children, A and B were in the hot tub in the garden with Z on a Bank Holiday Monday when, according to Z, A told her that Y had put a thing up her "front bum". That evening she only said that the thing was white. The following morning, again according to Z, A said that Y had put string in her "front bum". X had informed the police and social services by telephone on the evening of 29 May 2023. A was spoken to by officers on 1 June and interviewed on 24 June. A neighbour of X and Z, who has long thought X and Z's family was too noisy, overheard discussion in the hot tub which she thought was inappropriate and she made a video recording which she provided to the police. Y was later interviewed about the allegations made by A.

33. At the start of the hearing Y's position was that A had been coached or coerced by either X or Z to make the allegation. However, during the hearing Ms Venters KC informed the court that Y no longer maintained that position, but that his case was that A had been influenced by various factors to make the allegation, which was false. M's position regarding A's allegation is that "she worried that it is either true or that she has been influenced to make the allegations." However, in her evidence she pointed to arguments involving her and X speaking over the telephone, in one of which she maintains that X told her that she would not see her children again and to "see what happens". She considered it highly significant that this threat, as she saw it, happened only a month before A reportedly made her allegation in the hot tub. In her final statement M said that it seemed to her that X and Z were telling A what to say. In closing submissions on her behalf Ms Worsley KC took a position similar to Y – not alleging deliberate coaching but rather influence as a result of circumstances and negative attitudes to M and Y to which A had been exposed.

34. M told the court that on 5 April 2023 she challenged X on the telephone about his having told B that nobody liked her. X told me that B had been behaving badly and that he had taken her to one side and told her that if she behaved like that nobody would like her. M recorded the telephone conversation on 5 April, in which Z also participated. I do not have the full recording, only the transcript that M has chosen to rely upon. In my judgment it is a mature conversation in which all three adults seem to take reasonable positions. The later telephone conversation between M and X, on 29 April 2023, was not recorded. X says that the context was that he had asked M to come over to his house to tuck A and B into bed because they had asked for her. M had complained to social workers that she was being called over by X. X had thought he was helping her maintain her relationship with the girls. X denies that he made any threat to stop contact but did say he would stop additional contact beyond that already laid down by the Local Authority. Indeed, contact did continue, under supervision, in accordance with the Local Authority's plan which was adjusted from three times a week to two times a week at M's request. It is also the case that additional indirect contact also continued, facilitated by X and Z. Notwithstanding closing submissions of her Counsel, it did strike me that during her oral evidence M continued to imply that A had been coached by X and Z to make the allegations that emerged on 29 May 2023.

35. The evidence in relation to the initial allegations by A is, in the chronological order in which the evidence was recorded:

i) A six minute video recording made by a neighbour of X and Z of a conversation she overheard. She provided this to the police and I have been given a transcript of the recording, and have listened to the recording itself. I shall not set out the entire transcript in this judgment but it begins with Z saying, "Don't be stupid, I don't get drunk…" then

"F1 [Z]: "Has daddy Y done anything to you?

A: Err, no.

F1: Just loved you…. B said to me when it was up in A's bed, she had to go down to her mam

C1 [B] No she …

F1: was it… was it up on your bunkbed?

A: I don't remember, I think … it was B's bed

F1: He got you on B's bed

C1: Yeah, it was because … she was down the stairs watching the tele in the living room

F1: So you were on B's bed and it was just you and Y's special time?

A: Yeah

F1: What did he do with you?

A: Erm he put something white in me

F1: In where

A: My front bum

F1: Right, that's okay. Babes, that's ok to say that, that's ok to say that and, do you know, you're going to get some strangers asking you questions … you tell these strangers the same thing, you tell the strangers the truth … if that's the truth, you tell them the truth

A Yeah

F1: And then you'll be able to go back to mammy's house okay… is it the truth or is it lies?

A: Not lies, truth.

…

F1: If he's touched you, he … he's not going to get in trouble, you do know that don't you.

…

F1: Listen, you'll never get stopped from seeing your mam, C, or Y … All you do is tell me and daddy the truth …

A: I'll just tell the truth.

F1: You don't need to tell them that you've told us that Y's touched you in your private bits, do you? Has Y touched you in your private bits?

A: No

F1: Right, so that's just for me and daddy to hear."

It has been suggested that Z was drunk – that it was a Bank Holiday Monday, she is recorded protesting that she is not drunk, and she sounds somewhat slurred and repetitive on the recording. X and Z told me they had no alcohol to drink that day. On balance I accept their evidence. There would have been no issue with them admitting to having had a drink and so I do not think that they have misled the court by maintaining that they had not consumed any alcohol. I have listened to the recording and do not accept that Z was drunk.

ii) A crime report completed by the police at 1930 hrs on 29 April 2023, following X's call records, "Child victim discloses that known suspect who is her stepfather, "puts something in her front bum". Child victim described this as being something white."

iii) A Local Authority record of a phone call made by X to the police on the evening of 29 May 2023 stating, "today for the first time since living with him and his wife, his daughter A has talked about the sexual abuse perpetrated by her step-father when living with him."

iv) X told me that he had spoken to A at breakfast about the need to tell the truth and she had confirmed her allegation from the previous evening. Separately, Z told me she had spoken to A that morning and A told her that what Y had put in her was string.

v) On 30 May there is a Local Authority case note of contact with X and Z that morning in which she is noted to have said that Z had explained that she had been in the hot tub with the girls and A asked why they didn't live with their mum. … Z said they were asking the judge to help them because they might have been hurt. A stated 'like when Daddy Y put that thing up my front bum?'

vi) A handwritten note prepared by Z at some time between 30 May 2022 and the first police visit on 1 June 2022.

"A then asked me why is it that they do not live with their mam. I just said the judge needs to make sure nothing happened to you at your man's house, to which A replied, "like that time daddy put something in my front bum". I was shocked and ask, "Daddy who" (this is because A calls Y, Daddy Y s and X Dad). A said Daddy Y. She went on to say it was something white. At this point I shouted to X and A repeated this to X. X then phoned the police as this is what he had been informed to do. B also said she had seen this happen but we didn't know if this was B's way of joining in the conversation. We did not ask further questions. This was around 7.30 pm. The next morning 30th May, A was asking if she was still seeing her mam today as she was excited to go to the beach … A spoke about what had happened again as I said some people might want to talk to her about what happened to which A said she thinks it was string Y had put in her front bum. I just said okay and it was left at that. This was around 9 am."

vii) On 1 June 2022 PC Mooney and IO Bussey visited Z, A and B at home. X was away working. On arrival they initially spoke to A alone but she did not repeat any of the allegations she is said to have made in the hot tub or on the morning of 30 May. The officers then took a statement from Z based on the handwritten note she provided to them (above). A was in the kitchen with her sister and step-sister at that time. The officers gave evidence to me that she would not have heard what Z was saying. Then Z went to bring A back into the room with the officers. According to IO Bussey, an Investigating Officer experienced in first contacts in child sexual abuse investigations, Z was only gone for a moment. On return A was asked if there was anything she wanted to tell the police "now that Mam's in the room". She replied, "No, I don't think so." She was then asked, "Anything that you told Mammy?" And A replied, "Yes, daddy put something right up my bum." On further questioning she said it was something white, that it was her "front bum", that it happened downstairs at the "old house", it happened once, it did not hurt, she had not said anything to Daddy Y, and that mummy was there and "B was there, she can remember." IO Bussey took a handwritten note of this exchange on 1 June 2023.

viii) On 17 June 2023 A was taken to a suite near to the police station where she was met by the intermediary and the DC . I have viewed a recording of that meeting. The purpose was to build rapport and trust, to gauge A's understanding of anatomy, time, truth-telling, and to explain to her the "rules" for the interview. She was then the subject of an Achieving Best Evidence (ABE) interview conducted by the DC in the presence of the intermediary, on 24 June 2023. I have read the transcript and viewed the video recording of this interview. The salient features and elements of the interview are:

a) A does not spill out a full account of her allegation at the beginning of the interview. She was asked what she had told Z (the same question put to her on 1 June) and she said, "Daddy put something white in my

butt." She clarified that this was daddy Y and that she was referring to her front butt from where she would wee. She said that the thing he put in was white string. She said that this happened in the living room.

b) The interviewing officer struggled to obtain further information from A but eventually she drew pictures of the "thing". I have seen those pictures. She made three drawings. She drew an elliptical shaped object with lines on it from top to bottom which was in two sections. She drew spirals which she said was string. When asked what the object was that she had drawn she said it was a bottle. On further questioning she said that the string was wrapped around the bottle and the bottle was smooth and "probably plastic". Although questioning did not elicit an express answer that the bottle had been put inside her, she had drawn what she had already said had been put inside her and then called that a bottle.

c) There was a break in the interview at one point where all left the room. The evidence was that A spent time during the break with Z who had come to the interview with her. Z says that A just played with toys which had been given to her. On returning to the interview A was asked about the colour of the bottle and she eventually said that it was yellow but with green and pink. She said that the lines she had drawn on the "bottle" were pink.

d) At other times in her interview A said that Y had obtained the object from the kitchen cupboard and that she had not seen it before. She said that Y had held the bottle with his hands but his hands had not touched her. He had put it inside her once and then "maybe put it in the bin". She then said she saw him put it in the bin. Y had not said anything to her when he had done this. She had been sitting on the couch and she was wearing pants. This only happened once. When asked to point to an object from a selection placed in front of her that looked like the string she had referred to, A did not point to a piece of white plastic-coated electrical wire, but to a piece of string.

e) Some of A's responses were not coherent, for example in relation to wearing pants, and the interviewing officer did not always pursue lines of questioning she might have done to clarify. The interviewing officer did introduce some of the words which A adopted, such as that the bottle was "smooth" and that the strong was wrapped around the bottle. However, A's description of the object as being a bottle with pink lines on it, with string, appear to be unprompted. That information did not come at the beginning of the interview but emerged during the questioning.

ix) I note the long time between A's initial allegations on 29 May 2023 and her ABE interview on 24 June 2023. There are no notes or s9 statement by the interviewing officer of interactions with A on 17 June 2023. The intermediary did take on an investigatory role on one or two occasions during the ABE interview. There were therefore some failings to adopt the guidance in relation to ABE interviewing.

x) In his police interviews on 3 June and 24 July 2023 Y told the police that he had not previously been honest about his sexual encounter with the woman he called P because he had been "terrified" that it would end his relationship with M. He said that he had previously met P through Tinder two years or so earlier and had had sex with her then. He just happened to see her whilst he was having a cigarette outside the kebab shop on 2 February 2022. Her contact details were in his old phone which he did not have any longer. He did not know her surname and thought that she lived in the south of England and was just visiting the area. He had paid for the kebab shop food with cash. The police noted that there were no means of checking his story. Y denied having any sexual contact with A and suggested that she might have contracted gonorrhoea accidentally through "shared shower stuff." He denied using a vibrator on A and when asked for an explanation for why A might have made the allegation against him that she had, he said "she has been coerced by her step-mum and her dad."

36. When making their initial investigations in March 2022, the police had taken a photograph of a bedside drawer beside M's bed at her home. The photograph shows that the contents of the drawer are a collection of sex toys which include a plug-in white vibrator. It has a bulbous top end below which is a bright purple ridged section. Below that section the vibrator tapers to a narrow bottom end where there emerges the plastic covered wire which would be attached to a plug that can be put into a socket to power the device. M gave evidence that she established that she purchased this item when she was with X, and that he had discussed the purchase with her and must have been aware of it at the time. X said that he might have been aware then but he had since forgotten about it.

Professional Opinion Evidence

37. Dr Ghaly and Dr Teare both referred to and relied on the Royal College of Paediatrics and Child Health's guidance, *The Clinical Signs of Child Sexual Abuse*, 2015, otherwise known as the Purple Book, and in particular Chapter 10: *Sexually Transmitted Infections*. This publication sets out what is in effect medical orthodoxy, based on a wide survey of published evidence. It is now eight years old and a new edition is, I understand, being prepared. However, the evidence provided to me was that it is unlikely that there will be any material changes in the guidance relevant to the present case in the new edition.

38. So as to be clear as to the relevant anatomy and terminology, the "vestibule" is the cleft between the labia minora that contains the opening of the vagina and urethra. The labia minora surround the vestibule and lie inside the labia majora. The labia majora form the outer boundaries of the external genital area. The vestibule, labia minora and labia majora are part of the vulva, not the vagina which is the passage connecting the cervix to the external genitals, the vulva. Commonly in non-medical parlance, the term vagina is used to refer to the vulva and vagina. When A refers to her "front bum" I take her to refer to the whole genital area, but adults will sometimes use the term vagina similarly to refer to the whole female genital area.

39. The evidence of Dr Ghaly and Dr Teare was consistent with that given at the first finding of fact hearing before HHJ Mitchell. It can be fairly shortly stated and is not significantly disputed:

i) Neisseria gonorrhoeae (gonorrhoea) is a sexually transmitted bacterial infection.

ii) Gonorrhoea is a mucosal colonizer. Transmission is normally directly from one mucosal site to another, for example from urethra to vagina, by "direct inoculation of infected secretions from one mucous membrane to another." [Ghaly, first report para 2.3]. Dr Ghaly told the court that the ejaculate of an infected male will be likely to harbour infected secretions. Whilst the vaginal mucosa are a welcoming environment for the infected bacteria, there are also mucosa in the vestibule, such that infected secretions transferred to the mucous membrane of the vestibule may adhere there, colonise, and infect the female.

iii) As the bacteria colonise they cause symptoms and become infectious.

iv) Fomite transmission (the transference of the infection via an inanimate object) is "theoretically possible" [Ghaly]. As Dr Teare said, "nothing is impossible in medicine."

v) The bacteria cannot survive outside the human body for any length of time therefore "any transmission in association with towels, sponge or a loofer [sic.] (contaminated with pus) would need to be simultaneous" (Dr Teare, first report, paragraph 4.01). In her oral evidence, consistent with Dr Ghaly's evidence, Dr Teare did not put an absolute time limit on the period over which the bacteria could survive and remain infectious outside the body, and she did accept that it was not impossible for it to survive for a short period of time. Therefore transmission may not need to be simultaneous, but may have to be within a short period of time.

vi) The average time between the bacteria being introduced to a person and adhering to a mucosal site, and that person developing symptoms is known as the incubation period. The incubation period is generally thought to be between 3 and 14 days. For children, the incubation period is less clearly defined but is assumed to be similar. The period of time between the introduction of the bacteria to a person and that person becoming infectious, so that they could infect another person is the same. If a person has symptoms then they will be infectious. I was told that the average incubation period is thought to be 2 to 5 days but that is not consistent with the overall period of 3 to 14 days, because 2 days is outside that period. I understand however that for most individuals the incubation period is between 2 and 5 days but for some they may not have symptoms for up to two weeks, possibly longer and some develop symptoms within a day or so.

vii) Changes in temperature and a dry environment (i.e. outside the body and away from the mucosa) will tend to make the bacteria perish. Exposure to soap products outside the body can be expected to contribute to the death of the bacteria. Semen is a good environment for bacteria to survive, particularly semen remaining in contact with the mucosa.

viii) The gonorrhoea bacteria may be detectable on an inanimate object or in a laboratory but not be sufficiently potent to infect another person. Hence, the detection of the bacteria does not signify that it is capable of infecting someone.

40. Dr Ghaly has quoted from Chapter 10 of the RCPCH guidance,

> "For some [STIs] accidental transmission, including fomite transfer and autoinoculation or non-sexual close physical contact have also been proposed. Although there have been studies which have shown the presence of live organisms on inanimate objects, none have, to our knowledge, been demonstrated that the organism can then be transmitted to humans. STIs or sexually transmitted infections have also been detected on clinic surfaces and hands of national health service staff using the NAAT test but attempts to culture Neisseria Gonorrhoea or Chlamydia Trachomatis from these specimens have failed, suggesting that this material is nonviable and the transmission via this route is extremely unlikely."

41. In her first report, dated 12 July 2022, Dr Teare considered the possibility of fomite transmission but noted that M's evidence at that time was that (i) A and B shared a cream coloured sponge when bathing but that she used a loofah; (ii) the girls used a different towel from her; and (iii) M had showered on the evening before the girls' bath in the late afternoon of 6 February 2022. Even assuming that semen carrying infected bacteria had found its way on the towel, loofah, or sponge, on the given timing, Dr Teare said that the bacteria would have "perished" before the girls' bath and so transmission could not have occurred through that mechanism.

42. Dr Ghaly told the court that for a child of A's age at the time (February 2022) to be infected vaginally, the mucosa of her vestibule would have had to have been exposed, meaning that, at least, her labia majora would need to have been parted. He thought that this would not happen when, for example, dabbing herself dry with a towel, or passing a loofah or sponge over herself when washing. For a girl of A's age, contact with the mucosa of her vestibule with a loofah or towel would be likely to very sensitive and painful.

43. Mr Tyler KC for the Local Authority took each expert through the possible non-sexual processes of fomite transmission from Y's ejaculate to A's vaginal or vulval mucosa: (i) Y ejaculates into M; (ii) notwithstanding M sitting on the toilet, urinating and wiping herself, some infected ejaculate remains inside her; (iii) three hours later M showers herself and uses the loofah. Notwithstanding the shower water passing over her and probably the loofah, and shower gel being applied to the loofah and M's body, some of the infected ejaculate comes out of M and sticks to the loofah; (iv) the bacteria remains capable of infecting another even though it stays in room temperature and in a drying environment (in the loofah on a shelf) for a further two hours or so; (v) any remaining bacteria on the loofah then survive the application of more shower gel and possibly bath water; (vi) the loofah containing infective bacteria then makes contact with A's vestibule which has become exposed even though it is

protected by the labia majora. Dr Ghaly considered that it was highly unlikely that A became infected through that process. Similarly, it was highly unlikely that A became infected by Y's residual ejaculate being emitted by M onto his white towel, surviving in room air and room temperature for two hours or so, and then transferring to A's vaginal mucosa. In any event, the way M described A being dried by being dabbed with the towel over her genitals makes it very unlikely that infected ejaculate could have come into contact with the mucosa in her vestibule.

44. A letter by Elmros and Larsson to the British Medical Journal from 1972 was put to Dr Ghaly and Dr Teare. It is a short letter which says that a small laboratory experiment had demonstrated that gonorrhoea bacteria had been found to be present on a piece of towel in one case 3 hours, in another 6 hours, and in a third, 24 hours after the towel had been contaminated with the bacteria. This letter is listed in the reference section of the RCPCH's guidance. Dr Ghaly noted that this was not a controlled trial. It was not peer reviewed. There had been nothing similar reported in the 51 years since the letter was written. He and Dr Teare were also asked about an article in the Pan African Medical Journal in 2021 by Bambang and others, *Gonorrhoea Vaginitis in a Paediatric Patient*. This was a single case study. Dr Ghaly accepted a proposition within the report that a prepubertal vagina was more susceptible to the bacterial infection because it was more alkaline and contains no oestrogen. However, he was very unimpressed with the suggestion that the case report supported the thesis of non-sexual transmission of gonorrhoea since the child's father had had a penile discharge and sexual abuse had not been excluded.

45. Dr Ghaly and Dr Teare both advised the court that out-of-laboratory controlled studies of gonorrhoea transmission to children (or indeed to adults) did not exist and would be unethical. Hence, there must be a theoretical possibility of fomite transmission because controlled studies could not be performed to exclude the possibility. However, gonorrhoea is very rare in children. If transmission via shared towels, the use of shared bath products, or shared bathing were possible, it might be expected that there would be many more cases of childhood gonorrhoea.

The Evidence of M, X, Y, and Z

46. I have set out in detail the chronology of events above which comes from the documentary and witness evidence. At the hearing I heard, in order, from Z, M, X, and Y and in this section of the judgment I comment on certain aspects of their evidence.

A's Step-mother, Z

47. Z has children of her own and has looked after A and B at the home she shares with X, for some 17 months. The Local Authority's assessments of her as a carer/step-parent to A and B are very positive. Initially, there were some difficulties as might have been expected, but it is clear that Z has played a significant role in providing a stable and nurturing environment for A and B. Furthermore, the evidence shows that she and X have been pro-active in promoting time spent by M and the girls together, at least until A's allegations in May 2023. X and Z spent time last Christmas with M

and Y, staying up late, talking and sharing drinks together. I found Z to be an open and reasonable witness who answered questions directly, without evasion.

48. There is a legitimate question about the reliability of Z's evidence regarding A's allegation in May 2023. The allegation was made to her when she shared the hot tub with A and B. The first mention by A of "string" was also to her. Z told police officers that she had not asked any further questions of A after she had made her initial allegation, but the neighbour's recording proves that she did. The recorded conversation also reveals that Z gave A false reassurance, for example that she would not get Y into trouble. Z was with A when the officers arrived to speak to them on 1 June, and she was present when the ABE interview took place. She was not in the interview with A but she did spend time with A during a break in the interview. Hence, Z did have an opportunity to exercise influence over A in relation to the allegations that she made. I have to weigh this in my consideration of the evidence as a whole.

A's Mother, M

49. M has a history of mental health difficulties which are continuing, albeit she told the court she was much improved compared with six weeks or so prior to the hearing when she was at a very low ebb. M is vulnerable and the court took breaks every hour to accommodate her need to take time out. She was emotional at times when giving evidence but she persisted and presented to the court as articulate and was able to put her case. She did not simply accept propositions put to her, indeed she was robust in the defence of her position. However, it was very striking how M raised criticisms of X and Z over matters such as X shouting at A and B, or Z possibly having consumed alcohol on the evening of 29 May, whilst being entirely forgiving of Y. She memorably said that Y may have cheated on her but that did not make him a "beast", meaning a paedophile. The extent of Y's deception appeared to be lost on her:

i) She had previously found that whilst he had been away from home for a prolonged period he was flirting with other women on Snapchat.

ii) On 2 February, at the same time as stressing to M the importance of trust in their relationship, he had a quick sexual encounter with P in an alleyway whilst waiting for his kebab shop order.

iii) When he feared he might have an STI he knew that he had had sex with M on 06.02.2022. He obtained medication for himself on 7 February 2022 but when M told him the next day that she had developed symptoms, he did not suggest that she might go to the doctor, or obtain medication online. He acted as though she had nothing to worry about. He looked after his own health and exposed M to risk of an untreated infection.

iv) When A began to suffer symptoms, such as itching, soreness and discharge from her vagina – very similar to M's symptoms – he did not advise M to seek medical attention for A.

v) He maintained his denials of intercourse with anyone else and of having gonorrhoea for seven months, including at police interviews and in court statements. It was only during the first court hearing that he told M and the

court about the sexual encounter with P and his treatment for an STI through the online- pharmacy.

vi) Accordingly, by hiding his own gonorrhoea, he brought the spotlight of suspicion on M for being involved in sexual abuse of A.

vii) In September 2023, Y decided to undertake a lie detector test which he passed, indicating that he was telling the truth when he said that he had not sexually abused A. M later suspected him of cheating the test and looked through his search history on his mobile device. She then found that he had been using an App for "swingers", had set up a profile on the App, and had received messages from a couple and two single women. He had done this behind her back even after expressing his contrition for having cheated on her in February 2022.

50. Until the start of this hearing, on each occasion when M has found out that Y has deceived her, she has accepted his contrition as genuine. During cross-examination of the allocated social worker by Ms Worsley KC, it appeared that M had separated from Y on the Monday of the first full week of the hearing, following the discovery of his use of the "swingers" App. However, when she herself gave evidence a day later, M told the court that whilst she had sought assistance to remove Y from the home he had returned that night with her agreement and remained living with her albeit in a separate room.

51. In effect, M provides Y with an alibi for the weekend of 4 to 6 February 2022 since she has repeatedly said that he had no opportunity to sexually abuse A because he was never with A, or with A and B without M also being in the same room.

52. I note that M has made significant changes to her account of her showering and the children's bathing over the weekend of 4 to 6 February. Most importantly, after Y revealed his sexual encounter and that, as he has accepted, he probably brought gonorrhoea into the household, M, for the first time, set out in detail how she had showered on 6 February 2022 two hours or so before the children had a bath. This is the account which she and Y say allows for a mechanism of fomite transmission via the towel or the loofah to be put forward and which Dr Teare had previously rejected because of the timings. Previously, M had told social workers that the routine is for her to shower at 7.30 to 8.00 pm [social worker report at page C70 of the bundle]. In Dr Teare's first report dated 12 July 2022 at paragraph 4.16 she set out the evidence she had been provided with, namely that the mother bathed at 7.30 to 8.00 pm and the girls bathed the following day at 5.30 to 5.45 pm. No corrections or questions were put to her to change that information. In her July 2022 statement, M had said that the children shared a cream sponge when bathing (which was not for her use), but in her September 2022 statement she changed that to saying that A, but not B, had used the same loofah that she had used two hours earlier.

53. Having noted the changes in M's evidence about showering and bathing on the weekend of 4 to 6 February 2022, it is fair to note that in a police chronology apparently produced at the end of February/beginning of March 2022, it is noted,

> "5-6th Feb 22 – Y returned home on weekend leave.

> 6th Feb 22 – M and Y had unprotected sex with ejaculation. Later M bathed herself and the girls and they used Y's white towel and the same bath sponge."

This is equivocal as to whether M bathed with the girls or whether she bathed herself and then the girls, but it does indicate that she bathed herself on 6 February. It is also fair to note in her statement of April 2022, M said that "A uses my white loofa and B uses a cream small sponge." Hence, M's revised account about bathing in her statement in September 2022 is actually closer to her earlier accounts, albeit in conflict with her July 2022 statement, her evidence to the social worker, and the uncorrected instructions given to Dr Teare. However, crucially, it was only after Y revealed that he had had gonorrhoea that M gave the detailed account of the showering and bathing over the weekend that she continues to give, and which she and Y use as the basis for contending that A may have been infected by fomite transmission. This account also came after the written medical opinion evidence and the oral evidence of Dr Ghaly at the first hearing.

54. When I asked M whether there was even a minute or two when she left Y with the children, or one of them, over the weekend of 4 to 6 February she admitted that she had gone to the toilet on her own. She said that when making a cup of tea whoever was in the kitchen would be very close to the living room, and that it was always Y who put the dog out. She was very reluctant to admit any time other than when she used the toilet when Y was with A and/or B without her being present.

55. M vehemently denied having sexually abused A or knowing tor being involved with Y sexually abusing A. She strongly defended Y from the accusation that he had sexually abused A.

A's Father, X

56. With his wife Z, X has looked after A and B for the past 17 months. He has stuck to contact arrangements made by the Local Authority. His parenting assessment is positive. The girls are doing well in his and Z's care. He struck me as a thoughtful and open witness. He showed considerable patience when he was being asked about aspects of his own behaviour which were of a concern to M until, quite reasonably and mildly, he said that his primary concern was that his daughter had contracted gonorrhoea when in the care of M and Y. That concern ought to be regarded as far more important that the concerns with which he was being challenged. Even so, he was frank about having lost his temper with M after she had complained to social workers about his having asked her to come to his house to tuck the girls in because they were asking for her. He had viewed this as a gesture by him to keep M very involved in the girls' lives, in their best interests, and not as a justifiable ground for complaint to social workers. He denied saying that he would stop contact, explaining that it was not in his power to do so in any event. He accepted that he had said that he would stop additional contact of the kind that had led to M's complaint. He denied threatening "watch what happens". He has been consistent in his evidence and his frankness adds to his credibility.

A's Step-father, Y

57. Y came across in a similar manner to how he appeared on the films of his arrest and police interviews. He gave concise answers. He seemed controlled until he was directly asked whether he had abused A when, at one point, he raised his voice and swore when making his denial in response. He appeared pained when giving his evidence. During his oral evidence he had to make a large number of concessions about his past dishonesty and his treatment of M. He admitted that he had lied to her, the police, social services, and the court when he had not revealed that he had had intercourse with another woman shortly before M and A had contracted gonorrhoea, and having treated himself for a suspected STI with tablets purchased from an online pharmacy before he tested negative for gonorrhoea. He admitted that some of his messaging to M during February 2022 looked, on paper, like "gaslighting" and controlling behaviour. When making these admissions he dropped his head and spoke very softly giving an appearance of contrition. The children meant the world to him, he said, and he would never hurt them. He just wanted to prove himself to M. As to their recent separation, such as it is, he hoped that they could repair their differences.

58. When asked whether he could accept that M might have sexually abused A he said that he hoped that she would not. This struck me as a rather weaselly response, as if he sought to sow a seed of doubt. It was in contrast to M's steadfast defence of him and his character.

59. Y has demonstrated a pattern of admitting only what he has to admit and then, when he has to, admitting more. It is difficult to trust any of his evidence. As Mr Tyler KC for the Local Authority rightly submitted, Y even lies about his lies. I do not accept his account of why he suddenly decided to "come clean" about his sexual encounter with P and about having had gonorrhoea which he had treated with medication purchased online. He told the court that he had been affected by seeing the poverty and day to day existence of people in an African country where he had been working. This gave him a perspective on life and caused him to reassess his deceitfulness to that time. However, as it happens, and as agreed by all Counsel, on 27 September 2022, only two days before Y "came clean", the parties were informed that Ms Phillips, Junior Counsel for M, had discovered that the telephone number which Y had called on the morning of 7 February 2022, which number had been extracted from his mobile phone, was that of an on-line pharmacy. Y had been found out – he had treated himself with medication for a suspected STI before testing negative for gonorrhoea. I am sure that that is the true reason he decided to admit that he had had gonorrhoea. I am far from convinced that his evidence about an encounter with P is true, but what matters is that he did have gonorrhoea and he brought it into the household over the weekend of 4 to 6 February 2022. That is not disputed.

60. Y retracted the allegation he had made in his response to the amended threshold that X and/or Z had made A make the allegation against him that he had put something in her vagina. He said that he had listened to their evidence and that on reflection he had probably "over thought" things when he had made the allegation. He appeared to attribute his previous view to the arguments that M had had with X – they had given the context within which he was suspicious that they had acted in bad faith.

61. Although the burden of proof is not on him, I do record that Y could offer no explanation for why A might have made her allegation. There was no incident about which she could have reached a misunderstanding. He said that he has nothing to do with M's sex toys, they never use them in their joint sexual activity, and that the idea of a plug in vibrator frightens him. He told me that he is not a highly sexual person – so far as sex is concerned "I can take it or leave it". When I pointed out that he had told me about his sexual encounter with P down an alleyway one winter's evening after a five minute chat outside the kebab shop, he told me that that was a one-off and wholly out of character. He had never done anything like that before.

Findings of Fact

62. I received very helpful submissions from Leading Counsel for all the parties. Since those submissions were primarily directed to the facts I am invited to find, it is not necessary to repeat those submissions in this judgment. One important part of Mr Tyler KC's submission, however, was that the Local Authority did not rely on Y's dishonesty as evidence of his guilt of the allegations against him. Counsel have helpfully prepared an agreed note of the law which I have taken fully into account. I remind myself that the burden of proof is on the Local Authority and that neither M nor Y have to prove anything. They do not have to prove that A contracted gonorrhoea by fomite transmission. Even if I reject their own allegations, for example in relation to the way in which A came to speak about Y having put something in her "front bum", it does not follow that the Local Authority's case that A's allegations are true, is proved. I also remind myself that the medical opinion evidence is but a part of the evidence as a whole, and that my findings must be made on the basis of the whole evidence.

Analysis of the Evidence

(i) Source of Infection

63. By his own admission, Y had a sexual encounter on 2 February 2022 which gave rise to a risk that he would contract an STI. He later had a symptom of gonorrhoea with a stinging sensation on micturition but, according to him, that subsided. Nevertheless, on 7 February he sought out medication for an STI and treated himself. The expert evidence is that such treatment will have resulted in him having tested negative for gonorrhoea a few weeks later. M contracted gonorrhoea. She had sexual intercourse with Y on 6 February 2022.

64. The medical opinion evidence is that once a person has symptoms of gonorrhoea, and possibly before then, they are able to infect another person. Y had stinging on micturition on 4 February 2022. Although he says that that subsided it was likely to be the first symptoms of his gonorrhoea. Y was therefore able to transfer infective gonorrhoea to another person on the weekend of 4 to 6 February 2022. The timing of the onset of M's symptoms – most likely on 7 February, given her messages to Y, and her abstinence from sex with others during the few months prior to the onset of her symptoms and her positive test for gonorrhoea, all point strongly to the conclusion

that M did not have gonorrhoea before Y infected M with gonorrhoea on 6 February 2022. The incubation period would be short, but it is not inconsistent with Y having given M gonorrhoea the morning before. Y has in fact admitted that he had gonorrhoea and infected M with it on that day. His admission that he had gonorrhoea is perhaps surprising since on his own evidence he only had a fleeting and mild symptom and it cannot be confirmed by testing that he had gonorrhoea, but he has admitted it and the evidence overall firmly establishes that he probably infected M with gonorrhoea and it was he who introduced it into the household on the weekend of 4 to 6 February.

65. M was not capable of infecting A over the weekend of 4 to 6 February because she did not have gonorrhoea until having sexual intercourse on 6 February and would not have been infectious until she started having symptoms on 7 February 2022.

66. The evidence establishes that A's first symptoms of gonorrhoea emerged, at the latest, on 11 February 2022. The following day M messaged Y to say that A was feeling better and her "redness had gone down". M confirmed in oral evidence that the redness in question had been over A's vaginal area and that A had complained of being sore in her "front bottom". M had applied some cream to relieve the soreness. Since, on the medical opinion evidence, the average time from infection to symptoms – the incubation period – is two to five days, the onset of A's symptoms fits with her having been infected on 6 to 9 February 2022. However, as Dr Ghaly advised during his oral evidence, since the two to five day period is an average, then it is not inconsistent with earlier infection. Likewise, if the onset of symptoms were not until 14 February, as M has said in the past, that would not be inconsistent with infection as early as 6 February 2022.

(ii) Means of Transmission

67. The medical opinion evidence, supported by the RCPCH guidance from 2015, is that fomite transmission of gonorrhoea to infect A is extremely unlikely. In the absence of evidence of an almost immediate transfer of infected ejaculate via an inanimate object, and the absence of any suggestion of non-sexual mucosa to mucosa contact at a time when an adult with A was harbouring bacteria capable of infecting another person, then fomite transmission is even less likely. It is "theoretically possible" for fomite transmission to occur via a towel or loofah, but for that to have happened on 6 February 2022, the infective bacteria in Y's ejaculate would have had to have survived a series of transmissions, in environments hostile to the survival of the bacteria. Mr Tyler KC for the Local Authority submitted that the chances of fomite transmission to A on 6 February 2022 via the loofah or the towel were "vanishingly small". Even if M's current evidence as to the showering and bathing arrangements on 6 February 2022 is accepted, the chances of A being infected with gonorrhoea by fomite transmission via the loofah or towel are extremely low.

68. In relation to the possibility of fomite transmission, I must take into account the changes in M's evidence about showering and bathing on the weekend of 4 to 6 February 2022. On the account she gave in her statement of July 2022, an important statement on which the medical witnesses relied when making their initial reports, there was no shared use of the loofah, and so no means of fomite transmission via that

object. The detailed account she now gives of the sequence of showering and bathing came late in the day and after the written medical opinion evidence, as already discussed. Therefore, aside from the lack of medical opinion support, it is difficult to rely on the alleged factual basis for the suggested mechanism of fomite transmission.

69. The medical opinion evidence strongly supports the conclusion that A contracted gonorrhoea through sexual contact (and therefore sexual abuse). However, until May 2023 A had made no allegations of sexual abuse and had not given any information implicating any adult in any sexual contact with her. I note that on physical examination in early March 2022, A was found to have genital erythema but that is a non-specific sign and could be consistent with trauma or infection. Since it is known that she had gonorrhoea it cannot be safely assumed that the erythema was due to trauma. Dr Ghaly has advised that the absence of anogenital injuries does not negate sexual abuse but there were no such injuries present to help to prove sexual abuse. A has had counselling at her school and has shown some signs of being withdrawn and troubled – the school reports her as having the weight of the world on her shoulders – but that may be related to the general family situation rather than the consequences of an event of the kind she described in her ABE interview or any other sexual abuse.

70. M's evidence does not suggest that A could have suffered sexual abuse from any other adult (other than her or Y) during or after the weekend of 4 to 6 February 2022. Might A have become infected after 6 February 2022 by accidental fomite transmission? The onset of A's symptoms on 11 February is consistent with infection after 6 February. Y could not have infected her after 6 February because he was not present in the home. There is no chance of his infected ejaculate coming into contact with A's mucosa and causing her to be infected after 6 February 2022 – any very small prospect of his ejaculate being transmitted to A and causing her infection that may have existed on 6 February would certainly have disappeared by 7 February 2022 because any infective bacteria would have perished by then (see Dr Teare's evidence (above)). In any event, M does not describe any bathing, showering or other incident after 6 February when Y's infected ejaculate could have been inadvertently transferred to A's mucosa. However, M was probably harbouring bacteria capable of infecting A by 7 February 2022. Hence, it is possible that M infected A on or after 7 February 2022 not through transferring Y's ejaculate to A's mucosa but by transferring her own infectious bacteria.

71. M does not describe any event by which fomite transmission of gonorrhoea from her mucosa to A's mucosa could have occurred on or after 7 February and before 11 February 2022 when A began to suffer symptoms and was very probably infected. She told the court that showering and bath time routines were as normal, that is, that she would shower in the evenings after the children had bathed (on the days when they did bathe, which was about two to three times a week on weekdays). She does not say that they all shared a towel. Hence, there is no evidence of the possibility of accidental fomite transmission from M to A at a time when M harboured infective gonorrhoea bacteria.

72. Gonorrhoea is known to be a sexually transmitted infection. Upon sexual intercourse infected ejaculate is implanted deep into the vaginal mucosa. That is an ideal environment for it to survive and multiply. Penile transmission to vaginal mucosa would not necessarily require deep penetration – mucosa to mucosa contact may transfer the infection.. Vaginal to vaginal mucosa transmission or oral to vagina

transmission is also possible, although the mechanics of transmission are less advantageous for the bacteria. Digital to vaginal transmission is possible if the digit carried infectious bacteria but the transmission would probably need to be almost immediate. Fomite transmission via an object, including a sex toy, put into the vagina, or put into contact with mucosa at the vestibule, is possible but the medical opinion evidence was that transmission by that mechanism would probably require almost simultaneous transmission otherwise the bacteria would be prone to perish at room temperature and away from mucosa before it was brought into contact with the mucosa of the previously uninfected person.

M and Y do not describe, and vehemently deny, that sexual transmission by any of the mechanisms I have described, occurred. If Y did infect A by any sexual means, including use of an object, it must have happened on 4 to 6 February 2022 when he was in the house with her. If M infected A by any sexual means, including the use of an object, it must have happened on or after 7 February and before 11 February 2022 when she was harbouring infectious bacteria.

(iii) Opportunity

73. M and Y say that Y had no opportunity over the weekend of 4 to 6 February to infect A by any sexual means. M was the only adult living with A between 7 and 11 February and so had the opportunity to infect A by sexual means during that period. I regard the evidence that Y never spent time with A and/or B without M being present in the room as not credible. It may be true, as M has said, that A and B have a tendency to follow M around, but it is clear that they did not do so all the time. For example, they did not interrupt M and Y having sex on the morning of 6 February 2022. It must not be forgotten that Y and M had a baby to care for as well as A and B. It would be very natural in a busy household for adults and children to spend some time in different rooms from each other and very unnatural for Y, who was close to A and B, never to be alone with either or both of them. It is very likely that Y did spend some time with A and/or B without M being present over the weekend of 4 to 6 February 2022. On 6 February A and B spent the day in their nightwear. M took a shower in the mid afternoon and her evidence did not establish that A and B were with her in the bathroom throughout the period she was showering. She would on her own admission go to the toilet alone. I am sure that there will have been other periods during the weekend when she would be in another room, or outside the house, leaving Y with A and/or B.

74. M and Y have referred to a camera being installed in the bedroom shared by A and B. I was told that initially this was directed outside because of problems with intruders, but that after the girls had apparently used marker pens to daub the bedroom walls, it was turned so that it would record inside the bedroom. Footage can be viewed on M's mobile phone. This evidence is said to confirm that nothing could have been done to A in her bedroom because movement would trigger the camera to record. Leaving aside the wisdom of using a camera in the girls' bedroom, I do not find the fact that there was a camera to be particularly helpful – I have no evidence as to whether footage was reviewed, or whether the camera could have been turned away, or off.

75. It is right to note that other than the fact that A contracted gonorrhoea, before she made her allegations in May 2023, there was no other evidence of sexual abuse: no physical signs on examination, no corroborative evidence by way of messaging, conduct or physical evidence in the home, no camera footage, no evidence that either M or Y had previously shown a sexual interest in children. So if there were opportunities for sexual abuse of A before February 2022 then, apart from the more recent allegations by A in her ABE interview, there is no evidence that those opportunities were taken.

(iv) Y's Dishonesty

76. Y has been dishonest about a number of matters: his sexual encounter with P , his denial that he had an STI, and his failure to reveal that he had had treatment prior to testing negative for gonorrhoea. Y says that he lied to protect his relationship with M and due to shame over what he had done. Those are indeed motivations that might account for his having covered up the sexual encounter with P . Further, had he admitted having an STI, or even suspecting that he might have an STI, he would undermine his credibility as a trustworthy partner – a virtue he had been very keen to impress upon M. However, his dishonesty is also consistent with him also wanting to cover up the possibility that he might have infected A. His denials put the spotlight on M: if he had not had gonorrhoea, she must have done, otherwise, how could A have been infected? Indeed Y's text messages to M in February 2022 contain very firm denials that he has had sex with anyone else – he swears to that "on the children's lifes [sic.]" He told me in his oral evidence that the discussions between him and M after she and A had been diagnosed with gonorrhoea, were that M must have contracted the infection when she had sexual intercourse with another man six months earlier and it must have lain dormant over the months that followed.

77. Accordingly, Y not only lied to M, he went further and sought to blame her for infecting A after she, M, had been unfaithful to Y having had sexual intercourse with another man. As is now known and accepted, it was Y who contracted gonorrhoea after being unfaithful to M, and who by whatever means had caused A to become infected.

78. Y's dishonest response to being arrested by police on 4 March 2022, who told him that he may need to be re-tested for gonorrhoea, is also revealing. His manner was one of irritation with the police. He argued with them that since he had tested negative for gonorrhoea he could not understand why he was being arrested and why a further test was necessary. So, not only did he fail to reveal to the police that he had had sex with P and had probably acquired gonorrhoea as a result, as he must then have known, but he chose to give the clear impression that his negative test meant that he had never had gonorrhoea over the relevant period. He adopted a similarly self-serving approach to dealings with children's services.

79. I have regard also to his evidence on other issues. One of the most striking elements of the oral evidence of Y was his absolute confidence that he has not spent time with A and B without M being present. He maintained that that was true not just for the weekend of 4 to 6 February 2022, but also for the paternity leave he took and spent mostly at home with M and the girls, from the end of May to the beginning of

September 2021, and the Christmas period he took as leave at the end of that year. For part of the period of his paternity leave, M was considerably restricted in her mobility as she recovered from complications of surgery at the time of C's birth. For example, she slept downstairs to avoid having to use the stairs. There was then a baby to feed, change and look after, as well as A and B. There was later a dog to walk, feed and put out of the house. Both M and Y smoke and they would smoke outside the house. Y says that he never dressed or bathed A and B, that they would follow M around all the time, and that he was never alone with them, either individually or together. In that he was largely supported by the evidence of M, who, so far as the weekend of 4 to 6 February 2022 was concerned, admitted to me only that she might have had a minute or two on her own when using the toilet. I did not find the evidence about Y not being left alone with the A and B to be credible because it defied common sense.

Y gave other evidence that was difficult to accept. He said that he had looked at the swingers App out of curiosity only but accepted he had (i) added his profile, (ii) received and exchanged some messages, and (iii) one of his messages was to respond to a woman who had sent him a sexual image of herself by complimenting her on the photograph. He seemed to suggest that he had responded to the woman out of politeness.

(v) A's Allegations in 2023

80. I have carefully considered the evidence surrounding A's allegations in late May 2023, repeated to the police at her brief meeting with them on 1 June 2023, and later in her ABE interview on 24 June 2023. A highly unusual feature of this case is that the court has a recording of conversations involving the child very shortly after her first allegation was made. Had a trained police officer or social worker carried on the conversation as Z did on the recording, then they would be open to criticism for breaching guidelines. However, I am struck by the unguarded way in which Z repeatedly impressed on A the importance of telling the truth. Z and X were placed in a very difficult situation and I am satisfied that they did their best to deal with it. Z should not have told officers that she had not asked follow up questions. She clearly did so, but I accept that she did not continually press A for more details of what had happened. X and Z acted properly by notifying the police and social services immediately. The recording in itself does not cause me to question the authenticity of A's allegations at that time.

81. The initial contact with A by the police seemed to be eliciting no information from her until they asked her to say what she had told Z. That of course is not quite the same as asking her to tell them what had actually happened to her. There were also parts of the ABE interview where, in my judgment, A was being led to certain answers. A is also inconsistent at times for example the "white thing" was later said by her to be yellow, green and pink. I acknowledge that the white vibrator pictured in M's bedroom drawer is not yellow or green and that it does not have stripes down its length as she had drawn during her interview. When asked to point to an object that the string was like, she pointed to a piece of string rather than a piece of plastic coated wire of the kind that was attached to M's vibrator. However, the vibrator is white, as originally described. To a young child, the plastic coated wire might be remembered as "string", and the pink rings she refers to could well be the purple ridges that form

part of the vibrator between the upper and lower white sections. The drawing she made showing the object put into her vagina shows an upper and lower section. The vibrator is not unlike a "bottle". The way A describes the "bottle" object being put into her vagina is how a vibrator might be used. The way in which A gradually gave more information about the object clearly showed that her account was not rehearsed. The additional information she gave added detail, such as that the object was like a bottle, which better described M's vibrator. There was no sense of exaggeration by A. She did not portray Y as a villain in any way. She has seemingly maintained a good relationship with Y and has not shown any animosity to him, nor any (other) reason to be hostile to him. A was consistent throughout in saying that it was Y who had put the white thing in her vagina. I have no evidence of an incident which A could have mistakenly interpreted and it is difficult to think of what such an incident might have been.

82. A made the allegation against Y many months after the event could have happened. However, after spending a year with Z and X, she will have become more confident in their care and in her relationship with Z, to whom she first made the allegation. M herself said that it took her 24 years to reveal her own sexual abuse as a child. I do not find the delay between the event, if it happened, and A's allegations against Y in relation to that event, as in the least part surprising. The delay does not in itself give rise to any doubts about the authenticity of A's report of the event.

Conclusions

83. I have weighed all the evidence and the preceding observations are set out in order to give context to the conclusions that I now reach. As in most contested finding of fact cases, the evidence does not all point the same way and so the court has to set each element of the evidence alongside all the other elements, and weigh them, in order to form an overall view. My task is not to decide which one of two or more competing explanations of a given outcome is more likely than the other(s) but rather to determine whether the allegations made have been proved on the balance of probabilities. I approach this task with humility because the court does not have the gift of omniscience and is confined to make decisions on the documentary and oral evidence presented to it in a courtroom. I am aided by many previous court decisions, the guiding rules from which are distilled in the legal principles set out above.

84. I find that on the balance of probabilities A contracted gonorrhoea through transmission by sexual contact between her vagina and/or anus and the penis, mouth and/or anus of Y over the weekend of 4 to 6 February 2022. The precise circumstances cannot be known because neither A nor Y has described them. This was an episode of sexual abuse.

85. There is insufficient evidence for me to conclude that A contracted gonorrhoea after Y used a vibrator to sexually assault her over that weekend, but I am satisfied that on the balance of probabilities Y has put M's white, plug in vibrator against A's vulva at some point either that weekend or earlier. This was another episode of sexual abuse.

86. The key reasons I reach those conclusions are:

i) A was infected with gonorrhoea in February 2022. She certainly had symptoms of infection by 11 February 2022 when, M accepts, A complained of a sore vagina and had redness over her vulval region.

ii) By his own admission, Y was infected with gonorrhoea by 4 to 6 February 2022 and he infected M on 6 February when they had intercourse. Before then, M was not infected. M's text messaging to Y shows that she had symptoms as early as 7 February 2022. She would have been infectious by then.

iii) The incubation period for a child is likely to be region of 3 to 14 days (Dr Ghaly) but the average is at the lower end of that range (Dr Teare). The timing of the onset of A's symptoms of gonorrhoea infection on 11 February 2022 is consistent with her having been infected by Y's gonorrhoea when he was with her on 4 to 6 February, or by M's gonorrhoea on 7 to 9 February 2022.

iv) It is likely that A was infected with gonorrhoea bacteria entering her vulva so as to adhere to the mucosa of her vestibule, vagina, or anus by direct sexual contact with the mucosa or the ejaculate of a person infected with gonorrhoea.

v) A tested positive for gonorrhoea in her vagina and anus. The professional medical opinion to the court was that the bacteria can spread from one site to another once a person is infected (secondary spread). The initial symptoms were in A's vagina but I leave open whether A was infected by sexual contact with her genital area or her anus.

vi) It is medical orthodoxy that sexual contact is the most likely mode of transmission in prepubertal children with gonorrhoea. There are no reliable studies showing that gonorrhoea present on inanimate objects can then be transmitted to humans. Authoritative medical opinion is that although fomite transmission is a theoretical possibility it is extremely unlikely to be the means by which A was infected.

vii) Evidence as to the factual basis of any possible mechanism of fomite transmission comes exclusively from M. M has changed her evidence as to her showering and the children bathing over the weekend of 4 to 6 February 2022 and her evidence is not reliable. In particular, she gave the detailed evidence on which she now relies for the first time only after Y had confessed to having had gonorrhoea, and after Dr Ghaly and Dr Teare had given their written evidence and Dr Ghaly had given his oral evidence at the first hearing. In any event, the showering and bathing now described by M would involve a series of transmissions in temperatures and environments highly likely to cause any infected ejaculate from Y to have perished. Furthermore, on her account, any surviving ejaculate which might have remained capable of transferring the infection to A would have been unlikely to have come into contact with mucosal membrane. Accidental fomite transmission of Y's gonorrhoea to A over the weekend of 4 to 6 February is highly unlikely.

viii) By the same reasoning, it is highly unlikely that A could have become accidentally infected by fomite transmission of Y's gonorrhoea after 6 February. Indeed there is no real chance that infected bacteria could have survived overnight, or longer, so as to infect.

ix) M was probably infected and infectious by 7 February 2022 but she has not provided any evidence which would account for an accidental fomite transmission of her infected bacteria to A. On her evidence she returned to the usual routine of showering after the children's bath time. There is no evidence of shared towels or other items that could possibly have come into contact with A's mucosa so as to transmit the infection.

x) There has been no allegation by A of any inappropriate behaviour or sexual assault by M. Female to female transmission by sexual assault is possible but is much less common and more difficult to achieve than male to female transmission.

xi) A's allegation that Y put something in her "front bottom", which was, to her, like a bottle, is credible. Given that the incident she described in her ABE interview must have happened, if it happened at all, some 16 months earlier, on or before 6 February 2022 (the last time there would have been any opportunity for Y to act in that way) when she was only six, she gave the police a reasonable description of her mother's white, plug-in vibrator which was in M's bedroom drawer and previously in a clear plastic box in M's bedroom. She also described how a vibrator might be used: being put into her vagina or at least against her vulva. She very clearly stated that it was Y who had used it. A has always had a good relationship with him and has seemed eager to spend time with him. It is very unlikely that she would make these allegations because she was scared of him or wanted to hurt him in any way. I take heed of MacDonald J's summary of sexual abuse allegations by children in *Re P* (above). I take into account the manner in which the allegation was made and developed, A's inconsistencies, and the lack of coherence about some of her evidence to the police. I note that she did not recall any pain on the object being put in her (in contrast to her reaction to the physical examination by Dr Young) and that she did not show any emotional response when making the allegations in the ABE interview. However, those matters are consistent with her bond with Y, her trust in him, and that he may well not have pressed the vibrator very far into her may well not have exposed her genital mucosa. I take into account that A did not make these allegations sooner, and had previously denied that anyone had interfered with her, but I am satisfied that she made the initial allegation spontaneously when she felt sufficiently confident with Z to do so. The breaches of ABE guidance go to the weight to be given to A's evidence in this case but, having regard to all the circumstances, they are not separately or cumulatively so significant as to extinguish the reliability of her evidence. Indeed, having assessed all the circumstances, including the breaches of ABE guidance, I am satisfied that I can rely on A's evidence to the extent of making a finding that A did experience Y putting M's white vibrator against and possibly into her vulva.

xii) I have to consider the possibility that M caused A to contract gonorrhoea by sexually abusing A, without Y's involvement, after 6 February 2022 (she was not infectious before 7 February). The timing of the onset of A's symptoms of gonorrhoea is consistent with that possibility. However, it is very clear that M and A have a loving relationship and that M feels protective of A. A has not made any statements that would implicate M other than one comment to the

officers who spoke to her 1 June 2023 when A did say that "Mummy" had been present when Y put something in her "front bum". She had not said that in the hot tub and she did not say it in the ABE interview. She may have been telling the officers only that M was in the house at the time. If, as I find to be the case, Y has sexually abused A with a vibrator, it seems to me unlikely that, quite independently, M would also have sexually abused A. Female to female transmission of gonorrhoea is possible but much less common and less easy to achieve than male to female transmission. A had lived with M all her life and has not revealed any information or shown any behaviour that would suggest that she has become sexualised or has been the victim of repeated or indeed any sexual abuse by her mother. It is unlikely that, against a background of no previous abuse by her, M would have chosen a time when she had a sore vagina (from 7 February) to bring her infected vagina into contact with the genital or anal mucosa of her daughter. Applying the standard of proof I do not find that M sexually abused A so as to give her gonorrhoea or at all.

xiii) I consider it very unlikely that M and Y acted together in sexually assaulting A over the weekend of 4 to 6 February 2022. I do have to take into account that M's evidence about some of the events of that weekend has been unreliable. However, had she known that Y had sexually abused A and then that A had developed gonorrhoea, she would surely have known that Y had given A gonorrhoea. In contrast, all the evidence points to M being misled by Y about his having had gonorrhoea, and M being genuinely confused as to how A may have become infected. She was put under the spotlight of suspicion because of his dishonesty. Her text messages speak to her suspicions about Y but also her ultimate acceptance that he had not been the cause of any infection. Those unguarded messages from her convince me that she did not know that he had sexually abused A or that she became convinced that he had not infected her or A with gonorrhoea. The evidence is inconsistent with her being a participant or facilitator of his sexual abuse.

xiv) Y is a wholly unreliable witness who has consistently lied to M, to the police, to social services and to the court about very important matters. As such his account of his conduct over the weekend of 4 to 6 February 2022 cannot be trusted. Likewise his account of his symptoms cannot be trusted. I am sure that he did have some symptoms and I am prepared to accept that they were minor on 4 February when he took informal advice from a medic. Perhaps he was reassured that his symptoms were due to dehydration. He may therefore have underestimated the risk of giving A an STI.

xv) M has changed her evidence about important matters such as the onset of symptoms and the showers and bathing at the relevant weekend. She has been manipulated by Y over a prolonged period and has consistently shown her psychological and emotional dependence on him, such that she has been unwilling to contemplate the reality of his conduct and has readily forgiven his serial dishonesty. I cannot rely on her evidence that Y was never with any of the children without her also being present.

xvi) It is theoretically possible that A could have contracted gonorrhoea by fomite transmission via the vibrator over the weekend of 4 to 6 February 2022. However, A has not fixed that event in time, and she does not describe the

> object Y used on her as being sticky or moist. She does not recall pain on the use of the object and that suggests that it was placed over her vulva without penetrating even to the mucosal membrane in the vestibule. Hence it is unlikely to have deposited infectious bacteria in the mucosa. Unless the vibrator carried infected ejaculate which was then put into contact with A's mucosa in her vulval vestibule before the bacteria perished, fomite transmission via the vibrator is very unlikely. I do not have sufficient evidence to find that Y used the vibrator on A in that manner over that weekend. Hence, I cannot find on the balance of probabilities that A contracted gonorrhoea by fomite transmission via a vibrator. However, my finding is that Y probably did use the vibrator at some time on A. That finding that Y sexually abused A with a vibrator is consistent with and supports the finding that A was infected with gonorrhoea through some other episode of sexually abusive contact with him over the weekend in February 2022.

87. The chance of A being infected by fomite transmission via the loofah or towel is extremely low. Nevertheless, had other evidence strongly weighed against sexual transmission, then the medial evidence, standing alone, would not have necessarily driven me to conclude that sexual contact caused A to contract gonorrhoea. However, that is not the case and the evidence as a whole does support that conclusion.

88. I have given myself a *Lucas* direction and referred to Macur LJ's dicta in *A, B and C* (above). The Local Authority did not ask me to make a finding that Y's undoubted dishonesty was due to his guilt in sexually abusing A. I note Macur LJ's formulation of the third question to be asked in such a case, "on what basis it can be determined that the *only* explanation for the lie(s) is guilt." [emphasis added]. She earlier quoted from the Crown Court Compendium which put the third element of the test in *Lucas* as being that the lie "was not told for a reason advanced by or on behalf of D, or for some other reason arising from the evidence, which does not point to D's guilt." Hence, I am not sure that Macur LJ meant that inferences of guilt can be drawn only if the sole explanation of the lies is guilt. Rather, the court has to be able to discount that the lie was told for a reason that does not point to guilt. Here, I accept that one motivation for Y lying about his sexual encounter with P and his gonorrhoea, was to protect his relationship with M, but another might well have been that he wanted to hide his guilt in relation to sexually abusing A and giving her gonorrhoea. Given that the Local Authority do not rely on a "*Lucas* finding", I have reached conclusions as to the findings of fact made above without relying on any finding that Y's lies were told because of his guilt in sexually abusing A. Nevertheless, having found that he did sexually assault A, it is clear that his lies served to hide that truth.

89. I have found that M was not a participant in or facilitator of Y's sexual abuse of A. Indeed I conclude that she was unaware of the sexual abuse taking place. M has given unreliable evidence to the court and the Local Authority about the events of the weekend of 4 to 6 February but I do not accept that she has done so because she knew that Y had sexually abused A. Her communications and conduct since that weekend demonstrate that she has suspected him of lying to her and has, despite her protestations to the contrary in court, suspected him of abusing her eldest daughter. In her final statement, after viewing A's ABE interview she wrote,

> "Y has always denied that he has ever done anything to A. I just do not know what to think now that I have heard what she

> has said as I do not want to say that my daughter is not telling the truth."

90. Y took a lie detector test (a test which is not proven to be sufficiently reliable for me to rely upon the results as evidence of Y's guilt or innocence of the allegations against him). M explained in her final statement,

> I know that this might not be accepted by the court but Y wanted to do this to demonstrate to me that he has not done anything to A. I find it very confusing that this would come back that he has not lied, if he had abused A. I'm really worried about A and what she has said, if she has been coached and the impact this would have upon her."

91. In the same statement M provides evidence of her telephone conversations with X on 5 April, and X and Z on 29 April, and mentions an argument about A's birthday presents in May 2023. She does so to set out grounds on which she alleges that A may have been coached by X and Z to make her allegation against Y. This is a clear example of her thought processes: she suspects Y of sexually abusing A but the prospect to her is so disturbing that she prefers to latch on to much more unlikely explanations: the possibility of accidental transmission by a loofah or towel, or the coaching of A to make the allegations in May and June 2023. M's mental health has been difficult for her for some time but these proceedings have exacerbated her problems, and she hit a very low point a few weeks ago. I find that due to her vulnerability and Y's deceit and manipulation of her, she has buried her suspicions about Y and chosen to stick by him whatever the evidence reveals. Her assertion that during the weekend in question Y was never with the children when she was not present, and her changes of evidence about the timing of the onset of symptoms, and the timing of her shower, persuade me that, if she is honest with herself, she knows more about the events of that weekend that she has told the court. She has withheld information that might lead to the awful conclusion that Y, on whom she is so dependant, sexually abused her daughter.

92. M's suggestion that as recently as the start of this hearing she and Y have begun to separate is wholly unconvincing, particularly since Y told the court that he aims to repair their relationship. She is isolated – she was unable to work with the family friend so as to keep the children at home. She has now alienated X and Z who were working well with her to keep her relationship with A and B strong. She has lost everything and clings on to Y. I am concerned about her mental health and the effect of this judgment on her but I am driven to conclude that she knows more about the true events of the weekend of 4 to 6 February 2022 than she has currently disclosed and has knowingly withheld that information from the police and the court, and continues to do so.

93. The medical records show that M reported to A's GP on 21 February 2022 that she had had a vaginal discharge, by then green, as well as symptoms of soreness and itchiness for a week. In fact, as I have found, M knew that A had soreness and redness

on 11 February 2022. As Dr Ward advised, M would typically seek medical attention for her children more swiftly than most parents, but on this occasion she did not do so, even when she herself had remarkably similar symptoms. M said that with over the counter treatments A's symptoms were soothed, but they must have returned by 14 February, if her report to the GP can be relied upon, which I am sure it can. So by Tuesday 15 February she should have sought medical attention. A went on to become feverish before M sought medical attention. This failure by M to seek medical attention is, in my judgment, another feature of her unwillingness to confront reality in relation to the events of the weekend of 4 to 6 February and subsequent developments. It must have struck her that A's symptoms were similar to hers. She suspected that Y had given her something – she said as much by text. She also implied that what he had given her was related to him having sex with someone else. Yet, she was willing to accept his assurances. By burying her suspicions she prioritised her relationship with him, but in doing so she neglected to give A the medical attention she ought to have had.

94. Hence, by reference to the Local Authority's revised Threshold document, I find that:

i) A contracted gonorrhoea through transmission by sexual contact between her vagina and/or anus and the penis, mouth and/or anus of Y over the weekend of 4 to 6 February 2022. The precise circumstances cannot be known because neither A nor Y has described them. This was an episode of sexual abuse.

ii) Y has used M's white, plug in vibrator to sexually abuse A by putting it against her vulva on or before the weekend of 4 to 6 February 2022, but that did not cause her to contract gonorrhoea.

iii) M has not sexually abused A and has not participated in or facilitated the sexual abuse of A by Y, or did she know that Y had abused A, but she knows more about the events of the weekend of 4 to 6 February 2022 than she has currently disclosed and has knowingly withheld that information from the police and the court.

iv) M delayed seeking medical attention for A's symptoms of gonorrhoea until 21 February 2022 when she should have done so by 15 February at the latest.

For the avoidance of doubt, my findings mean that M is not in a pool of possible perpetrators – I have found that Y was the perpetrator and M was not involved in the perpetration of sexual abuse on A.

Welfare

95. For the reasons already given I am also satisfied that since the time when protective measures were instigated, M has continued to withhold from the court what she knows of the events of the weekend of 4 to 6 February 2022 and that in doing so has prioritised her need for a relationship with Y over her daughters. I find it likely that

she will be unable effectively to protect the girls from future sexual harm whether from Y or in future relationships.

96. I have carefully considered the evidence of the allocated social worker and the Children's Guardian as well as the assessments and other evidence provided to me. I hope not to do a disservice to the considerable work done and the value of the analyses and assessments if I do not summarise them in this judgment. There are no other safeguarding concerns other than those that obviously arise from the findings that I have made. A and B are now settled with their father and step-mother and their current wishes and feelings appear to be that they are happy to stay with them. The Local Authority's position, supported by the Guardian, has been that even without any findings made, it is in A and B's best interests to remain in the care of X and Z: the Guardian suggests a Family Assistance Order if no findings have been made, and a Supervision Order if findings have been made. The Local Authority does not oppose that approach.

97. I do take into account concerns raised about X and Z's parenting both by M and as discussed in the assessments and the Guardian's final analysis but the concerns are not unduly worrying. The children's best interests are my paramount consideration and I have to have regard to the Children Act welfare checklist. The central, but not the sole, issue in relation to the children's welfare is their safety in the light of the findings made.

98. I have made findings that Y sexually abused A and caused her to contract gonorrhoea, and that he has lied persistently about that and about related matters. I have found that whilst M did not know that Y had sexually abused A, she has withheld relevant information from the court and has prioritised her relationship with Y over her children and that it is likely that she will be unable effectively to protect the girls from future sexual harm. Although M told the court that she would separate from Y were the findings made as I have made them, I am afraid that I cannot accept that assurance. First, M has protected Y to date – she has withheld information. Second, she has prioritised her need for a relationship with him over her children. Third, she married Y after findings were made by HHJ Mitchell that he had sexually abused her daughter: even though those findings were appealed successfully, the marriage was a clear indicator of M's priorities. Fourth, her assertion that she would leave Y if he is found to have abused A is very recent. In the Guardian's final analysis M is reported as saying that if findings were made she and Y would appeal again. This indicates that she will find it extremely difficult, and may never, accept the findings of this court.

99. I have been urged to consider delaying the final welfare determinations pending an assessment of M's ability to protect her children from Y or from any other person who might pose a potential threat of sexual harm to them. It is not uncommon for the family courts to give time for parties to reflect on findings of fact, and to allow them space to make changes before deciding on final welfare orders but the interests of the children will not always allow for such time and space to be afforded. Here, the proceedings have been ongoing for over eighteen months. That might not be the fault of M but my focus is on the children's best interests. A and B are thriving in the care of X and Z. C is thriving in the care of Mr and Mrs D. In each case the children's relationship with M has been supported by those caring for them. The Children Act 1989 s1(2) provides,

> "In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child."

These children would all benefit from a permanent provision for their care. That provision is available now to each one of them.

100. I take into account the article 8 rights of M and of A, B, and C. For M, Ms Worsley KC submitted that in the event that I made findings against Y but not M, it would be unfair on M to make a final order that C should live with Mr and Mrs D under a Special Guardianship Order as is proposed because she would not then be given a chance to be assessed, perhaps by an Independent Social Worker, in the light of the findings made. As it is, whilst I have not made findings that M was involved in the sexual abuse of A or that she knew that Y had abused M, I have found that M has knowingly withheld information from the police and the court and has continued to do so. She has chosen to stand by Y for many months now when, if she had told the whole truth about events in February 2022, it is very possible that these proceedings could have been concluded sooner to the benefit of her children. Furthermore, I have found that when struggling with her suspicions and priorities in the days after the weekend of 4 to 6 February 2022, M delayed in seeking medical attention for A, to A's detriment. She has therefore been partially responsible for the delays to date and the position in which she finds herself.

101. I have to consider the no order principle but a Supervision Order in respect of A and B will provide an appropriate level of input to the benefit of the children, with emotional and psychological assistance as required and support for sustainable arrangements for them to spend time with their mother in the difficult aftermath of this hearing in order to ensure that arrangements can be sustained beyond the involvement of the Local Authority. I have considered the contact planning. For A and B it is proposed that there be a minimum of monthly contact with M, with video contact between times and monthly contact with C which may increase or decrease in the future in line with the children's needs and wishes.

102. In all the circumstances I am satisfied that it is A and B's best interests to be permanently placed with X and Z with a Supervision Order being made. This is supported by the Children's Guardian. Contact with M should be a minimum of once a month. Contact with C will be once a month.

103. The plan for contact for C, in addition to seeing her siblings, is for her to see her mother every other month. This was the very clear position of Mr and Mrs D who are experienced and highly thought-of carers who will also continue short term foster caring. They have explained their reasons for this level of contact. They are, I am assured, reasonable, and they have also agreed to contact on special occasions when such contact does not fall within the regular pattern. Between face to face contact, Mr and Mrs D will send videos and updates to M about C. As I understand it the proposal with regard to contact for C with Y is the same for her contact with M, even in the event of findings against Y. It would be supervised contact. If however M and Y do separate, then further consideration will have to be given to the contact arrangements. I have read the SGO report. The alternative for C, if she cannot go home, is adoption

which, as the Guardian has observed, would be catastrophic for her, and in my view could not be contemplated given the possibility of her being cared for by Mr and Mrs D under an SGO. Given my findings, including post-threshold findings, I do not see that it can be in C's best interests to return to her mother's care or to await further assessments of M before a permanency order is made. Accordingly it is in C's best interests for a SGO in favour of Mr and Mrs D to be made now.