Case No: 1234

IN THE FAMILY COURT AT BB

Date: 14/05/2021

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Before:

HIS HONOUR JUDGE COOPER

- -

Between:

M LOCAL AUTHORITY

Applicant

- and -

(1) MRS A
(2) MR A
(3 & 4) THE CHILDREN

Respondents

- -
- -

MR. A. LORD for the **Applicant Local Authority**
MS. G. FARRINGTON for the **First Respondent Mother**
MR. R. LEE for the **Second Respondent Father**
MR. P. GOODALL for the **Children through their Guardian**

- -

JUDGMENT

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HIS HONOUR JUDGE COOPER :

1. This case is about two children X and Y. Y was born on 19th September 2005 and is therefore aged 15 years. X was born on 7th March 2003 and is therefore now aged 18 years and given her age, I cannot now make any orders in respect of her. However, the facts of this case have centred on very serious allegations that she has made against her father. Given that Y is still a minor and that his father wants to be able to play a part in his life, coupled with the fact that Mr A needed the issues to be determined, it was necessary to conclude this hearing and to deal with the allegations that have been made.

2. The parents of both children are Mr A and Mrs A. They have another child, Z, but given her age, she has played no part in this case, although I do accept that she will certainly have been affected by it as she has lived, and still lives when not at college, with her mother. Her relationship with her father has been badly affected by the allegations made and by this case in general.

Background

3. To put matters into context, it is helpful to set out a brief background.

4. The family has been known to children's social care since around December 2018, when a referral was received from the children's school regarding an allegation made by Y that his mother was drinking every day and, as a result, she was erratic, aggressive and confrontational and was neglecting their needs. Y said when at school, that he wanted to kill himself by drinking bleach. The family had not been known to children's services prior to that referral.

5. X also alleged that her mother was drinking every night and that she would shout, throw things and hit out when in drink. At that time, Mr A was considered to be a protective factor and the focus was on helping Mrs A. Referrals were therefore made to her General Practitioner and to the S Partnership to help support her in addressing her problems.

6. On 31st January 2019, X alleged that Mr A had sexually touched her and that he had digitally penetrated her. On further exploration, she said that this behaviour had been ongoing for the past three years, so since she was about 13.

7. As a consequence of those very serious allegations, a joint s.47 investigation was undertaken between the police and children's social care. X was ABE interviewed on 1st February 2019 and provided details of what she said had happened. Mr A was arrested on the same day. He was interviewed and was bailed, one of his bail conditions being that he did not return to the family home. He has subsequently lived with his own mother and has not seen, as I understand it, any of his children since that time.

8. X made further allegations that, whilst on a family holiday in the country of BB in August 2018, her father had put his hands down her swimming costume and had been touching her. She said that she had told her mother about that. Mrs A's position was that she accepted that X had told her something but that she did not believe X and took no action to investigate or indeed to act on the allegations.

9. As a consequence of all of that, matters progressed to an initial Child Protection Case Conference on 7th March 2019, when it was agreed that both children would become the subject of child protection plans.

10. On the same date, which was X's 16th birthday, X decided to provide her consent to being accommodated by the Local Authority. She was placed with foster carers. X was clear that she wanted to have no contact with either of her parents at that time. I will return to the circumstances of her entering foster care a little later in this judgment.

11. As time has passed and matters have progressed, Mrs A has expressed a wish to try to rebuild her relationship with X and has had some contact with her. I am told that that contact is progressing, although there is some way to go.

12. Proceedings were subsequently issued by the Local Authority on 22nd March 2019 and X was made the subject of an Interim Care Order on 10th April 2019.

13. X was further ABE interviewed on 17th May 2019, when she made additional and very serious allegations about her father including that he had raped her.

14. Y has remained in the care of his mother in line with his wishes. In respect of him, an Interim Supervision Order was made on 10th April 2019. Y has had contact with his sister whilst they were at the same school.

Respective Positions

15. At the start of this hearing, the Local Authority pursued findings in relation to the allegations made by X.

16. Mrs A initially indicated that she did not believe X and expressed the view that X had lied about the allegations. For the purposes of the fact-finding hearing, she adopted a largely neutral position because, of course, the principal allegations were made against Mr A.

17. Mr A denied all of the allegations made against him and that has been his consistent position.

18. The Guardian, of course, was neutral in respect of the fact finding element of the hearing.

Representation

19. All parties were legally represented. Mr. Lord of counsel for the Local Authority, Mrs. Farrington of counsel for Mrs A, Mr. Lee of counsel for Mr A and Mr. Goodall, solicitor advocate, for the children through their Guardian. I am very grateful to all advocates for the help that they have given me and the manner in which they have conducted this case. It has not been easy.

20. The case had been listed for some time and actually started properly, if I could put it that way, on 7th December 2021. Having taken some evidence, it became apparent, having heard from Mrs F, one of the coaches at the children's gymnastics club, that some potentially important documents were in existence but had not been seen. These related to the investigation and reporting work that the club had undertaken once the allegations made by X had become known to them. The advocates set about investigating the whereabouts of those papers. Unfortunately, that led them to discover that the police disclosure was not complete and that other contemporaneous documents might well have been missing. Following lengthy discussions between myself and the advocates as to whether or not we could continue with the hearing, the impact of doing so and the potential outcome of the case, I became very concerned that a fair hearing might not now be achievable.

21. Albeit with great reluctance, the advocates were as one and agreed with that concern. There was not the slightest possibility that we would be able to complete the case in the remaining time allocated and that even if we had tried to do so, I felt there was a huge risk of unfairness. Given the issues and the stakes being so high, I was not prepared to take any such risk and the hearing had to be adjourned. It was relisted and started again on 6th April this year.

22. Although my starting point in December was to try and finish this case and I adjourned with huge reluctance, one of the important consequences of the adjournment was that there was time for the Local Authority to arrange for the original social worker, Ms P, to give oral evidence at the reconvened hearing. For reasons that are now understood by all parties and which I shall deal with later in this judgment, having Ms P available to give her oral evidence changed the shape, format and ultimate destination of this case.

23. I should, for the purpose of this judgment, make clear that the first part of the hearing in December 2020 was dealt with entirely remotely with no physical presence in the court building. That was, of course, due to the present national health crisis. That part of the hearing was conducted using Microsoft Teams. On resumption of the case, on 6th April this year, we were able to move to a hybrid platform. Detective Constable H and Ms P attended the Combined Court Centre to give their evidence with Mr. Lord, Mr. Lee and Mr. Lee's instructing solicitor also in court with me. The other parties and their advocates once again appeared remotely using the Microsoft Teams platform. The latter part of the reconvened hearing once again reverted to the Teams platform and proceeded, again, on a completely remote basis.

24. Submissions in relation to the welfare aspect of the hearing could not be dealt with in the hearing that recommenced on 6th April and was adjourned until 20th April of this year. That hearing was again dealt with entirely remotely and again using the Teams platform.

25. At this stage, I thank the respective legal teams and their clients for their help in conducting the case over that period and in the various formats. It has not been easy and was very tiring. I did try to build in effective breaks to give everybody downtime but I certainly do not underestimate the impact that the process has had on all concerned.

Evidence

26. Prior to the hearings, I had the opportunity of reading all of the relevant papers and have had access to the full bundle on CaseLines. Where documents are not in that bundle, they have been sent to me separately by email and I will refer to them as and when necessary. I watched the ABE interviews of both X and Y and I have listened to the police interviews of Mr A following his arrest.

27. I heard oral evidence from the following witnesses, Detective Sergeant K, Miss F and Mrs F, they were all in December 2020, and from Detective Constable H and Ms P during the hearing in April of this year. All witnesses were subject to extensive cross-examination. I therefore had a good opportunity to assess both the quality and consistency of their evidence and, of course, their credibility.

28. Whether or not X gave evidence was a constant issue in this case and predated my involvement. Mr A made an application for her to do so which, of course, was the "*Re W* [2010] UKSC 12 application".

29. All legal teams thought very carefully about how to resolve this issue. There were fluctuating positions coming from X as to her wish, or not, to give evidence. The matter was finally resolved by my endorsing a plan that X should give evidence but that the questions of her should be an agreed set of questions approved by me and put to her by one advocate in, effectively, ABE conditions. I was and remain completely satisfied that that was a just and fair solution to this issue/application. Having regard to the views of the expert Clinical Psychologist and the Guardian, it was the best outcome that could be achieved for X, being mindful of protecting her welfare and of ensuring for Mr A a fair hearing.

30. A police interview suite was made available on 8th December 2020 and an interview of X was conducted by Mr. Goodall on that date. I watched that interview with all advocates and their clients during the last hearing and I have watched it again prior to this case recommencing.

The Allegations

31. The schedule of allegations is found at A12 to 13 in the bundle. It helps to put matters into context to set out the allegations made and the facts that I was being asked or not to find.

32. Firstly, under the category "sexual harm" it was alleged that whilst at the family home that Mr A:

(a) touched X's breasts, her genital area and bottom over her clothes;

(b) touched X's breasts, genital area and bottom under her clothes;

(c) inserted his fingers into X's vagina;

(d) raped X;

(e) caused X to touch him on his penis;

(f) caused X to see him masturbating.

33. Secondly, under the category "sexual harm" whilst on a family holiday to the country BB in 2018, it was alleged that Mr A:

(a) touched X on her breasts and bottom over her swimming costume whilst in the hotel swimming pool;

(b) touched X on her bottom under her swimming costume whilst in a hotel swimming pool;

(c) touched X on her breasts and genital area over her clothing whilst in a hotel room;

(d) he touched her on her breasts and genital area under her clothing whilst in a hotel room.

34. Thirdly, under the category "sexual harm" that having been informed by X of the abuse whilst on holiday in the country BB in 2018 Mrs A took no steps to prevent the sexual abuse from continuing.

Change in Direction

35. Upon conclusion of the evidence of Ms P on 7th April of this year, Mr. Lord explained that he was going to be discussing matters with those that instructed

him and, when the case reconvened on 8th April, he told me that having considered in depth with his client the evidence given thus far, the Local Authority had made the decision to no longer pursue findings in respect of any allegations of sexual abuse against Mr A.

36. Mr. Lee for Mr A, explained that although his client was of course relieved that the Local Authority were not pursuing the allegations, he wanted to explore with me whether or not Mr A should give oral evidence because it was Mr A's position that he wanted me to exonerate him by making positive findings that he had not behaved as alleged by his daughter.

37. Having thought about that point I decided that there was no purpose in Mr A giving oral evidence, it was not proportionate for him to do so. It seemed to me that all that would happen would be that he would be repeating his denial of the allegations which were not now pursued. The Local Authority had made clear that they would not be cross-examining him, his evidence was not going to be challenged by any of the other parties. The reality was that the Local Authority were not now pursuing the allegations and therefore they should be treated as not having happened. In his additional submissions, Mr. Lee asked me to reconsider the issue of an exculpatory finding. I will return to that request later in this judgment.

38. The dramatic change of position of the Local Authority effectively saw the end of the fact find hearing. Therefore I discussed with the advocates directions to lead to the conclusion of welfare issues and, importantly, how Y, X and Z should be told about how the critical part of the case had concluded. I was very concerned at that stage that none of the children, calling them that, should find

out such important information in an unstructured and unfocused way. They needed to be able to understand the implications and to process the information. At the heart of that was of course their relationship with their father and, in X's case, with both of her parents. I was given assurances by Mrs A that she would not discuss matters with Y and that the professionals would give some serious and immediate thought to the best way of managing a very sensitive situation.

Welfare

39. I will deal with my decision on the welfare aspects of this case first.

40. As I indicated earlier the case was timetabled for a welfare hearing and that took place on 20th April 2021. The representation was the same. There was no further oral evidence all parties being content to deal with matters by way of submissions. The up to date positions of each of them was as follows.

41. The Local Authority proposed that Y remained in the care of his mother and both the Interim Supervision Order and children's social care involvement should end.

42. Mrs A supported that stance. It was her case that Y has had a period of stability within her care and, accordingly, she felt that once these proceedings had concluded, the involvement of the Local Authority should come to an end.

43. Mr A had initially stated to the Local Authority that he would like his family life to resume as it was prior to the allegations having been made but now recognised and understood that that was no longer possible. As to welfare outcome, it was his position that there should be a Supervision Order in respect of Y for a period of twelve months. He believed that some type of order was

necessary. As an alternative, Mr. Lee suggests consideration of a Family Assistance Order.

44. The Guardian was concerned as to how the outcome of any findings would be processed by both Y and Mrs A. Her final report was of course prepared prior to the decision of the Local Authority not to pursue the allegations of sexual abuse. She was worried about the impact that that might have had on their emotional wellbeing and possibly Mrs A's alcohol use. She felt that a robust support package for Y and Mrs A needed to be identified to ensure Y's safety and wellbeing. If CAMHS refused to provide Y with any therapy that he needs, then the Local Authority should consider funding this through private therapy. She was also of the view that family group conferencing should be provided to assist the family in repairing their relationships. If no findings were made in respect of Mr A, then he should also be included within that process. Therefore her recommendation was that the Local Authority needed to continue to support the family through a Supervision Order for a period of one year to ensure that the appropriate support was in place to help ensure Y's safety and wellbeing and to help repair family relationships.

45. In a position statement filed on her behalf on 20th April 2021 the Guardian sets out that she had expected a slightly more detailed child in need plan and/or a statement from a social worker and in particular felt that there should be some assessment of Y, his mother and his father following the findings in order to explore how the relationship between the three of them was to proceed.

46. That child in need plan is dated 12th April 2021 and is found at J280 to 285. The good news is that it is positive with little of concern. Y is said to be happy living

with his mother. There are no concerns about his needs being met and Y has stated that things are much better at home. His position is safety scaled at 9, the maximum being 10. In the longer-term, Y's relationship with his siblings, particularly X, and his father will be promoted in line with his feelings. At this stage, he does not want matters to progress at any faster pace. Y has said that he does not require or want any support with his emotional wellbeing although this is to be monitored as months progress, and as he comes to terms with the events of recent weeks and the position that his father now finds himself to be in in the sense that the allegations are deemed never to have happened.

47. The final threshold has now been agreed. The composite document was sent to me earlier this week and is found at A97 to 98 of the bundle.

48. I have to consider what is the welfare focussed and proportionate order to make in respect of Y. There is a straight choice, a Supervision Order for one year (or perhaps a Family Assistance Order) or no order.

49. The starting point is s.1(5) of the Children Act 1989, which provides:

> "Where a court is considering whether or not to make one or more orders under this Act with respect to a child, it shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all."

50. A Supervision Order is an order which makes it the duty of the supervisor to advise, assist and befriend the supervised child. The difference between that and a Family Assistance Order, other than one is a public law order and the other a private law order, is that either an officer of CAFCASS or the Local Authority must be made available to advise, assist and, where appropriate, befriend any person named in the order. It is therefore of a wider ambit in the

sense that it could include other family members in addition to Y. I have mentioned the Family Assistance Order because it was raised in submissions by Mr. Lee but I intend to focus on the rationale of whether to make a Supervision Order or not as that, it seems to me, will drive me to a conclusion irrespective of what label I put on my decision.

51. There is helpful guidance in the authorities. In the case of *T (A Child) v Wakefield Metropolitan District Council* [2008] EWCA Civ 199, Lord Justice Thorpe observed of Supervision Orders that:

> "Usually they are made where there is a real risk that the child's carers, ordinarily the child's parents, will fail or falter unless supported by a supervisor. Thus the Supervision Order where the risks indicate the need for statutory intervention is less intrusive than a care order."

That raises the question of how real the risk of Mrs A failing or faltering needs to be and whether any support has to be provided by a supervisor under the terms of a Supervision Order to perhaps assist Y, again remembering always the no order principle that I have already identified.

52. I have asked myself whether or not the duties of the Local Authority imposed under Part 3 of the Children Act will be sufficient to meet Y's needs or whether I am satisfied that these could only be met by the making of a Supervision Order. In considering all of this, I make and bear in mind the following factors.

53. There has been, and is, no suggestion that Mrs A will not continue to cooperate with the Local Authority under the auspices of a child in need plan. A Supervision Order is of course a matter for ensuring cooperation not available under Part 3 but there is no evidence to suggest that such an order is actually required for that purpose.

54. The Guardian raises in her final analysis a concern of the possibility that Mrs A might relapse in terms of her alcohol use. For me, although that might be a concern borne out of good intent, there is nothing to support that that is actually a risk.

55. In reality, the position for Mrs A has not changed for the best part of two years. Once she realised the seriousness of the situation in December 2018, it is common ground that she stopped drinking. That has never been challenged. Indeed, that perception was corroborated by X when she was still living at home and to which I shall return later. Mrs L, in her final analysis at C202, says this:

> "There is no evidence that Mrs A is currently misusing alcohol. Mrs A reports that she understands that her drinking was problematic and that this had an impact on the family. Mrs A states that she is no longer drinking to excess and reports that she will drink one bottle of wine over a week maximum. Mrs A states that she feels better for having stopped drinking to excess."

56. True, there is reference to Mrs A drinking one bottle of wine a week with her new partner. Is that sufficient to sound alarm bells? Not for the Local Authority and I have to say not for me. I give Mrs A credit for openly acknowledging that she enjoys a bottle of wine with her partner on a weekly basis. She has not attempted to hide the fact that that is what she does. That reassures me that she is being open, frank and has insight. It would have been very easy for her to have said absolutely nothing.

57. Further, Y has continued to live with his mother since the involvement of the Local Authority began some two years and five months ago. In her final report Mrs L says this at C202:

> "Y appears to be well cared for at home. As noted in the statement of Miss P dated 19th March 2019, there were concerns

> that Mrs A was not meeting Y or his siblings' basic needs. There is currently no evidence of this. Home conditions have been good and the fridge has been seen to be filled with healthy food. During home visiting, Y's bedroom has been observed to be very cluttered and there were plates and mugs of food and drink in varying levels of decay. However, this is not unusual for a teenage boy. During recent home visits, I have observed Y to be clean and wearing clean clothes".

58. Y has a good friend and, having moved schools, continues to have a good school attendance record. The school's welfare officer reports that Mrs A engages very well with him and is positive about Y's engagement and progress at school. Put simply, there are no negative factors identified in relation to Mrs A's parenting of Y.

59. Perhaps of critical importance is the fact that Y does not want any further involvement with the Local Authority or indeed with anybody else. I am told, and have no reason to doubt, that his reaction was that the Local Authority should just "piss off". Against a background whereby Y has explained that he does not want to engage Mr. Lord and Mrs. Farrington on behalf of their respective clients, made the point that the Local Authority can only work with Y if he will work with them. The Local Authority cannot force him to engage and it seems that given Y's personality and all that he has already expressed, that that is not going to change any time soon.

60. During the course of submissions, there was investigation into just what it was that the Guardian was actually asking or expecting the Local Authority to do more than it has already done or is prepared to do. There was a reference to further assessments being carried out and perhaps this matter being adjourned even further to allow that to happen. Despite that probing, which included questions from myself, I am frankly none the wiser as to what it is the Guardian

thinks could be done extra to assist Y. I am totally satisfied that any further delay will achieve precious little and would not be in his welfare interests.

61. The Local Authority have been very clear that they will not hesitate to extend the child in need plan if extension is requested and that they will not hesitate to work with Mrs A and Y if that is what at least one of them would want to happen.

62. I am also mindful of Mrs A's stated position that she wants to end the involvement of children's services and what she sees as an intrusion into Y's life. I do have a concern that the imposition of a Supervision Order might actually be counterproductive to the family working with children's services in the future. Whilst she has not welcomed the involvement of the Local Authority over recent months Mrs A has always cooperated with them. I have absolutely no reason to doubt that that cooperation will not continue as we move forward.

63. A part of Mr A's concerns centred on there being some type of an order because without one, he was fearful that his contact with Y would not be promoted. Whilst I understand that as a general concern, I have to say that I have not detected anywhere in this case a resistance from Mrs A supporting Y in having a relationship with his father if that is what Y wanted to happen. Indeed, it seems to me that it would be foolhardy for her to do otherwise. Y will be 16 on his next birthday and will soon be voting with his feet. I am sure that Mrs A would not want to put herself into a position, having rebuilt her own relationship with Y, whereby that was in danger of becoming fractured once again by her adopting, on the face of it, an unreasonable and unnecessary stance against Y's wishes.

64. I do, of course, accept that this is a fragile family and I understand the points made by the Guardian in terms of what she believes is required moving forward. I have carefully considered and balanced my options and reviewed the child in need plan. I am satisfied that the services and processes referred to in that plan could be provided under Part 3 of the Act rather than Part 4.

65. I also think I have to face the realities. Y has been living with his mother at home for a considerable period of time without the Local Authority having to react to any adverse aspect of her parenting or presentation. It is clear to me that whatever else may need to be done to help repair this family, things are now much better for Y than they have been for some considerable time.

66. Therefore I am satisfied that the correct order is effectively no order. The making of a public law order today would, for me, be disproportionate and unnecessary to protect Y's welfare. As I have said, the child in need plan does, I am satisfied, meet those welfare needs going forward. For completeness, I also decline to make a Family Assistance Order, applying the same reasons that I have declined to make a Supervision Order. I also make it clear that in making this decision, I am relying squarely on the commitment given by the Local Authority to continue to work with this family in the manner indicated by Mr. Lord and so that there can be no doubt about that forming a part of my decision, there shall be a recital to that effect on the face of the final order.

X

67. I cannot leave the issue of welfare without mentioning X. I have already said she is outside the ambit of this court because of her age. I understand that she has been told of the outcome of the proceedings in the sense that she knows that

the Local Authority did not pursue their case. I am told that the Local Authority continues to work with X and that her Pathways team will continue to provide her with support. To my mind, that is essential.

68. However given the difficulties that have shown themselves in this case and to which I will make reference shortly, the Local Authority must ensure that they do not overlook X moving forward.

69. She is a young lady who needs help and support. I anticipate that that support may require intervention from outside agencies and I would ask that the Local Authority give some thought to that. Having regard to the difficulties in this case and the problems I will soon identify, I do not think that that is too much for them to do or for me to ask.

70. That concludes my judgment in relation to the welfare issues.

The Involvement of the Professionals

71. Having dealt with the welfare issues, I must now make comment about how the investigative work was conducted, to include the meetings and interviews with the children by both the police and the Local Authority, and how aspects of the work done by the social work team and the gymnastics club that X and Y both attended have, in my view, fallen far short of the necessary standards required and to be expected.

72. It is not lost on me that had any of the key professionals acted in a different way in 2018 and 2019, then there might well have been a very different trajectory for this case and for this family. I should stress that I do not, when saying that, include the present social worker, Mrs L, because I understand that she was not

involved in the critical decisions that shaped the direction of travel on this case during its early period. She has had the unenviable job of trying to pick up the pieces as the true extent of the damage caused has started to be understood. I have detected absolutely no criticism of her or the efforts that she has made in trying to do that.

73. Dealing with these concerns was not something that I had discussed with the advocates at the conclusion of the hearing on 8th April because, as mentioned earlier, the focus of the remainder of that hearing was on directions in respect of the remaining welfare aspects of the case and on how best to inform Y, X and Z of the outcome of a fact find hearing. I therefore decided, to be fair to all, that I would email the advocates and explain that I would be making reference to some of the problems encountered so as to give them, if they so wished, an opportunity of making any additional submissions. However, I made plain that there was no pressure on them to have to do so and that it was purely a matter for them following consultation with their respective clients.

74. The Local Authority did file, through Mr. Lord, additional submissions explaining the steps that they are now taking following the problems identified in this case.

75. Mrs. Farrington, on behalf of Mrs A, indicated that she would not be filing any further submissions and would deal with any matters that she felt that she needed to deal with at the reconvened hearing which started on 20th April 2021.

76. Mr A, through Mr. Lee, did file lengthy written submissions in respect of all areas of identified concern and, as I have already indicated, in respect of a request that I consider exculpatory findings in relation to his client.

77. There were no additional submissions filed on behalf of Y through his Guardian.

The Problems

78. **The Q Gymnastics Club.**

79. It might, at first blush, appear strange that in this part of my analysis I start with the gymnastics club but I was deeply troubled by the approach of the club and the senior people responsible for running it. It became apparent to me that an organisation affiliated to British Gymnastics and charged with looking after children of all ages had an incredibly poor and haphazard approach when dealing with potential welfare issues relating to children in their care.

80. In broad terms, the club were made aware of and become involved in the following:

i) That X might be self-harming due to marks on her arms being spotted while she was training at the gym.

ii) That one day she came into the club with a bag containing pills and razorblades and was apparently threatening to kill herself.

iii) On 31st January 2019, when she made allegations of sexual abuse against her father.

81. The Q Gymnastics Club website makes it clear:

> "That British Gymnastics policies will be operative within Q Gymnastics Club for the safety and welfare of the gymnasts".

Perhaps not surprisingly, British Gymnastics have a comprehensive document which is readily available entitled "Safeguarding Policy and Procedures" which make clear that affiliated organisations and registered clubs are:

> "Accountable for having in place arrangements that reflect the importance of safeguarding and promoting the welfare of children."

82. It is not necessary for the purposes of this judgment to set out lengthy extracts from that policy. Suffice it to say that it mandates that each affiliated organisation ensures that:

> "a senior individual takes leadership responsibility for the organisation's safeguarding arrangements" designates "an individual with responsibility for safeguarding (welfare officer) whose role is to promote safeguarding and provide a safe environment for children and adults at risk and to respond to any concerns of harassment and abuse that are brought to their attention" and "ensure everyone knows what to do if they are concerned about someone's welfare and promote a culture where everyone is encouraged to raise concerns without fear of negative repercussions."

83. It was totally apparent to me that the F family who are, or were, the senior people with responsibility for running the club, Mr F was the head coach and the individual with leadership responsibilities, had limited effective if indeed any, processes or policies in place to help protect the welfare of the children that they were training and certainly did not have policies or processes good or comprehensive enough to deal with the issues that have been identified in respect of X.

84. When giving her oral evidence, Mrs F was asked about 31st January 2019, the date when she became aware of the allegation that Mr A had sexually abused his daughter. She was very clear that this was a huge shock. When answering questions put by Mrs. Farrington, she explained that they had never had to deal

with anything like this before at the club in over 34 years. To be frank, the manner in which she described what she or they did or perhaps did not do rather underscored that point. It was clear to me that the club were unprepared for such an eventuality and had no real systems or procedures in place to enable them to be able to react appropriately should they have been required to have done so.

85. It was very apparent that the preferred approach of those in senior positions was to effectively absolve themselves of any responsibility or involvement and to simply adopt a strategy of stating that they had reported what they had been told to their welfare officer and had expected that she would deal with matters. I was struck by the fact that Mrs F, despite being questioned by counsel and indeed myself, could not describe anything that she herself had done to follow up the safeguarding of X despite the seriousness of the allegations.

86. In one sense, perhaps it can be understood that given the seriousness that the club did not want to become involved in what was to be a far more in-depth investigation as far as the allegations of sexual abuse were concerned. After all, other professional agencies, such as the Local Authority and the police, were being tasked to investigate those allegations. However, such understanding cannot be applied to or help justify their approach towards X's self-harming.

87. In her statement of 11th B 2019, bundle references C41 to 52, Mrs F said this:

> "One day, towards the end of October 2018, she came to speak to me about things in general, when she then told me about her situation with her mother. She said that her mother was drinking and hitting her. She told me that her dad told her that she was the reason her mother was like she was. It was just after this conversation that she began to self-harm. She was cutting her arm and this was also noticed by two of her teammates, who were

> very distraught and came to tell me. She did not make any effort to hide this but continued to wear sleeveless leotards."

88. She then went on to explain how X's friend, U, was told things by X, who was used to relay things to Mrs F. Her statement continues:

> "She said that her situation with her mother was getting worse and her self-harming made her feel better. He insisted that she told me personally".

89. Mrs F further explained in her witness statement:

> "All our coaches have had safeguarding awareness course and the club has a welfare officer. Incidents are to be reported to the head coach and/or the welfare officer, who will take appropriate action. There may be a need to involve the regional welfare officer, the northern welfare officer at British Gymnastics or external agencies if there is urgency".

She then set out that her husband had contacted the police and safeguarding team, who set up actions to protect X. It is important to understand at this stage that that contact was made in relation to the allegations of sexual abuse only. There was absolutely no referral made to any agency in relation to the self-harming.

90. On 1st February 2019, Mr F sent an email found at J118 to Miss E, the regional welfare officer for British Gymnastics. The email was ostensibly targeted at dealing with making her aware that the club had been told of the allegations of sexual abuse. However, it also touched on the issue of self-harming and said this:

> "In September, there was an incident of self-harming which the school also picked up and social services were involved so we held back."

The emphasis of that email suggests that it was because of the involvement of the school and social services that the club decided there was no need for them

to take any proactive steps. I reject that. For me, the email seems to be one that was designed to make reference to the issue of self-harming and then to advance, on the face of it, a plausible reason for not reporting the issue or for dealing with it previously. Unfortunately, that paints a distorted and a misleading picture.

Mr. Lee put it to Mrs F that the first time that the school became involved with this issue was in December 2018, so some time after September, and, as such, the school could not have been providing support for X. Her response was:

> "Well, when it happened then, maybe she didn't inform the school because X was not one for opening up to people about things."

91. Mr. Lee therefore asked her if it was possible that the club was aware that X was self-harming, that they had asked X to tell the school, that X told them that she had told the school when in fact she had not done so. Therefore the reality was that telling her to tell the school was all that was done about the issue and that nobody else had been informed. Her response to that was to say, "The welfare officer, our welfare officer, was informed". She could not, however, provide any detail about how that came to be. She could not say whether the welfare officer's notes would have been retained, referring to them being in a filing cabinet somewhere. We also know, following cross-examination from Mrs. Farrington, that the welfare officer was away from the club for a few months due to the death of her mother and that there was no replacement appointed during that absence even on a temporary basis.

92. Further, the statement provided to the police from the club's welfare officer at that time, Ms. G, bundle reference I616, contains no reference or mention of the welfare officer ever being made aware of X self-harming.

93. The reality was that the preferred response was to suggest to X herself that she should tell her school with absolutely no thought being given to the fact that she was the person that needed help, was already filtering information through U and might not be best placed to attempt to discuss such sensitive issues with another organisation. To put the onus on X to approach another professional to get help was completely misguided and an incredibly poor response to what the club had been told.

94. I simply do not accept that the senior members of the club took any proactive steps to help protect the welfare of X once they knew of the self-harming. I am equally satisfied that they did not have in place any procedure or protocol, despite them all having received specific training, for reporting and dealing with such incidents. They did not follow, despite the statement on their website to the contrary, the protocols set down and established by British Gymnastics. They did not keep an adequate paper trail and, I am satisfied on the balance of probabilities, did not inform their own welfare officer of the problem. Even if I am wrong about that, I am not satisfied that there was in place a designated process for her, that is the welfare officer, to then follow. At the very least, I would have expected the senior members of the club to have checked with her that she had done all that she was supposed and expected to have done. It is abundantly clear to me that they did not do that.

95. To make matters worse, the senior members of the club chose not to tell either of X's parents about what they had seen or what they might have been worried about. That was despite the fact that the A family had been coming to the club for a number of years and were well known to them.

96. Mrs F was asked why she did not inform either of X's parents given that they would, on the face of it, have had ample opportunities to have raised those concerns with Mr A, who was the parent who collected the children on the majority of occasions. Her answers were totally unpersuasive.

97. She explained that she could not leave gym classes that were ongoing because it would not have been safe to have done so and said this:

> "When he came in, we've got a class of older able gymnasts that were doing some quite complicated tumbles and what have you and we were on the floor coaching them, so that by the time we've sorted these out, he had gone. We can't leave gymnast's unattended on the floor. If they have an accident, then that's down to us."

Mr. Lee asked her if it was not worth pausing a class to go and speak to a father about a daughter who was cutting herself, and Mrs F was defensive in her answer and said:

> "That is not what I said. That is not what I said. We would have gone to him after the class and we would have spoken to him if he had stayed long enough for us to speak to him."

When pressed further as to why those classes could simply not have been postponed for a short while, she could give no sensible answer.

98. What struck me, and of course we shall now never know the answer, is that the marks on X's arms might have been a first sign of her cry for help in respect of whatever might have been troubling her and playing on her mind. At the very least, it would have given Mr. and Mrs A the opportunity of investigating what might have been happening and, crucially, to have given them the chance, if necessary, of seeking appropriate help for their daughter. Putting all of that

together, the failure to report the worries to anybody was, to my mind, truly an opportunity missed.

99. No matter how well intentioned the senior members of the club were, and I am sure that they were and are fundamentally good and decent people with nothing other than the best of intentions, I have got little doubt that their failure to take any proactive steps once they were made aware of X's self-harming identified and exposed a significant gap in their internal processes and procedures. I sincerely hope that those responsible for running the club will reflect on that and design a policy and a protocol, perhaps taking advice and support from British Gymnastics before doing so, which works and, most importantly, is then followed by those in leadership positions.

The meetings with the children and the ABE interviews

100. The approach of the Local Authority and police to the various meetings and interviews with the children was calamitous. I have got absolutely no doubt that the failure to properly follow procedure and established guidance in so many ways, and on so many occasions, helped lead this case on a route that it should never have had to have taken. Of course, I can only speculate on what might have happened had matters been dealt with properly but I certainly cannot discount the possibility that there might not have been a case at all or, if there had been, that it would have been a very different case and one that proceeded in a very different way and with a very different outcome both in terms of legal process but, more importantly, in respect of the human impact.

101. Because the interviews have played such a central and critical part in this case and on its eventual outcome, I have taken the view that it is necessary for me to

make comment about them. I sincerely hope that the issues identified will be helpful to both the Local Authority and the police as they seek to improve and review their processes, systems and how they ensure continued education moving forward. I do not think it is an exaggeration to say that interviews of this standard must not be allowed to happen again.

102. As previously indicated, prior to the commencement of the hearings, I did view the ABE interviews of both X and Y. Indeed, I have watched the interviews on more than one occasion. Having done so, I anticipated that there would be a challenge to the quality and subsequent evidential value of the interviews, particularly from Mr A.

103. Of course, there was such a challenge. Mr. Lee spent some considerable time cross-examining Ms P, who was responsible for asking the questions of the children in the interviews. My initial concerns about the quality of the interviews were well-founded but it is fair to say that the full extent of just how badly they were planned and conducted was not something that could have been fully understood until Ms P's evidence had been completed. That is the reason that, on reflection, I am so pleased, although I could not possibly have understood why at the time, that I did adjourn the hearing in December 2020. I shudder to think what might have been had we not heard from Ms P.

104. The starting point for any interview of a child is the Achieving Best Evidence Guidelines 2011 a document that is, or at least should be, well known to everybody who works in the field of child protection and is involved even in just a small way with these types of interviews.

105. The Guidance is very detailed. It is imperative that it is read, that it is understood and, crucially, that it is followed by those who are involved with and conduct these interviews. It is perhaps an obvious statement to make but a child who is interviewed in such circumstances has no control over the way in which the interview is conducted by the adults who do have that responsibility. It is incumbent upon them to get it right.

106. The senior courts have made clear on numerous occasions the importance of adhering to and complying with the ABE Guidance and that in cases where that is not done then the court may be left in a situation where it can place little if any weight on the video interview or where, as in this case, one or other of the parties is forced to urgently review its position. There is little purpose in my reciting that case law as it will make this judgment unwieldy. It is well known to the advocates and a comprehensive summary can be found in Mr. Lee's written submissions. I am confident that the meaning and importance of the message from those cases has been properly explained to Mr. and Mrs A so that they can understand the expectations of the senior courts. I make it clear that I have that case law firmly in my mind when considering the facts of this case and how the investigative process was undertaken.

107. Where, as here, there are allegations of sexual abuse, the court normally decides first whether there is evidence of such abuse and then decides whether there is evidence of who the perpetrator was. Here, the evidence relating to both of those issues is primarily that of X's account. There is no independent forensic or medical evidence to help establish abuse.

108. Therefore, assessment of the truth or otherwise of the allegations came down, essentially, to a critical analysis and a balancing exercise between the evidence given by X, and to a lesser extent by Y, in her ABE interviews and the interview conducted by Mr. Goodall, against that of her father both in his police interviews, his witness statements to the police and to this court and when, as he expected to do, he gave his oral evidence.

109. Unfortunately, the ABE interviews were prepared and conducted so badly that it was readily apparent to me that I was likely to be able to attach little, if indeed any, weight to what X or Y had said in those interviews when considering my findings.

110. It would be very easy to go through each and every breach of the guidelines and pass comment. That, however, serves no purpose as many of the problems were borne from the same flawed processes. I have therefore decided to deal with a broad overview of some of the key elements to help identify why I am so troubled about what has happened. Mr. Lee, in his additional submissions, prepared a very helpful schedule which identifies many of the breaches. I have read that document and agree with the criticisms made. Mr. Lord, on behalf of the Local Authority, also confirmed that he takes no issue with the contents of that document. To avoid unnecessary duplication and unless Mr. Lee objects, I intend to use that schedule as an annex to this judgment so as to provide a source of reference to which professionals can refer as they look to refine and improve their internal procedures and processes.

111. When she gave her oral evidence, Ms P said that she had had ABE training and that that was in 2017. She explained that the training was interactive and

included role play. The first ABE interview with X was on 1st February 2019. Although we do not know the exact date that Ms P had received her ABE training, I can proceed confident in the fact that she had had that training within a relatively recent timescale so as to be able to expect that she should have been able to recall and proceed in accordance with the training that she had received. I am sorry to have to say that Ms P's evidence was such that I was struggling, on occasions, to believe that she had actually been trained or, if she had, then she had not retained or taken on any of the core or critical learning points from that training. There are a number of reasons for being so blunt in my assessment.

112. She was asked by Mr. Lee if she had heard of the Cleveland Inquiry, she confirmed that she had. He reminded her that the inquiry discouraged the use of the word "disclosures" when working with children in a case involving allegations of sexual abuse. Ms P had used the word "disclosures" throughout the interviews and within aspects of the documentation that she had prepared in this case. Her answer was that, "that was probably something for me to learn about". I was more than surprised by that response given what she had said about her training. Indeed, I was left with the clear impression that the use of the word "disclosures" and the problems associated with the use of that word was not something that she had thought about and did not properly understand.

113. As I have indicated, the word "disclosures" was used by Ms P on a number of occasions, including in her paperwork. To be fair to her, although I am satisfied that she did not properly understand the reasons that the use of that word was wrong, it seems to me that those in a supervisory or management position within the Local Authority appear to have adopted the same sloppy and unacceptable

procedure. A good example of that can be seen in the Child Protection Conference report dated 7th March 2019, which was sent to me by Mr. Lord on 16th April 2021. It is not a document within the bundle or, if it is, I am not sure what the case reference is.

114. In a section entitled "What are we Worried About?" it is recorded that the chair of the meeting, who I understand to be the Independent Reviewing Officer, reported that the conference had been convened in respect of X for a number of reasons, one of which was that:

> "X has been subject to sexual harm for around three years. Mum was unwilling to protect X so she disclosed to someone outside the family home."

There are two issues with that. Firstly, a positive assertion that X "had been subject to sexual harm", rather than making it clear that allegations had been made, were denied and yet to be tested. Secondly, the use of the word "disclosed". The fact that such language was being used at this meeting and by such an experienced person highlights again a worrying lack of basic understanding.

115. Unfortunately, the errors in that meeting continued, it being minuted that the Chair asked:

> "Mrs A how she had felt when X had disclosed that she had been suffering sexual harm from her father".

The same words were used in the "Key Points" section in that document. Given that the Cleveland Report deprecated the use of the term "disclosure" to describe a statement or allegation of abuse made by a child due to it precluding the notion that the abuse might not have occurred, it is more than worrying that in this case

those charged with the overall responsibility for mapping the way forward openly used the words "disclosure", "disclosed" and other phraseology that failed to recognise that the allegations remained untested and, of course, might not be true. If this practice is still ongoing within this Local Authority then it needs to be looked at urgently. Further training and education I would suggest needs to be provided. It needs to stop.

116. The ABE guidelines make absolutely clear the importance of planning for interviews with children and say this:

> "A well conducted interview will only occur if appropriate planning has taken place. The importance of planning cannot be overstated. Success of an interview and thus an investigation could hinge on it. Even if the circumstances necessitate an early interview, an appropriate planning session that takes account of all the information available about the witness at the time and identifies the key issues and objectives is required".

They state in terms that, "No interview should be conducted without prior proper planning", the reference to that in the guidelines is at para.3.5.

117. Planning is therefore a critical stage of the whole process and is not something that should be taken or dealt with lightly. At a most basic level, the guidelines require that those who are going to conduct the interview should meet and consider a number of factors prior to the interview with the child. Paragraphs 2.3 onwards of the guidelines provide an overview.

118. The factors to be considered at the planning stage cover a range of matters. A "Checklist of Desirable Information" is found in Box 2.1 within the guidelines. It is a broad range but includes a number of factors pertaining to the individual child, his or her family and background. For example, the child's age, issues of gender and sexuality, any special needs, the child's cognitive memory and

linguistic abilities, their current emotional state and range of behaviours, their relationships with family members, their sex education and sexual knowledge, family routines, the types of discipline used with the child, bathing, toileting and bedtime routines and their sleeping arrangements and the presence of any recent stress, to identify but a few of those factors that might have been considered in this case.

119. In cases where a child is a suspected or perhaps known victim of previous abuse, the guidelines suggest that the investigating team may also find it helpful to address the issues listed in Box 2.2 entitled "Checklist of Additional Factors". Again, there is a broad range. They include a number that might have been considered to be pertinent in this case. For example, the detailed nature of the child's attachment to their parents, the frequency and the duration of the abuse, the relationship of the child to the alleged abuser, the type and severity of the abusive act, whether or not the child was coerced into reciprocating sexual acts and any parental reaction to an allegation that has been made.

120. What struck me throughout Ms P's evidence, and indeed in many other aspects of this case, was the complete lack of any apparent planning by either Ms P, her immediate supervisors or the allocated police officers. That lack of planning could be seen most graphically in relation to the first interview with X on 1st February 2019, although I have to say it was also apparent in her second interview and in the interview with Y.

121. Ms P recalled that once she had been told of the allegations that she went to see X on 1st February 2019 and that she did so between 10.00 and 10.30 a.m. She confirmed that she was with X for "most of the morning" and that the police

decided to move forward with a formal interview and that that was to take place that afternoon. There has been no formal explanation offered as to why anybody felt that the interview must take place that afternoon and, on reflection, and when she was being asked about that by Mr. Lee, Ms P accepted that it might all have been "a bit rushed".

122. She was asked how the interview had been planned. She said that she had had discussions with her manager, who she did not identify, with Detective Constable J, with X and with Mrs A in the lead up to the interview. When pressed by Mr. Lee and reminded that the importance of planning could not be overstated, she said, "we discussed planning but nothing formal was written down". I was totally unimpressed with her answers. Ms P could not provide any information about the discussions that she said that she had had. There was no detail, no content or context. I was far from persuaded that she had actually had any discussions with her manager about planning for the interview or, that if she had, then they were only the briefest of discussions without any real thought or time being given to what was necessary to be able to conduct the interview properly.

123. The timelines on that day help support that conclusion. As I have already said, we know that Ms P was with X for "most of the morning". We know that she travelled back to the office and then to the ABE interview suite and we know that the interview commenced at 13.13. Quite when, within those timeframes, Ms P, the police or her supervisors could have done the necessary planning, even orally, is unclear to me. There was precious little, if indeed any, time

available before the interview started for a proper planning meeting to have taken place.

124. There is an additional point to make about those timings. I have identified an inconsistency as to when the interview was said to have started. I have referred above to them starting at 13.13. However, the record of interview found at I58 and prepared by Detective Constable J records that the interview commenced at 12.55. Perhaps is does not matter which time is correct. The point though is obvious. If it was 12.55, then Ms P would have had even less time to have planned the interview before it started.

125. Mr. Lee asked Ms P if she had considered in advance the factors in Box 2.1, to which I have already referred, when thinking about how to conduct the interview. She did not properly answer the question. She said that because she was doing the Single Assessment that it was the view of the police that she therefore had the necessary information, the point being that by implication she did not therefore need to specifically consider the factors set out in Box 2.1. Having read the Single Assessment, H15 to 29, I do not accept that it covers adequately, if indeed at all, the factors referred to in Box 2.1 of the guidelines to enable those conducting the interview to properly prepare strategies, questions and content.

126. I also have a concern about the accuracy of Ms P's answer in the sense that I do not understand how the Single Assessment could have ever properly provided the information required for the planning stage and as outlined in Box 2.1. The reason for that concern is that the assessment had not actually been completed at the time X's first interview took place. The date on which the assessment

started was 18th December 2018 and the date that it ended was 13th February 2019, the reference to that in the bundle is H19. The date that it was completed or at least taken to the A household was 28th February 2019. The end date was therefore nearly two weeks after the date of the interview.

127. When she was asked about how the information from the Single Assessment had been factored into the preparation stage, Ms P said that it was by "discussion". Again, no content or context was provided. When asked by Mr. Lee that given her involvement predated the allegations, if any of the factors in Box 2.2 had been taken into account in the planning phase, her answer was again not persuasive, it lacked detail and content. She said, "certainly, discussions were had around this" but she provided no more information. To be blunt, I did not believe Ms P.

128. There was no other evidence made available from anybody in a supervisory position about the discussions that were said to have taken place with Ms P when she returned to the office or what was said to have been planned. There was no evidence provided by Detective Constable J as to what was said to have taken place in terms of any planning prior to the interview either before or once at the interview suite. I have reached the firm conclusion that that was because the truth of the matter is that there was no planning done between Detective Constable J and Ms P or between Ms P and her immediate supervisors. I reject the assertion that there were discussions centred on the planning for the interview or, if there were, then they were of such a cursory nature that they could never have satisfied the requirements of the ABE guidelines.

129. Whilst it is lamentable that there was no effective, if any, preparation and planning in respect of X's first interview, the situation is actually made worse by the fact that the position was exactly the same for the second interview of X and in relation to the interview of Y.

130. Mr. Lee asked Ms P if between 13th May 2019 and 17th May 2019, which was the date of X's second interview, there had been any meeting with Detective Constable J regarding an interview plan. Ms P replied, "no, there was no plan drawn up. I think that there was discussion over the telephone". Again, she provided no detail or context about those discussions or how they factored into the planning for the second interview. When asked about the discussions in advance of the interview with Y, which took place on 11th September 2019, she said that "DC H was very keen for me to speak to Y" and when asked if an interview plan was drawn up, she replied, "No".

131. In one sense, that makes the poor processes that existed and the fundamental breach of the guidelines even more apparent as both of those interviews took place some time after the first interview with X and when the initial allegations were made. That would have given those involved in the subsequent interviews plenty of opportunity to engage in an effective and a focused planning exercise which they chose not to do.

132. Paragraph 2.222 of the guidelines mandates:

> "A full written record should be kept of the decisions made during the planning process and of the information and rationale underpinning them."

Ms P confirmed that there was nothing written down in respect of the planning process that she said had taken place in respect of the first interview with X. I

have already said that I have reached the conclusion that there was no effective planning undertaken which would help explain the absence of any written records. Once again, the position was made worse when asked if she had kept a note of the interview with Y, she replied, "I did not".

133. Unfortunately, the failure to carry out any strategic planning for the interviews was not the only breach of the guidelines that occurred before the interviews actually started. A further example of the poor processes that were in place are seen in relation to the ground rules that were carried out, or perhaps not, before the interviews started. Again this is graphically demonstrated in advance of the first interview with X.

134. The starting point is 2.223 of the guidelines, which mandates:

> "Witnesses must always be prepared for an interview. In some cases, this might be fairly brief and take place immediately prior to the interview. In other instances, it might be necessary to take more time and for it to take place several hours or days before the interview."

Paragraph 2.224 continues:

> "The preparation of the witness should include an explanation of the purpose of the interview and the reason for visually recording it (including who might subsequently view it), the role of the interviewer(s) and anybody else to be present, the location of the interview and roughly how long it is likely to take. The interviewer(s) should also outline the general structure of the interview and provide some explanation of the ground rules that apply to it (including the witness not making any assumptions about the interviewer's knowledge of the event). Substantive issues relating to the evidence should not be discussed while preparing a witness for an interview."

135. Ms P was asked by Mr. Lee whether or not she or Detective Constable J had gone over the ground rules with X prior to the first interview starting. Again, her answers were completely unsatisfactory. She said that it would have been

difficult to have done so "given that we had spoken to her in the house that morning". I simply did not understand that answer, other than of course, that she had realised that another flaw in the interview process had been identified and she was trying to justify and paper over the cracks. She could not explain why it would have been difficult to have complied with the guidelines because she had been at the A family home all morning. In one sense, that raised more questions than it answered because we simply have no idea what was said to X when she was at her home.

136. When pressed on the point, she said that once at the interview suite, X was "offered a drink, shown around the building and it was explained to her that Detective Constable J was in the room behind where we were". She was then asked if they were all together during this period and she replied, "I think we went round the room. Mum was upstairs for a short time. Generally, we were with X." She was asked how X had had it explained to her what was happening and she said, "Detective Constable J explained the purpose of the DVD and to capture information about the allegations." Mr. Lee suggested to Ms P that the fact that there had been discussions at home prior to the interview perhaps made it even more important that the process was explained to X prior to the interview. Ms P said, "yes, DC J did go over the ground rules for the interview". There was, however, nothing provided from Detective Constable J on the point and it is not at all clear what role she had in speaking to X or Ms P on 1st February 2019 and prior to the interview commencing. I was left with a deep sense of unease as to what had or perhaps had not been said to X ahead of that interview. Ms P's evidence was thin and it lacked content.

137. Ms P was then taken to para.2.237 of the guidelines, which provides:

> "Full written notes must be kept of the preparation of a witness for an interview and must be revealed to the CPS on request. The information obtained to plan the interview should be reviewed and revised if necessary in the light of any additional information that arises from preparing the witness for the interview."

She confirmed that no written notes were taken in the ABE suite and accepted that there were no other notes other than the record of the interview. No explanation was given for the failure to keep a written record and thus another significant breach of the guidelines was identified.

138. Once again, the process was made worse by the fact that in advance of X's second interview nothing changed. No notes were prepared in relation to any discussions that took place with X immediately prior to that interview commencing. In respect of the interview with Y, there is a reference to some explanation. At J83, Ms P records:

> "I explained the process and how it is just like us having a chat and that the legal team can then use what is captured. When I had explained the process, Y seemed more settled about the process and has agreed to do the DVD to express his thoughts and feelings. I explained this will be at his own pace, we can have breaks and we can have drinks, etc. Y was happy with this."

I recognise that there was that discussion and note made but the reality is that it was very limited and showed, again, a basic lack of understanding of the need to comply with the guidelines. Ground rules were not discussed with Y, there is no accurate record of just what was said to him, the handwritten notes were not kept and there were no notes prepared in respect of any discussions that might have been had with him when he was showed around the interview suite and met with Detective Constable H.

139. Mr. Lee asked Ms P if she had read the guidelines or at least the relevant parts of them before the first interview with X had started. Her answer was that she did not think that she had read all of them. With regret, I simply did not believe her, I am certain that she had not looked at them at all. She then attempted to justify why she had not refreshed her memory by saying that that was because she had had discussions with her manager and then said that she thought she would have referred to them in brief but not in their entirety. Again, regretfully, I was not persuaded that that was true. On balance, I was perfectly satisfied that her answers to the questions put were a kneejerk reaction because she knew that she had not reminded herself of or considered the correct process prior to starting the interview and was feeling uncomfortable about the questions that were now being asked of her and the flaws and deficiencies that were being identified. Again, she did not identify the manager that she said she had spoken to. Pausing there for a moment, if Ms P had indeed spoken to her manager about this and her proposed way forward for the conduct of the interview, then that identifies another worrying gap in the Local Authority's procedures because, effectively, Ms P's manager would have been approving and endorsing a fundamentally flawed process.

140. This was the first time that Ms P had ever conducted an interview as the person responsible for asking the questions. She explained that Detective Constable J had asked her to take that role because of the rapport that she had with X, coupled with the fact that she had done the Single Assessment. She confirmed that the police officer knew that she had never done an interview like this before.

141. Paragraph 2.178 of the guidelines says this:

> "Consideration should be given to who is best qualified to lead the interview. A special blend of skills is required to take the lead in video-recorded interviews. The lead interviewer should be a person who has established or is likely to be able to establish rapport with the witness, who understands how to communicate effectively with witnesses who might become distressed, and who has a proper grasp of the rules of evidence and criminal offences. The lead interviewer must have good knowledge of information important to the investigation, including the points needed to prove particular offences."

Paragraph 2.179 continues that in addition to taking account of the prospective interviewer's skills, a number of factors should be taken into consideration when considering who should conduct the interview. The first of those factors is "the experience of the prospective interviewer in talking to witnesses in respect of the type of offence under investigation, and any other skills that they possess that could be useful".

142. Perhaps this is where we can see again, graphically illustrated, the lack of proper planning and preparation. I would suggest that had even the most basic of planning been undertaken by the police, then it would have been readily apparent and quickly identified that for an interview as important as this, Ms P did not have the requisite experience and was not the right person to be asking the questions and leading the interview. Even if I am wrong about that and the decision was maintained that she should carry out the interview after a diligent planning process, then, at the very least, I would have expected careful preparation as to the questions and the processes to be followed to assist and to support Ms P.

143. Indeed, the guidelines recognise that. At para 2.184 the guidelines make reference to the need for an interview monitor, in this case Detective Constables J and H as follows:

> "The presence of an interview monitor is desirable because they can help to ensure that the interview is conducted in a professional manner, can assist in identifying any gaps in the witness's account that emerge, and can ensure that the witness's needs are kept paramount."

Paragraph 2.185 makes the role of the monitor or second person explicitly clear as follows:

> "Regardless of who takes the lead, the interviewing team should have a clear and shared remit for the role of the interview monitor. Too often this role is subjugated to the need for someone to operate the video equipment when, in reality, the interview monitor has a vital role in observing the lead interviewer's questioning and the witness's demeanour. The interview monitor should be alert to interviewer errors and apparent confusions in the communication between the lead interviewer and the witness. The interview monitor can reflect back to the planning discussions and communicate with the lead interviewer as necessary. Such observation and monitoring can be essential to the overall clarity and completeness of the video-recorded account, which will be especially important in court."

144. With that in mind, all the criticism cannot, it seems to me, be levelled at Ms P alone. The police who organised the interviews must, it seems to me, take a considerable amount of responsibility for the way in which the interviews were conducted. I have already dealt with the total lack of planning. It is also the position that despite an ABE trained police officer having been present for each of the interviews, they themselves did not raise any issues or concerns during those interviews or afterwards.

145. Detective Constable H confirmed, when he gave his oral evidence, that he could have interrupted the interview if he had needed to but did not do so and indicated that he could not recall any concerns in respect of the interviews. Detective Constable J, in X's second interview, only interrupted once to remind Ms P that she had forgotten to check "truth and lies" and in the first interview, at the end, added a description of the mobile equipment and the need to record the

interview. There was no other intervention by either police officer, taking me to the conclusion that neither of them saw anything wrong with what had happened. In his written submissions, Mr. Lord explains that this issue will be raised directly with the police as the purpose of the officer being present in the control room during an interview is aimed at, in part, providing checks and balances as they are effectively the controller of the interview and, indeed, most often undertake the interviews themselves. I endorse that proposal wholeheartedly.

146. Detective Sergeant K was asked, in terms of the decision making process, who would be responsible for making decisions such as the social worker undertaking all of the ABE interviews. She answered:

> "That's something that we do jointly, so together, police and social services. When a complaint of this nature comes in, we have an initial discussion, a strategy meeting, where decisions are made as to who will complete the ABE interview. Sometimes it's police led; sometimes it's social services led and that really depends on the relationship between the child and the social worker. If she felt she would engage better with a social worker, then we would let them complete, you know, lead the interview. That varies again from person to person".

The reference to that in the bundle is J139.

147. She was then asked about what happens when a decision is made for a social worker to undertake an interview, what checks the police undertake as to the social worker's ABE training or how recently they might have received refresher training in conducting ABE interviews. Her response was:

> "It's a general conversation as part of that initial strat meeting, would be, 'I am trained to complete an ABE interview'. We, as the officers, the sergeant (inaudible), we don't really have that strat meeting. That takes place within the MASH, which I do not know if everybody is aware but it is the Multi-Agency

> Safeguarding Hub, so they complete the strat meeting with all the relevant agencies and the decisions are made there."

Detective Sergeant K could not say whether a meeting would have been able to have taken place in advance of the interview on 1st February 2019 but said, "I would assume that the strat meeting would have taken place". She did confirm that had there been such a meeting, then minutes of that meeting would have been kept recording the content of any such meeting.

148. Detective Sergeant K's evidence helped identify some significant shortcomings in the way in which those that are to conduct an interview are selected. First, there should have been a strategy meeting at which the decision was taken. I got the impression from Detective Sergeant K's evidence that such a meeting was not a meeting held as a part or as a consequence of any written policy or procedure within the department within which she worked but was more a "hit and miss" process as to whether or not such a meeting was to be held at all. Here, there was no such meeting. The only "strategy" that seems to have been employed was that Detective Constable J, on Ms P's account, asked her to do the interview because she had done the Single Assessment and had a rapport with X. I have already dealt with my concerns about the Single Assessment and its part in the overall planning process.

149. Secondly, there was no effective supervision of the decisions taken at the strategy meeting, calling it that. As Detective Sergeant K's evidence made clear, as a sergeant, she would not have been involved in that strategy meeting it being undertaken within the Multi-Agency Safeguarding Hub. Here, of course, there is absolutely no reference to MASH, there quite simply were no checks or balances.

150. Thirdly, it seems from Detective Sergeant K's evidence that it is sufficient and acceptable practice as far as the police are concerned, for an individual to simply say that they have been trained to undertake ABE interviews to enable them to be permitted to lead such an interview, and that no further enquiry as to the nature of that training, how recent it was, whether or not there had been any refresher and, critically, how many interviews had been undertaken by the person since that training was or is necessary. If I am right about any of that then I would urge both the police and the Local Authority to urgently review their procedures. The risks of proceeding in this way are obvious. They were amply demonstrated in this case with a decision to allow Ms P to lead the interviews.

151. Detective Sergeant K recognised the need for careful planning but did not know if any interview plan existed in respect of the first interview of X. She said that she would have expected the police officer to have been involved in the original planning process. She explained:

> "From my own personal working ethic, when I completed this regularly, we would have a sit down prior to the interview and discuss what areas we needed to cover throughout the interview. It is not a case of the police officer sits in the next room and is not involved. They are an active part of that interview, so there is .... it comes a point when the interviewing officer or the social worker will come out of the room to see if there are any further questions from the officer who is taking notes."

152. It is reassuring that Detective Sergeant K recognised the need for planning. However, what troubled me about her answer was that it seemed to indicate that the need to plan was very much as a consequence of her own conscientious approach and personal experience rather than due to her having to follow an established process or procedure. Further, and I accept that this might just be a

figure or a method of speech, having a "sit down" prior to an interview does not inspire confidence that a proper process, procedure or protocol was in existence and needed to be followed.

153. In a report entitled "Achieving best evidence in child abuse cases - a joint inspection" carried out by Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services published in December 2014 it was noted that:

> "Forces should review their current interview procedure with children's social care services within their force area to ensure that it is in line with the guidance. Where social workers are not regularly interviewing or monitoring interviews with children, arrangements need to be in place to ensure that they are still able to gather the information required to safeguard the child and without requiring the child to repeat their story."

The importance of those words in the context of this case cannot be overstated.

154. Unfortunately, the failure to plan and follow proper procedure for the meetings and interviews with the children were not confined to the ABE interviews. They were not isolated incidents.

155. As already referred to, Ms P went to see X on the morning of 1st February 2019. The ABE guidance anticipates that it might be necessary for relevant professionals to put some initial questions to a child and that the need for video recorded interview might not always be apparent, paragraph 2.4 of the guidance refers. However, para.2.5 makes clear the process to be followed in those circumstances in that:

> "Any additional questioning should be intended to elicit a brief account of what is alleged to have taken place. A more detailed account should not be pursued at this stage but should be left until the formal interview takes place. Such a brief account should include where and when the alleged incident took place and who was involved or otherwise present. This is because this

> information is likely to influence decisions made in respect of the following aspects of the criminal investigation plan."

156. Ms P confirmed that she had not reviewed the guidelines prior to that visit. She accepted that her note of the meeting, which is found at J61, is far more detailed than a process of eliciting a brief account. There is no need for me to go through each and every element of that note. I am satisfied that it is a note that goes far further than the ambit suggested by para.2.5 of the guidelines and seems very much to be responses to questions put to X. Ms P said that the note "would have been verbatim as X was speaking". She did not persuade me when she said that, the note itself does not, on my reading, support such a conclusion. There is a lack of emotion, for example particularly given the circumstances of the discussion that was being had. That was put to Ms P by Mr. Lee and she replied:

> "Maybe it was my fault at the time that I did not capture the emotion. The police were leading the inquiry."

Given the accepted breaches of the ABE guidelines leading up to the meeting, I was far from persuaded that Ms P then complied with the spirit of the guidelines and that her answers were again another attempt to deflect the questions that were exposing the underlying and very poor practice.

157. Another troubling example of a flawed approach can be seen in the way in which the police dealt with the meeting with X on 29th November 2019 after X's diary had been found. How that meeting was dealt with and what provisions had been made for meeting with X was the subject of discussion at an earlier case management hearing leading HHJ V to making an order seeking clarification. Detective Constable H prepared a statement and confirmed in that document dated 29th February 2020, the reference is C146, that:

> "No preparatory work was carried out with X before this meeting. She has previously been through the ABE process on two occasions during the course of the investigation and her capacity to answer questions had already been established."

It is of extreme concern that the justification for not following ABE guidelines was because there had been previous interviews and X was deemed to have had capacity to participate in them. There is perhaps no need for me to comment any further on the concerns that those answers raise. They are obvious. The lack of insight and knowledge is frankly startling. I am sure that these concerns will be fed back to the police when any review of the process is undertaken by them.

158. I have focused on the build-up to the interviews themselves to identify the problems and concerns that exist. Unfortunately, once the interviews started, more difficulties presented themselves.

159. Ms P said that she was trying to give X the opportunity to provide free narrative. The reality was that she did quite the opposite. It is not necessary to describe each and every problem. I have already referred to the schedule prepared by Mr. Lee, which forms a good basis from which anybody conducting a review can identify the issues. It is sufficient here to say that there were a number of occasions when Ms P introduced topics and simply put questions to X for her to answer. There was precious little by way of free narrative, there were leading questions and a number of examples of "forced choice" questions. There were examples at the end of both of X's interviews of X being praised for what she had said in direct contravention of para.3.85 of the guidelines, which provide, "praise or congratulations for providing information should not be given".

160. Ms P accepted that she should not have asked questions in the way that she did but she said that she was nervous and she wanted to get it right. The sad reality is that she got it very badly wrong.

161. As indicated above, and in fairness to Ms P, she did admit to feeling nervous about conducting the interview. I give her credit for that and completely understand why she might feel that way but perhaps, on reflection, she should herself have made the decision that an interview like this was beyond her level of experience, should not have been her first interview and should have been one that was carried out by somebody far more experienced than her.

162. I have highlighted a number of examples of the poor process. There were others. It does not help to set them out here as I have said, they are in the schedule. Ms P said, on further questioning by Mr. Lee, that:

> "On reflection, I was not the best person to do this interview. Looking back on the interview techniques, I have got a lot to learn."

I could not agree more. The reality is that the manner in which the interviews and the meetings were prepared and conducted was such that there was, in reality, little possibility of this court being able to safely rely upon them.

163. Having focused on the planning phase of the interviews, it is helpful to close this section by considering what should have happened at the end of the three interviews with X and Y. Paragraph 3.92 of the guidelines says this:

> "The interviewer's skills should be evaluated. This can take the form of self-evaluation, with the interviewer examining the interview for areas of good performance and poor performance. This should result in a development plan. The interview could also be assessed by a supervisor and/or someone who is qualified to examine the interview and give good constructive feedback to

> the interviewer, highlighting areas for improvement. This should form part of a staff appraisal system."

164. There was no review of the performance of Ms P or either of the police officers involved in these interviews. Had there been, then there was a strong chance that the second interview of X and the interview of Y would not themselves have raised issues, damage might have been limited.

165. The lack of proper process or protocol from the start to the end of any interview, coupled with what seems to me to be an obvious lack of training, particularly refresher training within both the Local Authority and the police, has been exposed by what has happened in this case. I have already referred to the steps that Mr. Lord's clients are going to take by way of review of their procedures. If that work has not started then I urge those charged with responsibility for it to set about that task with no further delay. The consequences of getting it wrong, as we have seen in this case, are huge, it must not be allowed to happen again. Similarly, I hope that the police will take on board the comments made and the flawed processes identified and that they too will carry out a review of their procedures, perhaps in conjunction with the Local Authority.

Miss P

166. That takes me on now to consider the role in this case of Ms P, not only in relation to the interviews that I discussed earlier but, importantly, in relation to the work that she did once she was allocated as the principal social worker to this family. Normally, I steer well away from making any type of observation about or criticisms of social workers. I understand how difficult their jobs are. They often work in incredibly demanding and stressful conditions and with people who might not always welcome their presence and receive precious little

thanks for doing so. However, there are occasions when the steps that are taken are so wrong that not to mention and deal with those issues would be a dereliction of my duty. Regretfully, this is one such case.

167. Social Work England is the regulator for social workers in this country. They have developed a set of professional standards for their members. A number of those standards are pertinent when considering what happened in this case in the sense that the standards themselves appear to have been ignored.

168. Professional standard 3.5 requires that social workers "hold different explanations in mind and use evidence to inform my decisions", in other words, keep an open mind.

169. When cross-examined, Ms P said on more than one occasion that throughout the process she had kept an open mind in relation to the truth or otherwise of the allegations that X had made against her father. My assessment of Ms P, having seen her give her oral evidence, was that she had certainly not kept an open mind. For me, her thought process was blinkered to the extent that she gave the impression that there was only one outcome and that was that X was telling the truth. I struggled to find anything that supported a conclusion that she had kept an open mind and was trying to get to the truth of what had happened whatever that might have been.

170. Very early in his cross-examination, Mr. Lee asked Ms P if, in terms of what X had said, she believed her. She did not answer the question, preferring to say, "I kept an open mind and balanced thought and hypothesis". I am still not sure what that answer meant but I am satisfied that it was an answer given in general terms so as to avoid her giving either a "yes" or "no" answer.

171. Her reluctance to give an answer that might imply that X had not been telling a story that was plausible was seen on a number of occasions. Mr. Lee put it to her that it might have struck her when X was talking in interview and describing her father removing his clothes, her clothes then being removed so that they were both entirely naked and that she was then raped, was unlikely given that they were in the family home and that Mrs A, Z and Y were all in the building at the same time. Rather than acknowledging the possibility that that might indeed have been unlikely, Ms P was resistant. She chose to answer, "we don't know that anybody else was in the house", rather than accepting, on the facts that had been put, that the scenario could at least have been considered unlikely.

172. Mr. Lee pressed the point and asked if it had crossed Ms P's mind that this might be likely or not. Rather than accepting that it might have been unlikely, she again said that she had an open mind and that Y might have had his headphones on, Z might have been somewhere else and that Mrs A might have been drunk somewhere. That answer, constructed in the way that it was, demonstrated to me an intent not to concede as a possibility that the scenario might have been implausible and that Ms P had had anything but an open mind.

173. It was put to her that from 20th December 2018 to 31st January 2019, it was common ground that Mrs A was sober and that because X had said that the rapes had continued during that period and at a time when Mrs A, Y and Z were all in the property that that would have all contributed to what was, on the face of it, a highly unlikely scenario. Again, rather than simply accepting that that was perhaps an unlikely scenario, she said this, "Presumably, but they", meaning Mrs A, Y and Z, "might not have been in the property". For me, that was, again,

an answer of somebody who was quite unwilling to acknowledge square on a situation that, on the face of it, would have dented the credibility of what was being alleged. It demonstrated for me a mind that was far from open.

174. The perceived reluctance of Ms P to acknowledge an alternative explanation could be seen elsewhere. Mr. Lee suggested that X stating that her father could do more for her, referring to the period when the principal concern was centred on Mrs A's drinking, was perhaps an odd thing to say if she was being systematically raped by her father on a regular basis. Ms P could only respond by using the word "potentially", rather than giving a positive acknowledgment that it was indeed perhaps an odd thing to say in the circumstances.

175. Perhaps the reality is that her reluctance is simply explained by the fact that Ms P did believe X and that that mapped out the route that she was going to take in this case and whether or not she believed X was further explored with her in cross-examination.

176. The note made by Miss R, the pastoral manager at the school, on 1st March 2018, C69, records quite clearly that Ms P believed X. I have little doubt that the note reflected what Miss R had heard. The truthfulness or otherwise of the notes made at the school have never been the subject of challenge. The note made on that day says this, "P reassured X that she believed her and was supporting her". When it was put to Ms P as to whether or not reading that note must include the allegations of sexual abuse, in my view, she tried to dilute the impact of the words used.

177. The background to that meeting with Miss R came on the back of Mrs A having telephoned the school explaining that she was not happy because X had lied.

That much is clear from Miss R's notes. Mrs A was, of course, referring to the Single Assessment prepared by Ms P and mentioned earlier. Ms P suggested that her reference in the meeting to her believing X was due to what she referred to as being a level of volatility at home and that X was subject to, and that she was simply seeking to reassure her and calm her about that. I have to say that I was not persuaded by that answer. For me, it was an attempt to deflect from acknowledging the reality once again that Ms P truly did believe X and so tried to dilute the impact of the words used when at school.

178. My assessment of Ms P on this point can be further seen in what happened between her and the police, particularly when the police were identifying problems as they saw them in being able to move forward with any form of criminal prosecution against Mr A. At I509 to 510 is recorded an exchange between Detective Sergeant K and Ms P, when the police officer told Ms P that it appeared to her that X had lied and had appeared to have withheld vital information, the diary. The note in the police log says this:

> "P became very angry at this suggestion and told me that she was sick of hearing people say things like this. I have explained to her that no one was suggesting that she was telling lies but we had to be honest and to explain that this would be raised either by police or the defence."

179. That note provides a clear indication that Ms P was distinctly unhappy about the way in which she thought the police investigation was going and, of course, that the police might have believed that X was being untruthful. That point was put to Detective Sergeant K when she gave her oral evidence. She was quite tactful when she answered and she said, the transcript of the note is at J1453:

> "I think it was and I will read from the notes as well. We had several discussions about this diary, all of which X denied its

> existence, so now when it became apparent that there was this diary, I said, 'Well, why has she lied to us on several occasions? Why has she told us there is no diary, there is no journal?' and I expressed to P the fact that potentially this could undermine the case and she wasn't happy with what I said."

She continued:

> "We occasionally, with social workers, have a difference of opinion, I think because, as a police officer, we have to look at the bigger picture. We have to look at whether cases are going to be undermined by things like this, where obviously P was simply looking at it from the welfare of X and I just don't think she was happy with the fact that I had indicated that this could undermine the case."

180. Detective Constable H, when giving his oral evidence, was asked directly by Mr. Lee if Ms P had been clear that she thought that X was telling the truth. His answer was instant and I fully believed him when he said, "yes, she fully believed X".

181. When I balance all of that, my conclusion is that Ms P did not keep an open mind throughout this process and that she did not apply the professional standard required to "hold different explanations in mind and use evidence to inform decisions". I am perfectly satisfied, on the balance of probabilities, that she did believe X and that that affected quite significantly her approach to this case. There was precious little objectivity. That lack of objectivity and closed mind can be further seen in another aspect of this case that has deeply troubled me and which demands analysis.

X's entry into foster care, the Section 20 Agreement and subsequent care plan

182. The manner by which X entered into foster care has caused me enormous concern for a number of reasons. Firstly, due to the approach and motivation of

Ms P, secondly, because of the involvement or not of her supervisors and the Independent Reviewing Officer and, thirdly, and perhaps most importantly, because of the impact of what happened on X and the A family.

183. Social Work England's professional standard 3.11 requires that social workers:

> "Maintain clear, accurate, legible and up to date records documenting how I arrive at my decisions."

Regretfully, what occurred in the lead up to X entering foster care is not evidenced by comprehensive notes and records and we therefore have no reliable paper trail. Further, some of the documents that have been created are misleading and do not provide an accurate record of what did happen or why it happened.

184. On 26th February 2019, X was met by Miss D, a children's rights officer. She did some work with X, who filled in a document titled "Your Views Matter!" reference C24 in the bundle. In the first section headed "What's working well?", X wrote, "School, friendship, gymnastics and Mum's stopped drinking". In the next section headed "What are you worried about?" she writes:

> "Dad, what happens next? Y, the effect on him. Mum getting upset. Money. Upsetting people. Z when she goes to uni. Having no one to talk to. Not seeing Grandma."

In the final section headed "What needs to happen or to change?", she writes this:

> "people talk to each other, people not having a go and upsetting people, not worrying about mum getting angry, not be so dissociative."

185. What struck me when reading those notes was that X made a positive assertion that her mother had stopped drinking, something of course that Mrs A had said

had happened following the events of December 2018. There was absolutely no concern expressed in those notes by X about her mother's treatment towards her. Crucially, and of significance in the context of what happened in the week that followed, she made absolutely no reference to her being unhappy or wanting to leave her home, her mother, her brother and her sister.

186. At that time, Mr A was not at the property as a consequence of his bail conditions and, as indicated above, Mrs A had said, which is not challenged, that she was no longer drinking. Therefore, there had been a period of more than two months where there had been no need for any intervention by the Local Authority in respect of anything that Mrs A either was or was not doing.

187. Of course, we know that on 28th February 2019, Ms P delivered to the family the Single Assessment which had been prepared by her and we know from her oral evidence that the contents of that document were shared with the children. We also know that Mrs A was not happy with what was said in that assessment and reacted angrily, certainly towards X, and perhaps for her, on reflection, in a manner in that she would rather wish she had not reacted.

188. As a consequence, on 1st March 2019, there is reference to X and Y being very upset at school. An exhibit to Miss R's statement records, at 09.08, C69 of the bundle:

> "X came in this morning really worried. She said that the report had been shared with her family last night. After social worker left, mum got angry with X, saying that she didn't agree with some of the things that X had said. X told mum that she hadn't read it and so she didn't know what mum was talking about. X then went to gymnastics. Mum and older sister picked her up at 8.00 p.m. Mum was in a bad mood but she didn't say anything to X. X just went up to bed when she got in. When X got up this morning, mum was still in bed. When mum came down, she

> got the report, which she had highlighted things that she didn't agree with and she started to show X them. X told mum to go away because she did not care about her opinion on it. Mum then told X that she was going to call the police and tell them that X is a liar and that she lied in the statement. X then left."

189. Miss R's notes then show an entry at 11.16 on the same day:

> "Mum called me and said that she had had the report from the social worker. She needed to tell me that she is not happy with it because X lied. Mum told me that she was going to call the police and make them aware that X had lied. Mum said that she and Z (older sister) both knew that there were lies in the statement. I advised mum to call P, social worker, and speak with her."

190. At 11.18, Miss R had another chat with X and records this:

> "X was so upset that I called social worker so that she could speak with her. P reassured X that she believed her and that she was supporting her. X came off the phone and said that she was really worried about going home tonight because mum is going to be really angry and X is worried about what she will do. X is very scared and said she doesn't have a choice but to go home tonight even though she is frightened."

191. The final entry for that day in Miss R's records is at 11.21 on C58 and it says this:

> "Halfway through period 1, I could hear a child crying and a member of staff trying to comfort them. I went round and it was Y. I asked Y if he wanted to come with me and he nodded his head. I brought Y into my office and he was crying, chewing his nails and shaking. I asked him what was wrong and he couldn't answer me. I went for W to calm and support me to see if I could speak to him. When I left the room, Y turned to X, who was in the room, and said, 'You can't say anything about home'. W

asked Y if he wanted to go into his office and speak with them.

Y nodded his head and went with him."

192. Ms P's statement dated 19th March 2019, found in the bundle at reference C1 to 22, gives a chronology from C8 onwards. That chronology does not record the visit that Ms P made to the family on 28th February 2019. That omission is of concern given that it was the first occasion that the family was shown the Single Assessment, it was an important date. The only references that I can find to the visit on 28th February 2019 are in Ms P's statement dated 26th April 2019 at C35, where she records, under a title "28th February 2019 – Home Visit undertaken by Ms P - Social Worker", that:

> "this home visit raised no concerns. X and Y sat on the sofa with their mother and I explained I had completed the single assessment. All were happy for me to leave the assessment as they wished to read them in their own time and without me present, which was accepted. There was a general conversation during the visit about the day's events and lessons in school and everything was settled when I left the home."

193. In a document entitled "Social care case notes of meetings", J67 to 87, at J67 it is recorded:

> "28/02/19 – home visit, X seen. All engaged well and the assessments were provided for them to read. X confirmed that The Blue Door has not yet been in touch and that she is still wanting their support. X and Y expressed no concerns and they were about to have tea."

What is clear from those two entries is that both X and Y, on 28th February 2019, were fine in the care of their mother. There were, quite simply, no worries or no concerns.

194. Importantly, the single assessment recommends, H28, that:

> "Direct work will initially be completed by CSC and will look at lower level support and interventions around self-esteem, relationships, confidence and building resilience prior to the NSPCC being able to provide their support for X. CSC interventions will be as follows, self-esteem journal, positive traits, positive experiences, positive steps to wellbeing, health (inaudible), other healthy coping strategies, protective factors, common reactions to anxiety."

Therefore, on 28th February 2019, there was absolutely no suggestion from Ms P that to be able to protect X there needed to be consideration given to her leaving the family home.

195. The chronology in Ms P's statement does record that on 1st March 2019 Ms P had contact with the school. At C10 it states:

> "Significant concerns from school that X is really upset and Y is crying, rocking and biting himself as a direct result of mum reading the single assessment and responding in an aggressive, verbally abusive and hostile manner to X, calling her a liar. This was a sustained incident at home with X bearing the brunt of mum's aggression and hostility. However, Y was witness to it all."

196. Pausing there for a moment, I have real concerns about the accuracy of the words used by Ms P in that chronology when compared to the notes prepared by Miss R. Ms P's entry specifically records Y behaving as he did was as a direct result of his mother reading the Single Assessment and responding as she did. However, the note from Miss R clearly records that Y could not say why he was upset as he was. I accept that there could be an interpretation that could mean that he could not speak but another interpretation is that he simply could not say. Further, Ms P refers to Mrs A behaving in an "aggressive, verbally abusive and hostile manner" towards X. There is no other evidence that supports the use of those words. X talks of her mother being angry. Neither child uses the word "aggressive" or refers to their mother being "verbally

abusive and hostile". I can only conclude that that phraseology is included in the chronology because Ms P, for reasons best known to her, decided to put her own interpretation on what she thought had happened.

197. That conclusion is supported by the fact that Ms P refers in that chronology to this being a "sustained incident". That simply cannot be correct. The note of Miss R, taken when she spoke to X at 09.08 on 1st March 2019, document that after Mrs A became angry X was taken to gymnastics where she remained for the evening until she was picked up by her mother and her eldest sister at 8.00 p.m. It is simply not correct for Ms P to refer to a "sustained incident" when the facts show that X was not there. Further, Miss R's note records that when her mother picked her up from gymnastics that she did not say anything to X and that when X got home, she went to bed. That information came from X herself. In the morning, after Mrs A got up there was clearly an exchange between X and her mother but X then went to school. The whole tenor of the notes put into the chronology by Ms P is wrong. She was putting, it seems to me, her own emphasis on what she believed was happening rather than accurately recording what it was she had been told.

198. The chronology further shows that on 1st March 2019 there was a home visit by Ms P and that Mrs A was very agitated and believed X to be lying. It also records that there was no evidence of alcohol consumption by Mrs A. Following a further visit on the same day, a safety plan was put into place for the weekend and that was agreed with Mrs A. That plan can be found at C39 and says this:

> "Mrs A has agreed that she will be calm and supportive of the children this weekend. Mrs A states she does not want support from YFS this weekend, however I agreed to make a further home visit that day at 4.00 p.m. to ask the children what they want. X will be out all day Saturday at gymnastics. Y will be out with his friend all day, initially at the fun run, and then he tends to play out with his friend. Blue Door will be the contact for support for X. SP referral had already been made for Mrs A. It was agreed that Mrs A would not look at the assessments again this weekend. She would revisit the assessments on Monday when the children were at school and explore them with P."

Pausing there, it is very important to understand that there is absolutely no suggestion that that safety plan was ever breached by Mrs A.

199. What is of further concern is that in the chronology in Ms P's statement there is absolutely no mention of the telephone conversation that Ms P had with X when she was at school on 1st March 2019. There is no explanation for that omission.

200. Despite the language used by Ms P in her chronology to explain how the children were said to be presenting at school and her belief of the reasons for them doing so, Ms P, other than implementing a safety plan did not think it necessary to take any other steps to protect the children and, critically, there was no suggestion that to be able to ensure their continued safety that it was necessary to contemplate their removal from their mother. That suggests to me that whatever personal view she might have had about Mrs A's behaviour and her reaction to the Single Assessment, there was no need for the Local Authority to take any other proactive steps. Had she felt differently, then Social Work England's professional standard 3.12 requires that she:

> "use my assessment skills to respond quickly to dangerous situations and take necessary protective action".

The fact that Ms P did not consider anything else necessary at that stage is very important in the context of what happened in the days that followed.

201. The next entry in Ms P's chronology is the entry for 7th March 2019, in which it is recorded that a child protection plan had been agreed and that X had signed Section 20 paperwork and entered into a foster care placement, where she has remained since. It is this period between 1st March and 7th March 2019 when X entered foster care and the role of Ms P in that process which has caused me serious concern.

202. Before analysing what did actually happen to X it is helpful to remember what the obligations of the Local Authority are when considering providing accommodation for a child.

203. A Local Authority may provide accommodation for any child within its area, and any person who is over 16 but under 21, if it considers that to do so would safeguard or promote that child's welfare, Sections 20(4) and (5) of the Children Act 1989. The power under Section20 is subject to the right, in certain circumstances, for those with parental responsibility for the child to object, or to remove him or her from such accommodation.

204. Subject to certain exceptions (none of which apply to X because she had not yet reached the age of 16 when the planning was being done) if any person with parental responsibility objects to that child being provided with accommodation by the Local Authority and that person is able and willing to provide accommodation for the child, then the Local Authority may not provide accommodation or continue to provide accommodation, Section 20(7) of the Act. In this case, although she was not specifically asked, Mrs A was able and willing to provide accommodation for X because that was what she had been doing and what she thought she was going to continue to do.

205. The provisions preventing a Local Authority from providing accommodation arise only where a person with parental responsibility objects. In this case there was no objection to the provision of accommodation because neither Mr. nor Mrs A knew that that was what was being planned. That, of course, is serious enough but unfortunately the situation does not get any better when I analyse how X actually went into foster care and the steps that the Local Authority did not take and that they should have taken before accommodating her.

206. In *Worcestershire County Council v AA* [2019] EWHC 1855 (Fam), Keehan J suggested the following as being a non-exhaustive list of examples of cases in which it might be appropriate for a Local Authority to accommodate a child under Section 20 and without making an application under Section 31 of the Children Act 1989 Act:

> "i) a young person where his/her parents have requested their child's accommodation because of behavioural problems and where the parents and social services are working co-operatively together to resolve the issues and to secure a return home in early course;
>
> ii) children or young people where the parent or parents have suffered an unexpected domestic crisis and require support from social services to accommodate the children or young people for a short period of time;
>
> iii) an unaccompanied asylum-seeking child or young person requires accommodation in circumstances where there are no grounds to believe the threshold criteria of s.31 CA 1989 are satisfied;
>
> iv) children or young people who suffer from a medical condition or disability and the parent or parents seek(s) respite care for a short period of time; or
>
> v) a shared care arrangement between the family and the Local Authority where the threshold for s31 care is not met, yet where support at this intensive level is needed periodically through a childhood or part of a childhood."

207. None of those examples applied to X or to the facts of this case. Following the recommendations of the Single Assessment and the events of 1st March 2019, as I have set out previously, X was not a child who was being considered as needing intervention and accommodation, other than perhaps by Ms P. As I have already said, there was no suggestion on 1st March 2019 that any protective steps needed to be taken other than the implementation of the safety plan. As I shall explore shortly, the whole tenor and remit of the Child Protection Conference held on 7th March 2019 was that X would be staying at home with her mother and her siblings.

208. The general duty of a Local Authority is, of course, to safeguard and promote the welfare of a child. Many of the duties on a Local Authority pursuant to the provisions of the Children Act 1989 before providing accommodation are actually similar to the duties upon them when they are accommodating a child in care.

209. Before providing accommodation, the Local Authority shall, so far as is reasonably practicable and consistent with a child's welfare, ascertain and give due consideration to the wishes and feelings of that child, Sections 20(6)(a) and (b). Further Section 22(4) of the Act requires that before making any decision with respect to a child that a Local Authority are looking after, they must, so far as is reasonably practicable, ascertain the wishes and feelings of the child and his parents regarding the matter to be decided.

210. On 5th March 2019, Ms P went into the children's school to talk to both X and Y. The first important point to note is that that meeting is not referred to in the chronology in Ms P's statement of 19th March 2019 or indeed anywhere else in

that document. There is no note of that meeting made by Ms P anywhere in the papers.

211. The only record of the meeting is found at C68 in a note made by Miss R. That note is timed at 09.57 and it records this:

> "Ms P, social worker, came in to see X and Y. Ms P explained to the children how she was worried about their home life and that she had spoken to people above her. Ms P put to the children that they would have a choice of staying at home with mum or going into care for a while until things settled down. Y said even though he knows that home is not very settled and stable, he wants to remain there with his things and his friends close-by. X said that she was so worried about being at home and how mum is treating her that she wants to leave. Ms P told X that she was going back to the office to find somewhere safe and caring for X to go to. Ms P explained that it may take a couple of days for her to find the right placement for X."

212. What is striking is that there is absolutely no explanation offered as to why Ms P attended the school on that date. The school did not contact her, there is no record of either X or Y continuing to exhibit stress or upset as they had done on 1st March 2019. As I have already said there was no suggestion that Mrs A had in any way breached the safety plan that was put into place on 1st March 2019. The reality is that four days had passed without incident.

213. Ms P confirmed, when giving her evidence, that she had not taken any notes of the meeting on 5th March 2019. When she was asked by Mr. Lee why that was, given that this was such an important meeting, her reply was, "I can't answer that". That was, of course, a totally unsatisfactory answer. Not only was it in direct contravention of the professional standards that she was expected to comply with, the content of the discussions were, on anybody's view, going to have an enormous impact on both X and her family. If we did not have the note made by Miss R then it is highly likely that we would not have known that that

meeting had taken place at all. That is a totally unacceptable and frankly shameful situation to be in.

214. Mr. Lee asked Ms P if she thought it appropriate for her to directly ask the children if they wanted to go into foster care without perhaps discussing such a crucial subject with their parents. Her answer was again totally unsatisfactory. She said that the question was asked of them following discussions with her managers and them asking her to explore what would happen. She went on to explain that it was her team manager and the area manager who suggested that she had that conversation. She referred to the level of volatility that was in the home environment but she did not expand upon that any further. She made no attempt to explain what, if anything, was said to have changed between the events of 28th February and 1st March 2019 and the school visit on 5th March 2019.

215. There are no notes of what it was the team manager and the area manager were said to have told Ms P to do. Again, there was nothing from either of them to help provide any context. There are no minutes of any strategy or other meetings that took place between these critical dates. To be sure of my ground here, I explored this timeline and the existence of any available documentation with the advocates at the hearing on 20th April 2021. Mr. Lord took time during a lunch break to check all of the papers that he had been provided with. He confirmed that there was nothing else relating to this period other than a brief note from Ms P made on 7th March 2019 to which I shall return later.

216. As I have already stated, there was no prior consultation with either Mr. or Mrs A before the meeting at school on 5th March 2019 and when X was given the

choice of entering foster care or not. Not only was that meeting plain wrong in terms of the correct procedure not having been followed, it put X under incredible pressure when she was already in a very emotional and fragile state of mind. It was plain unfair on her and certainly not sensitive to or in accordance with her welfare needs.

217. Crucially, after the meeting at school on 5th March, there was, it seems, no overall evaluation and X's answer, that she wanted to be accommodated, was treated as being determinative. It seems clear that Ms P then simply focused on getting foster carers and accommodation sorted out. She had already told X that it might take a couple of days to arrange.

218. That whole approach is contrary to established case law and guidance. In *R (Liverpool City Council) v Hillingdon London Borough Council and AK* [2009] EWCA Civ 43, Dyson LJ provided guidance that Section 20(6) does not provide that a child's wishes will be determinative in every case. He said this at para.32 of his judgment:

> "But the position in relation to subsection (6) is different. It does not provide that the child's wishes and feelings are determinative. In view of the emphasis of the CA on a child's welfare (replicated in subsection (6) itself), this is hardly surprising. Children are often not good judges of what is in their best interests. Subsection (6) is carefully drafted. The Local Authority is required 'so far as is reasonably practicable and consistent with the child's welfare' to ascertain the child's wishes and feelings regarding the provision of accommodation and 'give due consideration (having regard to his age and understanding) to such wishes and feelings… as they have been able to ascertain' (emphasis added). The child's wishes are to be given 'due' consideration in the assessment process, no more and no less."

219. He continued at para.33 in the same judgment as follows:

> "There may be cases where the child's wishes are decisive. But in my view a Local Authority should reach the conclusion that the child's wishes are decisive only as part of its overall judgment including an assessment of the child's welfare needs and the type and location of accommodation that will meet those needs."

220. At para.34, he continued:

> "Where the child is mature, articulate and intelligent and has strong and reasoned views as to why he or she wants to have a certain type of accommodation in a certain place, it may be that the Local Authority will be able swiftly and easily to form the view that it ought to accommodate the child in accordance with his or her wishes. I believe that this is what Baroness Hale (in the Hammersmith and Fulham case) and Bennett J (in the Lambeth and Croydon case) had in mind. But an assessment of needs will always be required. Otherwise the authority will not be able to give due consideration to the question whether it is consistent with the child's welfare needs to accede to his or her wishes. I do not believe that Baroness Hale or Bennett J were contemplating a short-cut which would obviate the need for that consideration."

221. On the facts of this case, it is clear to me that the Local Authority did not give any consideration to X's welfare needs. There was no assessment carried out of those needs, simply a brief discussion with her at school when she was upset and which ended with her being given a choice which frankly she should never have been given. X already had accommodation that met her welfare needs, her family home in which she had lived all her life and in respect of which her mother certainly thought that she was going to continue to be living.

222. Further, there was no assessment undertaken of X's understanding as to actually what it was she was being asked. The Local Authority just did not apply the nuanced approach to her wishes and feelings which is demanded by Section 20(6). The reality is that they, through Ms P, took her response to the direct question put to her on 5th March 2019 as being determinative and as the way

forward. That could not, on any view, have ever been a proper discharge of their duties under Section 20.

223. We still have had no explanation from anybody within the Local Authority as to why there was no discussion with X's parents and still less any explanation as to why, on the face of it, they abrogated their responsibility to make arrangements to enable X to continue living with her mother and her family. If their position was that to leave her with her family would not have been reasonably practicable or consistent with her welfare, then I would have expected to have seen an explanation as to why that was and for far greater detail on the point during the discussions that took place in the Child Protection Conference which was held on 7th March 2019.

224. There is also no explanation offered as to why foster care was the only option for X if removal was felt necessary. What about her extended family members? We know that she got on well with her maternal grandmother, Mrs C. The maternal grandmother was supportive when the allegations were made and Mr A had to leave the property. Indeed, on 1st March 2019, Ms P's statement dated 26th April 2019 at C37 makes clear that:

> "A clear safety plan was put in place and maternal grandmother came and stayed with Mrs A, Y and X."

Therefore, there cannot be any suggestion or concern that the maternal grandmother presented any type of risk to X, Y or Z. As already mentioned, X reported to Miss D that one of the things that she was worried about was "not seeing Grandma" the obvious implication from all of that being that the maternal grandmother was not a threat to the children

225. Indeed, the maternal grandmother provided further support by attending the Child Protection Conference on 7th March 2019 with Mrs A. At that meeting, the minutes record as follows:

> "Ms. C said that some of the things which X has said are not quite right. For instance, she said that X and Mrs A have previously had a very close relationship."

If removal was truly the only outcome to protect X's welfare then why was the maternal grandmother not considered to be a person who could have stepped into the breach and been a protective factor for X, so providing some respite but ensuring that she remained within her family network?

226. Such was my concern about what had happened that I asked Mr. Lord to obtain for me through those that instruct him any Section 20 paperwork prepared in advance of any agreement being signed and X entering foster care. Mr. Lord sent to me by email on 16th April 2021 the Section 20 documentation, which is not in the bundle.

227. That consisted of one document, being the Section 20 agreement itself. It is clearly a pro forma document. It has not been annotated to reflect and personalise the facts of this case and the alternatives, such as "me/us", "my/our", "son/daughter", etc, all remain. It is not dated in the top right-hand corner and there is no reference provided in the space allocated. It is signed by X, Mrs A and Ms P. Next to all of their signatures is the date of 7th March 2019. At the very least, the preparation of the document was shoddy. At the other end of the scale, it can be regarded as the Local Authority simply paying lip service to the Section 20 procedure and to their obligations surrounding the circumstances when a child is to be admitted into foster care.

228. It is now necessary for me to take a step back and look at the sequence of events on 7th March 2019. Importantly, that was the date of the Child Protection Conference and X's 16th birthday.

229. The whole tenor of the minutes of the Child Protection Conference suggest that X and Y were to remain at home with their mother. The opening paragraph of the plan says this:

> "Advanced social work practitioner, Miss P, will undertake announced/unannounced visits to see the children at home no less frequently than once every two weeks. Information will be shared immediately if concerns arise."

The critical word there, of course, is "children". There is no suggestion that any part of the plan was for X to be leaving home and would not be living with her mother and her siblings.

230. In the section titled "Next steps", there is discussion about the allegations of sexual harm and it is recorded that Mr A had left the family home. The section continues:

> "Therefore, there is no immediate risk of further harm towards X. However, specialist services will need to support X to ensure that X can speak about her thoughts and feelings in a supported way. X is aware she can also speak with P and school if and when she wants to ensure she has ongoing support."

Again, that part of the plan makes absolutely no reference to X leaving home and to not living with her family. Indeed, the paragraph seems to suggest the complete opposite

231. That can be seen further in the section titled "Safety Goals", where it is recorded:

> "Y, X and Z need to live in a safe and settled home environment where they are not made subject to risk, vulnerabilities and harm by way of controlling parental behaviours, domestically abusive behaviours and lack of parental ability to protect them from harm, risk and vulnerabilities. X, Y and Z need to be able to thrive in each aspect of their lives to ensure that they can reach all of their goals."

Again, there is absolutely no suggestion in the words used that those goals could not be achieved by their mother and could only be achieved by them removing the children, or at least X, from the family home.

232. That observation is underpinned by the following section which is titled "Next Steps" which identifies that the stated goals will be achieved by:

> "Direct work will initially be completed by CSC and will look at lower level support and interventions around self-esteem, relationships, confidence and building resilience (prior to the NSPCC being able to provide their support for X)".

There is simply no reference to X needing to leave the family home, and a direct reference to "lower level support". That all flies in the face of any suggestion that placement into foster care was a serious consideration or a pressing concern necessary to help protect X's welfare.

233. The plan concludes with a section entitled "Bottom Lines and Contingency Plan". That states:

> "Should Mr A breach his bail conditions and, in the future, Mrs A decides to reunite with her husband, the Local Authority will consider taking legal advice regarding Y and X. Also, should Mrs A resume her previous levels of alcohol, the Local Authority will also consider taking legal advice on alternative ways to protect the children."

The whole structure of that contingency plan is predicated on X and Y being at home with their mother. Why else, if that was not the correct interpretation, would the Local Authority need to consider taking legal advice regarding the

children? Why else, if that was not the correct interpretation, would the Local Authority need to consider taking legal advice on alternative ways to protect the children if Mrs A resumed drinking? The only possible explanation is that the whole structure of the plan was formulated on both children remaining at home.

234. The plan concludes with the establishment of a Core Group to:

> "develop the child protection plan and ensure the support arrangements and safety network for the family remain consistent with safeguarding and promoting the children's welfare."

The members of that core group are then identified and include Mrs A and X, it was first to meet on 15th March 2019. Why would that group include X if the plan for her was to be accommodated into foster care pursuant to Section 20 and, as we now know, she expressed a wish not to have any contact with her mother?

235. I have set out the content and the focus of the Child Protection Conference to both highlight my concerns and to demonstrate the total disconnect between what was resolved at that meeting and what actually then happened. That demands greater scrutiny.

236. The minutes of the Child Protection Conference make only two references to X potentially leaving home. What is of grave concern is that nowhere in those minutes does that possibility ever appear to have been discussed in any detail within the conference.

237. In a section headed "Scaling", it is recorded that Ms P "said that X has felt blamed and isolated to the extent that she does not wish to reside at home anymore. As a result of this, she explained that a foster placement had now

been identified for X". It is frankly staggering that that comment did not provoke discussion, certainly from the Independent Reviewing Officer who was chairing the meeting and particularly, as I have set out earlier, where the whole ethos of the planning was that both children stayed at home with their mother. The words used by Ms P focus on what X's stated wishes were. They do not put into context how those wishes were obtained and, as detailed earlier, they make no mention of any assessment of her welfare needs having been carried out. I am sure that that is because, as I have said before, there was no such assessment.

238. The second reference to X leaving home is in the outlined plan itself in the section "Danger Statement (March 2019)" and under the subheading "Next Steps", where it is recorded that the social worker:

> "Is to progress X's wish to leave the home at present given the current tensions, therefore contact arrangements will need to be clarified by the social worker within the first week of the placement should X leave."

Again, that phrase provoked, it appears, no discussion within the meeting and no investigation or interrogation by the Independent Reviewing Officer. It completely flies in the face of the planning that was agreed. Indeed, that paragraph also lends support to the whole ethos of the Child Protection Conference that X was to be supported whilst at home because otherwise why use the phrase "should X leave"?

239. It must be the case that the Child Protection Conference took place and concluded before the Section 20 paperwork was signed later the same day. What is not at all clear and is of serious concern is that there is no information or paperwork available to help us understand what happened after the

conference concluded and why the focus of the Child Protection Conference and the protection plan were instantly derailed on that very same day.

240. The statement of Ms P of 19th March 2019 says this at C4:

> "On 7th March 2019 at the initial Child Protection Conference, professionals agreed that X and Y would be subject to child protection plans given the level of concerns identified".

So far, so good. Ms P records what was seemingly agreed as the way forward on 7th March 2019 at the Child Protection Conference.

241. She then continues in the next paragraph:

> "On X's 16th birthday, 7th March 2019, she signed her own s.20 paperwork stating she wanted to come into care and be placed with a foster family to ensure she was safe and protected. X has settled well into the foster placement since 7th March 2019 and states that she does not want any contact with her mother. Y stated he wishes to remain in the family home and youth and family support will be offered to ensure support and interventions were completed."

There is absolutely no explanation offered for the sudden and dramatic change in circumstances and planning following the outcome of the Child Protection Conference. There is no context provided as to how or why the decision was made for X to be accommodated under Section 20 (other than what we know of the meeting at school on 5th March 2019) and there is no explanation provided for X now stating that she did not want any contact with her mother.

242. That takes me back to the meeting on 5th March 2019 and the Section 20 agreement itself. Of great concern for me is what happened between 5th and 7th March 2019. We know, because it happened, that Ms P set about finding a foster placement but there is no documentation or indeed any other explanation about what steps she took to achieve that. Presumably, there must have been

discussions and paperwork created with Ms P's supervisors as Ms P herself, in oral evidence, said that she asked the questions of X on 5th March 2019 following discussions with her supervisor and area manager. Where is the input from the Independent Reviewing Officer?

243. Crucially and as I have highlighted earlier, there is nothing to inform us about what Ms P did to try and discuss X's perceived wishes following the meeting on 5th March 2019 with her parents and prior to the Child Protection Conference on 7th March 2019. It is clear that that void exists because she did not discuss anything with either Mr. or Mrs A about this critical issue as she should have done.

244. During the course of the hearing on 20th April 2021 I checked the position with both Mrs. Farrington and Mr. Lee, both of whom took instructions from their clients. Both parents confirmed that they did not have any contact from Ms P, or indeed anybody else from the Local Authority, about this critical issue. Neither of them were consulted and neither were asked for their thoughts and input, let alone whether or not they would provide their consent. It must be remembered that at that time X was still 15 years old, the obligation to involve her parents is both legally binding and blindingly obvious.

245. That can only be regarded as another huge error in the context of this case. X's parents should have been approached or at least, most certainly, Mrs A should have been approached given her role and the fact that she was to be in attendance at the Child Protection Conference on 7th March 2019. I have already referred to what the Local Authority should have done had they been contemplating a removal to foster care as being necessary. It is worth remembering that Section

20 does not provide a child with any stability or permanency. A child's parents remain the only holders of parental responsibility and, of course, there would have been no judicial scrutiny of any removal from the family. A Guardian would not be appointed for X, she was, as a consequence of the Local Authority's actions at that stage, going to be very much alone. I have actually stood back and tried to imagine a scenario whereby proceedings had been issued and I was being, on these facts, asked to remove at an interim stage. I think it is fair to say that such a hearing would not have taken me very long to conclude.

246. If X's parents had been approached to discuss the provision or not of their consent following the meeting on 5th March 2019 then it was essential that Ms P satisfied herself that X's parents fully understood the consequences of their giving any consent, fully appreciated the range of choices available to them, including the consequences of refusal as well as giving consent, and that they were in possession of all of the facts and issues material to the giving of that consent. The fact that the matter was not discussed with them at all raises serious and significant concerns about the social work practice in this case and particularly the motivation of Ms P.

247. Social Work England's professional standard 1.7 requires that social workers:

> "Recognise and use responsibly the power and authority I have when working with people, ensuring that my interventions are always necessary, the least intrusive, proportionate and in people's best interests".

Although this is perhaps for others far more experienced than I to consider in the field of acceptable social work practice, I would suggest that Ms P's approach to this matter drove a coach and horses through that professional standard.

248. We know that Ms P was to have had a meeting with Mr A on 6th March 2019 in the court at MM. That is referred to in Mr A's third party information provided for the Child Protection Conference held on 7th March 2019. The meeting did not take place because apparently on that day Ms P was busy in court.

249. In the note prepared by Mr A for the Child Protection Conference, there is no reference to X expressing a wish to live away from her mother. The remainder of the note is detailed. It sets out Mr A's initial thoughts and his concerns. If there had been any discussion with Mr A about X potentially entering foster care, then I am sure that it would have been mentioned. As I have already said, Mr A has now confirmed that he was not involved in any such discussions.

250. In one sense, and perhaps because Mr A was then away from the family home, perhaps there is some limited justification for X's future not being mentioned to him, although that is not a view that I subscribe to. What then assumes even more importance is the way in which Mrs A was included or not in the process and her views sought. To that end, there are aspects of Ms P's statement dated 19th March 2019 that give the wrong impression and can be considered to be misleading.

251. At C11, it is recorded that:

> "X signed s.20 paperwork on 7th March 2019 and was placed in a foster care placement. The ICPC agreed a child protection plan on this date for both X and Y."

I am very concerned about the structure of that paragraph. It gives the impression that the Child Protection Conference agreed a protection plan that included X going into foster care. The sentences are the wrong way around.

They do not explain what changed following the conclusion of the conference and the signing of the Section 20 papers later the same day.

252. At C20, it is recorded that:

> "Mrs A has also signed the s.20 paperwork in support of X being placed in Local Authority foster care."

It is true that Mrs A did sign the agreement. Ms P's statement gives the impression that she did so willingly but misses a number of very important points.

253. Firstly, as I have already mentioned, there is no information about what, if any, steps were taken to discuss all of the options with Mrs A between 5th and 7th March 2019. We now know that no steps were actually taken to discuss anything with her.

254. Secondly, the Section 20 agreement sets out the standard wording in relation to the information said to have been given to Mrs A and what a Section 20 agreement means including of course her right to say "no" and at a later stage to change her mind should she have said "yes". It gives the impression that Mrs A willingly participated in the signing of the agreement and, as such, had a say, which of course she did not. The problem is that it frankly did not matter what Mrs A thought or did not think on 7th March 2019 about the Section 20 agreement because that was X's 16th birthday. It is clear law that once a child reaches the age of 16, a parent has no right to object to or remove that child if the child herself is willing to be accommodated by the Local Authority.

255. Mrs A could not, therefore, have stopped what happened on 7th March 2019. Mrs. Farrington told me at the hearing on 20th April 2021 that, having taken

instructions on the point from her client, on 7th March 2019 Mrs A was presented with the Section 20 agreement by Ms P and was told that it made no difference, because of X's age, if she signed it or not and therefore she simply signed it because she felt that she had no choice.

256. It is clear to me that this was to all intents and purposes a "done deal". The failure of Ms P to discuss this crucial matter between 5th and 7th March 2019 with either of X's parents was unforgivable. The timing of X entering foster care in terms of both the date that that agreement was signed and the fact that it was done after the Child Protection Conference had concluded, I am very sorry to say I regard as being cynical, designed to remove any possible objection from the parents.

257. A further point, as the Section 20 agreement itself makes clear, is that even where a parent (on the face of the document as in this case) and child were consenting to accommodation, the Local Authority still had a positive obligation to consider whether it was necessary and proportionate for X to go into foster care. In making that decision, one of the questions that the Local Authority needed to be able to answer was whether or not it was necessary for X's safety for her to be removed at that time. Given all that I have said about the complete failure to carry out any assessment, the outcome of the Child Protection Conference, the plan going forward and that X had been living with her mother without incident, it is difficult if not impossible, to understand how it could ever have been argued that X's safety demanded her removal from the family home. I have absolutely no doubt that such a decision was not necessary. It was

certainly not proportionate to any risks that might have existed in early March 2019.

258. The Section 20 agreement itself also makes clear that if Ms P did consider that voluntary accommodation of X was necessary, then her analysis as to why that was the case should have been recorded on X's file. As we know, there are no notes available other than that found by Mr. Lord at the hearing on 20th April 2021, which he told me simply refers to mother packing X's belongings and then going on to sign the Section 20. As I have already said, the only substantive document that I have received is the Section 20 agreement itself. This demonstrates another lamentable example of a complete failure of process and the recording of vital information.

259. It is of extreme concern that X entered foster care in this way. The conclusion that I have reached is that she did so because Ms P had plotted a route to ensure that X would indeed enter into foster care irrespective of the views of her parents and so that they would not be in a position to object. The approach of Ms P to this whole issue was frankly disgraceful. It demonstrates vividly to me an approach of somebody working with a completely closed mind, determined it seems to obtain a result at whatever cost and ignoring virtually all aspects of good social work practice and legal principles.

260. Unfortunately, the failure to provide an accurate and fair outline of what happened is repeated in the court papers. The interim care plan was prepared by Ms P and that is found at D13 to 23, dated 19th March 2019, and under the heading "Overall Aim", para.1.1 states this:

> "The aim of the Local Authority is to ensure that X's needs are met, her welfare is safeguarded and that she is kept safe and has a stable home environment where her basic emotional, social and physical care needs are met. X turned 16 years old on 7th March and, as such, signed the relevant paperwork to enable her to be placed in a Local Authority foster placement subject to s.20 of the Children Act 1989 to ensure that she was safe from further emotional, physical or sexual harm. The child protection plan was also agreed on this date and therefore the interim care order is now sought to ensure the further safety of X. Mrs A also consented to X being accommodated under s.20, supporting X leaving the family home."

261. That paragraph is misleading. It gives the clear impression that X had to be accommodated to protect her from continued harm in circumstances where I have already demonstrated that there was not an immediate or indeed any risk that could not be safely managed. It gives the clear impression that the child protection plan formulated on 7th March 2019 was supportive of the need to provide accommodation when, as I have demonstrated, that was far from the truth. Finally, it gives the clear impression that Mrs A actively consented to X being accommodated and supported her leaving the family home. As I have demonstrated that was simply not true.

262. That theme can be seen elsewhere. For example, in section 2 entitled "Child's needs including Contact", para.2.2 deals with the extent to which the wishes and feelings of X have been obtained and acted upon. The final paragraph says this:

> "X expressed her wish to be placed with a foster family and provided consent to be accommodated under s.20 on her 16th birthday to enable this. Mrs A also provided her consent to X being accommodated, supporting X entering into foster care."

There is a positive assertion that Mrs A actively supported X being accommodated. For the reasons that I have already identified, that is seriously misleading. It is simply not true.

263. Unfortunately, the position does not improve when the interim care plan is further considered. The final paragraph at D16 in the section "Overall Aims" records this:

> "On 28th February 2019, when the single assessment was taken to the family to read through, there was a significant incident where Mrs A was aggressive and hostile towards X, calling her a liar and stating she would be calling the police to tell them X was a liar, which she did. Y and X were exposed to this prolonged aggression from their mother. Mrs A's aggressive and volatile behaviours continued the following morning prior to X and Y attending school. The impact of this upon Y and X was so significant that Y was crying uncontrollably the following day in school, rocking and biting himself as he significantly struggled to regulate his emotions."

I have already dealt with the analysis of what happened on 28th February and 1st March. In broad terms, the paragraph that I have just read could be said to describe the events of those two days.

264. However, the paragraph concludes with the following sentence:

> "X was also significantly upset and the initial discussions around them both potentially entering into a foster care placement was held as a direct result of the risk and vulnerability they were exposed to from their mother."

I am sorry to say that I regard that sentence as seriously misleading and providing a distorted view of the true position. That it was in a document used in court proceedings is deeply troubling.

265. Firstly, it gives the impression that the discussions with the children about entering foster care were held on 1st March 2019. We know that those discussions did not take place until some four days later. Secondly, there is absolutely no mention of the fact that the safety plan was agreed with Mrs A on 1st March 2019, that it was not breached and that the children remained with

their mother from 28th February until 7th March 2019 with absolutely no requirement for any intervention by the Local Authority or indeed any other agency, such as the school, during that period. Thirdly, there is no explanation offered as to what the referred to "risks and vulnerabilities" actually were. On reflection, perhaps that is not surprising, given that the Local Authority had not, as I have just identified, needed to be in any way proactive in terms of taking protective measures with the family for at least seven days prior to the Section 20 agreement being signed. Fourthly, there is absolutely no mention of the visit to the school by Ms P on 5th March 2019 when she met with the children, or what her reasons for attending on that date actually were. We know that that was a critical date in the chronology to these proceedings.

266. I have provided examples of what I consider to be misleading passages and statements in the interim care plan. There are others. There is, I have decided, little purpose in identifying them all in this judgment. Suffice it to say I am extremely troubled by the phraseology used and the impressions given in this document. It sets the scene for the care proceedings and ultimately the route that was taken.

267. Scrutiny of the interim care plan has helped me identify other serious concerns about how the Local Authority approached this case and their obligations to the A family. The approach demonstrates to me, once again, a total abrogation of both their responsibilities in law and to ensure good social work practice. It is helpful to state some basic principles.

268. Sections 17(1)(a) and (b) of the Children Act 1989 mandate that it is the general duty of the Local Authority to provide a range and level of services appropriate

for children who are in need in its area to safeguard and promote their welfare and, so far as is consistent with that duty, to promote their upbringing by their family.

269. Sections 22C(2) and (4) of the Children Act provide that the Local Authority has a duty (subject to regulations) to make arrangements for any child that it is looking after to live with a parent or a relative, friend or other person connected with him unless that would not be reasonably practicable or consistent with his welfare.

270. The Care Planning, Placement and Case Review (England) Regulations 2010 place a duty on local authorities to prepare an individual care plan for the child which must then be reviewed on a regular basis. They also provide a statutory framework within which they must meet their obligation to provide a well planned placement and which meets the child's needs.

271. The starting point is therefore clear. If at all possible the solution is to help try and maintain and promote family relationships. I have already dealt with the complete lack of any assessment to evaluate her welfare needs when X indicated a wish to go into foster care and why that process was so flawed. Sadly, the blinkered approach of Ms P and those who supervised her can be seen again in the preparation of the interim care plan.

272. In simple terms, the Local Authority's plan was one of long-term foster care for X. Nothing else appears to have been seriously or properly considered. Para.2.3 of the plan records, the reference is D18:

> "The views of X have been supported by the Local Authority and it is anticipated that she will remain in Local Authority foster

> care. It is envisaged that should X return to the care of Mrs A and Mr A, she will be placed at significant risk of emotional and sexual harm."

It continues at para.2.4:

> "It is the view of the Local Authority that X's needs cannot be met in the care of Mrs A and Mr A, therefore it would be expected that she would remain with Local Authority foster carers until she reaches adulthood."

At para.4.3, the reference is D20 in the bundle, it is recorded that:

> "It is proposed that X will remain in Local Authority foster care throughout these proceedings and until decisions are made about her long-term care."

273. Pausing there, that position is in complete contradiction to the original discussion held with X on 5th March 2019 as recorded by Miss R that going into care would be for "a while until things settled down". It throws into sharp focus, once again, the failure to assess X's needs prior to her entering foster care or ensuring that she understood what was meant by that. What was suggested on 5th March 2019 was certainly not what was planned less than two weeks later.

274. Paragraph 4.6 of the same plan sets out any plans for reunification or rehabilitation to the family. That paragraph simply records that:

> "The Local Authority does not have currently any plans for X to return to her parents' care."

There is no explanation as to why that is the position but the plan makes it clear that that paragraph has to be read in conjunction with para.4.8, which identifies other services to be provided to parents and other family members and says this:

> "At this time, it has been identified that Mrs A requires support from S Partnership in relation to alcohol abuse and also the single point of access in relation to her mental health via her GP."

The paragraph concludes (after referencing support for Y by the Local Youth and Family Support Team):

> "Should any further services be identified by the Local Authority in completing these assessments, then appropriate referrals will be made."

275. The interim care plan needs to be read alongside the statement prepared by Ms P which is dated 19th March 2019 and that I have already referred to, C1 to 22 in the bundle. There is no need to analyse that any further as, predictably, it is in line with the care plan. However, what is readily apparent is that foster care was the plan from the outset. In the table of realistic placement options found at C17, foster care is given as the first realistic option and rehabilitation to Mrs A as the third realistic option. The justification at that stage for placement in foster care was extremely thin, relying again on X's wishes and feelings as being, seemingly, determinative and that Mrs A was said not to be a protective factor, had called X a liar and minimised the harm that X was said to have been exposed to.

276. Of course all of that, as I have set out previously, ignored the fact that Mrs A had not been drinking since the end of December 2018 and that both children recognised that and were a great deal happier. It ignored the fact that they had been living with their mother without incident or need for any intervention from December 2018 until 28th February 2019 and that Ms P herself on that date recorded that "X and Y expressed no concerns". It ignored the fact that following the reaction of Mrs A to the single assessment on 28th February 2019, a safety plan was entered into for the weekend commencing 1st March 2019 and that there was not a hint of any suggestion that that was in any way breached by

Mrs A. It ignored the fact that the children lived with her without any further intervention by the Local Authority or by the school from 1st March to 7th March 2019.

277. There is no attempt in the statement of Ms P or in the plan itself to identify in any detail resources that the Local Authority could have deployed to assist the family during this relevant period and to help ensure that they stayed together. Resources that immediately spring to my mind include perhaps therapeutic support for the children in respect of their experiences in 2018 centring on the inconsistent care they were said to have received from their parents, support for Mrs A perhaps from the Early Help Team to help her recognise how her behaviours actions and responses had impacted on the children and their understanding and maybe an early referral for X to CAMHS to help her deal with her feelings of low mood, problems with food, self-harm, abuse and anxiety to give but a few examples. That level of intervention together with, if necessary, a robust safety plan was not even considered as a viable starting point. I would suggest that at the very least it should have been.

278. The care plan is a critical document in public law proceedings. It sets the tone and the direction of the proceedings. Sadly, in this case, that tone appears to have been set by the same driving forces and the same flawed decisions that led to X entering into foster care in the period leading up to 7th March 2019. I have already referred to the devastating impact that that has had on the family. From a legal perspective, it is difficult to see how the Local Authority could ever consider that they had complied with their obligations pursuant to the Children Act 1989 referred to earlier. Once again, I sincerely hope that when the Local

Authority analyse this case, that they will put into place procedures, processes and protocols that will help avoid such an appalling outcome as we have witnessed here.

279. I have been very critical of Ms P but I am satisfied that she must not take all of the responsibility for what happened. Her actions were bad enough but, as already mentioned, Ms P made reference to discussions with her supervisors on a number of occasions. Professional standard 3.9 from Social Work England mandates that:

> "Social workers will make sure that relevant colleagues and agencies are informed about identified risks and the outcomes and implications of assessments and decisions I make."

No doubt those in management positions will want to investigate the frequency and content of the discussions that were said to have been had. If they were as outlined by Ms P and if authorisation and approvals were given in the manner indicated, then there can be little doubt that an urgent review must be undertaken of management and supervisory processes, procedure and training as well as those of members of the social work team.

280. Having thought at length about all that happened, it seems to me to be an inescapable conclusion that somebody in a supervisory position within the Local Authority must have known what was going on. If they were not, then another failing has been identified. Foster placements are a valuable resource to local authorities. Availability and the cost consequent upon that would have had to have been authorised and approved, I anticipate, by those more senior than Ms P. That there is no paper trail is frankly astonishing. If anybody in a supervisory role within a Local Authority had taken any time to crosscheck what

was going on, they would have surely asked questions and needed to have been satisfied about the necessity of the steps that were to be taken. When the Local Authority undertakes their review of internal procedures and processes, I would suggest that they need to look very carefully at the sequence of events that I have outlined and which occurred immediately prior to X entering foster care.

281. In my preparation for this judgment, I also asked for sight of any documentation prepared by the Independent Reviewing Officer. The only document I received was the minute of the Child Protection Conference chaired and signed by the Independent Reviewing Officer on 7th March 2019. I have already dealt with the content of those minutes earlier in this judgment.

282. The functions of the Independent Reviewing Officer can generally be described as being to monitor the performance of the Local Authority of their functions in relation to a child's case, to participate in any review of a child's case and to ensure that any ascertained wishes and feelings of the child concerned in the case are given due consideration by the Local Authority. Further, the Independent Reviewing Officer must be informed of the content and any proposed changes to a child's placement or care plan.

283. The role and duties of the Independent Reviewing Officer are set out in detail in the Care Planning, Placement and Case Review (England) Regulations 2010. The work of the Independent Reviewing Officer is governed by the Independent Reviewing Officer's handbook. Para.2.10 of that handbook sets out that the primary task of the Independent Reviewing Officer is to ensure that the care plan for the child fully reflects the child's current needs and that the actions set out in the plan are consistent with the Local Authority's legal responsibilities

towards the child. According to the National Association of Independent Reviewing Officers, the role of an Independent Reviewing Officer is:

> "To oversee the child's care plan and ensure everyone contributing to the care plan fulfils their legal obligations to the child."

284. What strikes me in this case is the apparent lack of involvement of the Independent Reviewing Officer and a total failure, on the face of it, to be proactive. I have dealt at length with the disconnect between what was agreed at the Child Protection Conference on 7th March 2019 and what happened later that day when X went into foster care. I have seen nothing from the Independent Reviewing Officer confirming that he was aware and, if so, content with all that happened and that if he was content, then why there is no explanation as to why that was the case.

285. The only reference that I can find is at para.8.4 of Ms P's statement of 19th March 2019, in which she says this, at C20:

> "At the initial Child Protection Conference, the child protection plan was agreed by all professionals for both X and Y. The Independent Reviewing Officer supports the Local Authority's application to the courts and feels it is in X's best interests that the Local Authority shares parental responsibility with the parents."

Once again that paragraph has an unfortunate emphasis. It seems to suggest that the plan agreed was one of foster care. That was, for the reasons that I have already detailed, simply not the position.

286. I do not know and so cannot make further comment on the level of the involvement of the Independent Reviewing Officer in this case. The IRO handbook places a high burden on social workers to ensure that the Independent

Reviewing Officer for any child is continuously equipped with information that is needed for the function of the officer to be carried out effectively. The huge gaps that exist help identify perhaps two further issues.

287. Firstly, it is critical for social workers on the ground to ensure that all relevant and up to date information is passed to the Independent Reviewing Officer to ensure that they are fully informed and able to perform their role properly. If it is the position that Ms P did not pass on all of the relevant information regarding X to the Independent Reviewing Officer and he therefore did not know the full extent of what was going on, then the Local Authority need, as a matter of urgency, to address this failing to be certain that it does not happen again.

288. Secondly, if it is the position that full information was actually passed to the Independent Reviewing Officer but he did not act upon it, then perhaps I have identified another aspect of process that requires urgent and careful review.

289. I have set out in some detail the circumstances surrounding X leaving the family home because for me it seems to be a pivotal moment in this case. It highlights the risks that were being taken by the social work team in their approach and involvement with this family. I am struggling to understand how anybody could have thought that the meeting with the children on 5th March 2019 could ever have been a sensible and welfare focussed meeting to have had. X was clearly a troubled young lady and over previous days had been very upset. She had made very serious allegations against her father which were immediately disputed and remained untested. The parents were having to come to terms with what had been said by their children, and particularly by X, about them. Emotions were running very high and the family, perhaps unsurprisingly, was

in turmoil. To offer X a "way out" and to ask her, at that time, what was effectively another "forced choice" question that she could choose between staying at home with her mother or going into foster care until things settled down was a simply astonishing thing to have done. I would suggest that that question was only ever going to get one answer.

290. It is abundantly clear to me that X needed professional help and support rather than to be asked a direct question with no input from her parents as to whether or not she wanted to go into foster care. The question was far too big for her to have answered on her own. She should not have been put into that situation. The focus should have been on improving the family functioning and to help build the family's own capability to solve the problems that they were facing. That could have been done within a structured evidence based framework involving regular reviews to ensure that progress was being made. As I have said, X and her mother might, for example, have needed some type of therapeutic intervention, some assistance, perhaps some counselling.

291. Another consequence of the decision taken during the week commencing 3rd March 2019 was that the Local Authority effectively endorsed a plan and a process whereby X, Y and Z were separated. Y remained with his mother and his eldest sister. There is, of course, a specific duty upon local authorities to keep siblings together so far as it is reasonably practical and consistent with their welfare. This demonstrates another abject failure in the assessment process identified earlier. Since 7th March 2019, X has had limited relationships with either of her siblings. Y, to this day, does not wish to have any relationship with X, that much is made clear in the child in need plan at J283.

292. At this stage, I am reminded of the words of Lady Hale in the Supreme Court case of *Williams & Anor v The London Borough of Hackney* [2018] UKSC 37, when she considered, amongst other things, a number of problems associated with the use of Section 20. She said this:

> "Equally, they illustrate the dangers if the Local Authority proceed without such delegation or obtain it in circumstances where the parents feel that they have little choice. There are none of the safeguards and protections for both the child and the parents which attend the compulsory procedures under the Act. Yet, rushing unnecessarily into compulsory procedures when there is still scope for a partnership approach may escalate matters in a way which makes reuniting the family more rather than less difficult."

Those final words could not be more pertinent in the context of what happened to the A family.

293. In discussion with the advocates towards the end of the hearing in April Mrs. Farrington explained that Mrs A described her emotions as feeling as though the Local Authority had "launched a grenade into her family's life". I have thought carefully about that description and have to say that I understand why Mrs A uses that expression. Following my analysis of what happened or perhaps did not happen in the lead up to X entering foster care, it seems to me that the date that the pin was pulled out of that grenade and that it was actually thrown into the family environment was on 5th March 2019.

294. In virtually every aspect of this case, and with huge regret, failures by both the Local Authority and the police can be identified. It is important that those failures are recognised and urgently dealt with. The failures to discharge properly their duties have had very serious consequences. There has been an enormous human cost in terms of unnecessary upset, stress, confusion,

disruption and ultimately devastation of the familial relationships. Rather than adopting a strategy of helping to try and repair the family, the approach of the Local Authority has helped achieve almost total destruction. Whether or not the family relationships can ever be repaired only time will tell. I for one certainly hope that they can be.

295. There have been some very serious mistakes made which are of immense concern and must not be repeated. I hope that those responsible at the Local Authority and the police will reflect on the consequences for the A family and on the need for them to do far better in the future. The A family life has been decimated. We are now left with a simply dreadful situation in which both X and her father are separated from one another and from the rest of the family. There exist only very small chutes of possible recovery. The parents have separated and I am told are divorcing, it is unknown how much the stress of these proceedings has contributed to that. There is a significant amount of work to do to enable the members of this family to have a relationship again even in some small way.

296. Mr. Lord, in his additional submissions, has explained that the Local Authority, as a result of the issues identified, will undertake a review of its processes, training, guidance and the manner in which case notes are maintained. That is encouraging.

297. Further, he has explained that the Local Authority has recently formed a "Quality Assurance, Learning and Improvement Portfolio" which has within its remit a quality of practice and a learning and development function. This will be used to review and take forward the learning from this matter regarding the

nature of documentation, the manner in which this documentation is completed and it will also be used to identify training needs for social workers, not only when they qualify but also on an ongoing and a rolling basis. Again, that is heartening. The Strategic Lead for that service has been made aware, I am told, of the issues in this case and will be involved in the active review of training and documentation for the Local Authority and further discussions will be held with N Police. For me, all of that cannot come soon enough.

298. I understand that Ms P no longer works for this Local Authority and, as such, there will be little that they can do to influence her training going forward. However, so serious were the mistakes that she made, so fundamentally flawed was her thinking and approach to this case and so obvious was her lack of training or ability to apply what she had been taught that I must ask this Local Authority to find a way of notifying those that presently employ Ms P of these very serious issues. I would be failing in my duty if I did not make such a request as these mistakes cannot be allowed to happen again. No matter how well intentioned Ms P might have thought that she was being, the reality is that she got this case very badly wrong in so many ways and with simply devastating consequences. Repetition must be avoided at all costs.

299. Finally on this point, and given the enormity of what has happened in this case, I would ask that the Local Authority at least consider as a part of their review looking at any other cases that Ms P has been involved in whilst in their employment and particularly where she has been the principal social worker. I would sincerely hope that this case is an isolated occurrence but chances simply cannot be taken and the sooner any problems are addressed the better.

Exculpatory findings in respect of Mr A

300. As indicate at the beginning of this judgment Mr Lee asked me to once again consider making exculpatory findings in respect of his client.

301. In his written submissions, he directed me to a number of helpful authorities. I am familiar with those authorities and I have read them on more than one occasion during the preparation of this judgment.

302. Mr. Lord, in his final submissions, says that the cases referred to by Mr. Lee can all be distinguished from this case because in each of those cases, the judge heard all of the evidence including from those seeking exculpation. That did not happen in this case. He accepts, of course, that that is not the fault of Mr A but due to the review of the Local Authority of their case following completion of the evidence of Ms P. He submits that whilst technically the evidence of Mr A is unchallenged, I have not had the benefit of hearing that evidence and carrying out a balancing and evaluation exercise of him. That was something available to all of the judges in the cases that I have been referred to. As such, on behalf of the Local Authority, exculpatory findings go a step too far and are not necessary.

303. Mr. Lee submits that such a finding is indeed necessary. The total collapse of the Local Authority's case was nothing to do with Mr A. The impact of the submissions made by the Local Authority will mean that he is left with the stigma of the allegations having been made but of not having had the opportunity of asking this court to absolve him of that responsibility. That was no fault of his and creates a huge unfairness upon him. He accepts, of course, that the decision of the Local Authority not to pursue the findings means that

the allegations are treated as never having happened and that any exculpatory finding does not change the legal principles but here it is important for his client to have such a finding. Not only has the pressure on Mr A been intolerable, he now has no relationship with any of his children as a consequence and he wants to try and rebuild those relationships and a finding such as this will help him to do that.

304. Mr. Lee accepts that the evidential burden now shifts to Mr A but urges me to accept that his client has indeed met that burden, which should drive me to the conclusion that he asks me to reach.

305. Of the cases referred to by Mr. Lee, I found particularly helpful the guidance of Sir Mark Hedley in the case of *AA & 25 Ors (Children)* [2019] EWFC 64 and, in particular, the following passages:

> "Not only can a judgment travel no further than the evidence allows, it must also be faithful to that evidence. If the court believes that criticism must be made, and it has weighed with the judge, then the parties should in fairness know that.
>
> 265. However, within that context, the quest for exoneration is entirely proper and requires careful consideration. It must not be driven by sympathy but by the evidence alone. If the court has concluded that someone did not do something alleged, as distinct from its not being proved that they so acted, then in common justice the court should say so. That is what I understand exoneration to mean in this context."

306. Sir Mark continued:

> "So what is the test for exoneration? All parties agree that it is more than simply a finding that a specific allegation has not been proved against them. I suggested an analysis that whilst the legal burden of proof at all times remains on the Local Authority, a party seeking exoneration assumes an evidential burden to satisfy a court of their innocence on a balance of probabilities. No one sought to suggest that was wrong nor to argue for any particularly different approach."

He concludes:

> "How then should the court approach this matter? In my judgment, where the court accepts that a party has given frank evidence, specifically accepted by the court, then the court should say so, and assuming that evidence to be consistent with exoneration, the court should say that too. That is conceptually clear, simple, and in accordance with justice. On the other hand, where the court has heard evidence about which the court has doubts or indeed concludes that it has not been wholly frank, then, although declining to make a finding, it should go no further than that. Inevitably there will be some cases in the border lands and they will have to be resolved on their own facts. I stress, however, that no legal consequences flow from this."

307. I have stood back and thought carefully about the evidence that I did hear and read prior to the Local Authority's decision not to seek any findings against Mr A. I have asked myself whether or not any of that evidence helps lead me to an exculpatory finding.

308. I have already dealt with at length, the ABE interviews. Irrespective of the criticisms made of how those interviews were conducted, what struck me throughout them and despite the leading and forced choice questions being put to her, was the fact that X could not provide any context or detail of any of the sexual acts that she said her father had carried out on her. There are a number of examples of that and I set out the following for illustrative purposes.

309. In the first interview, she was asked whether or not her father had used anything else to touch her with or any other body part and she replied "No" to both questions. She was asked what she was scared of and said, "I was scared that it might progress into like more sexual contact". When that phrase, "more sexual contact", was explored further with her, she said, "It means touching me with his body, like his private parts, and going on into having sex and stuff". There

was no suggestion at all that her father had done anything more than that which she originally alleged.

310. As we know, that changed in the second interview on 17th March 2019. She was asked what it was she wanted to say and she responded, "My dad did more than just touching. He also had sex with me". She said that she could not remember when he first had sex with her but in answer to questions about when the last time was, said January 2019 and she explained that he, "Em, he put his penis into my vagina". She said that it happened at the family home and in her bedroom in that property.

311. She could not, however, provide any detail. She could not remember the exact time but said, "Em, I don't know, about past, past eight o'clock but before midnight". She could not remember the date of the incident but said that it was a weekday. She could not remember what had been done on that day, although she recalled having fallen out with her mother due to social services having been involved now with the family due to her mother's drinking and other behaviours.

312. X was asked whether or not she could explain anything about the incidents where her father had had sex with her. Was there anything she could describe to include any actions? The transcript shows that she shook her head, implying no, and when she was asked again to confirm that he did not say anything, again she shook her head, confirming that he had not. She was asked if there was anything that she could tell the interviewer and she replied, "I don't know".

313. X was then asked if she could tell the interviewer anything about the sex, that is to say when her father put his penis inside her. Her response to the question

was, "No". She was therefore asked what she did and she replied, "I don't know". She was then asked if she could tell them anything about what it was like or what was running through her mind at the time and she said, "I don't know. I didn't know what to do so I don't know. You just try and get rid of it."

314. She gave information about the incident that was said to have occurred on 31st October 2018. She could not describe anything about the sex that was said to have happened on that occasion other than it was in her bedroom and she said that as the sex was happening, she felt upset. She was asked whether or not she said or did anything because she was feeling upset, to which she replied, "No" and she then said her father did not say anything and there was no conversation.

315. She was asked whether or not he had ever used protection, meaning contraception, when he had put his penis into her vagina and she replied, "I do not know". She was asked when she said that her father would have sex with her if she could describe whether or not it was forceful. Again, she replied, "I don't know". She went on to say that she did not know how long the incidents lasted and she did not recall any bodily fluids.

316. It was noticeable that there was simply no further information provided by X about what she said happened during what, on the face of it, was a sustained period of sexual abuse. Nothing seemed to fit together, there was no content or context. Invariably, the alleged incidents happened when all other family members were in the house and nobody spotted anything or ever interrupted them.

317. X, as I have already mentioned, agreed to be interviewed again and that interview took place on 9th December last year and the interview was conducted

by Mr. Goodall following discussions with the other advocates and a prepared set of questions were used. The interview was recorded and is found in two parts in the bundle, J94 and 95, and there is a transcript at J96 to 117.

318. I have watched that interview on a number of occasions, including with the advocates and the parties the last time that this case was in court and again recently prior to the resumption of this hearing. It was not the best of interviews. I say that because the interview was carried out in what I would describe as a very mechanical way. The questions were quite literally read out, there was no fluidity or real engagement with X in the process. That was down, in part, to the way in which it was agreed that X could be interviewed.

319. What I did get from the interview was that X had a very clear and instant recollection of the problems that her mother was experiencing at that time as a consequence of her drinking and of her behaviours that followed. She had a clear recollection of her mother shouting, slapping and throwing things. I am sure that that was a genuine recollection.

320. She also had a good and clear recall of the role that she felt her elder sister, Z, played at the time. She recalled very clearly that Z was, on occasions, put in charge but she did not regard her as a good "caregiver". She was not unduly critical of her sister for that and gave me the impression that she felt, as a consequence, that she had a responsibility to look after her younger brother, Y.

321. Of particular interest was her approach to what she said her father had done to her. She was asked why, when she was telling the social worker about the problems with her mother, that she did not say anything about what she alleged her father had actually done. Her answer was that she was "too stressed out at

the time". I have to say that my analysis of that was that it seemed to be almost too convenient an answer. It is worthy of recall that one of X's solutions to the problems that were being encountered due to Mrs A's drinking was that she thought her father could spend more time at home with them. The contradictions and implications of that are obvious when balanced against the allegations that the abuse was ongoing at that time.

322. I was equally troubled by her answers to the questions that were put regarding the Amazon parcels. Unfortunately, this was another part of the questioning that was perhaps not the best. However, despite that, X was almost too quick with her answers. It was almost as though she had anticipated those questions. I was certainly left with the impression, on the balance of probabilities, that it was a distinct possibility that she could indeed have sent those parcels to herself.

323. She was asked about her friendship with somebody called TT who appeared in her diary. TT was a fictitious character made up by X because she said it was "all in my head". When she was asked to explain a little more about that, her answer was interesting. She said this:

> "Em, it's complicated. It's like if you were in my head, it's like you just make up like people to help you when they really don't end up helping me cos you always shut them out after a bit and that was one of the scenarios where I can make up people who then help you. When you don't like them anymore, you get rid of them cos that's what everyone does to you yourself".

324. She was not asked anything further and did not expand in any more detail. The importance of that is difficult to completely understand without perhaps expert assistance but it does suggest to me a process whereby X created people or things in her mind and when she did not like them, she discarded them.

325. Some support for the proposition that X made things up can be seen in the text messages that were passing between X and U which were ultimately provided by the police. These suggest uncertainty in X's mind and in her thinking. Examples are provided by Mr. Lee in his additional submissions and are worthy of repetition:

> "I won't hate you. You've done the right thing. I've just got to convince my brain it's not just in my head cos it has got to get there somehow but how was gym?"

And then:

> "But I've made everything seem 100 times worse than it is and it's my head and actually he's done nothing."

"You are 100 percent certain that he's sexually abusing you?" asked U, to which X replied, "No, because I don't want to say he is." "So he did?" U asked, "I think so but I couldn't tell you 100 percent unless plunged into my brain", responded X.

326. X's evidence left too many imponderables, too many uncertainties and, frankly, too many incidents that seemed to defy any logical explanation.

327. That takes me on to consider the evidence of Y. I have little doubt that Y was put into an almost impossible position, as Mr. Lee suggests, torn between trying to support his sister but not recalling seeing anything that would directly indicate that she was being abused.

328. A good example of that can be seen in relation to Y saying that he remembered seeing his father touching his sister's bottom. Y was very clear that he recalled his father smacking and squeezing what he described as "X's butt". He recalled clearly that that had happened on many occasions, "I don't really want to count"

and was usually at the gym club or sometimes when they went to Tesco's and he described that when at the gym club, it was usually in the café area and he explained where that was and where he, his sister and father were.

329. I rather agree with the submissions made by Mr. Lee that Ms P played a substantial role in influencing Y's thinking in relation to this behaviour. We know that Ms P had at least one, but on her admission in oral evidence possibly several, conversations with Y in which she described the billion piece jigsaw puzzle. The implication was clear that any information Y could provide, no matter how small, could influence or assist the investigation. Ms P accepted that she said in front of Y that:

> "I explained I feel that Y potentially has things he wants to express but does not know how to or even if he wants just yet."

330. Mr. Lee submits that the allegation that at gym class he had seen his father slapping or squeezing X's bottom could simply be an innocent memory given a sinister twist in the light of the bigger allegations about which, of course, Y was now aware. He accepts that it was perfectly possible that Mr A may have encouraged X to move along by tapping her gently but makes the important point that over the ten year period of attending the gym no parent or coach ever raised any concerns about Mr A and how he interacted with X. As Mr. Lee points out in his closing submissions, Y himself says in his interview that he "honestly did not think anything of it" I172.

331. Further, there was other evidence about Mr A squeezing or tapping X's bottom or not. That evidence was from Miss F. When she gave her oral evidence, she presented as a genuinely honest witness who was doing her best to recall the

events over a number of years. If she could not remember something, she said so rather than attempting to think of an answer.

332. Miss F confirmed that X had been coming to the gym class since she was about 6 or 7 years old. She confirmed that she had been there all of the time. At the end of her evidence, I asked Miss F whether or not she had ever seen Mr A squeeze X's bottom whilst in the gym or the café area. She was instant in her reply and said, "no". I believed her. I was perfectly satisfied that she had never seen Mr A squeeze his daughter's bottom in that way whilst at the gymnastics club.

333. Mr A, as I have already said, has always denied the allegations made against him. In his statement dated 5th April 2019, found at A4 to 8, he said this at para.4:

> "Although I accept the threshold is crossed for the making of interim orders, I wish to make it clear that I wholly dispute all of the threshold allegations of sexual harm and the allegations that X has made against me".

He continued at para.5:

> "I have never sexually abused my daughter or been sexually inappropriate with her in any way. I am devastated that she has made these allegations against me. I do not know why she has done this other and in an attempt to escape the home environment that was distressing her. I accept that our home environment was not a happy one at times."

334. He made his position clear in para.6 of the same statement when he said this:

> "I believe that the court needs to conduct a finding of fact hearing in relation to these allegations as they are totally untrue. I wish to see all of the evidence against me so that I can challenge these allegations. Whilst I find myself emotionally torn in saying that my daughter is lying, she has fabricated these allegations against me. I am really worried for her as to why she would do this."

335. At para.42 of his statement dated 24th July 2019, found at C118, he says:

> "I reiterate again that I have not inappropriately touched, sexually touched or raped my daughter. I have not made X sexually touch me. The allegations have had a devastating impact on me in terms of my family and my emotional wellbeing. I am very worried about my daughter and my family."

336. When he was interviewed by the police on 1st February 2019, Mr A was asked whether or not he was responsible for the offence- of raping his daughter, X. His reply was, "no". He was asked whether or not he was responsible for the offence of sexually assaulting his daughter and he replied, "no". The full transcript of that interview is found at I94 to 118.

337. When interviewed further by the police on 22nd B 2019, I148 to 160, he was told that there had been some fresh allegations made against him by X. Those allegations were that on several occasions, he had put his penis into her vagina. He was asked whether or not he was responsible for that and had he done it and he replied, "no".

338. In his statement of 24th July 2019, C109 to 118, he recalled the school contacting himself and Mrs A and said this:

> "I remember an occasion in 2016 when the school contacted us about X and I spoke to Mr. WW. He said that X's presentation was very quiet and he thought that she needed to talk to someone. I spoke to X and I remember asking her if there was anything she wanted to talk about but there was not. I remember, at the time, having a conversation with B about my conversation with Mr. WW. I was saying to her that X did not want to talk to me but she did not feel she could talk to her because of her drinking. I am aware there was an issue with X being bullied at school in 2016. I am not sure whether this was the cause of her being withdrawn or whether the bullying started after this time".

339. He explained how the school did not make him aware of any issues in the summer of 2018 and said this:

> "I note the school raised concerns in February 2018 about B's drinking. This was not raised with me at that time, nor did anyone make me aware in summer 2018 that they thought X had been self-harming. I had never noticed anything and did not know about it until I read the disclosure in this case. I am disappointed about this as opportunities may have been missed to support X more. I cannot remember noticing any scratches or marks to X at any time."

He accepted that his own mood was changing and was not very good and that:

> "I may have missed signs that my daughter was struggling. My own mother was becoming increasingly unwell, I had my job and I also had my family to care for."

340. He recalled the incident at Halloween in 2018 as follows. He was at his mother's and not at the family home and said this:

> "I was not present in the home on Halloween but X did text me about her mum drinking. I have not seen the mobile phone data retrieved from the police yet to comment on exactly what was said. I asked X if she wanted me to come home but she did not at that time. A while later, X called me and said her mum had gone off in the car and she was asking if I could come home. I initially thought that Mrs A had gone to sit in the car, which sometimes she did when she was annoyed. However, X said she had gone off in the car. I told her I could not come straightaway because I was just putting my mum to bed. A bit later on, maybe an hour or so later, I called X to tell her that I was on my way home. When driving up the M62, I noticed a police helicopter with a searchlight over the area. I recall I arrived home at about 11.30 p.m."

341. Then he recounted Mrs A coming home at about 02.30 a.m. and that the children were in the main okay. He said this:

> "Mrs A finally returned home at about 2.30 a.m. She was clearly still in a mood and she went straight upstairs. Whilst we were waiting for her to come home, none of the children went to bed. Y and his friend spent the time in my room on the Xbox and I have no idea what time they went to sleep. X went upstairs to

> bed shortly after her mum came home. Z was still in the lounge and I spoke to her. I had to ask her what time she was going to bed as I knew I had to sleep in that room because of the boys. I went to sleep at about 3.00 a.m. I know this because my Fitbit shows no movement between 3.00 a.m. and 7.30 on that date. I did wake a few times but I did not get off the sofa. The following day, Mrs A told me she had been to GG and had fallen asleep in the car in a different car park to where I had looked for her."

342. Of course, Mr A now understands the full extent of the allegations made against him by X and he deals with that at para.38 of his statement as follows. The reference is C117. He says this:

> "I have read the contents of X's ABE interviews and I am totally and completely shocked at the allegations she has made against me. I have never inappropriately touched my daughter. I have never sexually touched her. I have never made her sexually touch me. I have never raped her. I struggle to believe or understand the allegations she has made against me. I note that the allegations have developed over time. I also have concerns about how some parts of the interview were undertaken."

343. He continues:

> "I am very worried about X and why she would say these things. I fully understand the allegations need to be fully investigated by this court. I find it very difficult indeed to accuse my own daughter of lying but these allegations are not true and she is therefore lying. I hope that the court finds this to be the case. However, I also hope that X is supported to understand why she has made these allegations as that is just as much a worry to me. X, to my knowledge, has not told significant lies before and has always been an honest person."

344. The interview continues with a consistent series of denials, a constant theme throughout. Those denials are repeated in his submissions to the Child Protection Conference on 7th March 2019 when he said:

> "As such, I have not included any comments related to the accusations of sexual assault. Needless to say, they are all false and the allegations made against me are completely untrue."

345. I have set that background out at length because I am mindful that Mr A did not get the opportunity to go into the witness box. Mr. Lee submits that the evidence that Mr A has provided goes beyond a simple denial in a statement or a police interview. He has also voluntarily produced GPS and Fitbit data to support his contention that it was highly unlikely he could have been doing the things that it was alleged that he had done. He has provided an analysis of that data in his statement dated 17th May 2020 and found at C150 to C181, which helps demonstrate that it is incredibly unlikely that he was raping anybody in the early hours of 1st November 2018, which was the only specific allegation X made against him.

346. Of course, it is not just Mr A who has not given oral evidence as a consequence of the Local Authority's change of position. Mrs A is in exactly the same position. It is important to remind myself of what she said about the allegations that were made against Mr A. In her statement of 26th July 2019, prepared for this case, she said this at para.4, C120:

> "In relation to X, I confirm that X informed me that her father had brushed her shoulder down towards her breast whilst on holiday to the country of BB in August 2018. I could not see anything unnatural in X or her father's behaviour towards each other and believed it was an accident. I confirm that following on from the disclosure by X, I kept a close eye on the Second Respondent and X and saw them interacting as normal. I could not see anything that was out of character or unnatural in their behaviour. My position in this regard has not changed."

347. As can be seen from that paragraph, Mrs A had absolutely no concerns about the relationship that existed between X and her father and was not worried that he was behaving in the manner alleged.

348. So what do I make of the evidence available to me and how do I treat the evidence of Mr. and Mrs A?

349. As the allegations were pleaded against him, Mr A has provided statements in rebuttal. His statements and that of Mrs A are signed with statements of truth. Those statements are evidence before the court. Mr A always intended to give oral evidence in the case. Indeed, he positively invited a finding of fact hearing to enable him to deal with the allegations and to meet them head on. It was up to the Local Authority to decide whether or not to challenge the contents of the written statements or to accept their contents. Here, the Local Authority made plain that there would be no challenge to Mr A if he went into the witness box as he had offered to do so.

350. In simple evidential terms, evidence which is not challenged is to be treated as being accepted. Phipson on Evidence at para.12.12 provides helpful further guidance, setting out that:

> "In general, a party is required to challenge in cross-examination the evidence of any witness of the opposing party if he wishes to submit to the court that the evidence should not be accepted on that point. The rule applies in civil cases as it does in criminal".

The section continues:

> "The rule serves the important function of giving the witness the opportunity of explaining any contradiction or alleged problem in his evidence. If a party has decided not to cross-examine on a particular point, he will be in difficulty in submitting that the evidence should be rejected."

351. In this case, Mr A's evidence was not challenged because the Local Authority did not pursue their findings against him. All of his unchallenged evidence was within the scope of these proceedings and the case that he was forced to have to

meet. It seems to me that it must therefore follow that his evidence can safely be accepted by this court.

352. It is common ground that not giving oral evidence was not the fault of Mr A. The Local Authority no longer pursued findings against him and so there was no case for him to meet and that leaves me with the unchallenged evidence that he has provided and that I have just broadly outlined. Sir Mark Hedley refers to a party having given "frank evidence". I have asked myself if that encompasses only oral evidence and whether or not the cases that I have been referred to demand that that should be the position. I do not think that it does or that they do.

353. If that were the position then the consequence would be to put people such as Mr A into a situation whereby they could never have a positive finding made in circumstances whereby a Local Authority abandons its case against them because of the collapse of its own case and so would be denied, through no fault of their own, the opportunity of giving oral evidence. That, it seems to me, offends the principles of fairness and justice. I am satisfied, putting all of that together, that he has therefore given "frank evidence".

354. Mr. Lord referred me to X's diary at K94 and asked me to consider those entries in the context of exculpatory findings. He suggests that it is not a stretch to think that that aspect of the diary may have been a reference to what X was suffering and if that is right then it accords with I181 and what Y says about seeing his father in X's bedroom. He suggests that the evidence is too blurred for me to make the exculpatory findings that I am being asked to make.

355. I balance that with the observations of Mr. Lee in respect of the diary entries and their reliability. The content of the diary itself was not pursued by the Local Authority in terms of the findings that they sought. There were some very powerful entries, none of which were pursued because presumably the Local Authority did not think they would be able to satisfy the evidential burden in respect of them.

356. There are two of those entries that stand out that were not pursued. Firstly, that X was pregnant at age 12, gave birth to a child who was placed in a drawer while she was then raped by her father, K125, and secondly that she was cared for by several relatives and did not have a settled home life, K101 and K118, which we know to be simply untrue. X had lived in the same house all of her life with her parents and her siblings. I understand the point made by Mr. Lord but am not persuaded that the matters that he takes me to establish worrying features about which I need to be concerned and which might blur my thinking.

357. I have given extensive and very careful consideration to whether I can and should go further and make a positive finding on the balance of probabilities that Mr A has not sexually abused X. I am aware that I cannot approach this decision because I have sympathy for Mr A. I make no secret of the fact that I have deliberately left and revisited this issue on numerous occasions in the preparation of this judgment so as to be sure of my position. As Holman J said in Leeds City Council v YX & ZX (Assessment of Sexual Abuse) 2008 EWHC 802 (Fam), "I can of course only do so if, after due consideration, that is the true state of my mind". As I have said, I have stepped back and revisited this issue and looked carefully at the evidence and all of the facts.

358. Having balanced and viewed every aspect of this case as a whole I do feel sure, and accordingly find, that Mr A did not sexually interfere with or abuse X as he was alleged to have done.

Conclusion

359. This judgment now brings to a close what has been a very long, very sad and in so many aspects, a worrying and troubling case. It has raised issues of significant concern which need to be addressed.

360. I am very pleased to hear that the observations and criticisms that I have made in respect of key elements of concern will be fed back to relevant management in the Local Authority and indeed the police and, hopefully, the Q Gymnastics Club.

361. In closing, I am very grateful to the present social worker and to the Guardian for their help and analysis. I understand that this has not been an easy case for them.

362. I am very grateful to the legal teams for the manner in which they have conducted this case and assisted the Court. All advocates have worked very hard over numerous occasions to present their clients' respective cases. There are however two further comments that I think important to make in that regard.

363. Firstly, I commend Mr. Lord for the way in which he reacted once the evidence of Ms P had been completed. At the first opportunity, he clearly gave advice which, as I have already said to my mind was the correct advice, to those that instructed him as to the way forward. I appreciate that advocates have an ongoing responsibility to keep matters under review but it is important to make

the point that there was absolutely no delay once the position became clear following completion of Ms P's evidence and, as such, further anxiety, distress, pressure and court time were all spared.

364. Secondly, I must commend Mr. Lee for his cross-examination of Ms P and his dogged pursuit of the exculpatory findings even when the end result would be that it made no difference from a legal perspective. The human element was far more important. It was obvious to me that there had been meticulous preparation of his client's case and the cross-examination was carried out with considerable skill. I have no doubt that that helped lead to the eventual outcome of this case. He and those that instruct him could have not done anything more to have helped Mr A.

365. I should remark that I do not exclude, because I have already thanked them, Mrs. Farrington and Mr. Goodall from any additional comments. The fact is, of course, that their clients' cases were, of necessity, run from very different perspectives to those of the Local Authority and Mr A.

366. My final words must be to Mr. and Mrs A. I am terribly sorry, both of you, that you have had such a long day today listening to the delivery of this judgment but I hope you take from it that I have looked at all matters conscientiously and in some great detail. It is, of course, with huge regret that I have had to deal with the issues that I have referred to. I certainly never expected that I would have to do so. It would now be very easy for me to say that I understand all that you have been through and what you still have to face. However, it would be a nonsense and completely disingenuous for me to suggest that I could actually understand all that you have had to cope with over the past few years. I am sure,

when looking back, there will be many aspects of what has happened that you will reflect on and be both disappointed and saddened that your family was in the place that it was in the autumn and early winter of 2018.

367. I sincerely hope that the conclusion of these proceedings, the observations that I have made, the exculpatory findings in respect of Mr A and my final decision in relation to the welfare aspects give you both the opportunity of moving forward in a positive and a constructive way and I wish you well with that.

368. I appreciate that your relationship is where it is now but I sincerely hope that your respective relationships with all of your children can be rebuilt and strengthened over time, although I accept that that might be a difficult journey and one that will require considerable patience and understanding.

369. Unless there is anything further that concludes my judgment in this case.

(Judgment ends)

SCHEDULE OF BREACHES OF ABE GUIDANCE RE X AND Y

GUIDANCE	**INTERVIEW WITH X** **1st February 2019** **Miss P** **13:13 – 13:41 (28 mins)** **I63 – I87**	**INTERVIEW WITH X** **17th May 2019** **Miss P** **15:35 – 16:30 (55 mins)** **I119 – I147**	**INTERVIEW WITH Y** **11th September 2019** **Miss P** **10:50 – 12:10 (80 mins)** **I167 – I200**
Appropriate planning (Rule 2.1) for interview	No pre-interview booklet completed	No pre-interview booklet completed	No pre-interview booklet completed

not recorded (Rule 2.222, page 64) and not taken place (Page 13 - Rule 2.13) **(Page 11 - Rule 2.1)** 2.1 …A well-conducted interview will only occur if appropriate planning has taken place. The importance of planning cannot be overstated… It is important that, as far as possible, the case is thoroughly reviewed before an interview is embarked upon to ensure that all issues are covered and key questions asked, since the opportunity to do this will in most			

cases be lost once the interview(s) have been concluded.			
Box 2.1 (page 22) contains a checklist of desirable information that the officers should gather in the planning stage..	No evidence of Miss P considering any of these characteristics. Miss P said DC J asked her to undertake the interview as she had done the CSC assessment but this was not completed until 28th February 2019.	No evidence of Miss P considering any of these characteristics for this interview	No evidence of Miss P considering any of these characteristics for this interview
Box 2.2 (Page 23) Checklist of additional factors in cases where child is known or suspected to have been abused	No evidence of Miss P considering any of these characteristics.	No evidence of Miss P considering any of these characteristics.	No evidence of Miss P considering any of these characteristics.
Preparing Witness for interview 2.223 – 2.224 (Page 64-65) Must always happen. Should be an explanation of nature and purpose of the video	No evidence of X having been prepared for interview No notes taken from discussions immediately prior to interview when X shown around the ABE Suite by either Miss P or DC J	No evidence of X having been prepared for this interview No notes taken from discussions immediately prior to interview when X shown around the	Attendance note for 3rd September 2019 (J83) suggests the nature and purpose of DVD interview was explained after Y was reticent to do an interview but ground rules not discussed.

interview and ground rules established to include the witness not making assumption s about the interviewers knowledge of the event **2.237 (Page 67) Full written notes must be kept of the preparation of a witness for the interview and disclosed to CPS on request**		ABE Suite by either Miss P or DC J	Note deficient in that it does not record exactly what Miss P said and handwritten note not retained No note taken from discussions immediately prior to interview when Y shown round the ABE suite or met with DC H
Any Initial questioning should be intended to elicit a brief account of what is alleged to have taken place, a more detailed account should not be pursued at this stage but should be left for the formal interview.	The court cannot be clear about the exact content of any discussions with X prior to interview because: a) DC J made no notes of any kind b) Miss P accepts breaches of good practice in oral evidence	The court cannot be clear about the exact content of any discussions with X prior to interview because: a) DC J made no notes of any kind. b) DC H had visited X at home by this	The court cannot be clear about the exact content of any discussions with Y prior to interview because: a) DC H made no notes of any discussions with Y b) Miss P accepts breaches of good practice in oral evidence by speaking to

(Page 11 - Rule 2.5)	by accepting her note at J61 reflects a detailed discussion.	stage and retained no note of any discussion with her c) Miss P accepts breaches of good practice in oral evidence in that there are meetings with X that do not have attendance notes and some of the attendance notes we do have do not fully reflect the discussions within that meeting (e.g. Meeting	Y and asking questions about the note he wrote in the meeting of 19th August 2019 (J82) c) The children themselves have been given opportunity to discuss allegations through Miss P telling Mrs A what Y said, and then arranging contact between the siblings before Y is interviewed.

		with Y 21st August (J82) states discussed with X yesterday about diary but note at J73 makes no mention of the diary	
When speaking to a witness pre interview the guidance lists 7 principles to be adhered to including, (e) Make a comprehensive note of the discussion, taking care to record the timing, setting and people present as well as what was said by the witness and anybody	Miss P accepted in oral evidence that her note at J61 was deficient in that it did not record the time, people present and what was said by people present or questions asked of the witness	a) Miss P accepted in oral evidence that her note at J69 is deficient in that it did not record the time, people present and what was said by people present or questions asked of	**a)** Miss P accepted in oral evidence that her note of the meeting on J82 is deficient in that it does not record the questions asked of Y. Specifically no mention of a "Billion piece jigsaw puzzle" that Y is reminded of in the ABE interview

else present (particularly the actual questions asked of the witness) (Page 11 - Rule 2.6 (a)-(g))		the witness. b) The handwritten note at J250 simply records the word "RAPE" so the accuracy of her note at J69 is in question.	
THE INTERVIEW			
Introductory Comments. **It will be submitted that these comments have the ability to influence, lead the child witness into what the officer wants to hear and indicate the aim of the interview is to achieve a repeat of**	"So X, I'd like to ask you about the disclosure that you've made. Can you tell me what you've said recently?" (I65)	"So, X, the purpose of this DVD is that you're wanting to say some more information in relation to the initial DVD that we did, yes?" (I120)	1) "So, as you're aware there is an ongoing police investigation" "Yeah" "Do you know what that police investigation is about" "Yeah" "Can you tell me?" …. "The allegations …that my

previous allegations on camera			Dad raped X" "Can you tell me anything about those allegations Y?" I169 2) "So earlier on, you've mentioned about being at home. What more can you tell me about that?" "What just being at home in general?" "Again as part of the ongoing police investigation, Y" I175
Not allowing a free narrative (AA87 - Rule 3.28)	**There is no free narrative account allowed during this interview**	**There is no free narrative account allowed at the commencement of this interview**	**There is no free narrative account allowed during this interview**
The interviewer should be aware of the danger of subconsciously or consciously indicating approval or	1) "Does anything else happen or is anything said to you when he's		

disapproval of the information just given. **(Page 74 - Rule 3.28)** **And should avoid: Providing verbal approval reinforcement praise &/or encouragement** **(Page 85 - Rule 3.85)**	standing in front of you with his hands down your pants?" "No" "No? He doesn't say anything to you?" I68		
Page 80 - 3.55 (Forced Choice questions) This….should be avoided if at all possible and only be used as a last resort. This type of question can also be termed a selection question: it gives witnesses only a small number of alternatives from which they must choose and which may,	1) Behind you or in front of you X? I67 2) Whereabouts inside you, the front or the back X? I68		

in fact, not include the correct option….The result of asking this type of question is that witnesses may guess the answer by selecting one of the options given.			
Asking leading questions (Page 81 - Rule 3.61) 3.61 (Leading questions). A leading question is one that implies the answer or assumes facts that are likely to be in dispute. …Leading questions can serve not merely to influence to answer given but may also significantly distort the witness's	1) Sometimes it might be over the top of your clothes? How else? (I67) 2) "He'll put his hands underneath your clothes?" "Yeah" "So his hand is touch your skin?" "Yeah" "On your girl parts" "Yeah" "Then does he do anything		

memory in the direction implied by the leading question. For these reasons, leading questions should only be used as a last resort, where all other questioning strategies have failed to elicit any kind of response.	else?" I67 -68 3) "Has there been any other way Dad's touched you?" "No" "You said Dad would sometime s touch your legs?" "Yeah" I71 4) "Whereab outs on your hip?" "Erm the inside" "On the inside of your hip?" "Yeah" "Would that be your thigh?" "Yeah" "And would the hands stop at the thigh?" "N – no" I72 5) "Did he do anything		

	else with his hands on your girl parts?" "No" "Before you said to me Dad would put his fingers inside you?" "Yeah" I75 6) "Did anything else happen?" "No" "Did your Dad **just touch you** while you were in the room? What was his behaviour? What would he do?" "He'd touch himself" I77		

Page 84 - 3.75 Some vulnerable witnesses will respond to a question from, or a comment made by, an interviewer <u>by repeating the last few words in the utterance</u> (echolalia).	1) "How would he use his hand to touch you?" "He'd use it, like touching" I72		
Introducing words, ideas, making suggestions about what might have happened etc that have not previously been mentioned by the child during the interview and/or failing to clarify the child's understanding of what they have said and what the officer subsequently says	1) Would you be clothed? I67 2) "He like **sometimes** he'd like put his fingers inside" "So you're describing that **most times** when Dad would touch	1) "What was Dad wearing?" "Nothing" No mention of Dad being naked until this point – no free narrative I129 2) Do you recall any bodily fluids? I145	

Page 82 – Rule 3.66 & Rule 3.70	you..” I75		
Oppressive Questioning **(Page 82 - Rule 3.69)**			1) “X is really safe now, Y and she’s really settled, yes? And we want to make sure that continues, yes?” I190 2) Sometimes Y when we get lots of different thoughts, they can get a bit fuzzy, can’t they? Yes? And sometimes we try and block things out and protect ourselves, yes? Because sometimes things that we might hear or see or experience, we don’t really want to. Does that make sense? I199

Recapitulation **If appropriate, interviewers should in this final main phase consider briefly summarising what the witness has said, using the words and phrases used by the witness as far as possible. This allows the witness to check the interviewer's recall for accuracy. The interviewer must explicitly tell the witness to correct them if they have missed anything out or have got something wrong.** **Page 85 Rule 3.80-3.83**	**No recapitulation with a request to check for accuracy.**	**No recapitulation with a request to check for accuracy.**	**No recapitulation with a request to check for accuracy.**
Closure **The interviewer**	1) "You've been really	1) "So at this point, I think	

should always try to ensure that the interview ends appropriately. Every interview must have a closing phase. In this phase it may be useful to discuss again some of the 'neutral' topics mentioned in the rapport phase. **In this phase, regardless of the outcome of the interview, every effort should be made to ensure that the witness is not distressed but is in a positive frame of mind. Even if the witness has provided little or no information**	helpful, X" I84	you've done, you've spoken really well" I140 2) "You've done really well, X" I146	

, they should not be made to feel that they have failed or disappointed the interviewer. <u>However, praise or congratulations for providing information should not be given.</u> **Page 85 Rule 3.84 Rule 3.85 Rule 3.86**			
The interviewers' skills should be evaluated… this should result in a development plan. The interview could also be assessed by a supervisor and/or someone who is qualified to examine the interview and give good	The interview is not reviewed or evaluated in any way by 1) M Local Authority **2)** N Police	The interview is not reviewed or evaluated in any way by 1) M Local Authority **2)** N Police	The interview is not reviewed or evaluated in any way by 1) M Local Authority *2)* N Police

constructive feedback to the interviewer, highlighting areas for improvement. This should form part of a staff appraisal system. **(Page 86 – Rule 3.92)**			