

CASE NUMBER: LV23C50418

Neutral Citation Number: [2024] EWFC 318 (B)

IN THE FAMILY COURT SITTING AT LIVERPOOL

IN THE MATTER OF:

THE CHILDREN ACT 1989

BEFORE HIS HONOUR JUDGE GREENSMITH

A Finding of Fact Hearing heard on 2,3,4,5 September and 22 October 2024

Judgment to be handed down remotely via Teams on 6 November at 1000

BETWEEN:

LIVERPOOL CITY COUNCIL

Applicant

-and-

M

1st Respondent

-and-

F

2nd Respondent

-and-

THE CHILDREN

(acting by way of their Guardian)

3rd & 4th Respondents

-and-

P

Representation:

Miss Frances Heaton KC and Miss Megan Cox for the local authority

Mr Ian McCardle for the mother

Miss Megan Daniels for the father

Miss Ruth Scarisbrick for the children

Mr Michael D. Jones KC and Miss Jacqueline Deans for the uncle (intervenor)

JUDGMENT

1. The purpose of this fact find hearing is to establish whether the local authority has established facts sets out in its schedule contained within this judgment. The entire focus of this hearing has been on the allegations that C, during 2023, when she was six years old, was sexually abused by either her mother (“M”), her uncle (“P”) or both. The evidence in support of this allegation is that on 8 June 2023 C tested positive for gonorrhoea. C contracted gonorrhoea when she was living with her grandmother and her partner. C was having some contact with her mother during this period. C’s uncle, P, was also living in C’s household. The uncle was notified that he had tested positive for gonorrhoea by text message on 25 May 2023 and the mother received a positive result on 14 June 2023. It is alleged that C had contracted the infection as a result of having been sexually abused.
2. C was born in 2016. C’s father is F who is 31 years of age; her mother is M who is 24 years of age. C’s maternal uncle is P who is 23 years of age. C has one sibling, a boy born in 2018.
3. When C and her brother were living with their parents, they were both subject to domestic violence between their parents. The father was convicted of criminal damage in 2020 and the same year was convicted of battery. C’s parents separated in 2021. As a result of the mother struggling with her mental health both children moved to stay with their maternal grandmother and her partner on 5 May 2023.
4. On 1 June C showed symptoms of gonorrhoea (right eye swelling, pain and discharge.) On 4 June C presented to the emergency department at Hospital with her symptoms. C was tested for gonorrhoea and the grandmother was informed that the test was positive on 8 June. P vacated the grandmother’s home at the grandmother’s insistence, that day, and has not returned since.
5. C has made no allegation, of having been sexually abused, against either her mother or her uncle. There is no evidence to suggest that C has made any comment or suggestion that either adult has done anything that could be construed as sexual abuse. C refused a detailed examination and there are limited results from the attempt to achieve one. The evidence the local authority seeks to rely on is that it asks the court to draw an inference that C has been sexually abused because she has tested positive for gonorrhoea. Any

abuse must have occurred between 5 May 2023 and prior to the incubation period for the infection, 18 to 28 May 2023.

6. On 14 June 2023 the mother tested positive for gonorrhoea following a vulval vagina swab and a throat swab. There is no evidence of when (or if) she displayed symptoms.
7. Public Law proceedings were issued on 23 June 2023. Both siblings were made subject to interim care orders with care plans that they should continue to live with the grandmother and her partner and that only the four of them should occupy the home.

Schedule of (relevant) Findings Sought by the Local Authority

Sexual Abuse

- 1) On the 5th June 2023 the child, C, aged 6 years-old, was presented at A&E by the maternal grandmother due to having discharge in her eye and swelling. C was initially admitted but was discharged with antibiotics on the 7th June 2023.
- 2) During the admission period, swabs were taken of C's eye and vulva which were positive for Neisseria Gonorrhoea
- 3) It is not possible to determine the precise time at which C contracted Gonorrhoea. The first recorded observation of her symptoms was on the 4th June 2023. The incubation period in children is poorly defined but likely to be the same as in adults: 3-14 days.
- 4) C was infected with vaginal Gonorrhoea through transmission by contact between her vagina with the penis, vagina, mouth and/or anus of an infected person, such contact requiring intimate exposure of the respective mucus membranes.
- 5) C was infected with ocular Gonorrhoea through transmission by either:
 - a. Contact between her eye and the discharge from the penis or vagina of an infected person; or
 - b. Auto-infection due to C having already contracted vaginal Gonorrhoea.
- 6) By virtue of paragraphs 1-5, C has suffered significant sexual harm.
- 7) The perpetrator of that sexual harm was either the maternal uncle, P, or M.
- 8) The perpetrator of that sexual abuse would have or should have known that it would cause physical and emotional harm to C.

Summary of evidence

8. The local authority places heavy reliance upon expert evidence to prove its case. Reports have been obtained from Dr Amos Ghaly a consultant physician in genitourinary medicine, sexual offences examiner and forensic physician. A further report has been obtained from Dr Michael Rothburn a consultant medical microbiologist. Both the mother and the uncle have filed statements. The uncle has attended court to give evidence; the mother has been unavailable to give evidence.
9. Both the mother and the uncle deny having sexually abused C. Neither is able to give a definitive account as to how C has contracted gonorrhoea. P proposes C may have contracted gonorrhoea as a result of the germ having passed to her via fomite transmission via a toilet seat, towel or item of clothing.

The Relevant Law

The burden of proof

10. The burden of proof is on the local authority and must not be reversed. In *A, B AND C (FACT-FINDING: GONORRHOEA)* [2023] EWCA Civ 437, a case with similar facts to this, and in which the medical evidence was very similar, (one of the experts was Dr Ghaly,) Baker LJ warned:

To my mind there is considerable force in the appellant's criticism of the judge's conclusion at paragraph 75 of the judgement that "despite the parents' evidence they cannot be telling the truth, because the presence of the gonorrhoea infecting A itself is evidence of abuse. I would not characterise this as a reversal of the burden of proof. But I agree with the appellant submissions that by the statement the judge seems to have concluded wrongly on the medical evidence that the mere presence of gonorrhoea in the child was determinative that she did not sufficiently weigh it up against the substantial evidence pointing the other way. [53] (emphasis added)

Furthermore, the judge considered the evidence about the identity of the perpetrator after reaching a finding that the child had been abused. [54]

The Court of Appeal allowed the appeal on two pleaded grounds; the relevant ground for this case was,

The court failed to adequately consider the wider canvas of evidence and in doing so attached undue weight to the medical evidence to conclude that A was infected via sexual means. [64]

11. There is no burden or pseudo-burden on either parent to prove their innocence, rather it is for the Local Authority to disprove a reasonable explanation put forward by any parent. The Court must therefore be mindful against reversing the burden of proof as per *Re M (Fact-finding: Burden of Proof)* [2013] 2 FLR 874. Where a party seeks to establish an alternative explanation, but fails to do so, that failure does not, of itself establish the Local Authority's case, which still must be proved to the requisite standard as noted in *Re X (No 3)* [2015] EWHC 3651 Fam and *Re Y (No 3)* [2016] EWHC 503 Fam.

Standard of proof

12. The standard to which the Local Authority must prove the facts which it relies upon is the simple balance of probabilities; that something, "was more likely than not" to have occurred. This is a binary analysis by the Court in which each allegation is deemed to be either found to be 'proved' or 'not proved'. Baroness Hale of Richmond in *Re B (Children)(Care Proceedings: Standard of Proof)* [2008] UKHL 35 held that:

"In our legal system, if a judge finds it more likely than not that something did take place, then it is treated as having taken place. If he finds it more likely than not that it did not place, then it is treated as not having taken place. He is not allowed to sit on the fence. He has to find for one side or the other."

13. In *Re B* it was also held that the neither the seriousness of the allegations nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts.
14. The inherent probability or improbability of an event is a matter to be taken into account, as appropriate, on the facts of any individual case when weighing the probabilities and deciding whether, on balance, an event occurred.

The Broad Canvas

15. In determining whether the Local Authority has discharged the burden upon it, the Court must consider the “broad canvas” of evidence before it, considering each piece of evidence in the context of all the other evidence as per *Re T* [2004] 2 FLR 838. Expert evidence is only one part of that canvas and must be weighed together with the other evidence before the Court. Hayden J in *Lancashire County Council v M, F, and J (By their Children’s Guardian)* [2023] EWHC 3097 (Fam) said at [44]:

“...Section 31(2) of the Children Act 1989 requires the Court to focus not only on the significant harm sustained by the child but on its attributability. Inevitably, within the home environment, there are unlikely to be witnesses. The investigative process must track down ascertainable facts from the broadest canvas available and, where possible, draw such inferences as those facts will support. It is frequently a difficult tasks, but it is not one that can be shirked. The danger in failing to confront it is that an innocent individual may be tainted by a finding that has a direct impact, both on her and on the child. A finding which leaves a parent in a pool of perpetrators is likely to adversely influence the nature and extent of the contact arrangements or indeed, on where and with whom the child will live in the future. Of course, the imperative of child protection must not generate a reason to burden unsatisfactory evidence with a greater weight than it can legitimately support. That would create an injustice to all, not least the subject children, but neither does it absolve the Judge of the responsibility to confront the findings that the evidence properly establishes. The same obligation for forensic rigour applies to the lawyers.”

In *Re A (A Child) (Fact Finding hearing: Speculation)* [2011] EWCA Civ 12 Munby LJ, as he then was, said:

It is an elementary proposition that finding a fact must be based on evidence, including inferences that can properly be drawn from the evidence and not suspicion or speculation.

Truth and Lies

16. It is not uncommon for witnesses during the course of proceedings to tell lies. The Court will be aware that this may be for a variety of reasons, such as shame, misplaced loyalty, panic, fear, or distress. The fact that a witness may have lied about some matters does not necessarily mean that they have lied about everything. I refer to the comments of Lord Lane CJ in *R v Lucas* [1981] QB 720 where he stated that:

“To be capable of amounting to corroboration the lie told to the Court must first of all be deliberate. Secondly it must relate to a material issue. Thirdly the motive for the lie must be a realisation of guilt and a fear of the truth. The jury should in appropriate cases be reminded that people sometimes lie, for example, in an attempt to bolster up a just cause, or out of shame or out of a wish to conceal disgraceful behaviour from their family. Fourthly the statement must be clearly shown to be a lie by evidence other than that of the accomplice who is to be corroborated, that is to say by admission or by evidence of an independent witness.”

17. The approach to be taken within the Family Court to the treatment of proved lies is no different to that which applies within the Crown Court as held in Re H-C (Children) [2016] EWCA Civ 136 and reaffirmed in Re A, B and C (Children) [2021] EWCA Civ 451.
18. Therefore, the mere fact of a lie being told does not in itself prove a primary case against a party or witness, should they have been found to have lied to the Court.

Circumstantial evidence

19. In relation to the proper approach to circumstantial evidence, in Re A (Children: Care Proceedings: Burden of Proof) [2018] EWCA Civ 1718 King LJ cited the following passage from Toulson LJ (as he then was) in Milton Keynes Borough Council v Nulty [2013] 1 WLR 1183 who held that:

“A case based on circumstantial evidence depends for its cogency on the combination of relevant circumstances and the likelihood or unlikelihood of coincidence. A party advancing it argues that the circumstances can only or most probably be accounted for by the explanation which it suggests. Consideration of such a case necessarily involves looking at the whole picture, including what gaps there are in the evidence, whether the individual factors relied upon are in themselves properly established, what factors may point away from the suggested explanation and what other explanation might fit the circumstances.”

Expert Evidence

20. In Re B (Care: Expert Witnesses) [1996] 1 FLR 667, Ward LJ held:

“The expert advises but the Judge decides. The Judge decides on the evidence. If there is nothing before the court, no facts or no circumstances shown to the court which throw doubt on the expert evidence, then, if that is all with which the court is left, the court must accept it. There is, however, no rule that the Judge suspends judicial belief simply because the evidence is given by an expert.”

Non Participation of party at a fact find

21. The Children Act 1989 Section 98 states:

In any proceedings in which a court is hearing an application for an order under Part IV or V,

- (1) No person shall be excused from—
 - (a) giving evidence on any matter; or
 - (b) answering any question put to him in the course of his giving evidence, on the ground that doing so might incriminate him or his spouse or civil partner of an offence.
- (2) A statement or admission made in such proceedings shall not be admissible in evidence against the person making it or his spouse or civil partner in proceedings for an offence other than perjury.

22. In *Re O (Fact Finding Hearing: Parents Refusing to Participate)* [2018] EWFC 48: HHJ Bellamy (sitting as a High Court Judge) said:

*“[97] In addition to all of the factors outlined in the last two paragraphs is the fact that the parents' have chosen not to give oral evidence at this hearing. Although the burden of proof rests upon the local authority and although the parents do not have to prove (whether on the simple balance of probability or otherwise) that their account of a low-level fall is the causative event, their failure to give evidence means that their credibility simply cannot be tested.[98] As Baker J said in *Re L and M (Children)* [2013] EWHC 1569 (Fam), the evidence of the parents and any other carers is of the utmost importance. It is essential that the court forms a clear assessment of their credibility and reliability. In this case the court has been denied that opportunity. What is the consequence of that failure?[99]*

In Re O (Care Proceedings: Evidence) [2003] EWHC 2011 (Fam). Johnson J was very clear. He said, that

'As a general rule, and clearly every case will depend on its own particular facts, where a parent declines to answer questions or, as here, give evidence, the court ought usually to draw the inference that the allegations are true.' ”

Such unequivocal guidance must, in my respectful opinion, be treated with caution in light of current guidance of the Court of Appeal: facts should only be considered in the light of all the evidence, so while Johnson J qualifies his opinion with the caveat of regarding all cases on their own particular facts, the court has a clear duty to go further and to consider all the evidence even where a party refuses to give evidence. It could not serve a child's welfare to be told that her mother sexually abused her, earlier in her life (something she may have no memory of) *just because* the mother failed to give evidence at a court hearing.

The Evidence

Dr Ahmos Ghaly

23. Dr Ghaly has filed a report dated 2 October 2023 and a further report dated 14 May 2024. The first report Dr Ghaly gives a helpful history of gonorrhoea as being one of the oldest human illnesses. He explains that gonorrhoea is a sexually transmitted disease which is caused by contact with Neisseria Gonorrhoea. He says the primary sites of infection are the mucous membranes of the urethra, endo cervix, rectum, pharynx and conjunctiva. In Dr Ghaly's first report he makes the following unqualified comment regarding transmission:

Transmission is by direct inoculation of infected secretions from one mucous membrane to another. The main route is sexual contact with relevant anatomical sites, penile oral penile anal and penile vaginal etc.

24. Regarding transmission and its relevance to child sexual abuse Dr Ghaly says:

A positive culture for gonorrhoea from any site in a child without prior sexual activity is strongly suggestive of sexual abuse. The question of whether gonococcal infection in children can be acquired through fomites still arises. To date there are no convincing data to support nonsexual mode of transmission in children.

25. When asked to explain the mechanisms by which gonorrhoea may be transmitted including nonsexual, Dr Ghaly says:

The transmission of the said infection occurs through inoculation of infected material into the genital site which most commonly takes place through sexual contact. In the house e.g., through shared bathwater a towel, a toilet seat/potty, bed linen and has not been widely supported in the literature but cannot be totally eliminated. (emphasis added)

26. In his report Dr Ghaly relies extensively upon to the reference book, Physical Signs of Child Sexual Abuse (known as "The Purple Book"), May 2015 edition to support his conclusion.

27. Dr Ghaly's final comments in his report are:

It therefore follows that in all the circumstances of the case, the collective point alluded to above and documents provided; it is my opinion that C's gonococcal infection was contracted more likely through sexual contact. Vertical transmission is unlikely given her age and the material time. Other modes of transmission through, inter alia, contaminated hands, toys, bath, and fomite's (given the fragility of the organism and its susceptibility to dryness) have not been established/substantiated but cannot be totally excluded in their entirety due to lack of robust published research evidence. (emphasis added)

28. During Dr Ghaly's cross examination, he emphasised the fragility of the gonorrhoea bacteria and stressed how susceptible it is to dryness. To support the doctor's opinion that fomite transmission was unlikely he stressed that it is difficult for gonorrhoea to exist outside of the infected person as once the organism leaves its host it is compromised.

29. Regarding transmission from an object inserted into a child's vagina, other than a penis, this he concludes is impossible as the object would have to be inserted past the hymen which would have caused the child significant pain.

30. Dr Ghaly went to lengths to explain that the mere presence of bacteria on a surface cannot itself pass gonorrhoea onto a person simply by that person coming into contact with the bacteria. There must be a mechanism by which the live bacteria can be transmitted to a mucous membrane. Merely sitting on the toilet seat or touching live bacteria with a finger would not result in a person contracting gonorrhoea unless the child, for example, placed their finger in their mouth or touched another mucous membrane.
31. When asked how long the gonorrhoea bacteria can live outside of its host Dr Ghaly said that it can live from minutes to hours depending on factors. Regarding transmission from a towel, Dr Ghaly said that the child would have to pick up a towel and then immediately touch a mucous membrane in order for the infection to be passed.

Dr Michael Rothburn

32. Dr Rothburn prepared an initial report dated 1 February 2024 and a further report dated the 14 May 2024 in response to questions. Dr Rothburn's opinion is based upon the laboratory results he has been provided with and on information from the reports which he refers to in his written report.
33. A significant point that is made by Dr Rothburn is that whilst there are varying strains of gonorrhoea they are regarded as indistinguishable for the purpose of indicating the root source of infection. This means that it is impossible to identify from whom C contracted gonorrhoea by analysis of the strain that she had contracted. In light of the identifying positive infection in the three individuals involved it is of significance that Dr Rothburn says that in many cases gonorrhoea is an asymptomatic genital infection and that for this reason it is not possible to suggest the time sequence in which individuals became infected.
34. Regarding transmission of gonorrhoea from one individual to the other the doctor makes the following observations:
 - a. *Infection with gonorrhoea involves the initial attachment of gonococci to the surface of epithelial cells with invasion of the epithelial cells with intracellular gonococcal multiplying intracellularly and invading host immunity.*
 - b. *Gonorrhoea is transmitted through sexual contact with the penis, vagina, mouth or anus of an infected partner. Ejaculation does not have to occur for gonorrhoea to be transmitted or acquired.*
 - c. *The possibility of fomite transfer (transfer via an inanimate object), is considered rare because gonorrhoea is a fastidious organism which does not survive outside the human host in a dry environment.*
35. On the question of fomite transfer Dr Rothburn endorses the opinion of Dr Ghaly that the mere touching of gonorrhoea does not of itself result in infection. Dr Rothburn supports his views with research annexed to his report which he says confirm that a means of transmission from a toilet seat to the urethra or genital tract must be demonstrated. Therefore, C merely sitting on a contaminated toilet seat would not be sufficient to transmit the bacteria. Some other factor must be involved in transmission, and the most available and efficient would be her own fingers or hands.

36. The doctor went to length to emphasise that once the bacteria has dried it loses its ability to infect and therefore to enable the bacteria to remain infectious it must be sustained in what is described as a “moist” environment. An extreme example of this is given in the doctor’s report where he says that survival gonococcal been demonstrated for up to 24 hours on a towel periodically rinsed with warm, physiological saline. When questioned further by the court and by Miss Deans, Dr Rothburn clarified firstly that his notion of a moist environment would be where there is sufficient steam to cause visible condensation, or simply a damp or wet towel. In either of these environments Dr Rothburn opined that the bacteria would remain sufficiently live to convey the infection for 12 hours or so.

Maternal Grandmother

37. The maternal grandmother (“GM”) cared for the children together with her partner. GM has filed a number of statements and given oral evidence. I will say as a preliminary observation, that GM gave her evidence clearly and in a manner which supports the fact that she was endeavouring to help the court by being honest. None of the cross examination by counsel suggested that GM was not telling the truth and that was entirely appropriate.
38. The most relevant evidence that GM was able to help the court with was in respect of her domestic routines within the family home and her ability to comment on her son’s (P’s) personal hygiene.
39. GM helpfully explained the layout of the family bathroom. It is clear that the bathroom is of average size for the type of property; it was quite long and narrow and perfectly capable of serving its purpose.
40. GM explained in her statement how during bath time conditions in the bathroom would be very steamy and hot and emphasised that June 2023 was a particularly hot summer which compounded the problem. The only ventilation used by GM was to leave the bathroom door open and that even when she had a shower when the door was closed, she would only sometimes open a window but not always. She explained that when her partner or her son, P had a shower, they too would close the door and that neither of them would bother opening a window. Significantly she said that the windows would steam up (condensation.) The steam in the room would pass in a few minutes; she estimated under five minutes.
41. The family towel protocol was that bath towels were kept outside of the bathroom on shelves and a hand towel was retained in the bathroom hanging on the radiator, which would be changed once daily following the children’s bath time. While her partner and GM would bring their towels down to be washed after a bath or shower it was common for her P to either leave his (damp towel) on the bathroom floor or in his bedroom. It was GM’s position that all would use separate towels save for the hand towel.
42. During her oral evidence she said P would stay at her house for 2 to 3 nights per week. GM’s evidence is that P spent little time with the children as they tended to annoy him. The sleeping arrangements were such that the children shared a bedroom which was adjacent to hers. P had his own room and she was confident that if he entered the children’s room during the night, she would be aware of his doing so.

43. Regarding her son's hygiene GM said that she was aware that P usually failed to wash his hands after using the toilet.
44. GM described how C behaves in the bathroom. She confirmed that C would touch the toilet seat before sitting on the toilet. She further confirmed that C is a child who frequently touched her face and put her fingers in her mouth. Regarding the children's behaviour generally she confirmed that they would often enter her son's bedroom either to mess about or to play on an exercise bike which was stored in the room.

The Grandmother's Partner (GP)

45. GP, and the grandmother have been together for a significant period of time. GP has filed a statement which was not challenged. The information given regarding bath time supported the grandmothers in that GP confirmed that bath time would be steamy. He further confirmed that when he had a shower, he would close the door but would not open a window.

The Father

46. The father is not the subject of the allegations of sexual abuse. He has accepted the threshold in so far as it relates to him. He did not give evidence and was not expected to. The father is currently in prison. Arrangements were made for the father to attend the fact find hearing remotely via CVP and by this means he was able to attend most of the hearing. The father was represented throughout.

The Mother

47. The mother failed to attend the first three days of the fact find hearing and gave no excuse or explanation for her having failed to do so. I am satisfied the mother knew of the hearing as she was personally served with the Order dated 26th April 2024 which contained the date of the hearing. The order contained a warning that facts may be found at the final hearing in the absence of any party. Further the mother attended court on the final day of the hearing which was listed for counsels' submissions. The Court was informed that she was told by her counsel she may be required to give evidence and thereafter left the court building thereby deliberately absenting herself.
48. The mother has filed two statements in these proceedings which are dated 11 July 2023 and 18 September 2023. The mother accepts in her second statement that her medical records show that she tested positive for gonorrhoea on 13 July 2023: two days after her first statement is dated. She returned to hospital for a second test which she says showed a negative result on 3 August 2023. The mother said that she "slept" with two homeless men around this time: Connor on two occasions in May 2023 and Luke on three or four occasions in June 2023. She assumes that she contracted gonorrhoea from one of these men both of whom she had unprotected sex with.
49. There is no acknowledgement within the statements that she *may* have been the person responsible for transferring gonorrhoea to her daughter, only an acknowledgement that her brother P had been accused of doing so.
50. Paragraph 12 of the mother's first statement regarding C testing positive she says:

I was extremely shocked by this. I only learned about this from my mother and have since gone through the paperwork filed by the local authority.

51. The mother goes on to explain that the grandmother told her that C had conjunctivitis and was being treated by her for this. The mother does not give the precise date upon which she became aware of C's diagnosis.
52. Regarding P being considered as a possible perpetrator the mother says that she, "Could never imagine him sexually abusing any child let alone his niece," and goes on to say that she does not believe P should be treated as if he has sexually abused her daughter until we have expert evidence ruling out that this could be as a result of her becoming infected by other means.
53. Regarding the mother's contact with C the mother says that she was not living at her mother's home while the children were in her mother's care (prior to the commencement of proceedings) and that she only saw them on one or two occasions at her mother's house for short periods.
54. The mother says in her second statement, "At no time have I ever subjected either of my children to sexual abuse."

P

55. As a party to the proceedings as an intervenor, P has been given every opportunity to be fully involved in this process by providing instructions to his legal team and in his providing evidence to the court. P is in receipt of Legal Aid and therefore his representation has been funded by the state. Following a cognitive assessment and recommendations filed by an intermediary, P has had the benefit of an intermediary at what was listed as the finding of fact hearing on 22nd of April 2024 and at the relisted hearing. Despite this level of support P absented himself from the hearing listed on 22 April did not return to court. P only chose to attend the relisted fact find hearing on the third day, after all the expert evidence had been given. P failed to give instructions to his solicitor between the hearing on 22 April and lunchtime on the second day of the hearing which meant that his counsel, Miss Deans, was unable to cross examine Dr Ghaly. P's explanation for leaving the first final hearing in April was that he had left the court with his sister by taxi at lunchtime, intending to return and blamed his sister for them failing to do so. His explanation for failing to attend the first days of this hearing was wholly inadequate. P confirmed that he knew the hearing was taking place and, in my judgment, gave no reasonable explanation for failing to attend.
56. P has filed one statement in these proceedings. The statement is undated; the court is informed it was prepared on 3 October 2024.
57. P confirms that he started to live with his mother in May 2023 when the children had already started to live there. P says that he had little contact with the children and that he was, "Very rarely alone with them other than perhaps if mum was elsewhere in the house and we were then all in the living room." He says that C would go into his room when he was not there would mess around with his stuff, on one occasion C and her brother messed up his room completely.
58. P's discovery of his contraction of gonorrhoea, is confused. He says in his statement that he is unclear the exact dates things happened in June, but he was sure that it was a

Wednesday that he noticed a symptom of gonorrhoea which he described as a small amount of “*green gunk*” around his penis. During the hearing it was established that 31 May was a Wednesday, and this would tie in with the timeline of P’s as he said he attended the walk-in clinic on the Thursday (1 June) and was told to return on the Saturday (3 June) which he says he did. (Dates in brackets added for ease of reference.)

59. During P’s evidence he said he noticed the discharge during the day (31 May) when he was drinking in his room with his “mate.” He doesn’t say in his statement what he did following his discovery. When he gave evidence, he said he discovered the discharge in the bathroom when he was sitting on the toilet. He says that he sat down on the toilet, urinated, and wiped his penis with tissue and threw it into the toilet. He said he then had a shower. He said this was while his friend was in the bedroom. He said he shouted to his mother to inform her that he had got “*green gunk*” on his “*dick*.” He said his friend would have heard him shouting this.
60. P says that he tried to make an appointment for a test at the sexual health clinic on his phone and that he was told to go to the walk-in centre which he says he did the next day. He was told to go back two days later which was a Saturday, which he did. The nurse immediately confirmed that P had gonorrhoea. He says this was the day that the discharge and swelling was noticed in C’s eye. (This was not actually the recollection of the maternal grandmother who said that she was confident she noticed the discharge on 1 June which she remembers because it was her partner’s birthday.)
61. While these dates coincide, approximately, with the known timeline of events, they do not match when P confirmed in cross examination the date his diagnosis was confirmed to him by text message. The police were able to identify messages on P’s phone from the sexual health clinic regarding his being tested positive for gonorrhoea and chlamydia; these messages were dated 25 May 2023, 31 May 2023, 7 June 2023 and 8 June 2023. P in cross examination confirmed that he received a text from the sexual health clinic which confirmed his positive diagnosis for gonorrhoea and chlamydia on 25 May 2023.
62. As to the source of his infection, P names two women, but blames one in particular as he says he had had sex with her the weekend before the symptoms presented.
63. In the statement P gives an account of the domestic sanitation arrangements regarding the shared use of towels. He says that there are shared towels at home, but they are washed after each shower. P says that he would have a shower and then take a towel from the cabinet and after the shower would either take his towel downstairs and leave it by the washing machine or would leave it on the floor in his room or the bathroom. P says that there was only one hand towel in the bathroom and says that it is therefore possible that C could have picked up a used bath towel of his that he had left lying around if she needed to dry her hands.
64. Regarding his own personal hygiene, P says that after he discovered his symptoms, he was careful about hand washing and his mother and her partner would remind him to be so. P says that prior to discovering his gonorrhoea he would only wash his hands if he urinated on one occasion out of ten.
65. P says that the discharge continued for approximately one week and says that during that time it would have been on his boxer shorts and bath towels which were put in the

wash pile. It is P's case at the time of making a statement that it is possible that C might have touched those items.

Police information / other evidence

66. The local authority refers the court to involvement with police regarding allegations of offences of a sexual nature. These recorded allegations are incidents of indecent exposure in March 2013 and 2015 and an allegation of inappropriate sexual behaviour whilst P was at school in 2014. These are of course allegations which are made against P (dob: 9.6.2001) when he was in his early teens. There is a more recent ongoing allegation of rape which was made in March 2024. This matter is ongoing. When questioned during cross examination, P denied the allegation and maintained that whilst he accepted having sexual intercourse with the alleged victim he says this was consensual. The circumstances of the alleged offence are that P accepts that he was collecting a drug debt from the alleged victim and upon her confirming that she had no money to pay she "*came on*" to him and they had consensual sex. P said that following the encounter he stole the alleged victim's mobile phone which he said he would convert into cash so that he would have some money (of the £300 he had been told to collect) to return to his "employer". I found the explanation to be unconvincing.
67. Recently reported police involvement is that the police were called to the mother's property on 26 August 2024 regarding an allegation of criminal damage. P accepts that he used a broken paving slab to smash the glass pane of the mother's entrance door to her house. During his evidence P accepted that he caused the damage. His explanation was that he was staying at the mother's house and that she woke him in the early hours of the morning telling him to make himself scarce because she had brought a man back to the house and wanted privacy. P described the man as a "punter" implying that the mother was engaged in prostitution.
68. During these proceedings, from the point when it became known that the mother had also tested positive for gonorrhoea, the question as to whether P and his sister had engaged in incestuous sexual relations has understandably been of concern to the court. Miss Cox entirely appropriately, in the view of the court, asked P a direct question as to whether he had engaged in sexual relations with his sister. P's answer was, "No". As the evidence pointing towards inter sibling sexual relations was purely circumstantial the matter was, correctly, not pursued.
69. The police conducted a search of P's mobile phone by extracting all media from the phone and running it against various databases. No indecent images of children, or otherwise, were identified. The police also checked media in locations that they would expect to find first-generation material and again no indecent images were found. The police did say, however, that due to the quantity of media on the device they were unable to review it all and that should others identify indecent material they should contact their digital forensic unit who will be able to assist.
70. C's school has provided a letter dated 14 September 2023 which details examples of safeguarding concerns. Within the letter is a report that on 12 January 2023 P came to collect the children from school with another male. The report reads,

“The children’s uncle P came to collect them from school with another male. When C seen (sic) them she started to cry and told her teacher that she didn’t want to go with them. Her teacher asked her why C said, “They told me what to do.” As the teacher looked back at the door the two men were gone. Uncle then came back. Another teacher asked who he was. He said, “I am here to pick C up but she won’t go with me.” ... C told a teacher that her uncle and the other man are “too loud.”

71. During his evidence P volunteered that he had an ex-girlfriend who had been sexually abused and that because of this she would not have any contact with her abuser. The point P was trying to make was that he would be unlikely to abuse his own niece knowing that that would alienate her from him. In her submission Miss Cox correlates the behaviour of C at school with that of the abused ex-girlfriend of P.
72. When C attended hospital, she was examined by a Dr Ellis and a Dr Mohottalage. C would not permit a full physical examination. It was possible to conduct a visual inspection of her labia where she had a minor fusion, but a visual inspection of her hymen was not conducted. Neither was there a perianal examination. No external genitalia injuries were seen. It is uncontroversial that a lack of injury does not rule out sexual abuse.
73. A number of items which potentially could have carried the Gonorrhoea infection were seized from the grandmother’s home. These included a large number of towels and bedding and two sex toys which were found in a bedroom which the grandmother in her evidence said were hers. No forensic evidence has been produced to demonstrate whether any of these items carried any evidence of dried bodily emissions such as semen or (dry) gonorrhoea.

Analysis of the evidence regarding sexual abuse

Regarding the culpability of P and M

74. The timeline within this case is narrow. C displayed symptoms on 1 June 2023 (eye discharge). She will have contracted the infection 3 – 14 days prior to this: 15 – 29 May. C moved into her grandmother’s home on 5 May 2023. P was staying at his mother’s house for several days each week during the period that C became infected. The mother was not staying at her mother’s home during 15 – 29 May but did have contact with C during that period on some occasions.

There is no evidence except the infection that supports an allegation that P or the mother sexually abused (applying the definition of such in *Re P (Sexual Abuse: Finding of Fact Hearing)* [2019] EWFC 27.) I note that the window of infection suggests P was responsible. P tested positive with Gonorrhoea on or before 25 May 2023 which was some time after he first noticed symptoms. (His mother said he noticed the symptoms in mid May.) He would have been contagious thereafter.

75. C first showed symptoms of having contracted Gonorrhoea on 1 June 2023. Her period of incubation would have been from 14 May to 28 May. This coincides with P’s period of being contagious. I must look at the whole picture. There is no evidence which *of itself* would support sexual abuse of C other than her having contracted Gonorrhoea. The

expert evidence is that sexual abuse is the likely cause of the transmission of Gonorrhoea to C, but Dr Ghaly opines that whilst the likelihood of the N Gonorrhoea bacteria having been transmitted from an inanimate object in the house are uncommon and has not widely been supported in the literature available, fomite transmission cannot be totally eliminated

76. When giving evidence, P was at times difficult to understand. To give him the benefit of the court hearing his best evidence, I have listened to the recording of his evidence and am sure I have now heard every word.
77. P's discovery of his contraction of gonorrhoea, is confused. He says in his statement that he is unclear the exact dates things happened in June, but he was sure that it was a Wednesday that he noticed a symptom of gonorrhoea which he described as a small amount of green gunk around his penis. During his evidence he said he noticed this during the day when he was drinking in his room with his mate whilst his friend had gone downstairs to get glasses. He does not amplify in his statement what he then did. When he gave evidence, he said he discovered it in the bathroom when he was sitting on the toilet. He says that he sat down on the toilet to urinate and wiped his penis with a tissue or something and threw it into the toilet. He said he then had a shower and cleaned himself again when the discharge continued. He said he shouted to his mother to inform her that he had got green gunk on his "dick."
78. P's recollection of the date when he discovered he had gonorrhoea is unsustainable. It is significant that this story only became part of P's evidence after he would have been aware of the expert evidence. It did not form part of P's evidence up to the date of the final hearing as there was no mention of it in his statement. If he is to be believed, he was drinking in his room with his friend, he left the room at some point to use the toilet upon which he sat down to urinate. He discovered green discharge and used a tissue to wipe his penis clean. He then shouted, through the house, that he had green gunk on his, "dick". He initially said that he returned to his friend but then said he showered while his friend waited for him in the bedroom. Despite the discharge continuing he failed to attend the walk-in until the following day on his way home from work. No documentary evidence has been produced to support this account. The friend has not provided evidence. Most importantly, there is evidence (accepted by P) that he was informed by text that he had the infection on 25 May which contradicts his timeline. The fact that P discovered his infection in May, not June, is supported by the maternal grandmother who said in her evidence that her son told her he had discharge from his penis in mid May.
79. It is, in my judgment, likely that P made up this story to give a reason for the infection being present on the toilet seat or on towels he used in the bathroom. In my view it is likely that P has created a narrative which he thinks would tie in with the timings of the discovery of symptoms in C. P would be unlikely to understand the flaw in this explanation which is that it is most unlikely that C could have incubated the infection in this short period, sufficiently to show symptoms simultaneously with himself, so if this was his plan, it was destined to fail. The significance of this lie has to be regarded

in the context of the *Lucas* principles outlined above. The fact that P has lied does not of itself negate the possibility of C having become infected by reason of P's lack of personal hygiene.

80. The combined expert evidence does not exclude the possibility that C could have contracted the infection from fomite transmission. The collective evidence supports that the germ can survive on a surface for up to 12 hours in moist conditions. A damp towel located within a bathroom which is poorly ventilated and in which condensation forms, and is visible, is such a moist environment. For C to have contracted the infection from a fomite source, the germ must have been deposited on a surface and survived for a long enough period for C to come into contact with it. The germ must then have been conveyed to one of her mucus membranes for the infection to enter her body. This could be achieved directly by the object having been inserted into the body with such depth that it touches the membrane. In the case of the eye, this could be achieved by wiping the eye with an infected towel or by self infection from touching an infected part of the body and then touching the eye. In the case of the vulva, the infection would have had to have entered C's vestibule area. It has been suggested that the germ could have survived on the toilet seat and then conveyed to C. If C had sat on the toilet seat within such proximity for the germ to have survived, it would still have had to enter her body. This is imaginable in the case of the eye. For the germ to be found in the vulva it would have had to be digitally inserted into the body. The evidence does not exclude the possibility of C's eye and her vulva having been infected at the same time. Alternatively, either could have been infected before the other.
81. In light of C's age, any sexual contact would necessarily be sexual abuse. The experts expressly do not rule out fomite transmission as being possible. The grandmother's routine with the family's towels was meticulous. Some would say exemplary. The bathroom humidity makes it unlikely to have sustained the germ living for the necessary period for it to be picked up by C either from towels or a toilet seat, but not *impossible*.
82. P's evidence was unimpressive. The local authority points to aspects of P's profile which it says paints a picture of someone who may commit sexual abuse against a young child. This is pure conjecture. The evidence in this case paints a picture of P as a person with low sexual standards. The manner in which P has conducted himself throughout the proceedings evidence someone who has little or no respect for authority: someone who admits to dealing drugs and collecting drug debts by stealing. Accepting P's explanation as to how the infection passed is to accept that P continued to live in house with young children when he knew he was infectious with a sexual disease. While living in the house, P took few if any precautions not to pass the infection onto others. In fact, he continued with his usual low standards of hygiene of carelessly using towels and leaving infected clothing and bedding lying around.
83. I am satisfied that there is no cogent evidence to support that P spent sufficient or indeed any time alone with C to infect her physically in a way that would be necessary to pass the disease. The lack of a complaint from C is significant, as is no reference to such by her brother. The lack of supportive adverse evidence on P's phone is significant.

84. Regarding the mother, her refusal to give evidence must be considered in the context of this case. She is the mother of two children who have been placed in care in circumstances where one is thought to have been sexually abused by the mother's brother. It is possible that a mother in those circumstances would want the truth to be established, for the sake of her children, unless she was afraid of that truth. The mother's conduct is at best reprehensible and at worse an attempt to prevent this court from establishing what has happened to her daughter. I have regard to the fact that the timing is such that C *could* have caught gonorrhoea from her mother. I note that the mother's contact with the children has been limited and there is no evidence to suggest the mother has a sexual interest in young children. The mother is, however, sexually promiscuous. The mother attended court on the final day of the hearing no doubt assuming that she would not be called to give evidence. It was only after she was told that her attendance meant that she would be called to give evidence that she left the court building without excuse or explanation.
87. However, the mother's discovery of her infection was not confirmed until 13 July. She had very little contact with her children. The experts' evidence informs that the infection passing between females is rare because of the nature of the events need to pass the infection from person to person. As I have stated above, it would not serve the welfare of either child for a finding to be made purely on the basis the mother refused to give evidence. I cannot find on the evidence available that the mother caused or contributed to C's infection.
88. There is no suggestion that C caught her infection from anyone other than her mother or P. I proceed on that entirely reasonable assumption.
89. In conducting my analysis I must consider all the evidence in this case. I respectfully refer to the approach adopted by Mr Stoner KC in his submissions to the Court of Appeal in *ABC*. Baker LJ refers to Mr Stoner's submissions in paragraph 33 of his judgment. His Lordship says, referring to Mr Stoner submission:

By formulating a presumption that the presence of gonorrhoea is in itself evidence of sexual abuse, the court prevented itself from considering each piece of evidence in the context of all the other evidence and therefore did not undertake an overview of the totality of the evidence in reaching its conclusion. A proper survey of the wider canvas would have shown the presence of gonorrhoea was the only evidence of sexual abuse. All the other features pointed the other way.

Baker LJ then goes onto list the features of that case which were submitted a pointing the "other way". The list is remarkably similar to this case which has the following features:

- a. A verbal 6 year old child had not made any allegations of having been sexually abused.
- b. There is no (other or corroborative) evidence of C having been sexually abused.
- c. There is no evidence to suggest that P had any sexual interest in children.

- d. There was no evidence of P having had an opportunity to abuse C.
- e. The expert evidence supports that fomite transmission is possible.
- f. The evidence supports that the germs to carry the infection *could have* survived in a form that they remain transferrable in the environment described by P and his mother.
- g. P (despite his cognitive limitations) has presented himself to court to give evidence and has denied an allegation of sexual abuse.

In my judgment, if I were to find that C contracted gonorrhoea as a result of having been sexually abused by P, I would (to quote the words of Baker LJ in *ABC*):

“Have concluded wrongly on the medical evidence that the mere presence of gonorrhoea in the child was determinative of sexual abuse and I would not have sufficiently weighed it up against the substantial evidence pointing the other way”

I make the following findings:

Key findings following the fact find hearing

- 1) C contracted gonorrhoea between 15 – 29 May 2023 as a result of her living in a household where P frequently stayed and that she contracted gonorrhoea as a result of that close connection via fomite transmission.
- 2) The fomite transmission was facilitated wholly by P when he knew he was carrying the infection and was contagious.
- 3) By virtue of paragraphs 1-2, C has suffered significant physical and emotional harm.
- 4) The perpetrator of that harm was P.
- 5) The perpetrator of that harm would have or should have known that it would cause physical and emotional harm to C.