Neutral Citation Number: [2022] EWHC 2334 (Fam)

Case No: NG21C00056

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/02/2022

Before :

MRS JUSTICE LIEVEN

- -

Between :

NOTTINGHAM CITY COUNCIL

Applicant

and

THE MOTHER

First Respondent

and

THE FATHER

Second Respondent

and

V

Third Respondent

and

W

Fourth Respondent

and

X, Y AND Z
(Children, by their Children's Guardian)

Fifth-Seventh Respondents

and

AA

Intervener

- -
- -

Ms Suzanne Colclough (instructed by **Nottingham City Council**) for the **Applicant**
Mr Dorian Day (instructed by **Switalskis Solicitors**) for the **First Respondent**
Ms Carol Clelland (instructed by **Liberty's Solicitors**) for the **Second Respondent**
Ms Vickie Hodges (instructed by **Rotheras Solicitors**) for the **Third Respondent**
Ms Louise Sapstead (instructed by **Bakers Solicitors**) for the **Fourth Respondent**
Mr Steven Veitch (instructed by **Elliot Mather Solicitors**) for the **Fifth to Seventh Respondents**
Mr Alex Taylor (of **ParkLane Plowden**) for the **Intervenor**

Hearing dates: **18 February 2022**
- -

Approved Judgment

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MRS JUSTICE LIEVEN

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mrs Justice Lieven DBE :

1. This judgment relates to a ***Re W*** hearing in relation to three children V (15), W (14) and X (13).

2. The Local Authority ('LA') is represented by Miss Coleclough, the Mother by Mr Day, the Father by Miss Clelland, the younger children X, Y and Z by Mr Veitch through the Guardian Amy Clarke, V, who is competent, by Ms Hodges, and W, who is also competent, by Ms Sapstead. The Intervener ('AA') is represented by Mr Taylor.

3. The precipitating event was on the 11th March 2021 when Z sustained life changing injuries with a bleed on the brain needing emergency surgery. All the family, including the Intervener, were in the house at the time when Z suddenly became ill. All adults deny inflicting the injuries. The LA applied for care orders and Interim Care Orders ('ICO') were granted in respect of all the children. The reports of a number of medical experts have been filed.

4. A fact finding hearing is listed for 7 days commencing 3rd March 2022, a little under 2 weeks away.

5. All three older children were interviewed by police in March 2021. They all said they were in the room at the time Z became ill, went yellow and limp. However, the position changed in September 2021 when W gave a second police interview on the 23rd September where he said that his previous statement was untrue and that he and X were in fact upstairs when Z became ill. He also made a number of allegations of physical abuse.

6. The issue for today is whether the three children should give evidence at the fact finding hearing. The law is undisputed, the dispute being as to how it should be applied to the facts of the case.

7. The leading judgment on the issue is *Re W (children) (abuse)* UKSC 12, and the speech of Lady Hale, in particular at paragraphs 22-28:

> *"22. However, tempting it may be to leave the issue until it has received the expert scrutiny of a multi-disciplinary committee, we are satisfied that we cannot do so. The existing law erects a presumption against a child giving evidence which requires to be rebutted by anyone seeking to put questions to the child. That cannot be reconciled with the approach of the European Court of Human Rights, which always aims to strike a fair balance between competing Convention rights. Article 6 requires that the proceedings overall be fair and this normally entails an opportunity to challenge the evidence presented by the other side. But even in criminal proceedings account must be taken of the article 8 rights of the perceived victim: see SN v Sweden, App no 34209/96, 2 July 2002. Striking that balance in care proceedings may well mean that the child should not be called to give evidence in the great majority of cases, but that is a result and not a presumption or even a starting point.*
>
> *23. The object of the proceedings is to achieve a fair trial in the determination of the rights of all the people involved. Children are harmed if they are taken away from their families for no good reason. Children are harmed if they are left in abusive families. This means that the court must admit all the evidence which bears upon the relevant questions: whether the threshold criteria justifying state intervention have been proved; if they have, what action if any will be in the best interests of the child? The court cannot ignore relevant evidence just because other evidence might have been better. It will have to do the best it can on what it has.*
>
> *24. When the court is considering whether a particular child should be called as a witness, the court will have to weigh two considerations: the advantages that that will bring to the determination of the truth and the damage it may do to the welfare of this or any other child. A fair trial is a trial which is fair in the light of the issues which have to be decided. Mr Geekie accepts that the welfare of the child is also a relevant consideration, albeit not the paramount consideration in this respect. He is right to do so, because the object of the proceedings is to promote the*

welfare of this and other children. The hearing cannot be fair to them unless their interests are given great weight.

25. In weighing the advantages that calling the child to give evidence may bring to the fair and accurate determination of the case, the court will have to look at several factors. One will be the issues it has to decide in order properly to determine the case. Sometimes it may be possible to decide the case without making findings on particular allegations. Another will be the quality of the evidence it already has. Sometimes there may be enough evidence to make the findings needed whether or not the child is cross-examined. Sometimes there will be nothing useful to be gained from the child's oral evidence. The case is built upon a web of behaviour, drawings, stray remarks, injuries and the like, and not upon concrete allegations voiced by the child. The quality of any ABE interview will also be an important factor, as will be the nature of any challenge which the party may wish to make. The court is unlikely to be helped by generalised accusations of lying, or by a fishing expedition in which the child is taken slowly through the story yet again in the hope that something will turn up, or by a cross- examination which is designed to intimidate the child and pave the way for accusations of inconsistency in a future criminal trial. On the other hand, focussed questions which put forward a different explanation for certain events may help the court to do justice between the parties. Also relevant will be the age and maturity of the child and the length of time since the events in question, for these will have a bearing on whether an account now can be as reliable as a near-contemporaneous account, especially if given in a well-conducted ABE interview.

26. The age and maturity of the child, along with the length of time since the events in question, will also be relevant to the second part of the inquiry, which is the risk of harm to the child. Further specific factors may be the support which the child has from family or other sources, or the lack of it, the child's own wishes and feelings about giving evidence, and the views of the child's guardian and, where appropriate, those with parental responsibility. We endorse the view that an unwilling child should rarely, if ever, be obliged to give evidence. The risk of further delay to the proceedings is also a factor: there is a general principle that delay in determining any question about a child's upbringing is likely to prejudice his welfare: see Children Act 1989, s 1(2). There may also be specific risks of harm to this particular child. Where there are parallel criminal proceedings, the likelihood of the child having to give evidence twice may increase the risk of harm. The parent may be seeking to put his child through this ordeal in order to strengthen his hand in the criminal proceedings rather than to enable the family court to get at the truth. On the other hand, as the family court has to give less weight to the evidence of a child because she has not been called, then that may be damaging too. However, the court is entitled to have regard to the general evidence of the harm which giving evidence may do to children, as well as to any features which are particular to this child and this case. That risk of harm is an ever-present feature to which, on the present evidence, the court must

> *give great weight. The risk, and therefore the weight, may vary from case to case, but the court must always take it into account and does not need expert evidence in order to do so.*
>
> *27. But on both sides of the equation, the court must factor in what steps can be taken to improve the quality of the child's evidence and at the same time to decrease the risk of harm to the child. These two aims are not in opposition to one another. The whole premise of Achieving Best Evidence and the special measures in criminal cases is that this will improve rather than diminish the quality of the evidence to the court. It does not assume that the most reliable account of any incident is one made from recollection months or years later in the stressful conditions of a courtroom. Nor does it assume that an "Old Bailey style" cross examination is the best way of testing that evidence. It may be the best way of casting doubt upon it in the eyes of a jury but that is another matter. A family court would have to be astute both to protect the child from the harmful and destructive effects of questioning and also to evaluate the answers in the light of the child's stage of development.*
>
> *28. The family court will have to be realistic in evaluating how effective it can be in maximising the advantage while minimising the harm. There are things that the court can do but they are not things that it is used to doing at present. It is not limited by the usual courtroom procedures or to applying the special measures by analogy. The important thing is that the questions which challenge the child's account are fairly put to the child so that she can answer them, not that counsel should be able to question her directly. One possibility is an early video'd cross examination as proposed by Pigot. Another is cross-examination via video link. But another is putting the required questions to her through an intermediary. This could be the court itself, as would be common in continental Europe and used to be much more common than it is now in the courts of this country."*

8. The court must conduct a balancing exercise taking into account the following factors:

   a. The issues the Court has to decide to properly determine the case.

   b. The quality of the evidence it already has.

   c. The quality of any ABE interview.

   d. The nature of any challenge to that evidence which the party may wish to make.

   e. The age and maturity of the child.

   f. The length of time since the events in question.

   g. Specific factors may be the support which the child has from family or other sources, or the lack of it.

   h. The child's own wishes and feelings about giving evidence.

i. The views of the child's guardian and, where appropriate, those with parental responsibility.

j. That an unwilling child should rarely, if ever, be obliged to give evidence.

k. The risk of further delay to the proceedings.

l. Specific risks of harm to this particular child.

m. Where there are parallel criminal proceedings, the likelihood of the child having to give evidence twice may increase the risk of harm.

n. Steps that can be taken to improve the quality of the child's evidence and at the same time to decrease the risk of harm to the child.

9. A few months later the Family Justice Council ('FJC') gave guidance and I have considered paragraphs 8-9 and 12 onwards of that guidance:

> *"8. In light of Re W, in deciding whether a child should give evidence, the court's principal objective should be achieving a fair trial.*
>
> *9. With that objective the court should carry out a balancing exercise between the following primary considerations:*
>
> *i) the possible advantages that the child being called will bring to the determination of truth balanced against;*
>
> *ii) the possible damage to the child's welfare from giving evidence i.e. the risk of harm to the child from giving evidence having regard to:*
>
> *a. the child's wishes and feelings; in particular their willingness to give evidence; as an unwilling child should rarely if ever be obliged to give evidence;*
>
> *b. the child's particular needs and abilities;*
>
> *c. the issues that need to be determined;*
>
> *d. the nature and gravity of the allegations;*
>
> *e. the source of the allegations;*
>
> *f. whether the case depends on the child's allegations alone; g. corroborative evidence; h. the quality and reliability of the existing evidence;*
>
> *g. the quality and reliability of any ABE interview;*
>
> *h. whether the child has retracted allegations;*
>
> *i. the nature of any challenge a party wishes to make;*
>
> *j. the age of the child; generally the older the child the better;*

k. the maturity, vulnerability and understanding, capacity and competence of the

l. child; this may be apparent from the ABE or from professionals discussions with

m. the child;

n. the length of time since the events in question;

o. the support or lack of support the child has;

p. the quality and importance of the child's evidence;

q. the right to challenge evidence;

r. whether justice can be done without further questioning;

s. the risk of further delay;

t. the views of the guardian who is expected to have discussed the issue with the child concerned if appropriate and those with parental responsibility;

u. specific risks arising from the possibility of the child giving evidence twice in criminal or other and family proceedings taking into account that normally the family proceedings will be heard before the criminal; and

v. the serious consequences of the allegations i.e., whether the findings impact upon care and contact decisions."

Alternatives to child giving live evidence at a hearing

12. The Court needs to consider seriously the possibility of further questions being put to the child on an occasion distinct from the substantive hearing so as to avoid oral examination. This option would have significant advantages to the child and should be considered at the earliest opportunity and in any event before that substantive hearing. Such further questioning should be carried out as soon as possible after the incident in question. The Court will need to take into account practical and procedural issues including:

a. giving the child the opportunity to refresh his memory;

b. the appropriate identity of the questioner;

c. matching the skills of the questioner to the communication needs of the child;

d. where the questioning should take place; e. the type and nature of the questions;

e. advance judicial approval of any questions proposed to be put to the child;

f. the need for ground rules to be discussed ahead of time by the judge, lawyers (and intermediary, if applicable) about the examination; and

g. how the interview should be recorded.

Practical considerations pre-hearing

13. Once a decision has been made that a child should give evidence at a hearing and be questioned at court, the Court must factor in steps to improve the quality of the child's evidence and minimise the risk of harm to the child.

14. At the earliest opportunity and in any event before the hearing at which child's evidence is taken, the following matters need to be considered:

a. if 'live' cross examination is appropriate, the need for and use of a registered intermediary [insert details of register of intermediaries] [subject to their availability] or other communication specialist to facilitate the communication of others with the child or relay questions directly, if indicated by the needs of the child.

b. the use of other 'special measures' in particular live video link and screens.

c. the full range of special measures in light of the child's wishes and needs.

d. advance judicial approval of any questions proposed to be put to the child.

e. the need for ground rules to be discussed ahead of time by the judge, lawyers (And intermediary, if applicable) about the examination.

f. information about the child's communication skills, length of concentration span and level of understanding e.g., from an expert or an intermediary or other communication specialist.

g. the need for breaks.

h. the involvement and identity of a supporter for the child.

i. the timetable for children's evidence to minimise time at court and give them a fresh clear start in the morning.

j. the child's dates to avoid attending court.

k. the length of any ABE recording, the best time for the child and the Court to

l. view it (the best time for the child may not be when the recording is viewed by the court).

m. admissions of as much of the child's evidence as possible in advance; including locations, times, and lay-outs.

n. save in exceptional circumstances, agreement as to

(i) the proper form and limit of questioning and

(ii) the identity of the questioner.

15. If a child is to give oral evidence at the hearing the following should occur:

a. a familiarisation visit by the child to the court before the hearing with a demonstration of special measures, so that the child can make an informed view about their use.

b. the child should be accompanied and have a known neutral supporter, not directly involved in the case, present during their evidence.

c. the child should see their ABE interview and/or their existing evidence before giving evidence for the purpose of memory refreshing.

d. consideration of the child's secure access to the building and suitability of waiting/eating areas so as to ensure there is no possibility of any confrontation with anyone which might cause distress to the child (where facilities are inadequate, use of a remote link from another court or non-court location).

e. identification of where the child will be located at court and the need for privacy.

16. Where possible the children's solicitor/Cafcass should be deputed to organise these matters.

17. A child should never be questioned directly by a litigant in person who is an alleged perpetrator.

Practical considerations at hearing

18. If the decision has been made that the child should give oral evidence at the hearing the following should occur:

a. advocates should introduce themselves to the child.

b. judges and magistrates should ask if the child would like to meet them, to help to establish rapport and reinforce advice.

c. children should be encouraged to let the court know if they have a problem or want a break but cannot be relied upon to do so.

d. professionals should be vigilant to identify potential miscommunication.

e. the child should be told how the live video link works and who can see who.

f. a check should be made (before the child is seated in the TV link room) to ensure that the equipment is working, recordings can be played and that camera angles will not permit the witness to see the Respondents.

g. the parties should agree which documents the child will be referred to and ensure they are in the room where the child is situated for ease of access.

Examination of children

19. If the Court decides a child should give oral evidence, the Court and all parties should take into account the Good Practice Guidance in managing young witness cases and questioning children (part of the NSPCC/ Nuffield Foundation research 'Measuring Up' July 2009 by Joyce Plotnikoff and Richard Woolfson; and the subsequent Progress Report which Guidance has been endorsed by the Judicial Studies Board, the Director of Public Prosecutions, the Criminal Bar Association and the Law Society: http://www.nspcc.org.uk/Inform/research/findings/measuring_up_guidance_wdf66581.pdf).

20. Examination of the child should take into account the Court of Appeal judgment in R v Barker [2010] EWCA Crim 4, para 42, which called for the advocacy to be adapted 'to enable the child to give the best evidence of which he or she is capable' and which questioning should:

a. be at the child's pace and consistent with their understanding.

b. use simple common words and phrases.

c. repeat names and places frequently.

d. ask one short question (one idea) at a time.

e. let the child know the subject of the question.

f. follow a structured approach, signposting the subject.

g. avoid negatives.

> *h. avoid repetition.*
>
> *i. avoid suggestion or leading, including 'tag' questions; j. avoid a criminal or 'Old Bailey' style cross examination.*
>
> *j. avoid 'do you remember' questions.*
>
> *k. avoid restricted choice questions.*
>
> *l. be slow and allow enough time to answer.*
>
> *m. check child's understanding.*
>
> *n. test the evidence does not trick the witness.*
>
> *o. take into account and check the child's level of understanding.*
>
> *p. does not assume the child understands.*
>
> *q. be alert to literal interpretation.*
>
> *r. take care with times, numbers and frequency.*
>
> *s. avoid asking the child to demonstrate intimate touching on his or her own body (If such a question is essential, an alternative method, such as pointing to a body outline, should be agreed beforehand).*
>
> ***Court's overriding duty***
>
> *21. All advocates have a responsibility to manage the questioning of a child witness fairly. However, the ultimate responsibility for ensuring that the child gives the best possible evidence in order to inform the court's decision rests with the tribunal. It should set out its expectations of the advocates and make it clear to the child witness that they can indicate to the court if they feel they are not saying what they want to say or do not understand what is being said to them. The court must be scrupulous in the attention it gives to the case management and control of the questioning process and should be prepared to intervene if the questioning is inappropriate or unnecessary."*

10. It seemed to me, looking at the list of factors in the FJC report, the only one that goes beyond Re W, save putting flesh on the bones, is Para 9v to take into account the serious consequences of the allegations, whether on care or contact.

11. Re W was further considered in Re E (A Child) [2016] EWCA Civ 473 by McFarlane LJ at [46]-[48]:

> *"46. As is well known, children, even children of a very young age, who have made allegations of abuse which are subsequently the subject of criminal proceedings, are required to give live evidence within the criminal process. It is understood that some 40,000 do so during the course of each year. The child will typically be protected from full*

> *exposure to the court room by the use of special measures, for example, answering questions over a live video link. Conversely, for many years the practice and culture in family proceedings was that such children, even if aged in their late teens, would never be required to give live evidence in the Family Court.*
>
> *47. The issue of children giving live evidence in family proceedings was considered in depth in the Supreme Court in the case of Re W (above). The Supreme Court held that the practice and culture of the Family Court that had hitherto applied, which amounted to a presumption against a child giving evidence, could not be justified and should be replaced by the court undertaking a bespoke evaluation in each case on the question of whether a complainant child should or should not be called to give live evidence. Baroness Hale JSC gave the judgment of the court. The following key passages are of importance:*
>
> *[Paragraphs 22-28 of Re W quoted in full]*
>
> *48. I make no apology for quoting so extensively from Baroness Hale's judgment, which would seem to have gone unheeded in the five or more years since it was given. The need to give appropriate consideration to a child giving evidence in a case where that issue arises will soon be given further endorsement by amendments to the FPR 2010 and Practice Directions in accordance with recommendations from the President's working group on children and other vulnerable witnesses. In the meantime the decision in this case should serve as a firm reminder to the judiciary and to the profession of the need to engage fully with all that is required by Re W and the Guidelines."*

12. The court goes on to consider the particular facts of the case. At [58] the Judge stated that the factors relevant to the decision whether to call the child should be grappled with at an early pre-trial stage:

> *"58. It is crucial that any issue as to a child giving evidence is raised and determined at the earliest stage, and in any event well before the planned trial date. The court will not, however, be in a position to come to a conclusion on that issue unless it has undertaken an evaluation of the evidence which is otherwise available. Where there has been an ABE interview, and the quality and/or content of that interview are to be challenged, it is likely that the judge will have to view the DVD before being in a position to decide the Re W issue."*

13. Since these decisions and the FJC Guidance, FPR rule 3A and PR 3A have been added and amended. These provide additional levels of protection to vulnerable witnesses including children.

14. Applying the caselaw and guidance to the facts of this case, the following factors arise. W and V are considered to have capacity to instruct their own solicitors and therefore understand the nature of the proceedings. On behalf of V, Ms Hodges notes that her solicitor has visited her on three occasions to take instructions and to explain the process and what the role of the judge is. V is "fine" to give evidence; would definitely like to

speak to the judge on welfare issues; but takes a more neutral position as to giving evidence at the fact finding. V would like to give evidence in person rather than using a hearing hub; doesn't feel the need for a screen and would like to visit the court prior to giving evidence. She would like one person to ask her questions (rather than face a phalanx of counsel).

15. W has told his solicitor that he positively wants to give evidence and understands he will need to answer questions. He would also like to be asked questions by one advocate.

16. Mr Day invites the court to hear evidence from all three children. He says that is because the Mother understands they wish to give evidence and believes that they should be heard. He also points out that the allegations of other abuse stand and fall on W's account. As W alleges that the Mother assaulted X, she should be given the opportunity to respond to that evidence. In respect of the alleged harm, other than the injuries to V, Mr Day submits that harm is unevidenced and speculative unless W gives evidence.

17. Ms Clelland agrees with Mr Day's submissions. She focused on the children's wish to give evidence and that it may be a positive experience for them in that they will feel heard. Both Counsel emphasise that the decisions about the children's long term welfare will be impacted by the findings made.

18. The Intervener does not express a view.

19. Both the LA and Guardian argue that the children should not give evidence with the LA largely adopting the Guardian, Ms Clarke's, position. Ms Clarke has provided an analysis and has spoken to all three children. She spoke to V twice and she said she did want to give evidence initially, although what became clearer is that she really wants to tell the judge about the welfare issues rather than the fact finding issues. V is very bright and able to say what she thinks. V is allied to and very close to her parents and had a significant role at home. The Guardian questions the necessity of the children giving evidence. The crux of the Guardian's resistance falls at paragraph 19 of her report where she is very concerned about the pressure V would feel and the impact on her emotional stability and welfare. The Guardian is also very concerned about the impact on the sibling relationship if they give evidence.

20. In respect of W, the Guardian spoke to him twice. He was clear that he did want to give evidence. She records that he said he wanted to see the judge alone. The Guardian explained the process. W is bright and intelligent. He is polite and calm. He is more reserved than V but clearly knows his own mind. The Guardian is again concerned about the impact on W and the sibling relationship of his giving evidence.

21. X was principally upset about contact being cancelled. She sought to deflect and change the subject when asked about giving evidence. She did want to meet the judge but is worried about the process and what is going on. I understand the Guardian's concern about the impact on X and her being younger. The second time she met X she was more chatty. X says she wants to give evidence but is not very clear about what she wants to say.

22. Mr Veitch argues that given the children have given ABE interviews, the court has heard their voice and their evidence. The benefits of hearing evidence in this case do

not outweigh the disadvantages to the children. If they do give evidence, they would not be cross-examined in the way that adults are, and he refers to paragraph 20 of the FJC guidance, i.e. (i). avoid suggestion or leading questions, including 'tag' questions; (j). avoid a criminal or 'Old Bailey' style cross examination. Mr Veitch argues the forensic benefit of calling the children is therefore very limited.

Conclusions

23. I will consider all the factors in *Re W* and the FJC guidance albeit in a different order. I will consider all three children together although there is a slight difference in my analysis given their ages and what they have said.

Voice of the child / wishes and feelings

24. V and W have been assessed to be competent and instruct their own solicitors. X is not and is only 13 years old. Given their ages, their wishes should be given significant weight. They all in their own way want to give evidence; want to attend court; meet the judge and specifically W clearly wants to give evidence. V and X are more equivocal, but not resistant to giving evidence, and want their voices heard. I note that they have been consistent in that regard. They have all had it explained to them what the process involves. I take note of the fact that they are all bright children and none of them show any additional vulnerabilities above the fact of their age. This case involves decisions about the children themselves which, in whatever way, will change their lives forever.

25. The family justice system consistently tells judges to listen to the voice of the child. In my view the Court should be slow where the children are competent in respect of the legal proceedings, and wish to give evidence, to refuse to allow them to do so. I am in this case trying to listen to what these children actually want. I would find it difficult to say they should or should not live with their parents without letting them give evidence. X's views carry slightly less weight as she is not competent and is much less clear that she actually wants to give evidence. However, she is 13 and capable of expressing her views. I would find it very difficult to explain to X or V why they were not giving evidence but W was. Further, if I were to hear some of the children but not all of them, that in my view is more likely to create tension within the sibling group than if I hear from all of them.

26. I am also mindful that all three children have said they want to speak to me. Given the issues in the case I would find it very difficult to say to them that they can speak to me, but they cannot give evidence and I cannot take into account what they say as evidence. On the facts of the case, I think that would be a course of action that would be fraught with difficulty, as well as hard to explain to the children

27. The second group of issues are the forensic importance of the children giving evidence. In my view, in this case the children's evidence is important particularly over the issues of what happened with Z and the conflict between W's account and that of his parents. I also agree with Mr Day that as the other allegations entirely turn on W's evidence, there is a particular benefit in hearing that evidence.

28. Considering the factors in *Re W* I do take into account that the precipitating event was almost a year ago now. I appreciate the fact I do have the ABE interviews and none of

the counsel are making points that they are seeking to undermine them. However, there are different accounts here and I think this should be tested in evidence. If I do not allow W to give evidence, then I have no doubt that the parents' counsel will say that I cannot put the same weight on W's account as I can to the parents' and the Intervenor's evidence.

29. Mr Veitch says it is possible to come to a decision based solely on the adults' oral evidence. That may prove to be correct but is speculative at best at this time. Further, as I have said, the evidence in relation to the wider allegations of abuse can only come from W.

30. Whilst the children cannot be subjected to an "Old Bailey style" cross-examination they can be asked questions and it will be open to me to consider their credibility and consider the consistency of their evidence. For all those reasons I think that there are strong forensic reasons to hear oral evidence in this case.

31. The third group of factors is the impact on the children's welfare. This is the Guardian's principal concern. She is concerned about the impact on the sibling relationship and the wider family relationship if the children give evidence. I accept that this is a risk and I acknowledge the children giving evidence may exacerbate tensions that may already exist. However, I note the point Ms Hodges and Ms Sapstead make that the children have found a way to live together despite their differing accounts. At the moment they are getting on together and apparently not discussing the proceedings. Tensions and strains between the siblings are quite likely to happen in the course of these proceedings in any event, whatever the outcome. I take the view that difficulties in the sibling relationships are just as likely to be exacerbated if they do not give evidence. Not to call them and then give judgment accepting one version of events above the other is just as likely to damage their relationship. I do, however, agree with the Guardian that the impact of giving evidence may be greater on the children than they presently understand.

32. Weighing all these factors up together, I have reached the conclusion that it is appropriate that all three children be called to give evidence. Although the children have expressed different views as to how they wish to give evidence, I think they should all do so in the same way. I am conscious that X is not competent, and that no intermediary has been found as yet. The court, with the assistance of the Guardian, can work out appropriate measures for X.

33. Subject to further submissions, the children should come and meet me the day before the evidence, their evidence can be recorded and then the questions should be put to the children in cross examination by the Guardian's counsel.

34. In relation to Mr Taylor's application – in my view it is plain that AA should remain an Intervenor and continue to be represented. He was one of the adults in the room at the time that Z became ill. It is very important that AA is represented because the findings that could be made against him are of a serious nature.