

Neutral Citation Number: [2022] EWFC 190

Case No: ZW21C50019

IN THE FAMILY COURT AT WEST LONDON

West London Family Court,  
Gloucester House, 4 Dukes Green Avenue  
Feltham, TW14 0LR

Date: 01/06/2022

Before :

HIS HONOUR JUDGE WILLANS

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Between :

A LOCAL AUTHORITY

Applicant

- and -

(1) GG

Respondents

(2) FF

(3) Z (by his Children's Guardian)

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**John Vater QC & Nairn Purss** (instructed by **The Applicant's Legal Department**) for the **Applicant**

**Martina van der Leij** (instructed by **Duncan Lewis**) for the **First Respondent**

**Mark Twomey QC & Sarah Branson** (instructed by **Lock & Marlborough**) for the **Second Respondent**

**Nkumbe Ekaney QC & Mark Rawcliffe** (instructed by **Blaser Mills**) for the **Third Respondent**

Hearing dates: 3-6, 9-13, 27, 30 May & 1 June 2022

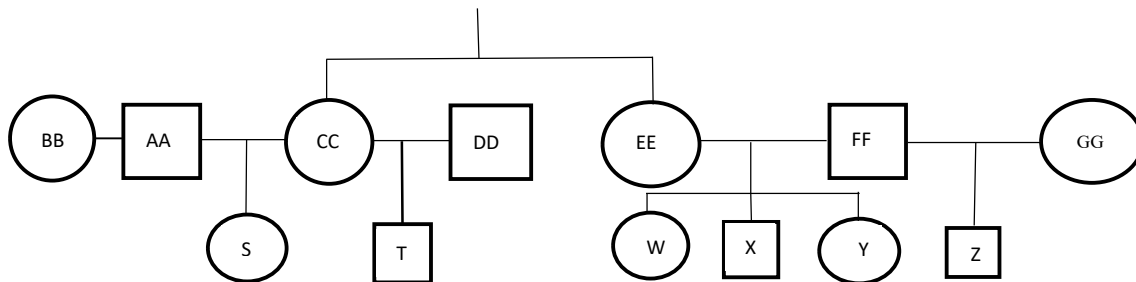
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**JUDGMENT NO.1: FACT FINDING DECISION**

## His Honour Judge Willans

### Introductory Points:

1. I refer to the anonymised genogram below which sets out the key individuals and relationships referred to within this judgment. I use these abbreviations and labels to safeguard the privacy of the child(ren) in this case. No discourtesy is intended.



2. These proceedings concern child Z, although the key focus of this judgment is upon the conduct of FF towards children S and W. He can be seen to be the father of child Z and also of children W, X and Y. He is the uncle of children S and T, with EE and CC being sisters. The genogram uses the convention of male individuals by squares and female by circles. For the avoidance of doubt this judgment uses the appropriate pronoun and gender identity for each individual as understood at the point of the conduct in question.
3. I have conducted a fact finding hearing over a number of day and in reaching this judgment I have had regard to the following:
  - a. The documents, videos and audio files contained within the final hearing bundle together with those supplementary documents filed in the course of the hearing. In total the digital hearing bundle extended to 4800 pages;
  - b. The live evidence of the following witnesses heard over the course of the hearing: - (a) S; (b) CC; (c) EE; (d) PK (S's carer); (e) EK (PK's daughter); (f) LG (S's previous social worker); (g) Police Constable Gale; (h) Detective Constable Armstrong; (i) GG, and (j) FF;
  - c. The written and oral submissions of counsel for all parties.
4. Inevitably this judgment focuses on a selection of the many documents put before me and highlights aspects of the evidence given to me. I have though borne in mind all the evidence in reaching my conclusions. The fact-finding hearing was conducted remotely save in the case of the evidence of GG and FF. Unfortunately on day 2 of FF's evidence a medical concern led to the need for an adjournment for that day. Given a continuing level of medical concern (which did not vitiate the ability of the hearing to proceed) I agreed to hear the balance of FF's evidence on a remote basis. I am satisfied my ability to assess and weigh the evidence has not been affected by this.

### What is his hearing about?

5. This has been a fact-finding hearing in which the Applicant asks me to make very serious findings of sexual abuse against FF. The allegations relate to paedophilic behaviour and sexual abuse of two children, S and W. The Applicant brings these public law care proceedings on the basis that due to these matters FF poses a significant risk of harm to his child, Z. The children's guardian supports the Applicant in asking for findings to be made against FF. FF denies the allegations and asks me to find all the alleged points not proven. GG has taken a neutral approach to the hearing but by the point of submissions considered the evidence against FF 'troubling' and had ended their relationship.

### **The Allegations**

6. By an amended threshold document dated 13 May 2022 and which amounts to the schedule of allegations in the case the Applicant contends:
  - a. FF is a paedophile.
  - b. FF has sexually abused no fewer than two children in pursuit of his distorted sexual interests;
  - c. Between about October 2015 and December 2017, FF sexually abused his daughter, W by touching her in a sexually inappropriate manner and inserting his finger or fingers into her vagina;
  - d. Between about January and December 2017, FF sexually abused S on various occasions and in the following ways:
    - i. Vaginal rape;
    - ii. Oral rape;
    - iii. Inserting a vibrator into her vagina;
    - iv. Engaging her in acts of masturbation.

### **The background to the case**

7. This case is factually complex and the events under consideration cover a significant period of time and geographic area. Within the time frame there are periods of intensive activity and communication which require full consideration to fairly determine the issue placed before me. I am immensely grateful to counsel for the Applicant for the opening note which attempts to provide me with a 'bird's eye' view of the case (§8 opening note). I do though make clear that in making this observation I should not be taken to simply adopt the argument contained within that document. I do not. My resolution of disputed matters can only be found within this judgment and I should not be assumed to find any event established simply by reliance on that document. In this section I provide a sufficient summary of the background to give a reader an understanding of the issues and the case. Later in this judgment I focus more closely on the detail of various aspects of the case.
8. In October 2019 both CC and DD were convicted in respect of sexual abuse of S. They were also convicted of conspiracy to sexually abuse T. Quite separately DD was convicted of sexual abuse of a separate child in respect of who he had played the role of a step-father. On 9 March 2020 the judge [N13] sentenced DD to a custodial term of 29½ years and CC to a custodial term of 12½ years. The sentencing judge was satisfied (so that he was sure) that messaging between the pair could not be seen as simply 'depraved sexual fantasy' but related to actual sexual acts perpetrated on the child. In relation to T whilst it might have been that the suggested actions were not carried out the judge was sure that, but for the

intervention in the case, they would have taken place. In relation to CC the judge considered the suggestion that CC's motives should not be viewed as 'wholly sexual' but rather 'arising from a need to maintain the relationship' with DD. He concluded CC had 'derived perverted sexual pleasure from what [DD] was doing' [N16].

9. This criminal process commenced following concerns in December 2017 around DD attempting to purchase children's used underwear on 'ebay'. This led to the police seizing his phone and discovering on that phone significant messaging between DD and CC which the sentencing judge referred to as '*some of the most depraved and vile reading*' he had encountered [N14 §6].
10. Following CC's arrest both S and T were placed into the care of a family member, PK. In January 2018 and thereafter S made allegations of sexual abuse against CC and DD to both PK and her daughter EK. This led to S being subject to an ABE interview process in February [N1054-1159] and April 2018 [N1160-1208] and then in April 2019 [N1209-1250]. In the course of the interviews S made allegations of sexual abuse.
11. In the course of her various interviews S also made allegations of sexual abuse against her father (AA); his new partner (BB) and her uncle (FF). In the course of her interviews she made wide ranging allegations involving other individuals who could not be identified. The police investigation of telephone records extended beyond the messaging between CC and DD. It also included messaging between CC and FF which was felt to be of concern insofar as child sex abuse was concerned.
12. The Court also has both notes and pictures produced by S relating to these concerns.
13. As a consequence of the above S's local authority issued care proceedings in respect of S and T. FF was added as an intervenor to those proceedings. The proceedings proceeded to fact finding before HHJ [ ] on 20 October 2020 [J11-92]. S gave evidence at the fact-finding. FF, although an intervenor, played no active part in the proceedings. At the conclusion of the fact-finding the judge was entitled to and did rely upon the guilty pleas as clear evidence in respect of findings against CC and DD. The judge considered in detail the allegations against AA and BB and determined they were not established on the balance of probabilities. Insofar as FF was concerned the judge [J81 §248] made a generalised finding thatn '*FF sexually abused S while carrying on a relationship with CC*'.
14. FF has been subject to police investigation and interview. No charges have been brought with respect to these matters.
15. In about September 2019, FF and GG met. It must be the relationship developed quickly with GG falling pregnant around the end of that year/start of 2020 given that Z was born in September 2020. In the following month HHJ [ ] made his findings as set out above. This led to safeguarding referrals; a joint visit to GG/FF on 29 January 2021 and an agreement that FF would only have supervised contact whilst assessments were undertaken.

16. FF then raised issue as to the findings which had been made against him and denied he had notice of those proceedings. He applied to HHJ [ ] to set the findings against him aside. At a hearing before HHJ [ ] on 8 July 2021 [J201] his application was adjourned generally with liberty to restore on the basis that:

*'...this Court considers that [FF's] application might be better considered by the London Court, an application to wipe the slate clean on the basis of Re B...[I]t is more proportionate...for the London Court to deal with the totality of the allegations, rather than a part of them. That Court can properly consider whether the slate should be wiped clean.'*

The reference to 'Re B' in the section above is to **Re B (Children Act Proceedings: Issue Estoppel) [1997] Fam 117**.

17. On 5 August 2021, FF's daughter, W, alleged he had sexually assaulted her several years earlier. She took part in an ABE interview and the allegation was repeated. FF was interviewed in this regard on 10 November 2021 and denied any impropriety.

### The procedural history

18. A full understanding of the procedural history can be found in section B of the bundle. In this section I will identify the major milestones during the course of the proceedings.
- a. The proceedings were issued on 28 July 2021 and allocated to Circuit Judge level. Save for the initial interim care hearing on 4 June 2021 I have heard all hearings as the allocated Judge;
  - b. Throughout the proceedings Z has remained in the care of GG under an interim supervision order. FF initially had supervised contact but since this contact moved to supervision in a contact centre he has not attended contact;
  - c. Early stages in the proceedings involved the obtaining of documents both from the police and from the earlier proceedings. Reference to the bundle will fully explain the steps taken. All such documents have now been obtained;
  - d. This fact finding hearing was fixed on 19 November 2021 [B49];
  - e. At hearings in early 2022 there was detailed consideration as to whether either/both of the children S and W should give evidence within the proceedings applying the principles in the authority of Re W. I ultimately determined S should give evidence supported by an intermediary and that W should not give evidence (W having refused to do so). Detailed ground rules were given and kept to at the final hearing;
  - f. On 9 March 2022 I heard an application made by FF for contact to be supervised by family members outside of the contact centre. I refused the same endorsing contact within the contact centre;

- g. At a PTR on 4 April 2022 I gave the final directions for the forthcoming fact-finding hearing. There remained live issues as to the management of the hearing include the need for production/summons of CC as a serving prisoner and of EE. Having now conducted the fact-finding hearing it appears to me these issues were overcome successfully and the hearing proceeded without any real issues.

### Legal principles

19. I attach a statement of legal principles as annex 1 to this judgment. This is a summarised version of a lengthy document prepared by the advocates..

### The Evidence heard

20. I will summarise (so far as is relevant) my impression of each witness in the analysis section below. I will resolve matters of dispute within the same section. In this part I will attempt to pull out the key oral evidence given during the hearing.

S

21. S was examined pursuant to ground rules set at an earlier hearing. I am grateful to counsel for complying with these provisions as I am to the intermediary who worked with S to enable her to give her best evidence. For the avoidance of doubt S gave evidence from a remote location. She was given the opportunity to refresh her memory from the various ABE interview recordings and was provided regular breaks to enable her to remain composed and focused.
22. She spoke in general terms about CC, DD and FF commenting there was nothing 'best' about any of them however she did not volunteer anything beyond poor care of her with respect to not being taken to school; food and shouting. She was taken to a picture she had drawn [N2685] and with respect to that commented it was a picture of FF and he had '*put his middle parts in my middle parts*' and he has '*licked her middle parts*' as well. She was not sure how often this had happened. The ABE interview process makes clear 'middle parts' was a reference to their respective genitals. She couldn't account for why she had said FF was '*nice*' and had '*not hurt her or made her sad*'. But that was not true.

When cross examined on behalf of FF she said she could not remember saying FF had been '*nice*' and could not remember or denied various positive things that were said to have happened with FF. She was questioned as to the fact that she changed her account in ABE interview from initially not making allegations against FF to later making allegations. She said she couldn't really remember but denied she had done this as she was upset because he had not coloured with her. She said no-one had said bad things about FF after she had been removed from her mother's care. She knew it had been important for her to tell the truth and had done so. She knew that DD and CC were in prison for hurting her. She knew her father had not been sent to prison for hurting her and was not sure if she had said he had hurt her. She was not sure but she might have been confused between DD and her father. She was not sure whether she was confused when she said FF had hurt her. She was also not sure whether she had said her father knew that FF had hurt her. She was asked about a variety of different names given by her to the

police (unidentified individuals) but could not remember any of these people. She remembered her auntie (EE) and her two children (W and X) but couldn't remember saying EE had hurt W or X like DD hurt her or that her grandfather had hurt another child in the same way as she was hurt. In terms of W, she knew who this was (EE's daughter) but couldn't remember when she had last seen her but it must have been years ago. It was years since they last spoke and she had no details to contact W on. She had certainly not seen or spoken to her since she moved to live with PK. She could not remember telling PK that FF had not hurt her. As to being taken to a field she remembered this from the ABE interview but could not remember saying it. She didn't have a clear memory of DD taking her to a field and it might be she had confused DD with FF but she was not sure.

Questioned on behalf of the guardian she said she couldn't remember if FF slept in the same bed as her; showed her his privates; or whether she had seen him naked. She didn't think this was the case and was not sure if he had touched her or hurt her. He never touched her 'flu-flu' [vulva/vagina] and she didn't think he touched anywhere else. She couldn't remember him ever playing with 'toys' with CC and he never played with toys with her.

#### CC

23. CC was produced by video link from prison under a summons. She had produced no statement for the hearing and had not given live evidence in the previous proceedings. It was agreed FF would require an opportunity to give instructions after hearing her evidence in chief. As such she gave evidence in two parts on different days. CC was forthcoming in her evidence answering all questions put to her.
24. She understood the issue was now around the need to consider the protection of a new child. She confirmed she had had no contact with FF since her arrest. She was asked about text messaging between herself and FF and remembered being previously asked about these by the police. She knew FF had *'fantasies about child sex and she had played into that'*. She was not proud of this but things had not progressed beyond the texts. She was asked about a specific text topic which had been sent to both DD and FF at almost the same point in time. She was pregnant with T at the time and the messaging related to a 'S' *'sucking her boob'*. This had been sent to both of them to please them and make them happy. She knew FF had an interest in child sex due to the things he had said during their relationship but could not give specific examples beyond him mentioning S or another child and being turned on. She was asked about abbreviations in the text messaging between herself and FF and agreed the use of the letter 'S' was a reference to S. But it was only ever texts and she was feeding a fantasy. There were also telephone calls. She didn't accept what had been said in the above text had actually happened. DD didn't know about FF but FF did know about DD. He knew because there had been an incident when he had seen an incriminating message on her phone from DD (an erect penis with girls pants around it). She was about 15 when she started having sex with FF and this would have been before 2010 but she was not aware of his sexual interest in children until around 2015. It was a gradual thing with him dropping remarks. It was in early 2016 she was aware DD had a sexual interest in children. She denied having a sexual interest in children herself, she had acted in the manner she had to please the men she was in a relationship with. She had been a victim of domestic abuse and told she was

not good enough unless she did what she was told. She acted in the fashion she did to maintain the relationships and was not proud of this. Although she claimed her memory was hazy she did recall an incident of sexual abuse when she had seen DD rape S. She was taken to FF referring to the 'boob' message as *'it being so hot'* but denied it had ever actually happened. She agreed in linked messaging at the same time DD was referring to S with respect to the same actions. Taken to later messages she agreed reference to 'Sxxx' was also to the child but couldn't think what the initials 'C P' referred to. The men had asked for pictures and she had played along but not sent photos. This was a fantasy. FF had been asking for pictures of S but she couldn't be 100% sure whether she had responded. She thought he wanted them for his sexual pleasure. She was referred to a message which referred to *'super glue'* and commented that they wanted pictures of S dressed in underwear or in nothing. She agreed she had sent photos to DD but couldn't remember if she had sent to FF. She couldn't remember if C P was *'cuckolding or child pornography'*. She agreed there were occasions when FF had shared the bed with her and S but this was not sexual. She did have sex with DD when S was in the bed. She was aware FF *'fancied S'*, he would say it was just a joke and then retract it but he would then come back to it. He led her on suggesting he wanted a relationship with her (CC). She talked about another child who stayed for a while and was a couple years younger than S. She was taken to messages that referred to it *'never being about hurting'* and another which used the word *'tighter'* but could not remember the context. A reference by CC to *'she'* pleasing FF more than CC was a reference to S. She talked about an argument on Boxing Day 2016 when FF had seen a picture on her phone (the penis photograph). FF had gone running to EE and DD had then turned up. She said she was not worried about giving her evidence and said she would have remembered if FF had physically abused S and she would tell 100% as there is a child who needs protecting. FF had discussed deleting messages, he would want her phone to be 'clean' and would ask for screen shots or would want to check the phone. Her phone was password protected and she did not think he knew the password. FF had known S all her life and she had no issues leaving S with him. She didn't think he would go further than fantasising. She had sent an erotic picture to FF but it was for his benefit alone. FF had been with her on the day she was arrested. There had been a call about the police and FF had *'freaked out'* and told her to delete everything and he ran into her house to collect his stuff. He made CC feel guilty for texting DD paedophilic content when she knew FF was interested in the same.

Questioned on behalf of the guardian she agreed there had been a few occasions when FF was in bed with her and S. FF might have shown S his *'privates'* but she did not notice. It was possible she had sex with FF when S was in the bed. She had seen DD touch S but was sure she had not seen FF do so. S might have come across CC's sex toys (vibrator) but this had not been used in sexual activity with DD or FF. She knew what a paedophile was and FF was a paedophile.

Cross examined on behalf of FF she confirmed she had not received any legal advice prior to giving her evidence. She confirmed she was eligible to apply for parole in 2024 and would apply if she had done everything she was required to do. It had not occurred to her that this evidence might help her application. She was examined as to the contradiction between her evidence and the findings of the criminal court. She claimed she had played to DD's fantasies but derived no pleasure herself. She denied conspiring to abuse T and was asked why she had pleaded guilty to this. She said this was on advice given the case against her. She



accepted she had been guilty of a gross breach of trust and had betrayed her children but not for her own pleasure. She had led both DD/FF into believing this. She agreed the reference to a trip to a field was linked to DD. She agreed she was cross/angry with FF who had led her on. She would always be angry with him for what he did and he could go to hell. She agreed she had lied to the police when first arrested. Everything she said in interview was false and self serving. She had sent pictures of her children. She had lied to the Family Court about her relationships and the messaging. She agreed she had opposed FF's application to set aside the findings notwithstanding the finding made against FF was not correct on her account. She had not opposed his application as she was angry. This was not about getting her parole. She had discussed a threesome with FF but it had not happened and she had never been on the 'Ashley Maddison' app. She thought the threesome idea was another fantasy. She had not had a threesome with a female with the tag 'sexybear' and the letter 'S' did not refer to her. It was wrong to suggest her relationship with FF started in 2017, it was when she was 15 and her sister heavily pregnant. She disagreed his reaction on Boxing Day supports his case that he was disgusted by what he saw. He went off the rails because he was jealous.

#### EE

25. EE was also summonsed and whilst it was envisaged she might have to also give evidence on two separate days it was possible to complete her on the single day. She was forthcoming in her evidence and answered without difficulty.
26. She was asked about her understanding of allegations said to have been made by two of her sisters against FF and as to a relationship between FF and her brother. She had little if any knowledge of the same. The information she had about FF's relationship with her sister was third party. He had admitted a one-night stand but no more. She had not been aware of the suggestion this had started much earlier in 2010 until after CC had been arrested. She had understood FF was giving CC emotional support and no more. As regards her own relationship with FF this was very on/off after he cheated. The relationship had continued in an effort for the children but both of them had *'one foot out of the door'*. She agreed herself, FF and their children had moved in with CC in the couple of weeks up to the Boxing Day incident following a disagreement with FF's parents whilst they were living with them. They had then moved out following the situation with DD (the penis photo) but also after CC had claimed she had a sexual relationship with FF. EE had a gut feeling about this but her brother had told her he felt this was CC trying to split her and FF up. As regards the photo/message FF had claimed to have seen, she had understood it was related to DD's daughter. She didn't recall how he had come to have the phone but FF had told her and her brother about it by which time the phone had disappeared. He had not said it was inappropriate but this was the sense she had from what was being said. FF had not described what he had seen. She had been concerned and that is why she had wanted to see the phone. She had a gut feeling but was unsure if this was FF trying to split up DD/CC. When taken to FF's description of what he had seen she told me this didn't ring any bells with her. He had not told her the detail but it was something inappropriate. She left and he stayed. After this he would visit to see the kids and they would sleep together sometimes. EE didn't know what cuckolding was and was not interested in threesomes or S&M. She was aware FF was interested in threesomes and he had tried to persuade her but she wasn't comfortable.

Something happened on one occasion and she slept with a man but it didn't go as FF wanted. There had been no contact between her or W and S since the Boxing Day incident. The first she knew of the allegations was when she had seen a text message, she had tried to speak to W but she was distressed and wouldn't talk. W is now seeing someone independently. She wanted to believe W as to her allegations but W has had a lot of issues going back to then which are felt to be linked to the allegations. She didn't know where W would have got this allegation from if it were not true.

Questioned on behalf of the guardian she agreed she felt manipulated by FF and was not aware he was sleeping in a bed with S or had an interest in children.

Cross examined on behalf of FF she denied allegations S had made about her care of her own children calling them '*pure fantasy*'. She could only think these false allegations arose out of the trauma she had suffered. As to the allegations against FF all she knew were that these were sexual in nature and had been made by S. She had not learnt this from AA. She had known about the plan to speak to W about safety work but she had not been directly involved. During this time W had made no allegations against FF. She spoke about contact between FF and their children. At first W had given the impression that she was enjoying the contact but it was not going well and she would say things about not feeling comfortable. She agreed FF had said he had not been having contact due to S having made allegations. W had asked questions but she had said she did not know the specifics. Subsequent to contact ending W had asked about updates, this had been both before and after W made her allegation, but EE's response had been non-committal. The last contact had upset W when Z could be heard in the background. W's troubling behaviour has been going on for years with outbursts and defiant behaviour. It has included telling lies but this was not significant until a few years ago. She was asked about an occasion when W broke her elbow, this had been when she was around 4 years of age.

EK

27. She told me she has a sister relationship with S. S has now calmed down but there used to be issues with her behaviour. When the allegations were made against AA she hadn't known who he was. S had drawn the picture at [N2680] but she (EK) had added the lines between the two bodies and written the words on the picture in accordance with what S had said. S didn't give the impression what she was describing was wrong. S had said FF was '*nicer*' than DD.

She confirmed the family had received no preparation for what to expect when S was placed with them or how to deal with the situation which then arose. She agreed S drew comfort from her being there when she was going to bed and agreed that the effect of S making allegations was to cause EF to remain with her longer. She was asked why S gave her account in '*instalments*' and agreed she obtained comfort from EF being there. She agreed S described FF as the '*nice one*' but there was no explanation as to why this was the case. She explained the process of note taking and how these were conveyed to her mother. S was not upset when talking about this. She was taken to a specific note [N1436] from April 2018 and agreed this was made in different circumstances in that she had started the conversation with S; S had made up a story; she had asked whether S was telling the truth and she had ended the conversation. The conversations lasted a

significant time (up to 3 hours) but there were big breaks in what she said and the notes were the headlines. She didn't know if it was a coincidence that the allegations started after S's contact with her father when among other matters he had mentioned CC being in prison. She agreed she had been told about an allegation against EE which she felt was quite fantastical. Movie night was a reward for good behaviour. She did link these things with being rewarded but EF didn't recall saying 'well done' when things were said.

Questioned on behalf of the guardian she said she didn't know who DD or FF were and didn't know the background. She did her best not to question but just record. Her recollection today was limited and her statement at the time is likely to be correct. She hadn't prompted S to say these things or put things into her mind.

PK

28. She confirmed the lack of training prior to receiving S into her care. She had known there was a need to write things down and that they should watch out for unusual things said or done and record the same. They had not been told how to make notes. EF was dyslexic/dyspractic and this was have impacted on her ability to keep up with S. She had kept the social services updated at all times but she had destroyed some original notes as she feared they would fall into the wrong hands. She now understood the approach they had taken was inappropriate but they had received no training and they were out of their depth. She gave evidence about an occasion when there had been a question as to whether S was telling the truth. She spoke of how it is easy to tell when S is lying. As to FF being the 'nice one' she commented that her understanding was that DD was quite violent and would hit S whereas FF was more gentle and did not hurt or smack her.

LG

29. She confirmed she has no previous experience of cases involving sexual abuse when she became involved with this case. Given the passage of time she could not remember the work, if any, undertaken with S prior to the move. S knew later on that her mother was in prison. She had settled in well and presented as resilient and unphased. She felt PK had been updated when new information was received about the case but could not remember when they were first told about the sexual abuse issue. She accepted at the time she did not have the experience to hold a case with this level of concern. She did ABE training after this case but had known previously not to ask leading questions. She understood a number of criticisms levelled against her approach. Anything received from the family was sent onto the police. She confirmed there was no knowledge as to a number of the names supplied by S. She did not remember being given a diary but felt she had received a piece of paper.

PC Gale

30. He agreed CC had initially denied all the allegations but when evidence was put to her she had 'gone no comment' in interview. They had seized devices but there was nothing to connect DD to FF. He had been involved in interviewing FF under caution and FF had provided answers to questions. He had given PIN access to his devices. He had not provided FF with the detailed messaging before questioning him on these messages. He agreed it might have been fairer to have given the

messaging to FF in advance. He confirmed FF's computer had been factory reset in the period between CC and FF's arrests. He confirmed that the messaging between FF and CC was found on CC's device on the deleted part of the device but there was no record of the same on FF's phone.

DC Armstrong

31. She confirmed S had spoken of being happy with FF and denied he had hurt her. He did not make her feel sad and made her feel happy. There had been further questioning of S due to further allegations being made to PK.

GG

32. She told me it had been a shock when the social worker turned up and she was told about the findings made against FF. She had previously heard about there being allegations but she had been told the police had sent a letter confirming there would be no further action. The attendance of the social worker was the first she had heard about findings being made. She had wanted to know what the accusation was and from who. She was told it was family member from his ex-partner's family who had accused multiple people. By the end of the conversation she was convinced the allegations were not true and that the police had looked into it. She was clear the allegation was made by a child and had understood the only evidence was what the child had said. FF had told her about being interviewed and receiving the letter from the police. She was shocked and initially felt this was a mistake [i.e. the allegations were not correct] as the criminal side had found nothing. In respect of updating her views she wanted to hear all the evidence before making up her mind and did not want to simply rely on what FF might tell her. They had spoken about the text messaging but she did not understand what they meant and they were heavily redacted. FF's explanations appeared plausible. He explained this was about a threesome and the Ashley Maddison app. GG confirmed she had used the same app once with FF when they had been joined by a third party male. She explained the circumstances in which a process server had attended her property and searched her bedroom. FF had told her about the one-night stand with CC which he said was a mistake which he regretted. He didn't say he slept in the same bed as S. He said words to the effect he was disgusted by what had happened. She was aware of the allegations made by W. FF had denied S's allegations and said W was lying because of Z as she did not want FF to see Z if W could not see FF. She was confused by the text messaging but after speaking to FF she could see where he was coming from. She still felt she wanted to hear the evidence before making her mind up.

FF

33. FF detailed his early life experiences of being physically abused at home and being placed into a children's home at a young age. He spoke of being 15 and meeting a 13 year old girl in a chat room and moving to live with her and her mother away from London. He had confided in people there about his experiences and they had called the police. After being in a 16+ unit he had lived with the family for about 1.5 years. It had been a good experience and he felt he had been helped by the child's mother in making progress in his life. He spoke of his first romantic relationship being with EE when he was 18 and she 16. This had gone well at first but deteriorated and he had slept with someone at work. He spoke about his

sexual relationship with CC. This had arisen by way of an act of revenge after EE had cheated on him. This was in January 2017 and it was untrue to suggest they had slept together either in 2010/11 or 2015. His relationship with CC lasted between January-April 2017. He had led CC on with false promises about setting up a family together. The last time they had sex was in November 2017. He told me that he had limited knowledge or dealings with DD. He did not know DD had a sexual interest in children. He denied abusing S and said he was never left alone with her. He spoke about the messaging and told me he had encouraged a threesome with CC and had used the Ashley Maddison app. This was what he was referring to in the messaging. The letter S was a reference to the tag name of the person who joined them. As to W he explained about how contact had been going well including with W but it came to an end when W became upset when it was apparent Z was also in the room. There is no truth in the allegation made by W. He could not explain why the allegation was made save that it was related to jealousy around contact issues.

**34.** FF was subjected to detailed forensic examination. I will summarise the key components here but will return to detail in my analysis below. He spoke about his relationship with S being a uncle relationship in which he loved her like an uncle and described limited physical interaction. He was horrified when he was arrested for raping her. He had first become aware there might be a suggestion CC was a paedophile after her arrest. He dealt with the Boxing Day argument and explained how he had taken CC's phone to check it when he came upon the photograph in question. It was a picture of an erect penis with small pants. He had spoken to EE and her brother and said he was uncertain if it was adult or child's underwear. His concern was that they were small pants. EE's account of what he said was false as DD didn't have a daughter. They decided to leave due to the concern about this. He had told EE what he told the Court. He later moved in with CC between January – April 2017. He had accepted CC's explanation about the photo and hadn't understood he was seeing something paedophilic. He noted he had reported being told by the brother that CC/DD had sex with S in the bed. He thought this was '*probably not a good thing*' and inappropriate. He didn't understand the question when it was put this would be sexually abusive. He couldn't remember if he spoke to CC about it. When asked he agreed this might have been to sexualise her and distort her boundaries. When he moved into the house he wasn't thinking about the photo or S being in bed with DD/CC, instead he was thinking about being homeless. He agreed these were the first matters in respect of which he had been arrested and knew things were serious. In police interview he was embarrassed and was not forthcoming. He and CC did interact sexually by videocall. He suggested he was not forthcoming entirely about the threesome due to embarrassment and due to worry as to the further questions his answers might lead to. He denied the suggestion of a threesome was a lie to cover up the truth of abuse.

**35.** As noted above there was then a pause in evidence due to FF feeling unwell.

**36.** When cross examination resumed FF wanted to clarify that he first slept with CC in December 2016 and he was not 100% sure if the Boxing Day photo had come from DD. He told me he was finding it hard to recall events and was mixing things up with subsequently obtained information. He was asked about his interviews and the messaging. He repeated embarrassment had impacted on how forthcoming he was. He made clear the references to the 'boob' text and 'S' were

to the threesome. He didn't want to make this clear before as *'back then he didn't realise how serious this was'* and was embarrassed. It wasn't because he had made this all up since. The messages were not about abusing S. He was then asked questions as to the detail of the meeting with 'sexybear'. He explained how this had come about via the Ashley Maddison app and gave answers to various questions around the process of locating someone for this threesome. He detailed the events of that threesome which was more about foreplay than actual sex. 'Sexybear' had arrived around 10-11pm and left around 7-9am the next morning. When asked for details he said he thought her real name was Sarah. He understood S was being cared for by the neighbour that night. He was then asked about subsequent messaging which he had suggested related to 'sexybear'. He denied this did not fit with the individual he had described and said it made sense to him and that he had been both messaging and telephoning CC and so she understood what he was sending. He suggested CC was now calling him a paedophile because she hated him and felt if she could not be around children then nor should he. When asked about the similar messaging to DD (the 'boob' message) he felt CC was stealing ideas they had and putting it into something disgusting. He denied he had seen S sucking CC's nipple. He interpreted 'Pref Under A' as preferably underneath and explained the error was due to a typing error. He was asked about the appearance of sado-masochistic elements to the messaging with CC but was unable to shed much light on these entries. He disagreed he was a sexual sadist. He disagreed he had asked for a photo of S and got upset when CC did not provide the same. C P was not child porn but cuckolding porn and threesomes. He agreed a reference to 'Sxxx' was to S. He explained one message should have read 'happier' whereas 'tighter' had been wrongly typed and that this had not been confusing for CC due to the fact they were also in telephone communication at the same point in time. He denied sexual abuse of S and that the messages were describing the same. He was asked about his knowledge of computers and deleting files. He denied inappropriate sexual activity with the child into whose home he moved when younger or to the two sisters of CC/EE who were said to have made allegations. He was asked about the factory reset on his computer but denied having done this to cover his tracks. He denied W's allegations.

Questioned on behalf of GG he agreed they had experienced a threesome through the Ashley Maddison app and gave some details of the same.

Questioned on behalf of the guardian he made clear he had not abused children and had no interest in doing so. He didn't know why S would have made allegations against him. He didn't think S and W had *'put their heads together'*. He agreed CC was a paedophile but he was not lying about the threesome. He was disgusted and upset about the allegations. He was not a paedophile.

### **My Analysis of the evidence by reference to the allegations**

**37.** I have to answer two essential questions:

- a. Does FF have a sexual interest in children (Is FF a paedophile)?
- b. If so has FF acted on those interests by sexually abusing either or both of S and W (Has FF abused the children in question)? In relation to this

question I am asked to determine specific acts of abuse as set out in the threshold above.

**38.** I intend to consider each point in turn and will set out my analysis accordingly.

*Is FF a paedophile?*

**39.** I have without hesitation reached the conclusion that FF is a paedophile. I have found the evidence entirely persuasive, indeed compelling. I have weighed up all the evidence with care and approached aspects of the evidence with caution but have found the evidence to be clear and cogent. At the heart of my conclusion are very clear findings as to messaging created by FF and which is telling against him. On any reasoned and balanced assessment this messaging can lead to only one conclusion. But these points are also supported by other aspects of the evidence which, although I might have been more cautious reaching conclusions upon them alone, fit closely with the surrounding evidence and support the conclusion I have reached. I have naturally weighed up with care the points which are said to have balanced against such a finding. I have to say such evidence is scarce on the ground and is at best ambiguous as to the direction in which it points. I have indeed struggled to identify any evidence (beyond FF's denials) which objectively and reasonably casts doubt on my finding. For reasons which I give below I gave the most careful consideration to the evidence given by FF. I found his evidence unimpressive and at points incredible and wholly unreliable. To make sense the surrounding evidence had to be pulled out of shape to fit with his account. I simply did not believe FF for one moment as to his evidence concerning this allegation.

**40.** When considering this first question little if anything turns on the actual allegations made by S or indeed the perceived failings in the process of obtaining those allegations. In my assessment this question substantially finds its answer in an assessment of the messaging between CC and FF. In simple terms if S had never made allegations against FF the messaging would remain damning against him (insofar as the question is: Is FF a paedophile)? It is what is known about CC and DD and what has arisen out of the S's allegations that has placed a focus on this messaging. But in my assessment once considered, the messaging speaks for itself.

*The messaging between CC and FF*

**41.** It was in the context of the messaging that I was asked to consider FF's case as to the threesome with the so-called 'sexybear'. The relevance of this was clear and significant. As FF commented in his own evidence 'sexybear' could be his 'saviour' were she available and able to confirm his account. This is because so much of the messaging associated with 'S' is plainly sexual in nature and conveys a sexual interest in physical interaction with 'S'. If 'S' is a child then a conclusion as to paedophilia is almost inescapable. However, if S is an adult the case potentially turns on its head.

**42.** It was therefore plain and obvious that the Court would have a keen interest in hearing what FF had to say about 'sexybear'. Having heard his evidence I was wholly unpersuaded I was being told the truth. I found the evidence on this subject incredible and beyond belief. My reasons are as follows:

- FF failed to engage with the police on this subject. I entirely agree with the Applicant's submissions in this regard. It was plain as could be that he was facing the most serious allegations when interviewed and that the police were placing a very concerning interpretation on the messaging between CC and FF concerning 'S'. Alive to this issue FF failed at any point to explain that 'S' was an adult who took part in an entirely consensual and legal threesome. I note and agree that this must be understood in the context of FF being interviewed twice on the subject. It is clear from his evidence that the 'threesome' was something he continued to remember and yet he wholly refused to provide the account that would meet the challenges put to him.
- This begs the obvious question as to why he would fail to defend himself as he sought to do before me. I listened to FF's explanation that this was about embarrassment and the potential that it might get him in deeper trouble with EE. I found this explanation unsatisfactory. Most importantly FF had by that point in the police interview travelled far beyond matters of simple threesomes in the information he provided to the Police. It simply does not make sense to say that he did not identify 'S' out of some sense of embarrassment. He had already stated an interest in a threesome to the police. On what basis could confirmation of achieving the same be so embarrassing as to get in the way of giving an exculpatory account? It is implausible to claim he did not give a fulsome answer because to do so would have led to further questions given that not to do so inevitably led to problematic conclusions being drawn.
- But whatever view I take about this historic failure to provide information it remains the case that FF's actual evidence before me fell far short of being persuasive or plausible. When he did in fact give his explanation it was simply unbelievable. It may be that this factored into his reticence in giving a similar false account to the police.
- In the context of this evidence being of crucial importance and in the context of FF being an intelligent individual who knew this would be a subject of enquiry (it is his alibi after all) it is bewildering that the account I was given was so poor and riven with gaps. Having listened to FF's account I was left with the sense I was not being given a remembered account of an event at which FF was an active participant but rather a theoretical account of how one would arrange a threesome and how it might thereafter proceed. FF on being questioned gave me no confidence he was recalling an event in which he had taken part. I agree with the Applicant that there was a strong sense of the account being made up as he went along. FF variously spoke of 'what one would do'; he seemed to have no recollection of the stranger to the threesome despite this being something he had worked on for some period of time and despite being in the company of 'sexybear' for about 10 hours; having intimate relations with her and eating breakfast together before she left. I note it was clear there was no suggestion of his memory being affected by either drink or drugs. FF could not even remember what colour 'sexybear's' hair was. Courts often talk in terms of the an account having the ring of truth. FF's account of this event did not have anything of the sort.



- Furthermore this account required various messaging which self-evidently did not relate to 'sexybear' to relate to her given that the reference was to S. FF messaged about missing the times CC and 'S' *'layed (sic) either side of [him] at night'* [J231]. FF maintained this was about 'sexybear' despite on his account this only happening once. In the same short conversation he wrote of *'You know when last time woke up cuddling S in the morning with you watching over...felt like it meant something, felt like home'*. Again this simply did not make sense in the context of 'sexybear' whereas it did in the context of S. Elsewhere at the same time as discussing the 'boob' text FF wrote *'what did you mean by earlier when you said maybe I could do something Friday with S'* [J335]. Again this was referenced to 'sexybear' but simply did not fit with the timelines of her suggested involvement with the couple. Elsewhere FF wrote of CC holding S like a baby. The obvious point was made how could this be CC holding another adult. In simple terms whilst one might give the benefit of the doubt to an isolated text which might be out of context in this case the reliance on 'sexybear' as 'S' strained the evidence beyond breaking point.

43. I therefore reached the clearest conclusion that 'S' simply was not a reference to an adult participant with the tag 'sexybear'. This was simply untrue. Rather I am satisfied on the evidence that 'S' is the child S referred to within this judgment.
44. That clear finding has obvious and significant consequences for this allegation. As previously noted FF accepts much of the messaging about 'S' was sexual in nature and reflected sexual interest on his part. That this is clearly S leads to the irresistible inference as to paedophilic interests. For the avoidance of doubt were FF to have denied the messaging was sexual in nature I would have reached the conclusion it was. It is plain beyond doubt that S was a source of sexual interest to FF. Perhaps the most obvious illustration of this is the 'boob' messaging in which FF is plainly writing about this 'being hot' and finding what he has seen/been told about it sexually exciting. If as is plain this is about 'S' (as FF agrees it was albeit on the basis 'S' was sexybear) then FF is describing being sexually aroused by S in a sexualised setting sucking her mother's breast. Boiling this point down to the bare essential I agree the messaging is in a sense referable to a threesome, in that it included three individuals, however the third party to the suggested act is a child, S not an adult 'sexybear'.
45. I do not intend to weigh this judgment with an exhaustive summary of the many messages which prove this point. However, I do wish to deal with two further messages. The first is at [N1313]. In this message FF is plainly upset about not receiving a picture he has requested. He wrote *'I'm a bit disappointed that you knew about getting pic but still let her go to sleep with something that must be super glued to her body and non-removeable'*. I am in no doubt this was FF wanting a picture of S as CC stated in her evidence and becoming upset when one was not provided. I am satisfied the reference to 'something being superglued' was FF criticising CC for not providing a suitable intimate picture of S in a state of undress and rejecting the idea this could not be done (as she was said to have fallen asleep clothed) by referencing in a sardonic way that the clothing must have been superglued to be non-removeable. This was FF seeking to coerce CC into complying with a plainly paedophilic request for a sexualised picture of S. There was no suggestion this message related to 'sexybear'.

46. The second message is the one that reads: *'You know 'Sxxx' looks 10 times tighter than [...another child...]' from what I saw, we was maybe too nice what do you think'* [J232]. I reject the notion that 'tighter' was a typo for 'happier' as suggested by FF. This is a fanciful explanation for what is a transparently worrying message. I frankly cannot see how one would mistype 'tighter' for 'happier' and it is striking this suggested error was neither corrected by FF or picked up by CC who received the message. She appears to have engaged with the message in a manner which supports my assessment. I find this was a message seeking to compare the genitalia of two pre-pubescent children. I will return to what, if anything, this tells me about actual abuse later in this judgment.

47. Before moving on I would wish to make three points:

- a. My rejection of the account around 'sexybear' and the threesome is not an out and out rejection of FF's suggestion of an interest in being involved in such an encounter. Indeed, I am satisfied that FF does have such an interest and he raised the same whilst in relationships with EE, CC and GG. I am satisfied FF was somewhat persistent in this regard but it did not eventuate in an actual encounter in the case of CC. In the case of EE the position is somewhat confused as I understood EE to accept there had been an encounter but that it had not gone as FF expected. This is confirmed by FF's depiction of that encounter as the occasion on which EE 'cheated' on him. Finally I entirely accept the evidence of GG of an actual threesome involving FF and another man. I am left wondering whether it is this factual event which FF has utilised to found his untrue account involving 'sexybear'
- b. I draw nothing of relevance to the allegations I have to decide from FF's somewhat unconventional sexual interests (excluding his interest in children). The fact he was seeking a threesome has absolutely no bearing or probative value to the allegations in this case. Further, whilst I understand the points put by the Applicant as to other aspects of the evidence which touched upon FF's expression of an interest in sadistic sexual activity I have ultimately placed no weight upon these matters. I am not satisfied they are in fact probative of the actual allegations placed before me.
- c. That leaves me to confirm that I have put these issues out of mind when resolving the key issues in the case. It is not my role to engage in social engineering or to make findings which cut across the right of individuals to freedom of expression (to include freedom of sexual expression). I can confirm I have approached the case in such a manner. In the simplest of terms if all this case was about was the threesome involving FF and GG then I would not consider the Applicant has a right to involve itself in this family's affairs. But sadly it is not simply about that event.

### The Indecent Images

48. I make a related finding that FF did indeed have indecent images of children upon his phone as a result of his sexual interest in children. There was no issue before

me that such images were found; that they related to children, and; that they were indecent. The only issue was as to whether they had found their way onto FF's phone without his knowledge or intent. Whilst I accept there is the potential for such material to be downloaded accidentally as part of a cache of information or otherwise I do not accept this was the case on the facts.

49. I am bound to draw on my assessment of the messaging above in considering this point. FF is on my assessment a paedophile and images of children were found on his phone. The finding of paedophilic interests is a significant factor when considering whether the images were downloaded accidentally or not. However a further supporting factor is the evidence I received as to (a) FF's computer being 'factory reset' in the relatively short period between CC's arrest and his own arrest; (b) the fact that whereas CC's phone contained a history of messaging between herself and FF, there was no corresponding message history on FF's phone; (c) that CC gave evidence (which I accept) of FF making the point that she needed to delete communications between the two of them; (d) that CC gave evidence (which I accept) of FF's response ('freaking out') when he understood the police were looking to speak to her, and; (e) that CC gave evidence (which I accept – and see discussion above re 'super glue') of FF seeking pictures of S.
50. I am on balance satisfied that FF has sought to expunge his devices of evidence of his communications relating to his sexual interest in children. The images found represent a likely residue of information previously found upon his devices. I am confident FF sought to equally remove these images but for reasons which I can only guess at failed in this regard.

*The events of Boxing Day*

51. Whilst on this subject I wish to consider the events of Boxing Day (the DD photo). It is suggested that FF's response to seeing this photo was one of disgust and this provides an insight into his distaste as to sexual abuse of children. I disagree. Although FF may have previously sought to have made such a point, in his evidence before me he equivocated as to whether the image was in fact indicative of child abuse at all. It is difficult in that context to take from the event a clear expression of disgust as to the same. But, and in any event, having regard to all the evidence I have reached the conclusion that this event should be assessed in a different way. I have to say I found the evidence of FF surrounding how he came to check the phone most unlikely. He suggested the phone was checked in the sense of a joke to embarrass CC by looking to find information as to DD. However, by the end of the evidence FF agreed he had probably started a sexual relationship with CC by that date. I put to one side the suggestion that this started much earlier. I consider it much more likely FF was seeking to check CC's phone for his own reasons and did come across a photo which was very evidently improper in suggesting paedophilic interests. In my assessment FF's emotions were not disgust but rather a likely combination of upset with CC (that she was engaging with DD) and concern (that CC was creating a situation in which FF might end up vulnerable – as he eventually did when her messaging was discovered). As the Applicant contends, and I agree, this was part of a picture which plainly fixed FF with knowledge that the household into which he then moved included worrying evidence of child abuse (by this I mean evidence that CC's boyfriend was sending pictures of his penis and children's underwear and the information which

FF received that DD and CC were having sex with S in the bed with them – a point which FF appeared to struggle to see as problematic).

52. Finally I note the evidence of CC that in her opinion FF is a paedophile. I will return to my assessment of CC below but before moving on I would note this as a further supporting feature.

***Has FF abused S?***

53. On balance I am satisfied FF has sexually abused S. On the evidence it is difficult to provide a clear and full account of the nature and forms of abuse but on balance I find he has on at least one occasion carried out an act of:

- (i) masturbatory or quasi-masturbatory actions in her presence;
- (ii) sexual activity with CC in the presence of S [on both occasions with S conscious of his behaviour];
- (iii) an act of oral sex on S, and;
- (iv) an act which was penetrative of S's vagina.

I cannot and need not go any further than this. The essential components of this finding are that:

- (a) FF is a paedophile;
- (b) FF knew CC was a paedophile;
- (c) FF had a sexual interest in S;
- (d) FF communicated his interest in S to CC;
- (e) CC was willing to facilitate the abuse of S;
- (f) CC used S to keep and please her male partners;
- (g) FF communicated in such a manner as to encourage CC to facilitate his abuse of S;
- (h) FF had the opportunity to abuse S;
- (i) FF and CC messaged with a view to abusing S;
- (j) FF and CC messaged conveying the impression they had abused S;
- (k) S alleged she had been abused by FF
- (l) S has been shown to be a witness of truth as to abuse suffered by her;
- (m) Concerns as to S's unreliability/contamination in the process have no bearing on points (a) to (j) above which irrespective of (l) provide a sound basis for a conclusion of actual abuse

**(n) A combination of all the evidence supports the finds as to the nature of the actual abuse**

*(a) FF is a paedophile*

54. This follows from the analysis above.

*(b) FF knew CC was also a paedophile*

55. It is quite clear to me that FF knew of CC's own sexual interests concerning children. I have referred to the Boxing Day photo and my finding that FF was aware at that time that this was wholly inappropriate in its content. I note it was the purchase of children's underwear on ebay that first led the police to DD. I have also referred to the information supplied to FF by CC's brother about DD and CC having sex with each other whilst S was sharing the bed with them. I also accept the evidence of CC that by 2015 she was aware that FF had an interest in children as a result of things he had said to her. Frankly though whatever view I took on the above it is clear beyond doubt that by the time FF and CC were messaging each other (in the manner set out in the preceding sections) they were each fully aware the other had a sexual interest in children.

*(c) FF has a sexual interest in S*

56. It is clear beyond doubt that FF expressed a sexual interest in S. See the messaged in which he stated he 'fancied' S and in which he stated he wanted her to 'like his c[ock]' [N1475].

*(d) FF communicated his interest in S to CC*

57. This is evidence from the messaging on multiple occasions [see preceding paragraph for examples]. The evidence is replete with dialogue which can only be understood as FF's expression of paedophilic interest in S. I have already mentioned the reference to the 'tighter' message above. It is clear that not only did FF and CC understand each other's sexual interest in children but FF freely messaged CC as to his interest in her daughter and CC at no point materially sought to dissuade him from such messaging and views. That CC understood FF's interest is clear, e.g. message at [N1476 / 104] 'has the thought of S got you going' after FF commences a plainly sexual dialogue.

*(e) CC was willing to facilitate the sexual abuse of S*

56. This flows inevitably from the criminal plea and the evidence underpinning that sentence. By her own admission CC accepts she allowed S to be abused and facilitated the same. It is relevant that this was abuse of the most gross form and took place in CC's presence. The relevance is that there appears to have been no ceiling on what CC would allow to happen to her daughter to have her own needs met.

*(f) CC used S to maintain her relationships*

57. In this respect I do not accept CC's evidence that her sole goal in permitting abuse of S was to keep her partner happy and that she drew no sexual benefit from the same. I consider by this evidence CC was distancing herself from the reality of her actions. I do not intend to go beyond the clear conclusions reached by the sentencing judge as set out earlier in this judgment. For my part I do not reject the notion that part of this behaviour was CC allowing S to be abused to maintain the relationship with DD. She understood DD's desires and treated S as a commodity that could be used to keep him. CC was willing to sacrifice her daughter to achieve this goal. CC gave clear and it seemed compelling evidence as to the interaction between her own needs and how these could be met by allowing the abuse of S.

(g) FF communicated in such a manner as to encourage CC to facilitate his abuse of S;

58. I find there to have been similar aspects in the relationship between FF and CC. On his own evidence FF appears to accept that he 'strung CC along' by painting a future picture of them together as a family. I have already referred to the message about waking up and it feeling like home. There is within the evidence significant support for the position that contrary to his actual feelings FF was allowing CC to develop a sense of emotional dependency on him. This might aptly be described as a form of grooming but for the fact that CC was already more than willing to permit her daughter to be abused. One can see FF taking an approach which varied between encouragement and bullying/coercion. The message about the clothing being super glued is at the bullying end. It is difficult to convey in a judgment but my reading of the messages paints a clear picture of FF by a mix of methods pushing and coaxing/encouraging CC towards an ultimate point at which S might be available for him. As is plain from the previous section CC was in many ways an open-door to such pressures and it was likely she would facilitate the same to preserve a relationship.

59. In this regard I draw support from what seems to me the clear evidence of the emotional connection felt by CC towards FF. This is not simply a case of CC being 'strung along'. It is clear to me she was placing some emphasis on the potential for this relationship to her future and this explains in part her strong antagonism to FF now. Within the later messaging from November 2017 one can see her feelings about being let down writ large.

(h) Opportunity to abuse S

60. I am persuaded FF had the opportunity to abuse S. I bear in mind FF's evidence of a very hands off relationship with S. When questioned as to the level of physical contact with S he portrayed a situation in which at most he would allow her to hug him but no more. This evidence stood in stark comparison to the messaging evidence in which FF portrays a much closer level of emotional bond to S in terms of his feelings for her and his wish for family life together. The messages culminate in two message referenced above in which he writes as to 'waking up cuddling S' and 'CC and S laying either side of him at night'. These are explicit and clear accounts of sharing a bed with S. They are supported by the evidence of FF in which he confirmed the limited sleeping arrangements in the property (2-bed) and the fact that S shared a bedroom with her mother. It is also supported by CC's evidence of a bed being shared. I bear in mind that these were the arrangements

which were in place when DD shared a bed with CC. I find they continued / were equally in place when FF shared the bed. I do not accept the notion that S would sleep on the sofa.

61. Of course it is not a requirement of such abuse that FF shared a bed with CC and S although that it is a plain opportunity. I accept the evidence of CC that S was left with FF and that she had no issues with doing so. As with the other parties I noted her visual response when this point was made. However I do not consider the smile she gave was one showing her taking the opportunity to get even with FF. Rather it was simply the reality of the consequence of saying she had no issues with leaving her daughter with a man she knew to be a paedophile. It was an unconscious response to the same.

*(i) Messaging which suggests **future** abuse of S*

62. There are a number of text messages which can only be understood as amounting to consideration of future abuse of S. I appreciate these can be said to amount to fantasy but this does not change the point that this relates to prospective abuse in the minds of CC and FF. This is what he/they would like to do or indeed on occasion appear to be planning to do (e.g. talk about organising a bathing session so that FF could voyeuristically look at S naked; the message asking about doing something with S on Friday; a message that '*S is like a bit on the side and a c. To watch us*' [N1475] followed by '*wish you would give her milk*').

*(j) FF and CC messaged conveying the impression they **had** abused S:*

63. In my judgment a reasonable assessment of the messaging demonstrates to the necessary standard that FF went beyond fantasy and proceeded to actual abuse of S. In this regard I have been required to take a sophisticated approach to the evidence given by CC. For whilst CC was clear in her denunciation of FF as a paedophile she was equally clear that the engagement with FF was at a wholly imaginary level in which she sought to fulfil his fantasies. She denied thoughts had at any point turned to acts, at least within her own personal knowledge.
64. This contradiction is one with which all parties have sought to grapple. Importantly for FF, whilst he asks me to reject CC's evidence in total as the attempted revenge of a wounded ex-partner, he alternatively argues that even if I were to accept her evidence as to the messaging then I should consider myself bound to treat her as a credible witness as regards all her evidence and thus reject the allegation of actual abuse.
65. As a matter of fact CC is a self-confessed paedophile who has been sentenced on a guilty plea of offences of the most serious abuse of her daughter and plans to abuse her baby son. It may be properly said that as a witness of fact she should be approached with the upmost care. I agree.
66. Furthermore she has shown (perhaps unsurprisingly) the willingness to shape the evidence to her best advantage. I note the manner in which she engaged with both the criminal and care proceedings and how she lied in an obvious attempt to exculpate herself. This position continued until it was wholly untenable at which point she went 'no comment'. Throughout her approach was geared towards protecting her own interests and showed no residual recognition of the

benefit to S, even at a late stage, of being honest as to what had happened. I appreciate she pleaded guilty to the offences but as she pointed out this was on advice and in any event this would appear to be a case in which she and DD were caught 'red handed'.

67. It can be seen (§52) that I added CC to my conclusions as to whether FF is a paedophile as a supporting feature. But it can also be seen that I would have reached this conclusion whether or not CC appeared to give evidence before me. The available evidence was clear.
68. So how is it that I resolve the dichotomy between CC's evidence as to fantasised abuse and actual abuse? In simple terms it is because I find CC felt able to confirm the reality of the messaging as paedophilic in nature (i) without harming her own position whilst (ii) obtaining pay-back against FF. I agree she harbours deep resentment against him but the messaging allowed her to activate this without any need to falsify an account. She could simply rely on what she knew had transpired to obtain this outcome. As with FF the alternative would have been to seek to create a false narrative around plain and obvious messaging. She had no need to stretch the truth to achieve this goal and I find from her perspective honesty on this aspect of the case is likely to come without any perceived material costs.
69. The distinction with the issue of actual abuse is that an admission in this regard would be potentially damaging two-fold. First, it would require her to further confront the level to which she went in abusing S to meet her own needs. I have little doubt CC has now settled on an internal narrative in which she is also a victim (which to some extent she may be but it pales in significance when once considers the abuse of S) of the men around her. In this narrative she continues to equivocate as to her responsibility seeing the abuse of S as being part of DD's sexual interests (but not hers) and in which she was simply feeding a sexual fantasy. To accept a similar pattern of actual abuse occurred with FF would be problematic. Secondly, though is the fact that CC was not sentenced for abuse involving FF. To accept the same now would not only likely impact on her hopes re parole but might open her to further prosecution. Whilst I appreciate the evidence from CC that she had not taken legal advice as to her evidence it seems to me a reasonable inference that she would be able to distinguish between the risks of admitting to thought-crime with FF and actual crime with FF.
70. So I am left with an assessment of a witness whose honesty has to be approached with care and has a continuing interest in downplaying her activity whilst at the same time a possible interest in partial honesty which fits with her existing narrative and which incidentally can be used to hurt someone she holds strong negative views against. My assessment is as set out above. In reaching this conclusion I have reflected on the evidence of the messaging which paints an equivalent picture against CC as it does against FF although it is perhaps only right to note that FF appears to more proactive of the couple with CC as the facilitator of abuse.
71. The net effect is that I do not feel inhibited in making a finding of actual abuse by the fact that I accept CC's account of FF as a paedophile but not an active one.



- 72.** I then return to the actual messaging in this regard which is clear and I consider damning. I will deal with some specific messages below but a common point has to be firstly made. This point harks back to the threesome debate. It is important to be very clear that FF was not submitting the messages related to 'sexybear' in respect of a planned or proposed meeting but rather they related to an actual threesome that took place and involved sexual intimacy between the participants. This acceptance and this narrative was it seems to me a consequence of the messaging which requires an explanation based upon an actual encounter. The messaging did not lend itself to an account based upon a failed attempt to procure a meeting or a fantasy unenacted. This poses a real problem for FF once, as I have, I reject the notion that S is 'sexybear' but is in fact a child. Simply put, too much of the messaging is as to what has happened rather than what might happen.
- 73.** In this regard I consider the submission made on behalf of FF as to the approach he encourages me to take if I reject his evidence as to 'sexybear'. In summary this was (a) that I am not bound to assume that the rest of the description of those events within the messaging are accurate but must have regard to whether the balance might all be fantasy, and; (b) that in any event I must consider whether a false narrative around 'sexybear' was one of a number of lies designed to cover up sexual fantasy (alone) regarding S. Counsel urged me to conclude the best approach would be to reject the account concerning 'sexybear' in totality rather than rely on parts of the account only whilst rejecting other parts.
- 74.** A Court is entitled to, indeed must take a sophisticated approach on the question of truth and lies ('the Lucas direction flows from this understanding') and it is well within the Court's assessment process to reject part of a narrative as false whilst leaving the balance unaffected. In this case I consider FF's reasoning has proceeded on the basis he needs an explanation for messaging which otherwise suggests actual abuse of S. To resolve this he has latched upon the idea of 'sexybear' but this is simply to replace the participant in the event not to change the physical quality of the event. So we see (below) it is 'sexybear' who sucked CC's nipple not S. I do not consider rejection of 'sexybear' means the whole event falls away. The much safer and logical conclusion is that 'sexybear' alone falls away to be replaced with S. This is because 'sexybear' was simply a device to hide the involvement of S.
- 75.** As to the 'boob messaging' it can be seen from the messaging (which took place very close in time) that CC was contacting both DD and FF about this event. But whereas it is clear in the messaging to DD that this was an event that had happened and was being reported to DD (*'she tried sucking my boob earlier'*) in respect of FF the messaging is plainly different (FF: *'And OMG when sucked your boob...holy shit...I know she was trying to steal [T's] milk...it was so hot'*). The conclusion I have drawn from this mixed messaging is that whereas DD was informed about what had happened FF witnessed the event happening. I consider it likely this was experienced remotely and this is perhaps why, due to technical limitations, why it was only him and not DD who witnessed the event. But it seems to me clear FF is detailing something he has experienced. There is nothing in his messaging which would suggest it was otherwise. For instance he doesn't seek for it to be repeated or suggest he would have liked to have been there. He doesn't ask for pictures or video. Rather he talks about *'it was (being) hot'*. The fact it was remote and not with FF present means that this was not FF actually first-hand

abusing S but significantly it is evidence of S being abused in part to satisfy FF's needs and further evidence to FF that CC would abuse FF pursuant to their shared deviant interest in the same. I simply cannot say where this act occurred in a process of abuse of S but it would have been the plainest signal of a willingness by CC to facilitate S's abuse. Again I reference back to FF's own evidence with respect to this event being one which took place in his presence (albeit with 'sexybear').

**76.** I also note the messaging at the same time [J335] in which FF enquires as to what CC meant when she had 'said' '*...maybe I [FF] could do something Friday with S*'. The conversation then turns to CC bathing S so that FF could see her naked and about putting '*cream on together*' and questioning whether '*will trust enough to put cream on*'. FF continues that '*last time stayed there n let me see...I'm a right p...I really fancy S....so desperate for S to like my c...*'. Later he writes '*Pref under a*'. Having assessed all the evidence I conclude the reference in this conversation to '*Pref under a*' is to '*prefer under age*'. The suggestion that it meant '*prefer underneath*' is most unlikely. The reference to '*p*' is either to '*pervert*' or '*paedophile*'. In the context of the conversation nothing turns on this ambiguity. I cannot be clear what '*cream*' refers to although it is troubling that in separate conversation with DD '*cream*' is used as a reference to ejaculate. It is clear to me that FF is asking about whether S or CC would trust enough to allow cream to be put on. It is far from clear on what basis this question could have an otherwise innocent explanation. The reference to '*do something with S on Friday*' is plainly a reference to a sexualised act.

**77.** I then turn to later messaging from August 2017 at [J232] in which FF urges CC to '*forget c p..*' and that '*Please just love me and be with me even tho I don't want to do any more c p :( ...*'. At [J233] in messaging from November 2017 there is the following dialogue:

FF: You know 'S' looks 10 times tighter than [another child] from what I saw, we was maybe too nice what do you think

CC: No wasn't to nice it was never about hurting

FF: I know it upsets you that 'S' managed to make me happy 😊

Would you never hurt ours?

CC: Yea

No I wouldn't there's a difference between fun and hurting

FF: I don't know what yea is to

Would you never want to see before 2

CC: That it upset me

I don't know and I don't want to talk about this

FF: Oh...what upset you...

CC: That she pleased you better than me

78. My conclusions on the above messaging [§76-77] is as follows. The messaging in §76 are communications which are planning towards an opportunity to engage in actual child abuse of S that forthcoming weekend. Whilst I cannot be confident as to the timeline my sense of the messaging is that matters had been escalating over the preceding period and by then had reached the point where S was being actively abused (the boob message) in pursuit of CC and FF's shared sexual interest in children. The subsequent messaging intended to take the interest forward with abuse in the physical presence of FF. Whilst I do not have direct messaging which details what did or did not take place in the following period I am satisfied the August messages reads back to the earlier period. The reference to 'c p' is as before ambiguous as to 'child porn' or 'child paedophilia' or an equivalent phrase but I am confident that this is the sense of the abbreviation. It is not a reference to cuckolding porn which is broadly interpreted as a man who obtains pleasure by watching their female partner engage in sexual activity with another man. Importantly here FF is writing that he doesn't want to do anymore of this which suggests he has by this point acted in this manner. It could be argued this might be limited to fantasy or talk. I disagree and consider the subsequent messaging makes this clear. In November the messaging is more explicit and sends a clear signal. I find CC and FF are talking about what they have done to S in the previous period and FF is explicitly comparing S's vagina by comparison to another child and commenting that it is '*tighter*' perhaps because they treated her too nicely. This is a plain reference to actual abuse involving S's vagina. I do not need to spell out the obvious meaning beyond that. It is not about her being damaged to a lesser degree because she was not actually abused. The final part of the messaging proves this point with the comment that '*[S] pleased [FF] more than [CC]...*'. In the context of the surrounding messaging this can only be a reference to sexual pleasure and FF **having been** pleased. Again the point being made is tolerably clear.

*(k) S has alleged being abused by FF*

79. It can be seen that the evidence in this regard is, as in the case of the first allegation, compelling prior to turning to S's allegations. In my assessment S's allegations are relevant and supportive of the allegation but not necessary to prove it. They are though instructive when one comes to evaluate the nature of the abuse perpetrated upon her.

80. The consequence of this assessment is that less weight in my judgment turns on the arguments around the manner in which S's allegations were taken and indeed the breadth of her reporting. I do though make the following points:

- I accept the process under which S made reports to EK and PK was seriously flawed by the lack of training given to the two and by the manner in which the conversations were conducted. I do not blame either for this. They were both unprepared to deal with a child with S's history and were doing their very best in the circumstances. They were plainly not helped by the fact S's social worker was herself inexperienced and as she accepted carrying a case beyond her experience.

- I accept I must approach S's allegations with care given the mixed findings made by HHJ [ ] and given the sense that S's allegations developed to the point where it appeared she was no longer giving a reliable account. HHJ [ ] was clear in his rejection of the allegations made against AA and BB and it is no part of this hearing to review that decision which I accept in full. Likewise S relates a number of names and places which on consideration were so lacking in detail or unlikely as to fail the test of probable likelihood.
- FF is entitled to ask me to consider whether he should be placed on the spectrum between DD and AA at the end inhabited by AA and as a understandable victim, but victim nonetheless of the misreporting of a traumatised child.
- I have considered these points with care as I have the apparent contradictory reporting of S in describing FF as 'nicer than DD' not making her 'sad' and various other potentially exculpatory comments. I have noted the chronology set out in the closing submissions for FF which seek to detail the shift in reporting made by S and the increasingly critical light in which FF is portrayed. I have borne in mind the exculpatory comments made by S when giving evidence.
- I also have regard to the position of S as a child who will undoubtedly have been traumatised by the gross abuse perpetrated upon her by DD/CC. I note the potential for her recollections to be clouded by these traumas and the potential for her to be confused between individuals during a relatively short period of time.

**81.** But there are other points that should also be noted:

- It is of questionable value what benefit one really draws from a comparative assessment of S's approach to DD and FF. Notions such as FF being the 'nice one' or 'nicer' have to be considered in the light of DD undoubtedly being a violent sexual abuser of S. The acts for which he was convicted would have caused not only emotional but serious physical pain/harm. To describe a second individual as 'nicer' is perhaps not helpful in the circumstances.
- This is particularly so given the likelihood (and I accept the evidence of EK that S spoke without any sense of distress) that S will have internalised a warped sense of boundaries around sexual abuse. She has been victimised in the presence of her mother and there is no reason to believe her abuse was not surrounded by notions of this being normal and appropriate. It is therefore entirely possible that S would not automatically fix on a perpetrator as essentially 'bad'. One thus might have degrees of attitude towards individuals who could not objectively be viewed as meriting the term 'nice'.
- It is of course important to note that S has made allegations which are proven to be true and that S made these allegations without any knowledge, detailed or otherwise, of the supporting messaging. She has

said things which might have appeared to have been unlikely, without documentary support, but have turned out to be entirely correct.

- It is also important to bear in mind that in contrast to AA and BB and the various other individuals referred to in her reports, there is good evidence that CC and FF were discussing sexual abuse of S. S has not simply alighted on an individual as an abuser but instead has made an allegation against an individual who was planning her abuse, a fact she could not have been aware of. This is a compelling point. She has said in simple terms that this person abused her and at the same point in time the person in question was not only saying they wanted to abuse her but as I have found above had abused her.
- S does also add details which are not only credible but on my findings are factually true. She describes FF in the bed, a point disputed by FF but in my assessment established. She reports seeing FF and CC engaging in sex before her. I have cited the message above in which FF speaks of S being a 'bit on the side' and talks about her watching.
- These are all points which balance the points raised in contradiction to her allegations.

**82.** I have explained in the preceding paragraphs the strong supporting evidence for a finding of actual abuse. In my assessment whilst I approach S's evidence with care I consider it is a further strand supporting the finding of actual abuse. I appreciate S did not support the allegations in her live evidence, indeed she denied the same. However I consider the totality of the evidence, including her earlier evidence is more reliable in the search for the truth.

**83.** In reaching this conclusion I have borne in mind the counter arguments set out with FF's closing submission. It is a focused document which deserves careful consideration. I have just explained why it is that I consider I can rely upon S as part of my overall evaluation despite the manner in which the evidence developed and the circumstances in which it was obtained. I accept S does not specifically make reference to abuse which can be found in the messaging between CC and FF. But there are messages which can be associated with the abuse claimed by S. A prime example is the messaging around 'hurting' and 'tighter' which speak of a set of circumstances not materially distant from the allegation made by S in her picture referred to during the hearing. I do not know why the DD messaging is more explicit than the FF messaging. It could be a function of the available opportunity to CC/FF for non-messaging communication during the relevant periods; it could be a function of FF's caution and as suggested by CC his prompting that all messages are deleted. I can only speculate but I do not consider the absence of explicit messages detailing what has just happened to S to be significant given the available evidence. I am also not particularly persuaded by the suggestion that the absence of a close link with DD is significance. There is no reason why there should be a close link. The sense of the evidence is that CC was playing off two men at the same time rather than joining them together (see the boob messaging). For this reason I do not think the messaging between DD and CC on 11 August 2017 has any real probative value to the issues confronting me. For CC to be telling DD that she has not carried out any further abuse for some time tells me very little if anything as to whether she has

in fact carried out abuse with FF in the intervening period. This might be different if there were clear evidence of CC sharing with DD (and FF) the abuse that was taking place with the other. But these are not the facts of the case. Why should I draw anything of relevance to FF from CC's comments to DD when she has never mentioned him in this context before.

- 84.** It should be borne in mind that there is absolutely no reason to believe that the messaging available is all of the messaging/communications that took place whether between FF/CC or DD/CC. I bear in mind CC's evidence, which I accept, of FF being keen for messaging to be deleted. I refer back to the factory reset and the absence of messaging on his phone. I bear in mind FF's actions on Boxing Day when he sought to review CC's phone and clearly got around any password protection. Why should I assume the messaging found is anything other than part of the full picture.
- 85.** I have dealt with my assessment of CC above. I found GG to be an essentially honest witness on the limited matters she was examined upon. I have commented on EK and PK above. I need say nothing about the officers who attended and whose evidence was largely uncontroversial. Likewise the social worker. I was not impressed with the evidence given by FF. I have set out some of my concerns in the assessment above. In general my sense was of a witness who was carefully seeking to navigate through a minefield in which there were unexploded bombs all around him. He sought to deal with this by a combination of vague generalities and excuses. Where he was probed to the point where he had no alternative but to give a direct answer his answer fell far short of what could be expected.

*What was the nature of S's abuse*

- 86.** I am satisfied FF showed S his genitals when sharing the bed with S and whilst she was present and conscious of his actions [N1436] and had sexual intercourse with CC in the same context. I have drawn upon FF's own messaging in such regard in which he speaks of her 'watching'.
- 87.** I am satisfied FF engaged in oral sex with S. This is the 'licking' detailed by S and captured in the picture given to EK. Whilst I note the concerns over the role EK played in the construction of the page I accept her evidence that she simply added what S had said to her. As such she did not materially alter the meaning of what she was told.
- 88.** On balance I satisfied there was an penetrative act against S although I cannot be confident as to the nature and form of the penetration but note this may have been digital in form. I note the picture drawn by S which associates FF's 'middle bits' with her 'middle bits'.
- 89.** In relation to §86-88 I draw corroboration from a range of messages which placed together support the essential allegation made by S. First there is the crude planning towards abuse of S as referred to above. There is also the worrying 'tighter' email in which FF is plainly detailing the differences between the 'tightness' of S's vagina against that of another child. Linked to this (literally within the same messaging strand) is the 'hurting' messages which suggest S is 'tighter' due to FF/CC being 'too nice'. In my assessment this fits closely with an allegation

of FF having close contact with S's genital area and physically treating her in such a way that she remains 'tighter'. In the same setting a very young child (S) has described FF performing oral sex upon her. In my assessment whilst the drawing of fine detail is inevitably highly problematic in such circumstances I am confident the above adds to a situation as found in the foregoing paragraphs.

90. I make no direct findings insofar as child '[another child]' is concerned. I agree the 'tighter' message is deeply concerning but it is entirely possible that the comparison drawn by FF arose out of circumstances which fell short of actual abuse.

Did FF sexually abuse W?

91. On balance whilst I retain a significant suspicion in this regard I am not satisfied to the necessary standard. There are surrounding circumstances relating to W which cause me to pause and create doubt in my mind. Most particularly, and whilst I reject any suggestion of S and W discussing the matter, it does seem clear W made this allegation after hearing allegations had been made against FF. Having regard to [removed to preserve anonymity] issues and behavioural concerns surrounding W I am wary as to whether these allegations flow from unrelated points unknown to me. The evidence in regard to this allegation is of a different order and is otherwise uncorroborated (other than by the fact of the S allegations). Weighing up all the arguments I am not satisfied.

**Next Steps**

92. I am handing this judgment out in a written form. It can be shared with both professional and lay clients (it is not embargoed). I will welcome any (a) corrections; (b) requests for clarification, and; (c) points as to anonymity/reporting. Can I have the same in advance of the hearing if at all possible. I will then hand the judgment down as envisaged at a remote hearing at 2pm on Wednesday, 1 June 2022.
93. This matter will now proceed to the welfare stage. I will need a statement from FF and GG as to their response to these findings. There will need to be a follow-up directions appointment at which the way forward is discussed. Can potential dates / dates to avoid for that be considered in advance of handing down?
94. I appreciate leading counsel may now be leaving the case. I would like to thank all the counsel in the case for the manner in which they conducted this case. It was always bound to be a challenging process given the significant period of time under consideration together with the morass of information. I have been greatly assisted by the skill, professionalism and sensitivity with which they have approached the case.
95. I am also grateful to a range of agencies who have co-operated to make this hearing work. This case has encompassed a number of police forces and local authorities both in this jurisdiction and outside. It has required the co-operation of individuals involved in previous proceedings. It required the support of the prison service. I am grateful to all.

- 96.** I also endorse the observations made by leading counsel for the Applicant as to the role played by the solicitor with conduct of the case, Mr [ ]. It is largely onto his shoulders that the preparation for this case has fallen, as has its maintenance throughout the proceedings. I can well imagine this will have required work well beyond normal expectations. I have previously commented as to the efforts he has made in ensuring videos are available in the proper format but this is only part of the exceptional effort he has brought to the case. It is only right and proper that I should recognise high quality work when it is found. I would ask leading counsel to ensure these comments are forwarded to the head of legal services at the local authority.

His Honour Judge Willans

31 May 2022