



Neutral Citation Number: [2024] EWFC 372 (B)

Case Number: RG24C50049

IN THE FAMILY COURT AT SLOUGH

The Law Courts
Windsor Road
Slough
SL1 2HE

Date: 18 December 2024

Before

HIS HONOUR JUDGE RICHARD CASE

Re C (a child)(fact finding: sexual abuse)

Between

READING BOROUGH COUNCIL

Applicant

and

MOTHER (1)

MATERNAL GRANDMOTHER (2)

C (THE CHILD) (3)

MATERNAL STEP-GRANDFATHER (intervenor)

Respondents

Representation

For the Applicant:

Ella Shaw, counsel instructed by the Applicant Council

For the Respondents:

Isabelle Watson, counsel instructed by the First Respondent Mother

Pashi Rayat, solicitor instructed by the Second Respondent child by their Children's Guardian,

Alina Albai

Hearing dates: 6 December, 9-11 December and 18 December 2024

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

APPROVED JUDGMENT

This judgment was handed down remotely at 10.30am on 18 December 2024 by circulation to the parties or their representatives by email.

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Summary

1. I have found that the threshold for making a public law order is met based on paragraphs 5, 6, 7, 8, 9 and 10 of the threshold document:

Allegation 5: M suffers from poor mental health and has a diagnosis of personality disorder with paranoia, OCD and anxiety which, when unwell, impacts upon her ability to safeguard C and provide safe, consistent care for her. As a result, C is at risk of suffering significant emotional harm and neglect of her emotional and physical needs.

Allegation 6: M's volatile and impulsive behaviour has put C at risk of emotional and physical harm. For example:

(a) On 9 October 2023 at 2:30 am, there was an incident where M banged on MGM's door and demanded money. C was awakened by the noise and became upset. As a result of insufficient sleep due to the above incident, C did not attend school on 10 October 2023.

(b) M returned to the home of the maternal grandparents in the evening of 10 October 2023 demanding money for drugs. M climbed over the back gate and entered the house from the rear, refusing to leave and then grabbed MGM's phone as she was calling the police for assistance. MGM and MGF struggled to get the phone back from M but were assisted by the police attending the incident.

Allegation 7: M lives a chaotic and criminal lifestyle putting C at risk of emotional harm and neglect of her needs.

For example:

(a) M is currently homeless. In October 2023, M gave up her temporary accommodation in [] and returned to []. Consequently, she became homeless and started sofa surfing at her relatives and family friends in [].

(b) Due to theft offences, M has been in and out of custody from December 2023 until 20 February 2024. M attended [] Magistrates' Court for sentencing on [] February 2024. Before the court hearing, M was on remand at HMP []. M been sentenced to a 24 months' Community Order, and 12-month Drug Rehabilitation Requirement and Mental Health Treatment Requirement and up to 20 Rehabilitation Activity Requirement days to include referral to the Women's Service.

Allegation 8: F continues to live a criminal lifestyle, putting C at risk of emotional harm and neglect. F is currently serving a two-year sentence at HMP [] because of theft offences.

Allegation 9: C is suffering and is at risk of suffering significant physical and emotional harm and neglect in the care of either parent because of M's and F's drug misuse. In particular:

(a) In January 2023 and for the preceding two years both M and F were regularly using illicit substances, including crack cocaine and heroin. C was present in the home and was locked in her bedroom at the time of her parents' drug use.

(b) M had continued to use drugs since C was removed from her care.

As a result of this, the parents' ability to meet C's needs were compromised in that, when using drugs, they were not available for C, whether physically or as a result of lack of energy or motivation. The impact of locking C in her bedroom caused C significant distress and emotional harm.

Allegation 10: C is suffering or at risk of suffering significant physical and emotional harm as a result of witnessing and/or hearing and/or being in the vicinity of domestic abuse between M and F including shouting,

arguing and violence. In particular:

(a) Between the 21 September 2020 and 29 August 2023 there have been six recorded incidents of domestic violence between M and F.

2. I have made the following further findings on the balance of probabilities:

Allegation 11 and 12: MGF sexually abused Child A putting C at risk of sexual harm.

Allegation 13: MGM failed to protect Child B from risk of sexual harm following allegations made against MGF by Child B.

3. I am satisfied the threshold for making public law orders is met.
4. I have concluded on welfare grounds that I should make a Care Order and approve the care plan for long term foster care (subject to amendments in relation to contact).

Parties

5. I am concerned with C, a girl of primary school age. Her mother is M, her father is F, her maternal grandmother is MGM; MGM's husband is MGF, he is the step-grandfather of C and has been permitted to intervene in the proceedings. I will use these initials throughout the judgment for the purpose of anonymity and I mean no disrespect to the parties.
6. F has played no part in the proceedings, he does not hold parental responsibility and has not responded to the notice of proceedings although has recently sought contact with C.
7. MGM had been caring for C immediately before proceedings were issued and was joined as a party, she is not represented but has been assisted throughout by an advocate, Ms Foy, for whose assistance I am very grateful. She was also assisted by a Qualified Legal Representative appointed to ask questions of Child A on her behalf.
8. MGM is married to MGF who I permitted to intervene given the allegations against him. Although he attended one hearing thereafter he has not engaged in the proceedings.
9. During the course of the hearing I heard oral evidence from another child, Child A. Child A is also a granddaughter of MGM, she is a teenager. There is also reference to another child, Child B, who is another granddaughter of MGM and daughter of M.

Background

Chronology

10. C has 3 half-siblings who are all older than her, Child B is one of them. Child A is her cousin.
11. The following is taken from the Local Authority's case summary:

X Council issued care proceedings for M's three older children [] which concluded in February 2016. These children were removed from M's care and placed with extended family members, due to serious neglect, M's poor parenting, domestic abuse, drug misuse, criminal activities, mental health difficulties, lack of housing and chaotic lifestyle in general. C's maternal half-sibling Child B was made subject to a Special Guardianship Order made in favour of her maternal grandmother, MGM [in 2016].

C has been known to the local authority for a number of years due to recurrent concerns around her parents' neglectful and harmful parenting, due to parental substance misuse, domestic abuse, criminal activities, mental health difficulties and chaotic lifestyle. C was made subject to a Child Protection Plan as an unborn on 6 October 2016, when her mother lived in X Council

area. X Council initiated care proceedings in respect of C at birth on 21 January 2017, these concluded in July 2017 with a 12-month Supervision Order and C remained in the care of her mother...

On 24 January 2023, a strategy meeting was held due to M's neglectful parenting and Child B's sexual assault allegations, this resulted in a Section 47 enquiry being initiated. Child B denied the allegations and said that MGF had never touched her inappropriately.

...Council X has now issued care proceedings with respect to Child B [I am case managing those proceedings separately from these proceedings].

C was placed on a Child Protection Plan under the category of Neglect on 13th February 2023. M signed a Written Safety Agreement on 13 February 2023 for C to remain in the care of MGM and MGF.

On 16 June 2023, a strategy meeting was held because Child B repeated the sexual assault allegations against MGF. Child B had returned to stay with MGM and then repeated the statement to MGM and M that MGF touched her inappropriately and the alleged incident happened one to two years ago, around the time that she went back to live with her mother...

...

On 10 January 2024 MGM became C's temporary foster carer under Regulation 24 of the Care Planning Regulations 2010. As such, the local authority intended to complete a full connected persons' assessment, to include MGF given that he was living with MGM, and he was closely involved in C's care.

On 6 February 2024, MGM's granddaughter, Child A made allegations of historic sexual abuse against MGF.

A strategy meeting was held on 7 February 2024 and a joint section 47 enquiry initiated with the police...

A safety plan was put in place to ensure C was not left alone with MGF at home.

The matter first came before the court for an initial ICO hearing on 2nd April 2024. The maternal

grandmother attended and was made a party to the proceedings. The court adjourned the local authority's application to 23rd April 2024 (no earlier date was available) as the court was of the view it was imperative that the maternal grandmother was represented.

At the hearing on 23rd April 2024, the maternal grandmother confirmed MGF would be returning to the home due to ill health. The court sanctioned removal of C from MGM's care and made an ICO.

Current living arrangement

12. C is currently in foster care pursuant to an interim care order. Parental responsibility is shared between the Mother and the Local Authority.

Positions

Local Authority

13. The Local Authority seeks findings on the allegations set out below and a Care Order with a care plan of long term foster care with 3 times per year supervised contact with M in the community and 6 times per year supervised contact with MGM in the community. Further details were given in the course of the social worker's evidence, including of an additional joint contact in the summer, all contacts for 2 hours. The social worker also set out the contact reduction plan.

Mother

14. M sought the return of C to MGM's care and in the event of a Care Order with long term foster care she sought monthly direct contact and indirect contact alternating every 2 weeks. Whilst she loves C very much she recognises she is not in a position to safely care for C. In no way does that diminish the love that she has for C.

15. Her position on placement changed before I commenced hearing evidence and she agreed that a Care Order and long term foster care was the right care plan for C. Her position on contact changed in closing submissions and she did not seek to challenge the plan for her to have contact 3 times per year.

MGM

16. MGM sought the return of C to her care and if this was not possible sought weekly unsupervised contact and a full day per week in the school holidays.

17. Before I started to hear evidence MGM's position changed. It was clear she had reflected very carefully on the evidence and focused on what was best for C. She loves C very much which is quite

clear from all I have read. However, following no doubt very painful soul-searching, she bravely came to the view a return to her care was not what was best for C and agreed to the making of a Care Order. She told me that she did not want C to feel she had let C down. I hope C will not think that. C should be reassured that in fact MGM has shown just how much she loves C by taking this brave decision which is one that is entirely right on the evidence which is before the court.

18. She put forward a changed position on contact, that is that it should be monthly and for extended times during school holidays. In the course of her evidence she asked for contact sessions to be, at least occasionally, longer than 2 hours; in particular if it was in the school holidays she would like the time extended to 10am to 4pm. She agreed she would not take C to places where she knows extended family reside and would not meet MGF or M during contact and would agree to a written recording of that. She would agree to supervision if that was felt necessary.

Children's Guardian

19. The Guardian supports the Local Authority care plan save on contact says that it should be 9 times per year with MGM and 3 times per year with M all of which should be supervised. Of MGM's 9 times 1 can be shared with M although the extent of sharing may be greater and will be kept under review as part of the child in care reviews. As to duration the Local Authority should consider extended times if MGM suggests appropriate activities and in due course there should be risk assessment to consider if supervision was still required (dependent upon compliance).

Evidence Summary

20. I have had the benefit of an extensive trial bundle and in particular considered:

- a) Composite schedule of proposed findings [A96] and MGM's direct responses to threshold [A68-A69];
- b) Witness statement of Ms Sharma, social worker, dated 12 March 2024 [C1] and 13 November 2024 [C141];
- c) Final Care Plan dated 11 November 2024 [D10];
- d) Contact reduction plan produced on 10 December 2024 and not in the bundle;
- e) Achieving Best Evidence (ABE) video recorded interview (VRI) of Child A on 3 February 2024 [Z0a] and transcript [K18];
- f) Witness statement of a teacher at Child A's school exhibiting a handwritten note prepared by Child A [C61] (the note is exhibited but appears in clearer form in the police disclosure at [K213];
- g) Transcript of VRI of MGF on 16 February 2024 [K1];

- h) Police disclosure in relation to MGF [K100];
- i) Police occurrence summaries [K114];
- j) Special Guardianship (SG) assessment of MGM by Deborah Orr using the Parent Assess model dated 17 September 2024 [E16];
- k) Referral Record dated 16 January 2023 [F18];
- l) Strategy Meeting minutes dated 24 January 2023 [F38];
- m) Witness statements of M dated 14 May 2024 [C55] and 12 November 2024 [C139];
- n) MGM's C2 application for contact [B92-99];
- o) Witness statements of MGM dated 28 April 2024 [C51], 18 May 2024 [C57] and 4 December 2024 [Z40];
- p) Witness statement of another of MGM's granddaughters [C67]; and
- q) The Guardian's final analysis [Z42].

21. I heard oral evidence from the social worker, Child A, MGM and the Guardian.

Law

22. I remind myself that the burden of proving the need for a public law order rests with the Local Authority on the balance of probabilities.

Threshold

23. I must consider if the Local Authority has proved that the threshold test set out in section 31(2) Children Act 1989 is met. It provides:

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

24. I remind myself that the relevant date for the purposes of making the assessment is the date on which the Local Authority initiated the procedure (*Re M (Care Order: Threshold Conditions)* [1994] 2 FLR 577) but subsequent events and behaviour are capable of providing relevant evidence about the position before the relevant date (*Re L (Care: Threshold Criteria)* [2007] 1 FLR 2050).

Fact Finding

25. I remind myself of the fact-finding self-directions that I must give myself adapted from the helpful summary of Munby P in *Re X (Children) (No 3)* [2015] EWHC 3651:

20. ...The principles are conveniently set out in the judgment of Baker J in *Re L and M (Children)* [2013] EWHC 1569 (Fam), to which I was taken. So far as material for present purposes what Baker J said (and I respectfully agree) was this:

“First, the burden of proof lies at all times with the local authority.

Secondly, the standard of proof is the balance of probabilities.

Third, findings of fact in these cases must be based on evidence, including inferences that can properly be drawn from the evidence and not on suspicion or speculation ...

Fourthly, when considering cases of suspected child abuse the court must take into account all the evidence and furthermore consider each piece of evidence in the context of all the other evidence. The court invariably surveys a wide canvas. A judge in these difficult cases must have regard to the relevance of each piece of evidence to other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward by the local authority has been made out to the appropriate standard of proof...”

26. Munby P continued:

21. To this admirable summary I add three further points.

22. First, that the legal concept of proof on a balance of probabilities “must be applied with common sense”, as Lord Brandon of Oakbrook said in *The Popi M, Rhesa Shipping Co SA v Edmunds, Rhesa Shipping Co SA v Fenton Insurance Co Ltd* [1985] 1 WLR 948, 956.

23. Secondly, that the court can have regard to the inherent probabilities: see Lady Hale in *In re B (Children) (Care Proceedings: Standard of Proof) (CAFCASS intervening)* [2008] UKHL 35, [2009] 1 AC 11, para 31. But this does *not* affect the legal standard of proof, as Lord Hoffmann emphasised in the same case (para 15):

“There is only one rule of law, namely that the occurrence of the fact in issue must be proved to have been more probable than not. Common sense, not law, requires that in deciding this question, regard should be had, to whatever extent appropriate, to inherent probabilities. If a child alleges sexual abuse by a parent, it is common sense to start with the assumption that most parents do not abuse their children. But this assumption may be swiftly dispelled by other

compelling evidence of the relationship between parent and child or parent and other children. It would be absurd to suggest that the tribunal must in all cases assume that serious conduct is unlikely to have occurred. In many cases, the other evidence will show that it was all too likely.”

...

27. In his President’s Memorandum on Witness Statements dated 10 November 2021 McFarlane P said:

14. Parties should understand that the court’s approach to witness evidence based on human memory will be in accordance with CPR PD 57AC, Appendix para 1.3.

This states that human memory:

- a. is not a simple mental record of a witnessed event that is fixed at the time of the experience and fades over time, but
- b. is a fluid and malleable state of perception concerning an individual’s past experiences, and therefore
- c. is vulnerable to being altered by a range of influences, such that the individual may or may not be conscious of the alteration.

28. Those comments apply equally to any written record, in this case particularly Child A’s written account of sexual abuse and her VRI.

29. I also direct myself to the judgment of Peter Jackson J (as he was) in *Lancashire County Council v The Children* [2014] EWHC 3 (Fam):

9. To these matters I would only add that in cases where repeated accounts are given of events surrounding injury and death the court must think carefully about the significance or otherwise of any reported discrepancies. They may arise for a number of reasons. One possibility is of course that they are lies designed to hide culpability. Another is that they are lies told for other reasons. Further possibilities include faulty recollection or confusion at times of stress or when the importance of accuracy is not fully appreciated, or there may be inaccuracy or mistake in the record keeping or recollection of the person hearing and relaying the account. The possible effects of delay and questioning upon memory should also be considered, as should the effect on one person of hearing accounts given by others. As memory fades, a desire to iron out wrinkles may not be unnatural – a process which might inelegantly be described as “story creep” – may occur without any inference of bad faith.

30. That should be borne in mind when considering perceived differences between accounts over time and generally when considering a witness' recall.

31. As regards demeanour I have regard to Peter Jackson LJ in *B-M (Children: Findings of Fact)* [2021] EWCA Civ 1371:

25. No judge would consider it proper to reach a conclusion about a witness's credibility based solely on the way that he or she gives evidence, at least in any normal circumstances. The ordinary process of reasoning will draw the judge to consider a number of other matters, such as the consistency of the account with known facts, with previous accounts given by the witness, with other evidence, and with the overall probabilities. However, in a case where the facts are not likely to be primarily found in contemporaneous documents the assessment of credibility can quite properly include the impression made upon the court by the witness, with due allowance being made for the pressures that may arise from the process of giving evidence. Indeed in family cases, where the question is not only 'what happened in the past?' but also 'what may happen in the future?', a witness's demeanour may offer important information to the court about what sort of a person the witness truly is, and consequently whether an account of past events or future intentions is likely to be reliable.

26. I therefore respectfully agree with what Macur LJ said in *Re M (Children)* at [12], with emphasis on the word 'solely':

"It is obviously a counsel of perfection but seems to me advisable that any judge appraising witnesses in the emotionally charged atmosphere of a contested family dispute should warn themselves to guard against an assessment solely by virtue of their behaviour in the witness box and to expressly indicate that they have done so."

...

28...There will be cases where the manner in which evidence is given about such personal matters will properly assume prominence. As Munby LJ said in *Re A (A Child) (No. 2)* [2011] EWCA Civ. 12 said at [104] in a passage described by the Judge as of considerable assistance in the present case:

"Any judge who has had to conduct a fact-finding hearing such as this is likely to have had experience of a witness - as here a woman deposing to serious domestic violence and grave sexual abuse - whose evidence, although shot through with unreliability as to details, with gross exaggeration and even with lies, is nonetheless compelling and convincing as to the central core... Yet through all the lies, as experience teaches, one may nonetheless be left with a

powerful conviction that on the essentials the witness is telling the truth, perhaps because of the way in which she gives her evidence, perhaps because of a number of small points which, although trivial in themselves, nonetheless suddenly illuminate the underlying realities.”

29. Still further, demeanour is likely to be of real importance when the court is assessing the recorded interviews or live evidence of children. Here, it is not only entitled but expected to consider the child’s demeanour as part of the process of assessing credibility, and the accumulated experience of listening to children’s accounts sensitises the decision-maker to the many indicators of sound and unsound allegations.

32. In relation to electronic messages I remind myself of the observations in *Stocker v Stocker* [2019] UKSC 17 in which Lord Kerr cautioned against “elaborate analysis of a tweet; it is likewise unwise to parse a Facebook posting for its theoretically or logically deducible meaning. The imperative is to ascertain how a typical (i.e. an ordinary reasonable) reader would interpret the message. That search should reflect the circumstance that this is a casual medium; it is in the nature of conversation rather than carefully chosen expression; and that it is pre-eminently one in which the reader reads and passes on”.

Sexual Abuse

33. I have considered the Crown Court Compendium (2023) and set out relevant extracts below:

10-29

Example 3: A child’s reason for silence

Experience has shown that children may not speak out about something that has happened to them for a number of reasons. A child may:

- be confused about what has happened or about whether or not to speak out;
- blame him/herself for what has happened or be afraid that he/she will be blamed for it and punished;
- be afraid of the consequences of speaking about it, either for him/herself and/or for another member of the family (such as {specify});
- may feel that he/she may not be believed;
- may have been told to say nothing and threatened with the consequences of doing so;
- may be embarrassed because he/she did not appreciate at the time that what was happening was wrong, or because he/she enjoyed some of the aspects of the attention they were getting;

- simply blank what happened out and get on with their lives until the point comes when they feel ready or the need to speak out {e.g. for the sake of a younger child who he/she feels may be at risk};
- may feel conflicted: loving the abuser but hating the abuse.

20-7

Just because W has not given a consistent account does not necessarily mean that W's evidence is untrue. Experience has shown that inconsistencies in accounts can happen whether a person is telling the truth or not.

20-8

Just because a person gives a consistent account about an event does not necessarily mean that account must be true, any more than inconsistent accounts must be untrue.

...

You should not assume that the way W gave evidence is an indication of whether or not the allegation is true. Witnesses react to giving evidence about allegations of rape/sexual assault in a variety of ways. Some people will show emotion or distress and may cry. But other people will seem very calm or unemotional. The presence or absence of emotion or distress when giving evidence is not a good indication of whether the person is telling the truth or not.

Evidence of Children

34. In *Re P (Sexual Abuse: Finding of Fact Hearing)* [2019] EWFC 27 (Fam) MacDonald J summarised matters to consider when assessing the memory of children:

577. That said, and considering the authorities set out above, the Report of the Inquiry into child abuse in Cleveland 1987 Cm 412 and Report of the Inquiry into the Removal of Children from Orkney in February 1991 among others and the contents of the current ABE Guidance, I am satisfied that this court can take judicial notice of the following matters:

- Children, and especially young children, are suggestible.
- Memory is prone to error and easily influenced by the environment in which recall is invited.
- Memories can be confabulated from imagined experiences, it is possible to induce false memories and children can speak sincerely and emotionally about events that did not in fact occur.
- Allegations made by children may emerge in a piecemeal fashion, with children often not reporting events in a linear history, reporting them in a partial way and revisiting topics.

- v) The wider circumstances of the child's life may influence, explain or colour what the child is saying.
- vi) Factors affecting when a child says something will include their capacity to understand their world and their role within it, requiring caution when interpreting children's references to behaviour or parts of the body through the prism of adult learning or reading.
- vii) Accounts given by children are susceptible to influence by leading or otherwise suggestive questions, repetition, pressure, threats, negative stereotyping and encouragement, reward or praise.
- viii) Accounts given by children are susceptible to influence as the result of bias or preconceived ideas on the part of the interlocutor.
- ix) Accounts given by children are susceptible to contamination by the statements of others, which contamination may influence a child's responses.
- x) Children may embellish or overlay a general theme with apparently convincing detail which can appear highly credible and be very difficult to detect, even for those who are experienced in dealing with children.

Police Interviews

35. The following is an extract from Family Court Practice summarising the law at para 2.338[2]:

Video-recorded interviews with children are hearsay evidence but may be admitted as evidence of truth of the statement in family proceedings. Such interviews should be conducted in accordance with the detailed guidance in Achieving Best Evidence in Criminal Proceedings (ABE) (latest edition 2022) although this guidance is non-statutory. The court can make findings based on ABE evidence so long as it is alive to the hearsay nature of the evidence and the age of the children at the time of interview (*Re M (Sexual Abuse: Evidence)* [2010] EWCA Civ 1030). In *TW v A City Council* [2011] 1 FLR 1597, CA, the Court of Appeal found that the inadequacies of the ABE interview were so manifest, even allowing for a broad margin of latitude to anyone conducting such an interview, that no evidential weight could be placed on it. In particular, it was not sufficient for a judge to rely primarily on the fact that a child might be able to stand up to and overcome a thoroughly unsatisfactory interview; rather, a clear analysis of all the evidence was required and the child's interview had to be assessed in that context. In *Re W; Re F (Children)* [2015] EWCA Civ 1300, the forensic value of the ABE interviews was found to be minimal such that the trial judge had been wrong to attach any weight to them. Whether the flaws in ABE evidence are so fundamental as to render the interviews wholly unreliable is a matter for the trial judge who must analyse the process thoroughly to evaluate whether any of

the allegations made in such inter views can be relied upon (see *Re E (A Child) (Evidence)* [2017] 1 FLR 1675, CA, *Re M-Y (Children)* [2019] 1 FLR 79, CA and *Re C (A Child) (Fact-Finding)* [2022] EWCA Civ 584 where the Court of Appeal dismissed a father's appeal against findings in care proceedings where criticisms were made of ABE interviews).

36. In *JB (a child)* [2021] EWCA Civ 46 Baker LJ said:

11. The importance of complying with the ABE guidance, which is directed at both criminal and family proceedings, has been reiterated by this Court in a series of cases including *TW v A City Council* [2011] EWCA Civ 17, *Re W, Re F* [2015] EWCA Civ 1300, *Re E (A Child)* [2016] EWCA Civ 473, *Re Y and F (Children) (Sexual Abuse Allegations)* [2019] EWCA Civ 206 and in the judgments of MacDonald J in *AS v TH and others* [2016] EWHC 532 (Fam) and *Re P (Sexual Abuse: Finding of Fact Hearing)* [2019] EWFC 27. It is unnecessary to repeat at any length the extensive comments set out in some of those judgments. For the purposes of this appeal, the following points are of particular relevance. (Save where indicated, the paragraphs cited are from the ABE guidance.)

(1) "The ABE guidance is advisory rather than a legally enforceable code. However, significant departures from the good practice advocated in it will likely result in reduced (or in extreme cases no) weight being attached to the interview by the courts." (*Re P (Sexual Abuse: Finding of Fact Hearing)*, *supra*, paragraph 856)

(2) Any initial questioning of the child prior to the interview should be intended to elicit a brief account of what is alleged to have taken place; a more detailed account should not be pursued at this stage but should be left until the formal interview takes place (paragraph 2.5).

(3) In these circumstances, any early discussions with the witness should, as far as possible, adhere to the following guidelines.

(a) Listen to the witness.

(b) Do not stop a witness who is freely recalling significant events.

(c) Where it is necessary to ask questions, they should, as far as possible in the circumstances, be open-ended or specific-closed rather than forced-choice, leading or multiple.

(d) Ask no more questions than are necessary in the circumstances to take immediate action.

(e) Make a comprehensive note of the discussion, taking care to record the timing, setting and people present as well as what was said by the witness and anybody else present (particularly the actual questions asked of the witness).

(f) Make a note of the demeanour of the witness and anything else that might be relevant to any subsequent formal interview or the wider investigation.

(g) Fully record any comments made by the witness or events that might be relevant to the legal process up to the time of the interview (paragraph 2.6 [now paragraph 2.7], see also *AS v TH*, supra, paragraph 42).

(4) For all witnesses, interviews should normally consist of the following four main phases: establishing rapport; initiating and supporting a free narrative account; questioning; and closure (paragraph 3.3) [now paragraph 3.4].

(5) The rapport phase includes explaining to the child the “ground rules” for the interview (paragraphs 3.12-14) [now paragraph 3.14-3.16] and advising the child to give a truthful and accurate account and establishing that the child understands the difference between truth and lies (paragraphs 3.18-19) [now paragraph 3.20-3.21]. The rapport phase must be part of the recorded interview, even if there is no suggestion that the child did not know the difference between truth and lies, because “it is, or may be, important for the court to know everything that was said between an interviewing officer and a child in any case” (per McFarlane LJ in *Re E*, supra, paragraph 38).

(6) In the free narrative phase of the interview, the interviewer should “initiate an uninterrupted free narrative account of the incident/event(s) from the witness by means of an open-ended invitation” (paragraph 3.24) [now paragraph 3.29].

(7) When asking questions following the free narrative phase, “interviewers need fully to appreciate that there are various types of question which vary in how directive they are. Questioning should, wherever possible, commence with open-ended questions and then proceed, if necessary, to specific-closed questions. Forced-choice questions

and leading questions should only be used as a last resort" (paragraph 3.44) [now paragraph 3.51].

(8) Drawings, pictures and other props may be used for different reasons – to assess a child's language or understanding, to keep the child calm and settled, to support the child's recall of events or to enable the child to give an account. Younger children with communication difficulties may be able to provide clearer accounts when props are used but interviewers need to be aware of the risks and pitfalls of using such props. They should be used with caution and "never combined with leading questions". Any props used should be preserved for production at court (paragraphs 3.103 to 3.112) [now paragraph 3.119 onwards].

(9) "The fact that the phased approach may not be appropriate for interviewing some witnesses with the most challenging communication skills (e.g. those only able to respond "yes" or "no" to a question) should not mean that the most vulnerable of witnesses are denied access to justice". It should not be "regarded as a checklist to be rigidly worked through. Flexibility is the key to successful interviewing. Nevertheless, the sound legal framework it provides should not be departed from by interviewers unless they have discussed and agreed the reasons for doing so with their senior managers or an interview advisor" (paragraph 3.2) [same paragraph numbering in new version].

(10) Underpinning the guidance is a recognition "that the interviewer has to keep an open mind and that the object of the exercise is not simply to get the child to repeat on camera what she has said earlier to somebody else" (per Sir Nicholas Wall P in *TW v A City Council*, *supra*, at paragraph 53).

Hearsay evidence

37. Hearsay evidence is admissible pursuant to the Children (Admissibility of Hearsay Evidence) Order 1993 but I must assess the weight to be attached to it.

38. In *Re W (Minors) (Wardship: Evidence)* [1990] 1 FLR 203 Neill LJ at 227 said:

Hearsay evidence is admissible as a matter of law, but...this evidence and use to which it is put has to be handled with the greatest care and in such a way that, unless the interest of the child

make it necessary, the rules of natural justice and the rights of the parents are fully and properly observed.

39. Butler-Sloss LJ (as she was) said this at 214:

In considering the extent to which, if at all, a judge would rely on the statements of a child made to others, the age of the child, the context in which the statement was made, the surrounding circumstances, previous behaviour of the child, opportunities for the child to have knowledge from other sources, any knowledge, as in this case, of a child's predisposition to tell untruths or to fantasise, are among the relevant considerations.

40. And at 218:

The reliability of the person relating what the child said is of vital importance.

41. The provisions of section 4 of the Civil Evidence Act 1995 apply:

4 Considerations relevant to weighing of hearsay evidence.

- (1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.
- (2) Regard may be had, in particular, to the following—
 - (a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;
 - (b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;
 - (c) whether the evidence involves multiple hearsay;
 - (d) whether any person involved had any motive to conceal or misrepresent matters;
 - (e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;
 - (f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight.

Welfare

42. So far as the law on welfare issues is concerned my paramount concern is the child's welfare. In assessing whether to make an order I must take account of the matters set out in section 1(3) Children

Act 1989 (welfare checklist). I must then have regard to the realistic options put forward taking a holistic and balanced as opposed to linear approach to them consistent with the guidance given in *Re B-S (Children)* [2013] EWCA Civ 1146.

43. In reaching a final decision I must start from the position that the least interventionist alternative is to be preferred applying section 1(5) of the Children Act; I must not make an order unless I consider that doing so would be better for the child than making no order.

44. I remind myself I must also have regard to Article 6 and 8 ECHR rights. Pursuant to *Re B (Care: Interference with Family Life)* [2003] 2 FLR 813 I must not make a public law order unless I am satisfied it is both necessary and proportionate and no other less radical form of order would achieve the need to promote the welfare of the child.

45. If I make a Care Order I must consider the permanence provisions of the care plan pursuant to section 31(3A) Children Act 1989 and the contact provisions pursuant to section 34(11) Children Act 1989.

Findings/Threshold

5: M's poor mental health

M suffers from poor mental health and has a diagnosis of personality disorder with paranoia, OCD and anxiety which, when unwell, impacts upon her ability to safeguard C and provide safe, consistent care for her. As a result, C is at risk of suffering significant emotional harm and neglect of her emotional and physical needs.

46. This allegation has been deemed to be accepted by M in the absence of a response.

6: M's volatile behaviour

M's volatile and impulsive behaviour has put C at risk of emotional and physical harm. For example:

(a) On 9 October 2023 at 2:30 am, there was an incident where M banged on MGM's door and demanded money. C was awakened by the noise and became upset. As a result of insufficient sleep due to the above incident, C did not attend school on 10 October 2023.

(b) M returned to the home of the maternal grandparents in the evening of 10 October 2023 demanding money for drugs. M climbed over the back gate and entered the house from the rear, refusing to leave and then grabbed MGM's phone as she was calling the police for assistance. MGM and MGF struggled to get the phone back from M but were assisted by the police attending the incident.

47. This allegation has been deemed to be accepted by M in the absence of a response.

7: M's chaotic lifestyle

M lives a chaotic and criminal lifestyle putting C at risk of emotional harm and neglect of her needs.

For example:

(a) M is currently homeless. In October 2023, M gave up her temporary accommodation in [] and returned to []. Consequently, she became homeless and started sofa surfing at her relatives and family friends in [].

(b) Due to theft offences, M has been in and out of custody from December 2023 until 20 February 2024. M attended [] Magistrates' Court for sentencing on [] February 2024. Before the court hearing, M was on remand at HMP []. M been sentenced to a 24 months' Community Order, and 12-month Drug Rehabilitation Requirement and Mental Health Treatment Requirement and up to 20 Rehabilitation Activity Requirement days to include referral to the Women's Service.

48. This allegation has been deemed to be accepted by M in the absence of a response.

8: F's lifestyle

F continues to live a criminal lifestyle, putting C at risk of emotional harm and neglect. F is currently serving a two-year sentence at HMP [] because of theft offences.

49. This allegation has been deemed to be accepted by M in the absence of a response.

9: Drug misuse

C is suffering and is at risk of suffering significant physical and emotional harm and neglect in the care of either parent because of M's and F's drug misuse. In particular:

(a) In January 2023 and for the preceding two years both M and F were regularly using illicit substances, including crack cocaine and heroin. C was present in the home and was locked in her bedroom at the time of her parents' drug use.

(b) M had continued to use drugs since C was removed from her care.

As a result of this, the parents' ability to meet C's needs were compromised in that, when using drugs, they were not available for C, whether physically or as a result of lack of energy or motivation. The impact of locking C in her bedroom caused C significant distress and emotional harm.

50. This allegation has been deemed to be accepted by M in the absence of a response.

10: Domestic abuse

C is suffering or at risk of suffering significant physical and emotional harm as a result of witnessing and/or hearing and/or being in the vicinity of domestic abuse between M and F including shouting,

arguing and violence. In particular:

(a) Between the 21 September 2020 and 29 August 2023 there have been six recorded incidents of domestic violence between M and F.

51. This allegation has been deemed to be accepted by M in the absence of a response.

11, 12 and 13: Various allegations of child sexual abuse by MGF and failure to protect by MGM

52. Because of the nature of these allegations I have considered them in a separate schedule attached to this judgment which is not to be published. In summary I find as follows:

Allegation 11 and 12: MGF sexually abused Child A putting C at risk of sexual harm.

Allegation 13: MGM failed to protect Child B from risk of sexual harm following allegations made against MGF by Child A and Child B.

16: MGM has failed to keep adult matters from C

MGM has failed to keep adult matters, including the police investigation out of earshot of C, and has

talked about the investigation openly in front of her and has inappropriately questioned C about whether she has been touched inappropriately by MGF, putting her at risk of emotional harm.

53. MGM denies the allegation saying:

[A109]

MGM did not ask C if MGF had touched her. MGM asked C whether MGF goes into her bedroom to get her up for school and C said no and that MGF calls her from the bottom of the stairs in the morning when it is time for her to get up and ready for school.

54. The Local Authority rely upon 2 notes in the police record relating to the pre-interview assessment of C (my emphasis):

[K126]

When we initially attended the address, C was sat on the sofa eating McDonalds [sic]. She was not visibly upset by our presence, and said that she would be ok to talk to us. MGM then started to speak to officers about the allegations and how she and the rest of the family are 'fuming' about it. I reminded MGM that we should not speak about it in front of C, and that we would need to speak to C alone.

55. In MGM's oral evidence she said she was just answering questions the officers had asked about the allegations but the note does not suggest any had been asked of her at that stage. The officer who made the notes has not been called to give evidence.

56. The note continued:

[K127]

MGM mentioned that she and the family were 'fuming' and want to provide statements about how this is not true. She said they had questioned C and she had denied that anything had ever happened. I advised MGM that we would not recommend asking C questions, and that conversations about the investigation should not be happening in front of her.

57. I find it difficult to criticise MGM for asking C whether anything had happened between C and MGF at a point before she was advised not to do so; MGM denies saying it, her case is she only asked C if MGF went in to her room. Even if she did say what was alleged it seems no more than the natural response of a concerned carer.

58. More generally the social worker said that on 15 February 2024 after C's initial health assessment MGM asked about the outcome of the police investigation of MGF in front of C [C13/1.39] and there is further evidence in support in the SG assessor's report: on an observed contact in the community C knew that there had been a court hearing because "MGM had told her carer about in front of her"; MGM "could not remember saying this" but did not deny it [E43].

59. Further, the SG assessor reported:

[E42]

“3.18 MGM then told me that she had to have an emergency blood test as her potassium was very low. She raised this several times, saying her potassium and BP ere [sic] a problem and that her GP said she could die (this was in front of C).

60. In oral evidence MGM accepted this last comment “but not the bit about could die”. It does seem rather unlikely the assessor has this very specific point wrong if the rest of the report on the point is correct.

61. I do not find the second aspect of the allegation (questioning C about MGF’s conduct) is proved for the reason set out above. I discount the double hearsay evidence of the SG assessor saying C knew there was a court hearing because MGM had told her carer on the basis that it is denied by MGM directly and in any event, saying there has been a court hearing in the context of C being in foster care and alleging this will lead to a risk of emotional harm to C is hyper-critical and it is frankly questionable whether it would lead to any greater emotional harm than being in foster care.

62. That leaves the allegation that MGM said the family was fuming, asking about the police investigation and saying there was a risk of her dying all said in front of C. I find that MGM did say those things; it is difficult to see how the police, the SG assessor and social worker are all wrong in their reports. In relation to the first, it was in the context of an unexpected section 47 enquiry/pre-interview assessment visit to C. In relation to the second she was being asked questions by the SG assessor. In the third this was perhaps unwise but I do not find individually or collectively the allegations come anywhere near meeting threshold which requires significant harm.

Other allegations

63. A number of other allegations were made but in light of MGM’s change of position in relation to placement findings were not sought.

Conclusion

64. I am satisfied on these findings that the Local Authority have proved the threshold test for the making of a public law order.

Welfare checklist

65. I now turn now to the considerations under section 1(3) Children Act 1989.

Wishes and feelings

66. The Care Plan records C’s wish to return to MGM’s care [D11] but the Guardian reported:

[Z49]

I told her that her social worker is going to tell the judge that she would be very worried if C returned to the care of her mum or grandmother and that Ms Sharma says she should remain in her current placement until she is 18. I asked her how she felt about it and she said “good” with a big smile on her face.

...

C told me she doesn’t know where she wishes to live for the rest of her childhood. She told me she feels safest in her placement but happiest at the grandmother’s home. She told me that she would prefer if adults made a decision that they think is best for her and that she would not be sad if the Judge decided that she should stay with her current foster carers.

Physical, emotional, educational needs and age, sex and background

67. C is the youngest child of M.

68. Historically the Guardian says C “had an unhealthy diet, and she was obese. She had no guidance and boundaries and, at 7 years old her behaviour was outside of adults control at times” [Z45].

69. Since being in her foster placement she is described as being been calm, observant, sociable and friendly [C153] although there was an incident in August 2024 when she was abusive to MGM at the end of contact as she wanted to go home with MGM rather than with the foster carer. The Guardian says “she made significant progress in her placement where she is happy and settled.” [Z45].

70. In the SG assessor’s report it is said that the foster carers report her to love routine and be keen to learn without emotional or behavioural concerns in the placement and nor does she “seek to control (like she does with her grandmother)”. It is reported she has recently stopped using nappies [E60].

71. The Guardian says:

[Z44]

C is happy and settled in her placement and she enjoys spending time with her maternal grandmother twice a week and with her mother less regularly within the community. C attends a school in [] where she started whilst she was in the care of her family. Whilst she enjoys going to school and forged some friendships there, the travel is taking its toll on her and impacting on the activities she is able to do in her placement.

Likely effect of change in circumstances

72. There will be no immediate change for C if the care plan is approved, she can remain with the current foster carers in the long term [C153]. However, the Guardian comments that C has a long journey to school and it seems inevitable that if a final Care Order is made there will be a change of school. The care plan provides that this will take place after this academic year (ie from September 2025) [D14]. The Guardian said that C reported she would miss her old school but she has a new friend (in the foster placement locality I presume) who attends the same school she would move to which may mitigate the harm. C said she would be “excited to start at the new local school” [Z50] and when the social worker gave evidence she said that would be the priority school for C.

Capability of Mother

73. The social worker describes M having missed 5 contacts since July 2024 and describes M giving different reasons for non-attendance.

74. The Guardian comments:

[Z45]

9. C benefited from at least some good enough care during her early childhood when her mum was stable and did not misuse substances.

Capability of MGM

75. The Guardian comments that MGM has “been a consistent figure in C’s life since birth and became C’s full-time carer in January 2023” [Z46].

76. The following is taken from the SG assessment:

77. MGM said that if C comes back to her care she will give up work to manage concerns arising from the allegations against MGF [E20] yet also said “she fully stands by him” [E22] and “would not change anything” even if findings were made [E29]. As to giving up work the assessor said that was an unrealistic plan in circumstances where MGM had spoken of the “ways in which it is protective of her emotional and mental health” [E48]. MGM has diagnoses of a dissocial personality and emotionally unstable personality disorder and she feels she may be obsessive recognising “she finds it difficult to cope with unexpected changes in routine or expectations”. The assessor’s comment is “this can make parenting/caregiving hard” [E51].

78. The assessor formed the impression MGM was “a woman greatly impacted by her own experiences of loss, grief and abandonment which made it very difficult for her to separate her own emotional states and needs from that of children and/or grandchildren” [E22-23]

79. The assessor commented on MGM's insight. She reported MGM to not understand the way M was which the assessor thought was "indicative of MGM's lack of insight and understanding of her children's adverse childhood experiences, needs and care" [E31]. The SG assessor said:

[E36]

She denied any guilt with M, saying, 'She's got no reason to be like that' (the dysfunctional way that she is and inability to safely parent her children). Again, sadly, I feel this reflects MGM's difficulties in understanding her children's lived experiences and how these have impacted their development and outcomes. She dismisses anything in M's childhood/upbringing that might have led to at least some of her negative behaviours and cannot see the patterns in her own difficulty parenting the children: with care and social service experiences, domestic abuse/violence, none of her children completing secondary school education, all the children using drugs and themes of criminality and anti-social behaviours. This is not about blame (which MGM feels she is attributed with), however, the reality of her own children's lived experiences – and those of some of her grandchildren – have been that their care has not been adequate or safe enough, and thus has affected their welfare."

80. She also said of her 4 younger children that they never saw "any of the violence" between MGM and her former partner as they were in bed without appreciating there could still have been an impact [E32].

81. Whilst MGF was not being assessed MGM lives in his house, they live together as friends now after an affair that MGM had engaged in. He reports being "in extremely poor health" [E33] (and that was the reason given for him not engaging in these proceedings). It is hard to see how that can be managed at the same time as raising C.

82. The SG assessor was similarly sceptical of how MGM would manage the relationships with her adult children, including M. Her response was that "none of them will be here". Given the history of M "regularly being in the home when she should not have been...and me observing M in the property on several occasions during the course of this assessment, when she was staying overnight in the house" [E35] that seems unlikely. MGM's response was that "I protect my own" [E35] which seems to exemplify her split loyalties. The same position applied to another of her children in relation to whom she had needed to apply for (and was granted) a Non-Molestation Order:

[E36]

As to [], MGM told me that he has 'backed off' since she got the Court order against him and isn't coming around at this time. However, this was rather undermined by [] and his girlfriend turning up in the back garden while I was there...MGM has very little power and control over the family visits to her home and does not want to turn her adult children down, at least in part due to her guilt and her sense of 'protecting her own'.

83. The assessor noted the breakdown in placement for Child B and asked MGM about it concluding "she was not able to reassure me as to a different, more positive outcome for C, set against the complex family relationships" and she continued:

[E38]

Neither was MGM able to locate any of the behaviours within family relationships, modelling or experiences, or parental/adult difficulties in managing emotional or behavioural needs and my impression was that this was an unmanageable area for them (and they have too many competing demands already to deal with) and therefore C would be likely to be vulnerable in the same respect, perhaps repeating some of the negative cycles that have been enduring in the family.

84. The behaviour recorded above in the foster carers' care contrasts with MGM's report of "significantly challenging emotions and behaviours including quite extreme measures – such as MGM locking herself in her room away from C when her granddaughter is 'kicking off'" [E49]. Her conclusion was:

[E49]

Unfortunately, it is my concern that, should C return to live with her grandmother, this will not be sustainable as it would be most likely the challenging emotions and behaviours would recur and MGM is no more equipped to deal with them now than she has ever been (with her own children or her grandchildren). In my opinion, there is a plethora of evidence as to MGM's significant challenges in parenting/caregiving and would indicate that she would be unlikely to be able to cope with C's developing emotional and behavioural needs over time and therefore there would be a high risk of relationship/family breakdown.

85. The assessor specifically considered potential harms:

[E65-E66]

- C's diet/health; this was not something MGM was previously able to manage, resulting in C being obese and therefore compromising her fitness and health. Issues around food and control remain as observed during family time.

...

- C's emotional and behavioural needs: while in her grandmother's care, C would have uncontrollable 'tantrums' which would lead to MGM locking herself in her bedroom until C calmed down...

...

- C's educational outcomes: MGM has not been able to support any of her own children to access secondary level education (due to them being beyond her parental control and their own significant traumas and difficulties)...

...

- C's protection: MGM acted appropriately and protectively in removing C from her parents care after what had been a long period whereby C was subjected to abuse and neglect (which MGM said she did not realise the extent of), and MGM has previously had to intervene to safeguard other grandchildren. C's mother is a regular visitor to the property and continues to misuse substances and demonstrate withdrawal behaviours (such as pacing during the night disrupting the household). While MGM has said she would not have M in the home if C [was] there, the assessor considers this an unlikely outcome based upon historical information as to M being there with C and upon seeing M myself there when she was staying overnight during this assessment process. It is not manageable for MGM to maintain boundaries around this: she considers it a rejection of her daughter...

...

- risk of placement breakdown: MGM has sadly been unable to fulfil the duties upon her as a Special Guardian in respect to an older granddaughter and there are various complications and concerns in respect to that relationship.

86. The Guardian says MGM "is committed to C, and she has attended all the contact sessions that were available to her" [Z45] and "there is evidence of a strong bond between C and her grandmother" [Z47] and on 27 November 2024 she "demonstrated insight in some of the challenges that would prevent her from looking after C for the rest of her minority and indicated that she is considering accepting the Local Authority's plan, provided that she can have more contact with C than proposed by the Local Authority. However, on 29th November 2024, she was clear that she would "fight" for C" [Z48].

87. More specifically the Guardian reports:

[Z48]

MGM appears unable to empathise with Child B's experiences and she does not see why breakdown of her relationship with Child B is relevant to C's case. She shifts a lot of responsibility for C's current situation on Child B and other children in the family. This is significant and it raises concerns about her ability to protect C when/if C needs/wishes come in contradiction with MGM's beliefs."

Capability of others

88. No-one else has been positively assessed to care for C. The negative assessment of C's maternal aunt has not been challenged.

Any harm suffered or at risk of suffering

89. This is extensively covered above.

Range of powers

90. The Guardian says:

[Z51]

If placed in the care of the wider family members, C should be able to maintain her relationships with her siblings and cousins and she would continue to attend her current school.

91. When the social worker gave evidence she said that the current contact arrangement (from September 2024) is that C sees MGM twice a week for 90 minutes and M once every 2 weeks for 2 hours. Her rationale for disagreeing with the Guardian on future contact was "to promote stability and settlement" and because additionally C is having monthly indirect contact with maternal aunts, F has recently requested contact and C has 3 half-siblings and has met with Child B already so there are potential further demands on her time.

92. She agreed there could be telephone contact with MGM on C's birthday and on Christmas Day and with M on a day before or after each of those events (because M has not been consistent with contact and if it is missed on the special occasion C may be upset). She agreed that if C wanted it there could be telephone contact with MGM on her birthday and M on her birthday. If M was planning to miss contact then if consistent with C's wishes MGM could take over that contact time.

93. The social worker produced a contact reduction plan and agreed that there could be an additional direct contact with MGM in Christmas week.

94. When MGM gave evidence she agreed (as set out above) to a written agreement placing certain restrictions on where she could take C. As to the need for supervision she said her understanding was that she could not speak to C about adult issues and gave an example of how she might respond to a hypothetical question from C to avoid this but said she had not received help in understanding what was acceptable and would agree to undertake work on this if it was offered.

95. On contact the Guardian said:

[Z53]

The current level of contact is impacting on C's placement. However, it is difficult to know how her placement will be effected by such a drastic reduction. Under their Looked After Procedures, the Local Authority should consider whether it is in C's best interest to spend time with her family 12 times a year (in total). Some of the sessions could be joined by mother and grandmother (if their relationship at one particular time allows it). The sessions can be shared at a ratio of 9 for grandmother and 4 for mother. I do not believe that a contact order is in C's best interest as this is likely to reduce the Local Authority's ability to protect her and promote her emotional wellbeing...

96. When she gave oral evidence she said that 2 hours duration at the leisure centre that C and MGM meet "can be repetitive" and whilst 2 hours during term time may be right there was no reason why during holidays the contact cannot be arranged around (including duration) an activity that MGM suggests which may mean it is longer. She agreed it could be up the 6 hours MGM suggested although that may be something that becomes more suitable as C grows.

97. She was asked if an order for a defined level of contact should be made and she appeared to think this was finely balanced. She was concerned about rigid or formulaic thinking by the Local Authority but on balance did not support a defined order for the lack of flexibility that would impose, in particular if it met C's welfare needs to have contact with other family members in due course. She did suggest inviting the Local Authority to vary the care plan on contact and in submissions the Local Authority agreed they would do so if that was my decision. She considered that contact should remain supervised; the concerns about MGM are that she would expose her strong views about the Local Authority and contact to C but once proceedings ended, with a clear plan for contact, a good working relationship with the foster carers, a clear written agreement and some work with MGM on child focused conversation that might be mitigated. However, that would not take place overnight but the benefit of supervised contact would be to assess compliance and there should be a new risk assessment of MGM to assess the risk in light of MGM's changed position and following a period of

monitored compliance with a written agreement. She recommended the Local Authority revise the care plan to make specific proposals for sibling contact recognising the likely longevity and importance of such a relationship.

98. She asked that the Local Authority to agree to life story work which they did.

Holistic balancing exercise

99. I come now to consider the balancing exercise that is required by *B-S*. For completeness I have considered the possibility of a Special Guardianship Order even though that is now no longer supported by any party

Realistic Option 1: cared for by MGM pursuant to a Special Guardianship Order and potentially also supported by a Supervision Order

Factors in favour	Factors against
Consistent with C's wishes	Risk of sexual abuse by MGF
Remaining cared for within the family promoting C's sense of identity	Risk arising from MGM's failure to appreciate risk of harm from MGF
Remaining at current school	

Realistic Option 2: Care Order with a plan for long term foster care

Factors in favour	Factors against
Safe care	Contrary to C's wishes
Supported to remain in contact with M and MGM and half-siblings	Raised outside family
	Continuing to be a looked after child
	Risk of placement breakdown

100. In light of the parties' positions and the risks of harm given my findings I am drawn to the conclusion that option 2 is preferable to option 1. This is not finely balanced, the risks of harm are serious, they have not reduced over time and it is difficult to see how they could be adequately mitigated given MGM's view of MGF's innocence.

Contact

101. As to frequency of contact I can see the logic in the Local Authority argument that contact needs to be manageable for C especially given her age and the possibility of contact with other family members. That is an argument against a defined contact order and on that basis I decline to make one and dismiss MGM's application for the same; it would prevent the flexibility that is necessary to manage the competing needs for contact.

102. However, at present there is no actual plan for contact with the half-siblings, F or any direct contact with Maternal Aunts. That will be kept under review by way of child in care reviews which the Local Authority confirmed MGM would be invited to. In those circumstances I prefer the Guardian's evidence that contact with MGM and M should be monthly when combined (ie 8 for MGM, one joint and 3 for M). It is certain and sufficiently frequent with MGM to maintain the connection that is plain on the evidence (set out above). However both MGM and M need to be aware that it may need to reduce over time to take account of the needs of C to have contact with the wider family and potentially F. I found the Local Authority argument that it would be harmful to C's welfare to set the annual combined contact at 12 only to have to reduce it in the event of possible wider family contact entirely failed to take account of the converse harm of setting at just 6 per annum with MGM with whom C has a strong bond and which has been regular and consistent.

103. To reassure MGM, if I were to have agreed to her application for a defined contact arrangement it would have been at a much lower level to allow for the flexibility I consider is likely to be needed in the future.

104. I accept the Guardian's evidence that the duration of contact needs to be based on the proposed contact activity such that it might be longer than 2 hours on occasion, particularly in the holidays.

105. I accept the social worker's evidence that indirect contact at Christmas and on C's birthday can be on the relevant date with MGM but should not be for M given the risk of C being disappointed if M was not available. The alternative of it taking place with M on the day after or day before seemed sensible.

106. As to the need for supervision I agree with the Local Authority and Guardian's evidence that contact with M needs to be supervised given the risks of harm arising from the findings above. I also agree contact with MGM needs to continue to be supervised for the time being because of the findings (including the findings in relation to allegation 16 even though I did not find they were relevant to threshold) and to assess compliance with any written contact agreement. I invite the Local Authority to review this in due course.

Amendments to care plan

107. It is not for me to amend or direct amendment of the care plan but I invite the Local Authority to do so and they agree to do so as I understand it. My approval of the care plan is contingent upon their acceptance of these requests.

108. The amendments I am inviting are:

- a) An agreement to undertake life story work;
- b) Provision for 8 sessions of contact with MGM per annum, 3 with M per annum and 1 joint per annum;
- c) Incorporate the contact reduction plan into the care plan so it is available to the IRO;
- d) Confirmation the meeting point for contact with MGM is the currently used leisure centre (the reduction plan names the wrong location) but an agreement to review any proposals for a different venue for each contact from MGM;
- e) Confirmation that there can be indirect contact with M before or after Christmas and C's birthday;
- f) Confirmation the proposed direct contact with MGM will be for 2 hours but that a request for longer contact, particularly in holidays, will be reviewed if MGM makes a proposal for a particular activity during contact (such as a visit to the cinema and meal or a visit to the coast or other excursion) including contact periods for as long as 6 hours;
- g) Provision of advice and guidance to MGM on child focused conversation;
- h) Provision of a plan for sibling contact;
- i) Provision for a risk assessment of MGM's contact after a suitable period of monitoring of compliance with the written agreement and in light of MGM's changed position in these proceedings in relation to placement.

Conclusion

109. In light of the above analysis I make a final Care Order pursuant to section 31 Children Act 1989 and approve the care plan with the amendments set out above which I understand the Local Authority accept. That also addresses the plan in respect of contact arrangements.

110. I want to finish by thanking Ms Foy for her invaluable assistance to MGM throughout the proceedings. It assisted me in understanding MGM's case and ensuring a fair hearing.

111. I also want to thank the Guardian for her evidently passionate defence of the importance of sibling contact and her thoughtful and well reasoned recommendations on contact more broadly.