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Case No: CF23C50154

Neutral Citation Number: [2024] EWFC 227 (B)

**IN THE FAMILY COURT AT NEWPORT (SOUTH WALES)**

Newport (South Wales) County Court and Family Court  
5th Floor  
Clarence House  
Clarence Place  
Newport  
NP19 7AA  
7<sup>th</sup> May 2024

BEFORE:

**HIS HONOUR JUDGE JONATHAN HOLMES**

BETWEEN:

**A Local Authority in Wales**

**APPLICANT**

**- and -**

**Grandmother**

**(1) RESPONDENT**

**Grandfather**

**(2) RESPONDENT**

**Mother**

**(3) RESPONDENT**

**Father**

**(4) RESPONDENT**

**CHILD (VIA THE GUARDIAN)**

**(5) RESPONDENTS**

**Legal Representation**

**Miss Heyworth KC and Mr Jones** on behalf of the Applicant Local Authority

**Ms Reed KC and Miss Morgan** on behalf of the First Respondent

**Miss Hughes KC and Miss Chamberlain** on behalf of the Second Respondent

No attendance by Third or Fourth Respondents

**Miss Jones** on behalf of the Third and Fourth Respondent Children

**Miss Knight** on behalf of A Welsh Police Force

**Judgment**

**This judgment has been redacted for publication in accordance with the judgment of HHJ Holmes, as set out in the separate judgment. Not all redactions are explicitly marked.**

## **Introduction**

1. The Local Authority made an application for an Interim Care Order on 19 April 2023 in respect of the subject child. Neither Mother nor Father have engaged in these proceedings. The child's grandparents are his special guardians.
2. The Local Authority now seek permission to withdraw their application. That application is consented to by all parties. I confirmed at a hearing on 8 April 2024 that I would grant permission to withdraw on the basis that the Local Authority could not establish threshold. The real issue in this case is not whether the Local Authority should be granted permission to withdraw, it is about what has happened in this case since August 2022; the impact it has had upon the subject child and the extent of serious failings by the Local Authority and a Welsh police force.
3. Miss Jones in her skeleton argument dated 20 February says on the child's behalf that the Local Authority's management of the child's care since August 2022 has been negligent, unlawful at points and a harmful interference with his right to family life. Sadly, having considered all of the documentation I am inclined to agree.
4. I am grateful to the advocates for the detailed skeleton arguments that have been produced in February 2024 and April 2024. The purpose of this judgment is not for there to be a public flogging of the individuals concerned. It is so there is a proper objective record of what has happened. This judgment should be placed on the child's file and anyone dealing with this matter in the future should carefully consider this judgment to have a clear understanding of what has happened. This judgment is also for the Local Authority and the Welsh police force to have a clear and complete picture of matters so that lessons can be learned, and mistakes of this nature can be avoided in the future.

## **The child**

5. What cannot and should not be forgotten in this case is that it is about the child. The events since August 2022 have without doubt had a significant impact upon him.
6. The child has a life limiting illness [details redacted].
7. Very sadly, the natural progression of the condition is death by later teens to early 20's.
8. It is against that context that the events since August 2022 must be viewed. By the time of reunification in February 2024 the child had been out of the care of his Grandparents for over 17 months. The period of time that he has spent in the care of the Local Authority since August 2022 represents a quarter of his life. Whilst those timescales would be undesirable for any child, the harm for the child and his family is compounded by the fact that his life is limited by a life limiting illness.

9. The impact that removal had on the child is clear from a recording made by the child's school on 13 December 2022 [names redacted] which states '*the child seemed excited when his teacher said it was home time. He was repeating 'nanny nanny nanny'. The teacher said 'no you are going home with X today'. The child pulled a sad face and said 'no I want nanny'.*
10. The child is now back in the care of his Grandparents but the events since August 2022 continue to impact upon him. Miss Hughes KC said that he continues to be upset when leaving home. He is presenting as more frustrated and angrier than before. He presents with worry when he sees a police car in the street. Being out of his Grandparents care for 17 months must have been a distressing and confusing time for the child. He was well cared for and content with his Grandparents until August 2022. He was then removed from their care in distressing circumstances and remained out of their care for over 17 months.

### **Essential Background**

11. In November 2018, the child was made the subject of a final care order. He was placed under that order with his Grandparents, in December 2018. He settled well into their care and reports from the time describe him as thriving.
12. By 2020 such was the level of care being provided and the lack of concerns held by the Local Authority an application was made to discharge the Care Order. Those proceedings concluded in February 2021 with the Grandparents being granted a Special Guardianship Order in respect of the child.
13. At the time of the SGO being made the child was described as a 'normal little boy'. All records from social services and health indicate that the Grandparents were meeting the child's developing needs and were positive.
14. On a date in August 2022 allegations of historic sexual abuse were made against the Grandparents by the complainant (the date of the notification). The following day the Local Authority attended at the family home to seek section 76 consent for the child to be accommodated. When the grandparents would not provide consent the child was removed from his grandparent's care by Police invoking their powers under section 46 and placed with foster carers.
15. The Grandparents agreed ongoing placement in foster care on 3 September 2022.
16. Within 7 days of being accommodated the child's placement was changed without any notice to or consultation with the Grandparents.
17. Care proceedings were not issued until 19 April 2023. Despite being made over 7 months after the child was removed the SWET filed with the application gave little detail about matters other than to state that allegations of historic sexual abuse had been made which remained under investigation; that the Local Authority had increasing concerns about Grandfather presenting aggressively and concerns about the Grandparents being able to meet the child's needs due to their own health and mobility.

18. The Guardian filed an Initial Analysis dated 10 May 2023. The Guardian stated that on the basis of the information before the court she was unable to support the Local Authority's application for an Interim Care Order but also was not in a position to recommend that the child be returned to the care of his Grandparents without information from the police regarding the nature of the allegation as it was difficult to risk assess the situation.
19. The matter first came before me at a Case Management Hearing on 12 May 2023. A DS attended that hearing and confirmed that serious allegations had been made in respect of the Grandparents and that the investigation was on-going. A direction was made for police material in respect of the Grandparents to be provided by 21 July 2023. That was considered by the DS to be a realistic timescale. Directions were also made for disclosure of previous proceedings, an assessment plan and subsequent assessment of the Grandparents and a report from the child's treating clinician. The matter was listed for a FCMH on 21 August but with the agreement of the parties this was later adjourned until 11 September 2023 because the police information remained outstanding.
20. A Connected Persons Assessment dated 5 July 2023 was completed in respect of the Grandparents. The assessment referenced the police investigation and said that if no findings were made then it was a challenging assessment to reach a recommendation on. It said that there were many strengths to the application but did not recommend the Grandparents as long-term carers due to their age and their current health.
21. On 11 September 2023 at a FCMH the Local Authority confirmed that the child's parents had been served with notice of the proceedings but had not sought to play any role in the proceedings. It was recorded that in the event that the complainant did not wish to provide a statement and participate in the proceedings the Local Authority would make a C2 application seeking an urgent listing as without her participation it was unlikely that the s31 Children Act 1989 criteria would be satisfied. The Court invited the police to provide the Local Authority with a realistic timescale for the examination of items seized from the home of the Grandparents, noting that the outcome of the examination may have an impact on the family proceedings. The time for disclosing documents from previous proceedings was extended to 15 September 2023.
22. The Local Authority was also directed pursuant to paragraph 5 of the order to disclose to the parties *'all material it holds in respect of the historic allegations of sexual abuse made by the complainant in relation to the first and second respondents.'* The Local Authority were directed to notify the complainant of the direction, and in the event, she objected to the same a C2 application was to be made by 18 September.
23. The Local Authority filed a statement from the complainant as directed dated 19 September 2023 following a meeting with the Local Authority Solicitor confirming that she was willing to give evidence in the case and that she consented to disclosure of the previous records regarding previous allegations she had made.
24. At a FCMH on 12 October 2023 it was recorded that the Local Authority did not propose to obtain a further statement from the complainant at that time and that it relied

on the extensive transcripts of interview and that the Local Authority would consider the necessity of obtaining a further statement upon consideration of the historical records. The DS confirmed to the Local Authority by way of an email dated 22 September 2023 that there was an estimated completion date for the forensic examination of 25 October 2023. The Police force were directed to disclose any records or extraction reports generated during the forensic investigation of the devices seized from the Grandparents' property by 9 November and were, by the same date to disclose any records held in respect of the original allegations made in or around the late 1990's. The Local Authority was directed to file and serve their final evidence and care plan by 20 November and the matter listed for a FCMH on 27 November (this was subsequently moved to 6 December 2023). The matter was listed for final hearing for 5 days commencing 15 January 2024.

25. On 1 September the Local Authority had filed a more detailed threshold. That document pleaded the specific allegations made by the complainant but also pleaded that Grandparents' own health needs would prevent them meeting the child's increasing needs. By 12 October 2023 the Grandparents had filed their response to the amended threshold. I raised a concern with the Local Authority as to whether such a pleading was relevant to threshold and invited them to reconsider the manner in which it had been pleaded.
26. During the course of that hearing I was informed that the historical records had been retrieved and would be disclosed within 2 weeks and that a risk assessment prepared in proceedings in the late 1990's was also available and would be disclosed.
27. A further meeting took place between the Local Authority Solicitor and the complainant on 25 October 2023 to obtain her consent for disclosure of her medical records.
28. On 20 November 2023 the Local Authority filed final evidence from the Assistant Team Manager and a final care plan. These set out that if the historic allegations were substantiated the Local Authority would seek a Care Order and would search for a long-term placement which would be able to support the child now and in the future with his condition at the forefront of any placement. If the allegations were unsubstantiated the Local Authority's plan stated that the child would return to the care of the Grandparents and the Local Authority would continue to provide support on a Care and Support basis under the Special Guardianship Order.
29. There was a FCMH on 6 December 2023. I was told during that hearing that a number of documents from the late 1990's had now been disclosed and that redactions had been made by relating to legal discussions and other matters relevant to care planning for the other children, but nothing had been redacted relevant to the allegations made. Submissions were made on behalf of the Grandparents in respect of the extent of the historic disclosure. The Local Authority submitted that the direction requested by all parties and made by the Court on 11 September was clear, namely the Local Authority was to *'disclose to the parties all material it holds in respect of the historic allegations of sexual abuse made by the complainant in relation to the first and second respondents.'* It was later submitted by the local authority that this was not a direction to disclose all of the historic case papers. I made a direction for the Local Authority to notify the respondents to the late 1990's care proceedings and subsequent discharge of care order proceedings, directing that they needed to write to the court by 15 December

2023 if they objected to the disclosure. The Local Authority included within the letters sent to the respondents that it would include their social services records. The Local Authority was to provide the disclosure by 18 December 2023. The Local Authority was also granted permission to file and serve a statement from the complainant by 13 December 2023. Further directions were given in respect of police disclosure given the information provided by the investigating officer at Court.

30. The complainant's GP records remained outstanding. The Local Authority informed the court that it had emailed the relevant surgery on 26 October 2023 and chased again on 23 November 2023 and 30 November 2023. On 1 December 2023 a reply was received from the relevant surgery apologising for the delay and stating that the request had come through when there was annual leave and that it was being dealt with as a priority.
31. The Investigating Officer was also in attendance on 6 December 2023. She stated that she had received a number of police records created in the late 1990's when the complainant made allegations. This information was in conflict with a letter received from the Disclosure Unit dated 24 November 2023 which stated that there were no historical records in existence relating to the late 1990's allegations. I ordered the officer to provide a list of all such material together with a statement confirming that all historic records had now been identified and disclosed.
32. It was also confirmed at this hearing that the Local Authority no longer pursued paragraphs 8 and 9 of its amended threshold (matters relating to the health of the grandparents and previous concerns regarding the child's mother and Father.)
33. On 14 December 2023, The Local Authority Solicitor met with the complainant to take instructions for her statement. The Local Authority said it was explained to her that it would be a difficult process and that she would need to answer questions arising from the historic documents. The complainant confirmed that she was willing to give evidence and wanted to proceed.
34. The grandfather filed a C2 application with the Court on 8 January 2024 requesting an urgent directions hearing to deal with issues surrounding disclosure and compliance by the Local Authority with the Order of 6 December 2023.
35. The matter was listed for an urgent directions hearing on 9 January 2024. Concerns were raised over the lack of compliance with some of the directions made on 6 December. I was informed amongst other things that there were significant issues with the police disclosure that had been received with numerous documents missing; that the previous proceedings were still in archive and yet to be disclosed; that there were concerns that not all of the information from the late 1990's had been disclosed and that difficulties had been encountered in serving the respondents to the care proceedings and discharge of care order proceedings (the Local Authority had only been able to serve one of the respondents).
36. The Local Authority case summary for the hearing set out that the final hearing due to commence the follow week could proceed without prejudice to the parties. During the course of the hearing that position changed with the Local Authority accepting that the hearing could not fairly proceed.

37. The order from that hearing records that the Local Authority confirmed that it had disclosed all historic case records held in respect of the late 1990's proceedings (which amounted to 23 pages). This was not accepted by other parties, so I ordered that all of the case papers from the late 1990's be brought to the court building on 15 January 2024.
38. I also made directions in relation to service on the Respondents from the late 1990's proceedings together with further directions in respect of police disclosure for the investigating officer to produce material as previously directed on in December and against Welsh Police Force Disclosure Unit, to include PNC and the occurrence summary for the complainant. The Local Authority was directed to file and serve a position statement by 12 January 2024.
39. There was a further hearing on 15 January when I was informed that disclosure from was now available. I was also told there remained issues in respect of the completeness of disclosure that had been received from the Welsh Police Force despite the investigating officer being in attendance. It was not possible to resolve these issues, so I ordered the attendance of Police officers and staff to attend at Court on 18 January.
40. On 18 January I heard oral evidence from the Police personnel who attended. The content of this evidence was extremely concerning. It is worth setting out in full matters recorded on the face of the order dated 18 January 2024 [names redacted from original]:

**AND UPON** the Court recording that it heard oral evidence from a Police officer and a disclosure officer from the Welsh Police force. The parties and the Court considered that it was necessary to hear oral evidence as a result of the information provided by the investigating officer, that they had requested information from another officer, including the ABE interview assessment booklet but had received no response. The parties and the Court considered that it was necessary to hear evidence from the disclosure officer, so as to understand why confirmation had been provided that all disclosure had been provided when that wasn't the case and for the Court to understand what if any communication takes place between the Officer in the Case and the Disclosure Unit, in light of the investigating officer informing the advocates in January 2024 that "there is no communication between the disclosure team and me."

**AND UPON** The Police Officer admitting in evidence that she had made a number of errors in her conduct of the case and thereafter. And upon the Police Officer informing the Court that she still has items stored in her locker at the Police Station relating to the case, including the ABE Witness Booklet for the complainant, that she thought she would have scanned onto the system before she left CID and she thought she would have provided to the investigating officer. The Police officer also thought that she would have replied to any emails from the investigating officer. The Police Officer informed the Court that she would retrieve the items and provide these to the disclosure unit in accordance with paragraph 4 below. The Police Officer has further confirmed that whilst she will check her 'blue book' for any notes relating to this case she does not have any separate handwritten or electronic notes of interactions with witnesses or complainants in the case save for as set out in the ABE booklet and

the occurrence log. She has also confirmed that she will check her professional email account (although advised that all emails over 12 months old are automatically deleted) and her police OneDrive account for any records and/emails related to this case and will disclose them.

**AND UPON** The Police Officer confirming that the “book” she refers to in the ABE interview of the complainant is simply a book that she had used to press on whilst taking notes and the only other document she had in her possession was the ABE interview booklet, which has not yet been disclosed.

**AND UPON** the disclosure officer giving evidence to the Court that despite the Family Court Orders requesting disclosure of “all documents” held, unless documents are specifically listed, the disclosure unit does not search for, or disclose, all documents held and that was the procedure adopted in this case. And upon the disclosure officer confirming that it was therefore likely that documents were missing from the disclosure provided to date and agreeing to provide full disclosure in short order.

**AND UPON** it being recorded that when this case was before the Court on 15 January 2024 the investigating officer attended the hearing on a witness summons. They did not give oral evidence, but discussed the records available in this case in the presence of all of the advocates and the solicitor for the Local Authority and confirmed during that discussion, and in a subsequent statement, that she does not have any separate handwritten or electronic notes to supplement the occurrence log entries beyond the material she has provided from her ‘blue book’ and questioned why she would need to take notes. Further, the investigating officer:

- Was unable to provide the dates that disclosure witnesses were put forward by the complainant
- Confirmed that she had spoken to the complainant many times and had also spoken to 2 of the grandchildren and a number of ‘disclosure witnesses’ whose details had either been provided by the complainant or obtained from the material within the Annex C request, but did NOT take any notes, indeed she asked “why would I take notes?”.
- Confirmed that she did not know when she had spoken to 2 of the grandchildren unless it is detailed in the occurrence log.
- Confirmed that she had spoken to “disclosure witnesses” who are not named in the occurrence log but could not provide any details of when she had spoken to them and had not taken any contemporaneous notes or entered any details of her conversations with those persons in the occurrence log.
- Explained that she makes a short entry in the log that is made from memory and can sometimes be entered several days after the discussion.
- Confirmed that there were several platforms upon which documents could be saved, including the Logs and a U drive. Anything pre-2017 was held by the Records Management Team.
- Stated an investigation of this type would take around 3 years.
- Confirmed that that she could not find the ABE assessment of the complainant. She said that the previous OIC may have had a paper file,



but she didn't know where it was and the officer had not responded to any of her requests for information. She said that the ABE assessment could be anywhere; it could be in the officer's office, the writing room, or scanned on to the officer's own device.

- Confirmed that she had not provided the documents she had obtained via an Annex C request but could provide a list.

- Confirmed that the texts between the Police officer and the complainant would have been sent on a works phone and were not saved to the investigation log and therefore she did not have a copy.

- Stated "there is no communication between the disclosure team and me" and confirmed that there was therefore no way of them checking what they had and were disclosing everything that she has in relation to the investigation, to the Local Authority.

**AND UPON** it being recorded that the investigating officer filed a statement dated 18 January 2024, that contained a list of documents relating to the investigation that spanned 5 pages. And upon the Court noting that the list contained items that had not been disclosed into the Family Proceedings to date, despite numerous orders made for full disclosure.

41. Directions were given for further police disclosure as it was clear that there was a significant amount of information that remained undisclosed. The Local Authority was also directed to file and serve statements from the complainant, a community support worker, 2 of the grandchildren and witness in respect of the historical allegations. if so advised.
42. Cafcass Cymru confirmed at the hearing that it had performed a search of its records and could not find any typed or handwritten notes/records from the Children's Guardian in the proceedings from the late 1990's
43. The parties were all directed to file and serve position statements/skeleton arguments and the matter was listed for a further case management hearing on 23 February 2024. I directed that given the state of the evidence that the Local Authority give consideration to whether it remained proportionate to pursue the allegations against the grandparents.
44. The Local Authority filed its position document in February 2024 in which it confirmed that a decision had been reached that it was no longer proportionate to pursue the historical allegations and indicated it intended to seek permission to withdraw.
45. Following a series of emails and discussions the child returned home to the care of his Grandparents in February 2024. I will deal with the circumstances of the reunification later in this judgment.
46. In February 2024 the Local Authority confirmed that it would seek to withdraw its application for a care order and would make a C2 application to do so. All parties confirmed their agreement to the application being withdrawn. The Local Authority submitted that given the concerns raised by the parties in their position documents, the Local Authority should have an opportunity to respond to those concerns and a direction was provided for the Local Authority to file and serve a statement from the Head of Service and any other statements that it considered necessary. Furthermore, the Local

Authority submitted that The Welsh Police force should be provided with an opportunity to respond and be represented if they so wish at the next hearing.

47. Directions were given for the filing of further evidence and documents, including a statement from the Head of Service and position statements/skeleton arguments. The matter was listed for a Final Hearing on 8 April 2024.

## **Issues**

48. It is agreed by everyone that there have been a number of failings in the manner in which this matter has been dealt with. From the documents now filed by the Local Authority the following concessions can be drawn:
- a. The Local Authority failed to ensure that expectations were clear in the period following the revival of the allegations.
  - b. The Local Authority knew from the original referral in August 2022 that the allegations had previously been made to social services and withdrawn. The Local Authority failed in its duty to analyse the information and to look at the historical files held either in archive or electronically in a timely manner.
  - c. The Local Authority failed to seek legal advice sufficiently promptly – no meeting was convened until 1 September 2022.
  - d. The use of Police Powers at the instigation of the Local Authority was inappropriate.
  - e. The significant delay in issuing cannot be explained.
  - f. The decision to go to PLO cannot be explained.
  - g. There were several key decision making meetings held where there was no reference to the fact that the complainant had previously made allegations regarding sexual abuse perpetrated by the grandparents during care proceedings in respect of her children. This is the case even though this information was known to the Local Authority and was considered as part of the strategy discussions held in August 2022;
  - h. The Local Authority took no action to consider its own records and what this information might mean in terms of the assessed risk of significant harm to the child, and the proportionality of any action required to safeguard him whilst investigations were ongoing.
  - i. Even when the grandparents' solicitor raised the history of the allegations and their withdrawal the Local Authority failed to act and check the records.
  - j. The decision to conduct a connected carer assessment prior to issue was 'flawed' because there was still the key matter of the historic sexual abuse allegations that needed to be resolved regardless.
  - k. There was a complete reliance throughout on the outcome of the police investigation, with the Local Authority seemingly believing its hands were tied whilst the investigation was ongoing. Looking at the correspondence with the Police it is also clear that there was a breakdown in the information sharing protocol. That being the case, an application to issue proceedings should have been made at a much earlier stage.
  - l. The delay in issuing denied the child the opportunity of having a voice within the process;

- m. There were several key points where the Local Authority should have been alerted to the need to take action to bring matters before the court to avoid delay for the child. These were missed. The delay in issuing is indefensible.
  - n. The change of placement pursuant to section 76 but without the knowledge or consent of the Grandparents was wholly unacceptable.
- 49. The Welsh Police force filed a position statement in advance of the hearing in April 2024. They were also represented by Counsel at the hearing. They accept that 'learning has taken place as a result of the matters raised in these proceedings and processes will be implemented'. However, the position statement does not go very far and other than a bald assertion that lessons have been learnt it provides no further information. It is largely a repetition or chronology of what has happened. The concerns arising from the evidence I heard in January have not been fully ameliorated. In submissions Miss Knight accepted that there had been failings in terms of the disclosure. She said that the Police acknowledge that processes in place have not been followed; that there was a lack of communication between them and the Local Authority and that for some aspects there were no processes in place and lessons have been learnt. She said that a training package is being put together to assist officers in understanding the Family Court process.
- 50. I remain sceptical about these reassurances as an unrelated 15 day hearing that was meant to commence before me in April 2024 was derailed following 2,500 pages of disclosure being received from the police the week before the hearing was due to start. Miss Knight acknowledged that there are ongoing issues that are wider than this case. The resolution of these issues is beyond the scope or remit of this judgment. I have raised my concerns with the Designated Family Judge so that matters can be considered outside of these proceedings.
- 51. There are issues and areas that require consideration in some detail within this judgment so that context is given to the concessions made by the LA. They are:
  - i. Withdrawal application
  - ii. Original decision to remove the child and the police PPO
  - iii. Decision making thereafter and delay in issuing (including seeking a threshold finding of a risk of significant harm from the grandparents' health)
  - iv. LA actions during proceedings including in relation to disclosure
  - v. Reunification of the child with his Special Guardians.
- 52. **Withdrawal application Law**
- 53. Withdrawal of applications in proceedings is governed by Rule 29.4 of the Family Procedure Rules 2010 which provide as follows:
  - 1) This rule applies to applications in proceedings –*
    - (a) under Part 7.*
    - (b) under Parts 10 to 14 or under any other Part where the application relates to the welfare or upbringing of a child or.*
    - (c) where either of the parties is a protected party.*

*2) Where this rule applies, an application may only be withdrawn with the permission of the court*

54. In **Re GC (A Child) (Withdrawal of Care Proceedings)** [2020] EWCA Civ 848 the Court of appeal reiterated that applications for permission to withdraw care proceedings fell into two categories.
55. In the first category, if the local authority is unable to satisfy the threshold criteria under the Children Act 1989 s 31(2) for making a care or supervision order then the application to withdraw must succeed. In the second category, if threshold could be established, then an application for withdrawal will be determined on a welfare basis by considering whether withdrawal is consistent with the welfare needs of the child.
56. In **J, A, M and X (Children)** [2014] EWHC 4648 (Fam), Cobb J expressed the view that in order for a case to fall into the category of cases where the local authority is unable to satisfy the threshold criteria (and hence the application for permission to withdraw must be granted), the inability on the part of the local authority to satisfy the threshold criteria should be 'obvious'. Where this is not the case, and it is possible that the threshold might be crossed depending on the court's construction of the evidence, Cobb J concluded that the court must first determine whether or not it should proceed with a fact-finding exercise by reference to the factors set out by McFarlane J (as he then was) in **Oxfordshire County Council v DP, RS, BS (By the Children's Guardian)** [2005] EWHC 1593 (Fam). Having considered those factors, the court should then cross-check the conclusion reached, with regard to the best interests test under CA 1989 s1(1).
57. When considering an application to withdraw care proceedings the court should also take into account the overriding objective in FPR 2010, r1.1 and, whilst proportionality can never trump welfare, it is nevertheless a factor to which proper consideration must be given. The decision is a case management decision, and the court should apply the approach set out in **Re TG (Care Proceedings; Case Management: Expert Evidence)** [2013] EWCA Civ 5.
58. On applying to withdraw proceedings, the Local Authority should state whether the child is a child in need' under CA 1989, s. 17 and if so, the Local Authority should file a document listing the needs identified and outlining the support and services that the authority proposes to make available.

### **Analysis**

59. The basis for the application to withdraw is detailed in the Local Authority position statement from February 2024. The statement sets out that the Local Authority had undertaken an evaluation of the available evidence and consideration of its applicability to any threshold relating to the child.
60. The statement goes on to state that the complainant had been spoken to since the hearing on 18 January 2024 and that no statement had been taken from her as the solicitor with conduct of the case was concerned that the complainant presented as vulnerable and expressed contradictory views as to her ability to withstand the process of giving evidence.

61. In addition, one of the grandchildren [redacted], had been contacted and made it clear that she did not wish to engage with any court process. The Local Authority had also made unsuccessful attempts to speak to another of the grandchildren but understood from the police and from attempts to contact her that she wished to have no involvement in the police investigation or the Family Court proceedings.
62. The evaluation of the evidence by the Local Authority revealed:
- a. The complainant is the only person who has definitively made allegations against the grandparents.
  - b. She is now in her mid fifties. When she was in her late twenties, in the late 1990's, she made serious allegations of sexual assault against the grandparents.
  - c. The history of how the allegations came to be known is [dates redacted but presented in chronological order]:-
    - i. Late 1990's the complainant first mentioned in care proceedings relating to her own children that she had been sexually abused by the grandparents. Records indicate that she was reluctant/indecisive when spoken to. She said that her allegations were true but refused to make a complaint to the police.
    - ii. Late 1990's – following the making of the allegations, the grandchildren, who had been in the care of the grandparents were removed.
    - iii. Late 1990's - a strategy discussion recorded that the complainant said that she was sexually abused by her father from aged 14-16 years. She alleged that she had informed her mother who did not believe her. The Guardian, allocated in proceedings, said that the complainant had told her that she had also been abused by her mother, but she was unclear about the detail.
    - iv. Late 1990's - at a further strategy discussion it was noted that the complainant declined to make a statement and that there was no consistent version of events.
    - v. Late 1990's – the task of assessment was taken over by a new social worker. The assessment process had initially been commenced by another social worker.
    - vi. Late 1990s – the complainant tells professionals that she has lied. She is said to be upset.
    - vii. Late 1990's – the complainant is noted to repeat her retraction.
    - viii. Late 1990's - the complainant discusses the allegation of sexual abuse with a counsellor; the counsellor opines that they believe the complainant.
    - ix. 23.11.99 - Risk assessment completed by the social worker outlined the reasons the complainant asserted that she had lied about the allegations of sexual abuse. She listed the following reasons:
      1. she had lied to friends;
      2. she wanted attention;
      3. she had been drunk;
      4. she had wanted to feel important;
      5. she had been very unhappy;
      6. it had led to a trivialization of her own problems.

7. she said that sexual abuse was an easier thing to talk about.
8. she said that she had heard others describe sexual abuse.
9. she had wanted her partner to think that she had a poor relationship with her family just as he had a poor relationship with his family.

During the risk assessment the complainant reinforced the reasons for making the allegations up were that she was feeling unhappy; she was fearful of her parents having a better relationship with her children; she was fearful of 'being rejected by her children' and she was jealous of her parents and she resented them for shutting her out.

The risk assessment concluded that the children of the complainant could and should return to the care of the Grandparents which they did.

- d. The complainant made no further reference to her allegations of sexual abuse until August 2022. The records suggest that the catalyst for her raising her allegations again is cemented in her belief that another grandchild who had been cared for by the Grandparents, had herself alleged that her grandfather had sexually abused her. The grandchild has made it clear to the Local Authority and the police that she wishes to play no part in these proceedings. She has never made a formal complaint.
- e. The complainant was interviewed by the police in October 2022 and made serious allegations of sexual abuse.
- f. The police took statements from a number of witnesses [names redacted]. None of these witnesses were told at the time of the alleged abuse but many years later.
- g. The Onyx booklet notes that the complainant stated that the abuse started when she was 16, that it would take place in her bedroom and when she was 16, she was made to do stuff with her mum.
- h. The allegations are denied by the grandparents. They denied the allegations in the late 1990's and maintain that position to date.
- i. The grandparents were assessed when being considered as long term carers for the child in this case in 2018. As part of that assessment the complainant and grandchildren were spoken to by the assessor. In respect of the complainant it said [name redacted in quote]:

*"The complainant feels that the grandparents did an amazing job bringing up their grandchildren and never kept her out of the loop. The complainant confirmed that she experienced a normal childhood which included routines, quite strict boundaries and they were quite protective parents. They were always involved with school and attended concerts and parents' evenings. Family is everything to them. The complainant feels despite their age they will give the child a good life....she has no concerns for his well-being".*

In respect of the grandchild it said:

*"The grandchild said they and their siblings owe a great deal to the Grandparents who went through a lot of stress and heartache to keep the siblings together. They spoke of the allegations that the complainant made towards their Grandparents and how she caused all of the family to suffer. They marvel that the Grandparents were strong and managed to do what they did for them all when placed under such terrible stress. They feel that the grandfather values honesty, the grandmother is nurturing, protective and understanding. As a teenager they described*

*themselves as a bit of an arsehole and felt they did go off the rails for a while. However, she always felt she could talk to the Grandparents and despite this difficult period in their life, they stood by them , continued to parent them and did their best to keep them safe”.*

63. The Local Authority statement in February 2024 continued:

- i. It is clear that the allegations are the complainant’s word against the grandparents.
- ii. There is no independent or forensic evidence to support the allegations.
- iii. There are a number of evidential hurdles.
- iv. There is the original complaint, followed, almost immediately by a coherent retraction.
- v. The complainant was aware that her retraction was almost certain to result in the grandchildren being cared for by her parents.
- vi. The complainant supported the grandparents’ desire to care for the child.
- vii. The allegations lay as unfounded allegations for over 20 years seemingly to be resurrected after one of the grandchildren is thought to have made an allegation of a sexual nature against the grandfather.
- viii. The grandchild has been unwilling to engage in this or any criminal process. They supported her Grandparents in their desire to care for the child.
- ix. The complainant found it enormously difficult to consider the allegations and retractions, she expressed a wish to give evidence but also a doubt as to her robustness to see the process through.

64. In the skeleton argument on behalf of the Local Authority in March it is stated that for the reasons identified in the February statement the Local Authority is unable, despite the existence of a potentially willing witness, to discharge the burden and standard of proof. Miss Heyworth KC submits that this case falls within the first category identified in **Re GC**.

65. All parties agree with the decision that has been reached by the Local Authority and support the withdrawal of the care application.

66. The Local Authority knew in August 2022 that the complainant had made previous allegations. The chronology of how the allegations in the late 1990’s came to be known (paragraph 62c I-ix) is drawn from the Local Authority’s own files and records. The detail of the allegations made and the extensive reasons given for retraction were available to the Local Authority. The grandfather informed them during a home visit on 2 September 2022. The recording for that visit said:

*“Grandfather expressed that the complainant has been blackmailing Grandparents for money. The complainant had her children removed. Some of the children lived with the grandparents and they brought them up into their 20’s. 30 years ago the complainant made an allegation of sexual abuse against the grandfather from when she was a teenager and then retracted this as she was told the children would be adopted and she didn’t want this. Children were returned to the grandparents and now the same thing is happening.”*

67. The matters were considered further when the grandparents were assessed as long term carers for the child, when both the complainant and grandchild spoke in glowing terms of the grandparents.
68. The Head of Service in their statement accepts that there were several key decision making meetings held where there was no reference to the fact that the complainant had previously made allegations regarding sexual abuse perpetrated by the grandparents during care proceedings in respect of her children. These meetings include, the initial 'management discussion' held on 31 August 2022, the 'urgent legal discussion' held on 1 September 2022, VCP held on 28 September 2022 and LDMM held on 4 October 2022. The s47 assessment document references the fact that the allegations had been made previously but again, there is no evidence to suggest that Local Authority records (either relating to the previous care proceedings or the complainant's children's care proceedings) were considered. This failure continued after proceedings were issued. Such a failure like other failures in this case is inexcusable and indefensible.
69. Upon being provided with the detail of the allegations which form part of the ONYX booklet in August 2022, the Local Authority should have balanced the inconsistencies and made an initial determination as to the quality of the available evidence, taking into account the previous investigation, retraction and assessment of the respondents as Special Guardians.
70. The allegations being made were inconsistent with the allegations made in the late 1990's. The allegations from the late 1990's themselves had been considered lacking in consistency with the Local Authority within a strategy meeting in the late 1990's concluding that there was no consistent account.
71. By the following day it is recorded that the complainant had made allegations shortly after an argument with the grandparents. This mirrors the position in the late 1990's when she was aggrieved at not being able to smack the children whilst the grandparents were caring for them.
72. The complainant was interviewed in October 22. The Local Authority were in receipt of the transcript of that interview prior to their amended threshold dated 1 September 2023. Upon receipt of the transcript the Local Authority should have undertaken a further analysis of the quality of the evidence. Had it done so further inconsistencies in the allegations would have been apparent.
73. The Local Authority should have considered its position and the evidential picture available to them as disclosure was received from the Welsh Police force; when it became apparent that no other person suggested by the complainant as being a further victim was prepared to corroborate her account; prior to every CASP review and prior to every Court hearing.
74. I agree with the submission of Miss Jones that there is an inevitability to the application. The analysis of Miss Heyworth KC in February is entirely correct. Based on that analysis I am entirely satisfied that there is no prospect of proving the allegations to the civil standard and that the Local Authority should be given permission to withdraw their application for a care order. It is of the utmost concern that this exercise was not carried



out by the Local Authority sooner. This exercise was not undertaken until directed by the court following the defective fact find in January 2024. As Miss Hughes KC submitted the local authority has an on-going duty to ensure that any interference with a family's rights continues to be necessary and proportionate. That duty is fundamental to the process of justice. It is clear when one considers the chronology that the Local Authority have not complied with this duty. Had they done so the proceedings may well have been withdrawn many months before. Most of the information used by the Local Authority to rationalise its decision to withdraw was or should have been available to the Local Authority many months ago.

75. Miss Hughes KC asks me to go further. She asks me to consider whether an allegation of sexual abuse by the grandparents so many years ago, even if it were to have been true, would ever have met threshold. She submitted that the allegations relate to abuse alleged to have occurred in the early 1980's, over 40 years ago. There is no other evidence of inappropriate sexual behaviour and no evidence that the child has been subjected to inappropriate sexual boundaries or exhibited any sexualised behaviour. The harm alleged to the child has always been the likelihood of future harm.
76. She reminded me of the guidance set out by Baroness Hale in **Re B (A child)** [2013] UKSC 33 which clarified the basis upon which the court can make findings of future harm, between para 177-193. In particular para 193 sets out five specific criteria for threshold where harm may be likely in the future.

*"193. I agree entirely that it is the statute and the statute alone that the courts have to apply, and that judicial explanation or expansion is at best an imperfect guide. I agree also that parents, children and families are so infinitely various that the law must be flexible enough to cater for frailties as yet unimagined even by the most experienced family judge. Nevertheless, where the threshold is in dispute, courts might find it helpful to bear the following in mind:*

*(1) The court's task is not to improve on nature or even to secure that every child has a happy and fulfilled life, but to be satisfied that the statutory threshold has been crossed.*

*(2) When deciding whether the threshold is crossed the court should identify, as precisely as possible, the nature of the harm which the child is suffering or is likely to suffer. This is particularly important where the child has not yet suffered any, or any significant, harm and where the harm which is feared is the impairment of intellectual, emotional, social or behavioural development.*

*(3) Significant harm is harm which is "considerable, noteworthy or important". The court should identify why and in what respects the harm is significant. Again, this may be particularly important where the harm in question is the impairment of intellectual, emotional, social or behavioural development which has not yet happened.*

*(4) The harm has to be attributable to a lack, or likely lack, of reasonable parental care, not simply to the characters and personalities of both the child and her parents. So once again, the court should identify the respects in which parental care is falling, or is likely to fall, short of what it would be reasonable to expect.*

*(5) Finally, where harm has not yet been suffered, the court must consider the degree of likelihood that it will be suffered in the future. This will entail considering the degree of likelihood that the parents' future behaviour will amount to a lack of reasonable parental care. It will also entail considering the relationship between the significance of the harm feared and the likelihood that it will occur. Simply to state that there is a "risk" is not enough. The court has to be satisfied, by relevant and sufficient evidence, that the harm is likely: see In re J [2013] 2 WLR 649."*

77. I agree that whilst a finding of sexual abuse of the complainant would have been significant, it would not necessarily of itself have been sufficient to meet threshold in respect of the subject child. There was no analysis by the Local Authority at any point of the likelihood of future harm or the risk posed by the grandparents as at the relevant date. There was no evidence of or analysis of propensity. That point was made by the Guardian in her final analysis who confirmed she did not see this as a two-option case but rather even if findings were made then the next stage ought to be a risk assessment to consider whether findings of sexual abuse against a female child some 35 – 40 years ago translated into a direct risk to the child. The Local Authority's approach was entirely linear and non-specific to this child.

#### **Original decision to remove the child and Police Powers of Protection**

78. In the February 2024 statement the Local Authority sought to distance itself from any involvement regarding the police exercising their powers of protection. The statement specifically said that if there was any criticism then the police should be asked to comment. That statement went on to maintain that the decision to remove was correct. There has been some change in this position as the Head of Children & Family Services, in her statement acknowledges that the Police Powers of Protection were used at the instigation of the Local authority and that this was inappropriate. There has been no change regarding the decision to remove. The Head of Service maintained that the Local Authority was right in its decision to remove the child.
79. This position is not accepted by any of the parties. Miss Jones in February said that everything that has gone wrong in this case started with the decision to remove the child. In her April 2024 position statement she described the removal as 'the fruit of the poisoned tree'.
80. The actions of The Welsh Police force during this time are also the subject of criticism. The issues are clearly set out in the respective position statements/skeleton arguments from February. The Welsh Police force's position statement dated April 2024 does not deal with these criticisms other than to set out a chronology of the PPO being exercised.
81. It is necessary to consider in detail the events that started in August 2022 and culminated in the child being removed from the care of the grandparents in August 2022. Before doing so, it is worth setting out the statutory context of Police Powers of Protection and section 76 accommodation.
82. Section 46 of the Children Act 1989 provides:

*“(1) where a constable has reasonable cause to believe that a child would otherwise be likely to suffer significant harm, he may (a) remove the child to suitable accommodation and keep him there; or (b) take such steps as are reasonable to ensure that the child’s removal from any hospital, or other place in which he is then being accommodated is prevented.”*

83. The use of section 46 is a particularly sharp interference with family life, the holders of parental responsibility on the ground are rendered defenceless with no objective check on the decision to remove at the time it is happening. It is such a sharp measure that the Home Office considered it necessary to issue a circular in 2008 which said

*“the provisions of the Act aim to strike the proper balance between the provision of speedy and effective help to children at risk and unwarranted interference in family life. The underlying principle of the Act is that the welfare of the child is paramount”.*

84. The circular goes on to say

*“police protection is an emergency power and should only be used when necessary. The principle being that wherever possible the decision to remove a child/children from a parent should be made by a Court”.*

85. Section 76 Social Services and Well-being (Wales) Act 2014 enables a person with parental responsibility to consent to the Local Authority accommodating a child. In **Re A-W and C** [2013] EWHC B41 the Court reminded Local Authorities of Hedley J’s guidance in **Re CA (A Baby)** [2012] EWHC 2190 (Fam) which confirmed that section 20 (being the comparable provision to section 76 in England) consent to accommodation must be freely given and not ‘compulsion in disguise’ and that having a police officer present during the discussions would have led to a legitimate complaint that the principles of section 20 had been breached.

86. In **Re. A-W** the Court emphasised:

*“There are a whole range of remedies before enforced separation, which is the absolute last resort. Decisions as to whether that protection is necessary should be made by a court, and decisions as to what course is the least interventionist necessary should be made by a court. There was a duty, it seems to me, not just on the social worker but on the police themselves to look at the route into protection.”*

87. The points were reinforced further in **Re. E (A Child)** [2013] EWHC 2400 (Fam) where Mrs Justice Theis commented that to use the section 20 procedure in circumstances where there was the overt threat of a police protection order if they did not agree reinforced by the physical presence of uniformed police officers was wholly inappropriate. By adopting this procedure, the Local Authority sought to circumvent the test any Court would have required them to meet if they sought to secure an order either by way of an EPO or interim care order. In that case Theis J also said:

*“It is not suggested that the issues raised in this case should not have been investigated. What is criticised is the way the information has been presented,*

*both before and after the issue of proceedings, and the process that was used by the LA. It has graphically illustrated the dangers of not rigorously analysing the evidential foundation for and against any allegations made and not exercising a balanced judgment. Due to the complexities of the case it required strong, experienced leadership from the LA who hold primary responsibility for safeguarding issues. Put simply, that was not provided and there was no check on the structures that failed to provide what was required in this case."*

88. I keep this legal framework in mind when considering the timeline of events.
89. The allegations first came to the attention of the Local Authority in August 2022 when a Police Constable contacted EDT. This referral set out that the complainant had made an allegation of historical rape. The information provided was that the complainant had made serious allegations of sexual abuse.
90. The CS Contact – Proportionate Assessment completed in August 2022 sets out that the initial view of the EDT Social Worker :

*"In reviewing WCCIS it can be seen that the child is thriving in the care of his Grandparents and that he was removed from the care of his parents. Now the complainant has made this allegation of sexual abuse against the grandparents. It can also be seen that the child has a life limiting illness and his Grandparents are able to meet his complex needs. Advised that I would be very reluctant to move him and that I would prefer that we discuss a safeguarding adult to be present at the home pending further investigation."*

91. The document then goes on to detail that a further discussion occurred between the EDT Social Worker and a Police Officer. This discussion is recorded in the occurrence log as taking place at 21:19. The content of that discussion is detailed by the EDT Social Worker as follows [names redacted in quote]:

*"We discussed that the complainant has alleged sexual abuse by the grandparents perpetrated when she was a child. That they had said that they had reported this before to social services but that grandfather put pressure on them to withdraw the allegations or he would ensure that they do not see their children who he was caring for at the time. As the allegations are against both parents it is felt more measured and proportionate to find a safeguarding adult to stay with the child in his own home and supervise the Grandparents."*

92. It was agreed in this discussion that there would be a joint investigation and the police were to attend the family home that evening to "ensure that the safeguarding adult identified resides at the address, issue safeguarding direction and inform perpetrator that allegation has been made". The Police Officer was to attend the address.
93. By 22:20 officers had attended the home address. The PPN notes [names redacted in quote]:

*"The identified safeguarding adult also resides at the address and is a legacy guardian for the child. He is aware that any contact between the child and his Grandparents needs to be supervised by him. A full Strat will need to take place*

*AM and actions agreed.”*

94. This information was updated to the occurrence log at 22:24. The log also records that the safeguarding adult did not know the extent of the allegation, only that an allegation had been made and there are safeguarding concerns. Unfortunately, there is no entry from the Police Officer, no note of what the family were told and no written agreement regarding the safeguarding requirements. The Local Authority seemingly delegated the task of conveying this information to the family directly and had no role in discussing the matter with the family on that night.
95. Following this initial call the Welsh Police Force sent a PPN which provided the following further information [names redacted in quote]:

*“Concerns have also been raised around the three-year-old child living at the address”*

*Social services have been de-briefed about the circumstances of what has been alleged, they have given information about the child whereby they state that he is on their system, but the case of the family is now closed as there were no concerns raised regarding the child living at the address and in fact the family received a “GLOWING REPORT”. The child does however have a life limiting illness and therefore they are reluctant to move the child from the address due to the care he requires. They have stated that grandmother will need to be informed about the disclosure and will need to be told to supervise contact between the child and grandfather; A DS is currently discussing options and POA with them.”*

*“The complainant states that she did disclose this to social services many years ago, but grandfather used the children to emotionally blackmail her by stating that if they went ahead with the report, then the children would be adopted, and they would not be able to have contact. The complainant’s children all resided with the grandparents at the time. The complainant also states that she told the grandmother what was going on but was accused of lying, although the incident involving grandmother did not get discussed after it happened.”*

96. It is clear from these records that the Local Authority knew from the outset that the allegations had been made by the complainant; that she had made allegations previously to social services; that the child had additional needs that on all of the available evidence were being met to a high standard. The Local Authority clearly had sufficient information to have checked its own historic records to establish whether the allegations had been made before and if they were of a similar nature. I agree with Miss Jones that the Local Authority did not undertake the task required as enunciated by Theis J of “rigorously analysing the evidential foundation for and against any allegations made and not exercising a balanced judgment”.
97. It is difficult to reconcile the detailed information given to the Local Authority with the implication throughout PLO that little was known about who was making the allegation or what allegations were being made. This implication was carried forward into these proceedings. The case summary for the 1<sup>st</sup> hearing on 12 May 2023 suggested that it was not until 15 February 2023 that the Local Authority were told that it was the

complainant who had made historic sexual abuse allegations against both the grandparents.

98. It is staggering that there is absolutely no mention of the previous allegations when the Local Authority filed the initial statement in these proceedings over 7 months later. That statement is entirely silent on the issue. I draw the inevitable conclusion that despite being aware of previous allegations since the date of the notification in August 2022 the Local Authority had taken no steps to consider their own records.
99. From the records it appears that the situation as at the date of the notification in August 2022 was that police had attended the family home, woken the family out of bed to inform them that serious allegations had been made against them but had not advised by whom or the nature of the allegations. The family had been advised that they ought to be supervised by the identified safe person and that social services would be in touch the following morning.
100. At 9.00am on the day of removal in August 2022 the Support Worker noted that she received a message from the grandmother stating the police had come to the home the night before and told her that social services would be attending that morning as an allegation had been made. The support worker recorded [names redacted in quote]:

*“I replied to grandmother I knew nothing about this and would make some enquiries and come and see her later on”.*

101. It seems that she then checked the system, saw the PPN and arranged a strategy discussion. That discussion was not held until 10:30 with the log being uploaded to the occurrence log at 11:12. No professional from the police or children’s services had contacted the family before this meeting took place. The meeting was attended by 3 Workers from the Local Authority along with a DC. During that discussion it was noted by the Local Authority that the property is visited weekly and there are *‘absolutely no concerns – the child always appears well looked after’*. The note of the support worker goes on to state [names redacted in quote] *‘I know the grandparents don’t have a good relationship with the complainant they have had recent fall out with the complainant as the complainant commented how they should be caring for the child.’* In this log the police made it clear that the *‘this current investigation could last anything from a week to months– you will need to factor this into the safeguarding’*.
102. Meanwhile, as there had been no contact from the Local Authority during the course of the morning and as a result of identified safeguarding adult having work commitments, he left the home and went to work.
103. Following the strategy meeting there was a management discussion between two senior managers , 2 social workers , a Team Manager and the support worker . The entry time on the system for this meeting is 11:00 and reads [names and other information redacted in quote]:

*“There is a legacy carer in the property – who has been managing levels of supervision over the weekend – however he works away/works long hours travelling over the country but returns home each evening. Was living with his partner as they have a child however recently separated. However legacy carer*

*doesn't overly have much to do with the child – he is able bodied but does have a life limiting illness. Speech delayed. Carers are in their 70s – have been struggling with managing the child ... Support worker visits every week/fortnight, no concerns with home conditions and the child has everything he needs.”*

104. The log goes on to note [names redacted in quote]:

*“Female carer made contact with the support worker this morning and advised of circumstances – Grandfather query saying that he was handing child back to SSD – query not understanding the process. Given the concerns, it is felt that the child needs to come into a LAC placement during the interim until further circumstances known. As SGO in place, then carers will need to give S.76 consent parents also need to be informed of the circumstances and contact attempted with them as they still hold element of PR. Ongoing Joint S.47 – with police, if carers don't give S.76 consent then PPP could be considered. Placement request form to be completed the support worker has been having continued involvement as per the SGO support plan. Support Worker in agreement to complete visit with DCT team today. Ongoing S.,47 – Social Worker confirms that police will not undertake visit with workers today, as their part of S.47 is currently being undertaken and no requirement for them to visit child – however if Grandparents will not provide S.76 consent then request that investigating officer is contacted re. request for PPP.”*

105. It would seem from the records that this is the extent of the considerations as to whether the child should be removed from the care of his Grandparents. This was the extent of the risk assessment and balance of harm exercise that it was incumbent upon the Local Authority to carry out when considering whether the child should be removed. The decision was made to remove the child without the benefit of legal advice; without any real consideration of the impact on the child ; without an analysis of his specific needs and risks that would arise from his removal; without consideration of the immediacy of any alleged risk and whether the Court should be involved; without any mention of the previous allegation and what, if any, impact that would have on the risk analysis. All of these things should have considered fully before reaching a decision that removal was necessary and proportionate. I fully agree with the submission that the risk assessment was wholly defective.

106. At some point in these meetings the grandmother rang and spoke to the support worker [names redacted in quote]:

*“she had been trying to ring the duty number and couldn't get through, I could hear grandfather in the background he sounded annoyed and then he came on the phone. The grandfather said the police got them out of bed last night saying an allegation has been made and they know nothing else. The identified safeguarding adult was asked to supervise them and social services would be out 9am in the morning. He said they waited in all day and nothing and the identified safeguarding adult got sick of it and said he was off to work as he was losing money. I explained to the grandfather that I didn't know the exact details of the allegation but it was important that the identified safeguarding adult remained with them today, the grandfather said its tough he's in work and*

*we are in MacDonalds. I said to the grandfather social services will be out today they are trying to get hold of him and the grandmother, I passed the social worker's mobile onto them for them to ring. The grandfather said this is the complainant this is we had a falling out weeks ago and she is nasty cow. Soon as we say no to money that's it, her and the grandchild all about money. Few weeks ago they tried telling us how to deal with the child, how can they do that when they didn't even bring up their own we brought them up. I told them straight get out and don't come back. I asked grandfather to leave the call and ring the duty number so arrangements could be made and he said he would. I informed the social worker that they were alone with the child and the identified adult was at work."*

107. I agree that quite why the support worker was telling the grandparents to call the duty number about this issue when she was sitting in meetings with two managers, a team manager and two social workers making decisions about where the child was going to live is baffling and entirely disingenuous. The content of this call also provided some context to events. The grandfather was clearly under the impression that the complainant was involved. He said that there had been a falling out recently. This should have led the Local Authority to reflect once again on the context of previous allegations that had been withdrawn. There does not appear to have been any attempt to consider matters or to try and obtain further information from their own records to contextualise matters.

108. At 11:42 the occurrence log was updated with an email from , Assistant Team Manager:

*"Just to update we have agreed to seek an alternative placement we will need to seek section 76 consent from ca Should there be any issue would we have support from Police if needed such as PPP"*

109. The reply from the DC was as follows:

*"Come back to me if they refuse and I will get police there ...".*

110. It is clear from the records that by 11:42 the Local Authority had decided that the child needed to be removed from the care of his Grandparents. They made arrangements for the police to use their powers of protection if Grandparents did not agree. They had no regard to the comments of Theis J in **Re E** that using section 76 where there was an overt threat of a police protection order if consent was not given as being wholly inappropriate. At the point this decision had been made:

- i. There had been no proper discussion with the carers of the child;
- ii. No exploration of whether there were any alternative carers available;
- iii. No checks of their own systems despite being on notice that these were allegations which had been made and withdrawn historically;
- iv. There had been no apparent consideration of whether the legal department should be involved or whether proceedings should be considered if section 76 consent was not freely given.
- v. No effective assessment of risk or assessment of the proportionality of removal.



111. It is also clear that the police had agreed to assist with a PPO if section 76 was not given. There is no indication from police disclosure of any consideration being given as to whether such a step was appropriate given the needs of the child and no indication that the Home Office Circular 2008 had been considered.

112. At 13:40 the Support Worker received a further call from the grandmother who advised she had:

*“spoken to duty and they are coming at 3pm I said I would be there with them as well. She said she is not happy she was told the identified safeguarding adult was meant to be supervising them all this time and she can’t find that in the paperwork. I explained to grandmother this was not the case it was since last night when the police came that’s when he agreed to supervise them both. Grandmother understood then what I was saying. Grandmother said she doesn’t know what all this is about and she is not happy with how it has been dealt with.”*

113. At 15:00 the support worker attended the home of the grandparents . The full case recording for that visit is set out below. I have underlined parts of this recording.

*“15:00 –Joint home visit and S47 , I arrived at the home and knocked the door. I was aware that 2 social workers were on the way. The grandmother answered and looked tired but made conversation and said she feels let down but how things have happened she said they have no idea about the allegation. I assured the grandmother that she would be made aware but the police have to be the ones to inform her as there was an ongoing investigation. The grandmother said she felt this was the complainant as they have done this before and they fell out with them 2 weeks ago. The child was playing happily and they had been to MacDonalds.*

*The grandfather came downstairs and it was immediately clear that he was angry and upset. He said that he felt this was the complainant , they call them Billy liar as they tells so many lies. The grandfather said this happened before when they had the children in their care and she made an allegation about them, the kids were taken into foster care and then they retracted her so called allegation. He then went on to say that maybe it is the next door neighbour as he drove a young girl out of the street before as her kid kept crying and he reported her. He said the child had a huge let down the day before and he commented to grandmother that the police be knocking this door the way he is screaming. I assured grandfather that he would be informed about the allegation but by police as they were the ones with the information.*

*Grandfather said he was not in the mood for this and he knows all about social workers ruining people’s lives and he would not be putting up with it. He said they can take the child now because we won’t be supervised looking after him. He said they have given their lives to him and love him and care for him they would never hurt him. Grandfather was getting angrier waiting for the other social workers, he was pacing saying he will kill whoever did this.*

*The other social workers came and grandfather was not pleasant to them, he*

*wouldn't let them speak and told grandmother to pack the child's things. She did start packing and the child got very upset he could hear grandfather telling grandmother he had to go.*

*I took the child and his toys into the next room to avoid him hearing this conversation. I could hear grandfather getting irate and he told the social workers to leave shouting at them and he locked the door. He was extremely angry and grandmother was crying whilst packing the child's things. I tried to reason with grandfather stating if he signed the forms then this would avoid the police coming and would show he is working with social services. He said no way was he signing anything he said social workers were idiots with no brains and they had been brainwashed and if he had to put up a I asked grandfather to remain calm for the child's sake and he was hugging the child saying sorry. Grandfather kept pacing the room and had some scissors at one point, I asked him again to think about things and not do anything silly and he placed the scissors in a utensils holder on the sink.*

*The police came and I asked Grandfather for permission to answer the door, he said do what you like but don't let them social workers in. I opened the door and went back to the child to keep him busy.*

*Grandfather was getting really angry with the officers and the social workers again had to leave. A few minutes went by and things began to escalate, Grandfather got really angry and started shouting "Fucking take him go on get it done. The male officer said it was best for us to leave, I picked up the child and carried him and he started to cry. I was reassuring him and telling him I was coming in the car for a ride to a nice ladies house. I could hear Grandmother screaming behind me and crying on the door. I took the child to the car and got in with him and we went to the foster carers house. The child was fine in the car and asking where we were going I said we were going to see a lady called and he was going to stay there and play toys with her. The child warmed to the carer immediately and sat on her lap playing toys and wandering about the house. He was shown to his room and he seemed to be happy and settled when we left and got ready for the park.*

*I came back with police and we discussed a welfare check, police asked me to go to the door and knock but there was no answer. I came home and had a text message off Grandmother asking if the child was ok, I explained we had knocked the door, but no answer and she said she was out walking. I explained that the child was happy and settled and no longer upset, he was going to a park with the foster carer."*

114. It is unclear from the log who told Grandparents that the Local Authority sought their consent to remove the child from their care. It is unclear what information was given to them about matters or about the options available to them. This was the first substantive conversation with them since the referral had been received. The Local Authority knew that the complaint had been made by the complainant. The grandparents did not know yet expressed a feeling that it was her. Yet again it was brought to the attention of the Local Authority by both the grandparents that the complainant had made previous allegations that social services were aware of and that

she had withdrawn those allegations.

115. Grandfather clearly indicated that he would not give consent to accommodation. The Support Worker then recorded that she:

*“tried to reason with Grandfather stating if he signed the forms then this would avoid the police coming and would show he is working with social services. He said no way was he signing anything.”*

116. That she was willing to make such an entry shows a fundamental misunderstanding of section 76 and the manner in which it should be utilised and a complete disregard for the principles in **Re A-W** that consent should be freely given and not compulsion in disguise and in **Re E** that the overt threat of a police protection order is wholly inappropriate.

117. It is also clear from the case recording that this was an upsetting and distressing scene both for the grandparents and for the child. Grandfather, I am sure he would accept with hindsight, did not act appropriately for the entirety of the visit. He was angry and hostile. I do not condone his actions but cannot ignore the context of them. The police had attended the previous night at 22:00 to inform them that serious allegations had been made against them but no further detail was provided. They were advised that their son needed to stay with them and someone from the Local Authority would be in touch at 09:00 the next day. Grandmother attempted from 09:00 – 13.30 to contact someone from the Local Authority with no success. Three social workers then attended and seem to have informed the grandparents that a decision had been made to accommodate the child and that the options were either to agree or the police would be attending to remove.

118. At 15:35 the police had been called to come to remove the child by the Assistant Team Manager. The removal was executed at 16:20pm via section 46.

119. The reasons given for the use of Police Powers of Protection is documented within the PPO document [names redacted in quote]:

*“They did not adhere to this and the child has been on his own with the grandparents all day. Due to this, officers had reason to believe that the child may be at risk of immediate significant harm. The grandparents refused to sign any paperwork for Social Services to take full care of the child and therefore PPP were used ... social services attempted to seek section 76 consent from the grandparents to which they refused to do so. Due to this police were asked to attend to support social services. 2 Police officers attended and tried to speak to the grandparents and ask them to agree to signing social services section 76 consent.”*

120. It is under those circumstances that the child came to be taken in Local Authority accommodation in August 2022. The grandparents were clear that they would not consent to section 76 accommodation. Given the lack of communication with them that is not entirely surprising. The Local Authority had pre-empted this by making prior arrangements for the police to attend and exercise their powers of protection. That was used by the social workers on scene as a threat to try and secure consent. It was an

entirely inappropriate way of seeking consent and entirely against all of the authorities. It was inappropriate and as the Guardian says appallingly managed contrary to the basic principles of fair and open justice and deeply harmful to the child .

121. The Head of Service now accepts that the actions of the Local Authority were wrong in respect of the PPO. It is extremely frustrating and concerning that even now with the benefit of hindsight that the same acknowledgement is not made regarding the decision to remove the child in the first place. The Head of Service in fact positively maintains that the decision to remove was correct. Such a position seems contrary to the acceptance in the statement that at the point of initial contact in August there was no action taken to consider the records and what that information might mean in terms of the assessed risk of significant harm to the child , and the proportionality of any action required to safeguard him whilst investigations were ongoing.
122. In my judgment the decision to remove the child that day was not correct. I appreciate that when referrals are received matters are often fast moving and decisions have to be made with incomplete evidence. However, from the outset the Local Authority knew allegations had been made previously by the complainant. They had assessed the grandparents positively in the knowledge of those allegations. It seems they made no effort to retrieve their own documents to consider matters. They knew the child had significant needs and that there was no criticism of the care provided to him in the years that he had lived with the grandparents. They knew that the police investigation was likely to take months. From the records there is a complete absence of proper risk assessment. There was no consideration of the balance of harm in removing the child. There was no consultation with the grandparents; no consideration of any safeguards that could be put in place and no consideration of alternative carers. These should be some of the main tenets of a decision to justify such a sharp interference with family life. This judgment should go to the Head of Service for further consideration in the hope that such fundamental errors will not be repeated in the future.
123. At the very least in such a situation when the grandparents refused to agree to accommodation the proper route for the Local Authority to take would have been to issue an urgent application with the Court for an interim care order or an EPO and not to summons the police to improperly use their powers of protection as a means to secure removal. Failure to do this was compounded by the decision to not issue proceedings for over 7 months. 7 months during which time the child was denied a Guardian and a voice and denied court oversight where there would have been a requirement for proper evidence and a scrutiny of plans and the process.

#### **Delay in issuing**

124. When the section 46 police powers expired rather than issuing proceedings the Local Authority instead sought section 76 consent to the continued accommodation of the child,
125. The allegations made by the complainant have always been denied by the grandparents. They had been raised over 25 years ago and were denied then. They had been investigated and considered by the Local Authority before the child was placed with the grandparents and before a SGO was made. Section 76 consent was given by the grandparents in September 2022 but that consent was given in the context of the damage

had already been done as the child had already been removed from their care under the PPO in August 2022. The child remained on section 76 accommodation for the next 7 months until proceedings were eventually issued. The Local Authority now acknowledge that this delay in issuing is indefensible. It denied the child a voice in the proceedings for over 7 months. This matter was never capable of being dealt with under PLO and should have been brought to the court much sooner than April 2023.

126. Section 76 Social Services and Well-being (Wales) Act 2014 is, for all relevant purposes, identical to section 20 Children Act 1989. As such, case law concerning section 20 Children Act 1989 is applicable by analogy.
127. Munby (P) in **Re N (Children) (Adoption Jurisdiction)** [2015] EWCA Civ 1112, stated, in respect of children who were accommodated under section 20 in May 2013, but proceedings were not commenced until January 2014, nearly 8 months later:

*“Section 20 may, in an appropriate case, have a proper role to play as a short-term measure pending the commencement of care proceedings, but the use of s20 as a prelude to care proceedings for a period as long as here is wholly unacceptable. It is in my judgment and I use the phrase advisedly and deliberately a misuse by the local authority of its statutory powers.” [157]*

128. He went on to explain at paragraph 158 the impact, as he saw it, of such a course, that it deprives the child of the benefit of an independent guardian to represent and safeguard his interests and deprives the court of the ability to control the planning for the child and prevent or reduce unnecessary and avoidable delay. I agree with Miss Hughes KC that all of his comments are entirely applicable to this case and in the context of the child’s medical issues, the delay and lack of representation are all the more deplorable.
129. Furthermore, he said at paragraph 171:

*“The misuse and abuse of section 20 in this context is not just a matter of bad practice. It is wrong: it’s a denial of the fundamental rights of both parent and child. It will no longer be tolerated and it must stop. Judges will and must be alert to the problem and proactive in putting an end to it. From now on local authorities which use s20 as a prelude to care proceedings for lengthy periods or which fail to follow the good practice I’ve identified can expect to be subjected to probing questions by the court. If the answers are not satisfactory, the local authority can expect stringent criticism and possible exposure to successful claims for damages.”*

130. **Re N** has been tempered somewhat by the 2021 PLWG Guidance and the observations of King LJ in **Re S (A Child)** and **Re W (A Child) (S. 20 Accommodation)** [2023] EWCA Civ 1. Section 20 (or section 76) can be used as a long term measure without the need for proceedings or a care order. There is no statutory time limit on how long a child can be accommodated under section 20 (or section 76). However, in my judgment such placements and plans are not appropriate in circumstances such as this case. The placement and plans were not agreed by the grandparents. There was drift for over 7 months without the child having a voice and without court oversight.

131. Ms Reed KC also reminded me of **Williams v Hackney LBC** [2018] UKSC 37, [2019] 1 FLR 310) which provides the following guidance on s20 (corresponding references to s76 in [square brackets]):

- a. Where a parent agrees to the removal and accommodation of his or her child, that parent is simply delegating the exercise of their parental responsibility, for the time being, to the Local Authority;
- b. Any such delegation of the exercise of parental responsibility must be real and voluntary. Delegation of the exercise of parental responsibility by a parent should not occur as the result of compulsion where the parent lacks the requisite capacity to decide to delegate parental responsibility or where an impression has been given to the parent that he or she has no choice but to delegate the exercise of parental responsibility. However, delegation can be real and voluntary without being fully informed;
- c. Absent a real and voluntary delegation of the exercise of parental responsibility to it, the Local Authority has no power to interfere with the parent's parental responsibility by removing the child;
- d. In any event, as a matter of good practice, Local Authorities should give parents clear information about what they have done and what the parents' rights are. This should include not only the parents' rights under s 20(7), (8), [s76(4) and (5)] but also their rights under other provisions of Children Act 1989, including the right ... to know the whereabouts of their child. Parents should also be informed of the Local Authorities' responsibilities. In an appropriate case, that may include information about the Local Authorities' power and duty to bring proceedings if they have reasonable grounds to believe that the child is at risk of significant harm if they do not;
- e. Pursuant to s 20(7) [s76(4)], the authority cannot accommodate a child if a parent with parental responsibility who is willing and able either to accommodate the child herself or to arrange for someone else to do so objects;
- f. A parent with parental responsibility may remove the child from accommodation provided or arranged by a Local Authority at any time without the need to give notice, in writing or otherwise. The only exception to this is where preventing such a removal constitutes doing what is reasonable in all the circumstances to safeguard and promote the child's welfare for the purposes of ChA 1989, s 3(5);
- g. If a parent unequivocally requires the return of the child, the Local Authority has neither the power nor the duty to continue to accommodate the child and must either return the child in accordance with that requirement or obtain the power to continue to look after the child, by way of applying for an emergency protection order, or if time allows, an interim care order.'

132. Furthermore, Ms Reed KC submitted that pre-Williams guidance in **Coventry City Council v C** [2012] EWHC 2190 (Fam), [2013] 2 FLR 987 and in **Re N (Adoption: Jurisdiction)** [2015] EWCA Civ 1112, [2016] 1 FLR 621) made it clear that:

- a. wherever possible, the agreement of a parent to the accommodation of their child under s 20 should be properly recorded in writing and evidenced by the parent's signature;

- b. the written document should be clear and precise as to its terms, drafted in simple and straightforward language that the particular parent can readily understand;
  - c. the written document should spell out, following the language of s 20(8), that the parent can ‘remove the child’ from the Local Authority accommodation ‘at any time’;
  - d. the written document should not seek to impose any fetters on the exercise of the parent’s right under s 20(8).
- 133. As with the decision to remove the child it is worthwhile setting out a chronology of events post removal up to the issuing of proceedings in April 2023 to understand exactly what happened.
- 134. In the strategy discussion in August 2022, it was noted that the current investigation could last anything from a week to months.
- 135. Section 76 consent was given on 2 September 2022. No section 76 documentation has ever been disclosed in these proceedings. Case recordings refer to section 76 paperwork being prepared and signed but the actual documents have never been produced.
- 136. On 5 September 2022 the Social Worker submitted a referral for the child to be considered by the Vulnerable Children’s Panel (VCP). The reason for referral was noted as view to go to Legal Decision Making Meeting (LDDM).
- 137. On 28 September 2022 the child was discussed at the VCP, chaired by a senior manager . The VCP concluded with a decision to proceed to a LDMM to consider whether to issue an application for care proceedings. It was noted that this would help and assist to avoid drift. The referral for LDMM noted that advice was required to ensure the care planning for the child was paramount and that there was no drift in the case due to the ongoing police investigation being likely to take months due to the nature of the allegation.
- 138. The LDMM took place on 4 October 2022. The meeting concluded that threshold was not met. The Head of Service statement says it is unclear when or why a decision was made to progress to PLO. This decision would ordinarily be made in a LDMM, but there is no reference to this within the minutes in October 2022.
- 139. A case recording from 25 October 2022 said Grandmother had spoken to her solicitor and was not happy with social services. She said they never hear off anyone and it was 8 weeks since the child had been removed. The grandmother said they were going to withdraw section 76 consent.
- 140. The initial PLO meeting was held on 17 November 2022. The minutes of that meeting include the following:

*“The grandparents’ solicitor queried when this allegation took place. The Social Worker stated that she is unsure as what age the complainant was when the alleged incident took place, but it was when she was a child. The solicitor asked whether this was investigated at the time and the social worker*

*emphasised that she has not had any correspondence from Police and grandparents have not been spoken to yet regarding the matter. The social worker is unaware as to whether it's been investigated previously. The social worker cannot comment further on the investigation until the complainant has been ABE interviewed."*

*"Grandad, emphasised that Grandparents have brought the complainant's children up following this alleged incident and queried that if the allegation was true, why would they allow Grandparents to care for the children. The Team Manager acknowledged grandfather's comments and the difficulty of the situation, whilst explaining that the Local Authority have a responsibility to follow safeguarding procedures when new allegations are raised. Grandfather stressed that the complainant has made similar allegations previously when they were losing their children and she thought that if Grandparents were out of the picture, that the children would return to the complainant's care. Once the children were removed, the complainant retracted the allegations. The Local Authority Solicitor reassured grandfather, in saying that this will be taken into account."*

*"The grandparents' solicitor is concerned that threshold is not met in this case, as whether the Police substantiate the concerns or not, this is a historical allegation and several assessments have been done since the alleged incident."*

*"Grandfather feels that the complainant has made this allegation out of spite and has previously lied about many things. The Local Authority solicitor stressed that she would appreciate if all parties could co-operate until we can have a Review PLO, to look at the new information. The Local Authority requested for the current arrangements to remain in place until the Review PLO."*

141. It is clear that, yet again, it was raised with the Local Authority that allegations had been made previously by the complainant and withdrawn. Again, this did not prompt the Local Authority to consider its own historical records. They were entirely reliant on the police investigation and seemed to have made no assessment of the available evidence themselves. The social worker said that she was unaware as to whether the allegations had been investigated previously. The Team Manager said that the Local Authority had to a responsibility when new allegations are raised. Whilst correct this entirely misses the point being made by the grandparents from August 2022 that these were not new allegations. They had been made previously and retracted. This is 11 weeks after the child had been removed. The Local Authority had been aware since the very beginning that the complainant had made allegations previously. It is apparent that no attempts had been made to consider their own records. I agree with Miss Jones that to have removed the child and not undertake the most basic enquiry of records which were in the Local Authority's own control is simply negligent and prevented there ever being a proper evaluation of risk and welfare.

142. A review PLO meeting was convened on 30 November 2022. The minutes include [names redacted in quote]:

*"The grandparents' solicitor summarised, in stating that it appears that we are in the same position as two weeks ago, which is waiting for the Police to conclude their investigation. Team Manager stated that this leaves the Local*



*Authority in a difficult position in providing a decision, as the outcome will be made based on the Police outcome.”*

*“The grandparents’ Solicitor is concerned that the Police investigation is open ended. This is a historical allegation from 20/30 years ago and since this allegation, Grandparents have been assessed to care for their grandchildren and assessed to care for the child. The grandparents’ solicitor is struggling to understand where this case is going, as minimal progress has been made. Also, the grandparents’ solicitor is concerned that a risk assessment has not been undertaken”.*

*“The social worker indicated that she tried to speak with the Police Officer but she was off last week and the social worker has taken leave, too. The social worker advised that it is difficult as the Local Authority are not sure as to what was verbalised 20 years ago. She is unsure as to whether these are allegations that have been made and not taken forward, or whether this is new information”.*

*“The grandparents’ solicitor feels that the Local Authority needs to be more proactive in making progress for the family. The grandparents’ solicitor felt strongly that a risk assessment should be undertaken, as the risk that could have been posed to the complainant 20/30 years ago, could be different to any risk posed to the child now.”*

*“The Team manager acknowledged that this case is frustrating for the Local Authority also as they’d like to make a decision, but they must have the outcome of the Police investigation. The Team Manager reassured Grandparents that the Local Authority will do all they can in order to gain some information from Police. The grandparents’ solicitor commented that they will escalate matters by means of a letter or arranging a meeting if necessary, should the Police not respond or are evasive.”*

143. This was approximately 3 months after the child had been removed. The Local Authority were informed at the outset that the investigation could take weeks or months. The Local Authority again were abdicating decisions to the police and the outcome of their investigation without any apparent consideration of what evidence they did have available to them and how such evidence impacted upon risk. The social worker asserted *“it is difficult as the Local Authority are not sure as to what was verbalised 20 years ago. She is unsure as to whether these are allegations that have been made and not taken forward or whether this is new information.”* There is no justification for this. The Local Authority had details of the allegations made via the PPN and had detailed information regarding the allegations from the late 1990s together with the retraction. These documents were in their possession had they only accessed it. It is unfathomable as to why this was not done. A further two weeks was again sought and agreed as the grandparents wanted to co-operate.
144. There is a case note on 5 December 2022 suggesting that Grandmother said that if there was no progress in 2 week she would be revoking section 76 consent.

145. A CLA review took place on 13 December 2022 (15 weeks since removal). There is no mention of the previous allegations and surprisingly no recorded observations by the IRO about the delay. It is noted that the grandparents were considering withdrawing their consent.
146. The grandparents did not attend the review in December as they were attending the child's Christmas Concert. When they updated by telephone after the review it is recorded that Grandfather *"said he is revoking s76 and it can go to court and let a judge decide what happens."*
147. On 14 December 2022 following a home visit SG support worker noted:
- "The grandparents are going to revoke S76 consent and are well aware that they will need to go to court really soon if they do this. Grandfather said he feels this is the only thing they can do as it feels like they are sat doing nothing and 15 weeks have gone and no one has even interviewed them and they are no further forward. They feel if a judge has a fresh pair of eyes on the case they will see how unfair this all is on the child. Grandfather reiterated its not about them it is about the child and they will do what they can for him."*
148. These are the exact considerations that the Local Authority should have been having. The matter had drifted for 15 weeks without any progress being made. The grandparents were only reluctantly maintaining section 76 consent. Despite these conversations the Local Authority did not issue proceedings.
149. A further case recording dated 15 December 2022 noted
- "The grandparents will be revoking the section 76 agreement next week, and therefore will be expecting the case to be presented to the family court. There is another PLO meeting tomorrow"*
150. A third PLO review meeting took place on 16 December 2022. At that meeting the Local Authority said that it had received information from the police that they were unable to share details of the allegations due to the risk of prejudicing the investigation. As Miss Jones submits, at this meeting matters took a deeply unfortunate turn as the social work team raised: *"the deterioration of the child's condition and the Grandparents health; how they would care for him late into their 80's and with his health too. It is hard to see a future without re-assessing."* In her statement, the Head of Service said, it was agreed that 8 weeks would be required for an updating assessment and that it would be beneficial for the assessment to be completed prior to any application to issue. She now acknowledges that this thinking was flawed because, regardless of any concerns in respect the grandparents continued ability to care for the child, there was still the key matter of the historic sexual abuse allegations that needed to be resolved. In my judgment, the thinking was more than just flawed. It was entirely inappropriate. Prior to August 2022 there were no concerns regarding the care being provided. All reports were that the grandparents were providing a high level of care and meeting all child's needs with no consideration as to how the assessment was ever going to be able to properly and fairly conclude without a factual matrix regarding the allegations being determined. This decision and approach continued to pervade Local Authority thinking for a significant period of time. It was in fact issues with this

assessment that led to the proceedings eventually being issued. It was such an issue for the Local Authority that threshold for a long time included a finding in relation to the Grandparents' health. This finding was only removed after a strong indication from the Court that it was not appropriate and not relevant to threshold.

151. So as to be entirely clear the finding in respect of health should never have formed part of the threshold document. As at the relevant date, being the date of removal, the evidence from the Local Authority's own employees was that the child was 'thriving' and reports were 'glowing'. There was not an iota of evidence to underpin a pleading that the Grandparents couldn't meet the child's needs as at the relevant date. The health issues were exactly the same faced by the grandparents when they were positively assessed as Special Guardians. They had shown an excellent ability to care for the child and meet his needs throughout the time he was placed with them. This was raised at the hearing on in September 2023 and specifically recorded on the face of the order dated in October 2023. It was not until December 2023 order that the Local Authority accepted it would not be pursuing health matters in threshold. This was not far off a year to the day since the matter had first been raised (December 2022 PLO meeting). For that year the grandparents had the unnecessary and immeasurable upset and worry that even if the allegations made by the complainant were not proved the child may still not return to their care due to other reasons. I agree with Ms Reed KC that the inclusion of health in threshold is a further clear indicator of a failure in analysis and apparently a failure to appreciate how threshold works and why it exists.
152. The other issue arising from a focus on the health of the grandparents comes from the assessment completed in July 2023. The order of 12 May 2023 provided for an assessment plan in respect of the grandparents by 26 May 2023 and an assessment of them by 11 July 2023. For some reason that assessment took the form of a Connected Persons and concluded that irrespective of the outcome of the criminal investigation the grandparents should not be approved as connected persons foster carers for the child. This assessment entirely missed the point that the grandparents were the primary carers and Special Guardians for the child. They held enduring overriding parental responsibility. Absent the issues arising from the allegations of the complainant there was absolutely no legal basis for state intervention in this family and no basis for the child to be removed from their care.
153. On 5 January 2023, the support worker noted:

*"I am meeting grandmother tomorrow and it was suggested I let her know if she was not going to be assessed this would mean the child not being able to return to their care"*
154. On 6 January 2023 the support worker noted:

*"I needed to make sure [ED] is aware that if she refuses the assessment then the child will not be able to return to her care even if the police NFA the case this assessment is needed due to the child's needs and the fact there is no legacy carer. The grandmother said this is so unfair as their health has not changed in this time and neither has their ability to care for the child."*
155. A case recording dated 24 January 2023 said:

*“Within the previously held PLO meeting a reassessment of Grandparents was proposed; Grandparents have declined this. Another PLO meeting is forthcoming (February), this will focus on plans moving forward... Unfortunately, should Grandparents agree to a re-assessment, there is the potential that they will not pass (previously they had legacy carers which are no longer in situ). Potential to escalate this case into the Court arena and of the need for the LA to share PR.”*

156. On 3 March 2023 a management meeting was held during which it was noted that the assessment still hadn't been completed and that Grandfather did not want to be assessed. It was at this meeting that a decision was made to issue proceedings by April 2023. This meeting was over six months after the child had been removed from the care of the grandparents. The Local Authority were no further forward in terms of obtaining information about the police investigation. There had been no apparent attempt to retrieve documents to consider the previous allegations. It appears that the main rationale for issuing was the ongoing concern in respect of the grandparents' engagement. The entirety of this important meeting was redacted when it was eventually disclosed and only after a specific request was the redaction removed. It is unclear as to why it was redacted previously as none of the information redacted amounted to legal advice.

157. A further CLA review took place on 7 March 2023. The case recording of this meeting by the support worker said [names redacted in quote]:

*“Grandfather was very agitated in the meeting and he kept wanting to talk about the investigation and the accusations made by the complainant. The IRO kept asking him to focus on the child and how he is and not the investigation. Grandfather then asked why social services won't give the child back and said that I had told them he would not be returning. I intervened and said to Grandfather I did not make that comment, I said that if they were not willing to be assessed then it was highly unlikely that the child would be returning to their care. Grandfather would not accept this and was adamant I said that he wasn't going to return.”*

158. Despite her assertions to the contrary it is clear from the case recordings from 5 and 6 January that the support worker had, in fact, told the grandparents that if they did not agree to the further assessment the child would not be returned to their care irrespective of the outcome of the police investigation.

159. As Miss Jones notes once again there are no comments made by the IRO at the delay or lack of proceedings. Astoundingly at 6 months post removal the conclusion of the review is *“SW to continue presenting the child's care plan in PLO discussion for management/legal consideration with Grandparents complaints and comments regarding the process”*.

160. On 23 March 2023 a Professionals Meeting was convened. That meeting noted:

*“Grandparents are currently being assessed, grandad not wishing to progress currently, I allocated assessor, it is early days, Assessor hasn't manage to get*

*the grandad to engage but neither of the Grandparents have completed the relevant paperwork.”*

*“The child hasn’t got the time for people to be causing delays.”*

*“Social Worker to liaise with Legal, there is a clear delay with the Connected Persons Assessment, application to the Court may be required.”*

161. On 31 March 2023 there was a management discussion for which the minutes are entirely redacted.
162. The Local Authority eventually issued proceedings on 19 April 2023. By that date the child had been out of the care of the grandparents for over 8 months. Proceedings were issued with no proper evidence gathered; no substantive assessments; no consideration of the previous allegations and no real plan to resolve any of those matters.
163. The Head of Service in her statement said it is unclear why there was such a significant delay in the Local Authority making an application to issue care proceedings and that proceedings should have been issued at a much earlier stage. Furthermore, she accepted that there was a complete reliance throughout on the outcome of the police investigation, with the Local Authority seemingly believing its hands were tied whilst the investigation was ongoing. She also conceded that there was no consideration of the fact that the delay in issuing was denying the child the opportunity of having a voice within the process or the fact that there was likely to be little progress made in PLO.
164. Having made these concessions the Head of Service added that whilst she would agree with the Guardian’s position that the Local Authority’s delay in issuing care proceedings is indefensible, the child continued to remain in Local Authority care for a further 10 months with the oversight of the Court and without challenge by way of a contested hearing regarding the need for continued separation.
165. This case drifted for 7 months. This case should never have entered the PLO process as nothing could be achieved given the factual issues at the heart of this matter. It is difficult to understand the decision making and planning of the Local Authority during this 7 month period. It is difficult to understand the decision to embark on a connected persons assessment which had the result of deflecting concerns to the capacity of the grandparents to care for the child. It should have been patently clear to professionals that the grandparents had until removal been meeting the child’s needs to a high standard. They had been positively assessed as Special Guardians and absent the allegations of the complainant there would have been no role for the Local Authority other than by way of support services. This should have been blatantly clear to the Local Authority at a very early stage.
166. As Miss Jones says, by the time the Local Authority did issue the die was cast. The child had been removed and accommodated for 7 months, it had become his status quo without him ever being represented throughout the process. Furthermore, at the point of issue there was no mention of the previous allegations in the SWET or in the case summary for the 1<sup>st</sup> CMH in May 2023. The focus of the proceedings at that stage was to gather information and to deal with placement issues in respect of the child. The true picture of the previous allegations did not become clear until months into proceedings when disclosure of historic records was received.

167. The use of section 76 for that 7 months was improper. The manner in which it was obtained and the manner in which it was then used was contrary to the authorities and guidance. This case doesn't fall into any of the categories of appropriate use of section 76 identified by either the PLWG or the Court of Appeal. It should not have taken the grandparents withdrawing section 76 consent for the Local Authority to see that. The purpose of section 76 is not to allow the Local Authority to accommodate a child without a plan until forced to issue. The Local Authority missed multiple opportunities to issue proceedings to allow the Court to have oversight of what was happening. The Head of Service said that the grandparents could have withdrawn their consent. Whilst that is correct it is clear from the records that they mentioned withdrawing on a number of occasions but were always persuaded to continue for another period whilst information was being sought from the police. They could have withdrawn which would have forced the hand of the Local Authority to return the child to their care or to issue. The child did not have this option available to him. He was removed from his carers by the police in distressing circumstances. Less than a week later he was moved yet again. He had no voice in this process and as Miss Jones submits his rights were trampled over roughshod.

#### **LA actions during proceedings including disclosure**

168. Further issues have arisen in respect of the actions of the Local Authority during proceedings and the manner in which they have approached disclosure. In their February statement it is said that any serious assertion that the Local Authority have withheld information is strongly and wholly refuted. Furthermore, it said that as far as the Local Authority is concerned it has done all and more in order to be fair and transparent.
169. The skeleton argument dated March 2023 acknowledged that the Head of Services' statement accepted that all relevant information held in archives should have been accessed much sooner and was not dependent upon the issue of proceedings. It went on to apologise if the interpretation of the requirements of paragraph 5 of the court order dated 12 September 2023 was interpreted too narrowly. That the Local Authority, maintained that there was no attempt to withhold information and no motivation to do so. It said that ultimately, whilst it should have been done sooner, it was the Local Authority that resolved the issue of disclosure to enable fuller disclosure to be provided.
170. In support of this submission it said:
- a. The search of the historical records was undertaken by the local authority solicitor. She disclosed the information located in archive relevant to the allegations as ordered by the court. Upon inspecting the archived documents, she identified potentially relevant information which fell outside of the disclosure anticipated in paragraph 5 above.
  - b. The additional information was quite properly addressed by the local authority and incorporated into the order dated 12 October 2023. Paragraph 3 permitted disclosure of a risk assessment prepared during the course of late 1990's proceedings. The risk assessment was relevant to the placement of non-subject, now adult children. The preambles to that order also acknowledge potential evidential issues which might affect threshold.

- c. Following the making of this order and before the matter returned to court on in 6 December 2023 the additional information including the risk assessment undertaken in the late 1990's had been disclosed.
  - d. Whilst it is not accepted, the Local Authority acknowledge that some may take the view that the wrong balance was struck in what was disclosable pursuant to the September order. If that is the view of the court, the Local Authority reiterates that no attempt to withhold information was ever intended and the Local Authority continued to be mindful of its obligations in disclosing sensitive material.
171. Other parties do not agree that this is an accurate reflection of what has happened nor do they accept the submissions made.
172. Miss Hughes KCs skeleton argument of 4 April 2024 asserts the Local Authority was selective in the disclosure provided; it withheld Local Authority and police disclosure at various points during the case and the withholding of the police disclosure in December 2023, was compounded by the failure to inform the Court, or any other party of that decision, until questions were asked by the Court at an application to vacate the final hearing on 9 January 2024. The order of that date records: "As a result, the Local Authority had unilaterally decided not to disclose those records, did not inform any party that those records had been received..."
173. Ms Reed KCs skeleton asserts that the Local Authority had failed to comply with its duties of disclosure but does not attempt to identify or unpick the reasons for the failures or attribute responsibility to individuals (be that systemic issues, intentional (in)action, or simple human error) as to do so would be disproportionate and would create satellite issues.
174. Ms Reed KC refers to the following legal principles:
- i. **Kent CC v A Mother** [2011] EWHC 402, per Baker J (as he then was) – is authority for the proposition that there is a duty upon a Local Authority to conduct a lawyer led review of relevant material held on its files: Whilst Kent CC is specifically concerned with duties of a Local Authority which brings proceedings, self-evidently any Local Authority contemplating proceedings ought to have scrutinised the evidence base well before bringing proceedings, save in emergency both in order to establish whether proceedings are truly warranted and to ensure that as a public body its decisions and acts in the exercise of its powers and duties are done reasonably, lawfully and proportionately, particularly where they involve an ongoing Art 8 interference as was the case from [the date of the notification in] August 2022 to date.
  - ii. Within proceedings there is a specific rolling duty of full and frank disclosure. See Practice Direction Family Proceedings: Case Management [1995] 1 FLR 456:
- "The parties and their advisers must also use their best endeavours:*
- (a) to confine the issues and the evidence called to what is reasonably considered to be essential for the proper*

*presentation of their case;*  
*(b) to reduce or eliminate issues for expert evidence;*  
*(c) in advance of the hearing to agree which are the issues or the main issues.”*

- iii. In addition, the Overriding Objective set out in FPR 1 also requires the parties to assist the court in ensuring that matters are dealt with justly, having regard to any welfare issues involved. This includes assisting the court to ensure that the case is dealt with expeditiously and fairly and that the parties are on an equal footing. Withholding records that would fall to be disclosed under standard disclosure principles does not ensure that the parties are on an equal footing.
  - iv. A Local Authority has a positive duty to disclose all relevant material in its possession or power (except that which is covered by public interest immunity), which might assist the parent in rebutting allegations made against him. **Re C (Child Cases: Evidence and Disclosure)** [1995] 1 FLR 204 (Cazalet). Social work records do not, as a category of material, attract PII (**Durham County Council v Dunn** [2012] EWCA Civ 1654, [2012] 1 WLR 2305, per Munby J). No such immunity been asserted in this case.
175. Miss Jones’ skeleton argument expresses how frustrating the Guardian and her legal representatives found the disclosure. However, she does not suggest that any professional had the ‘mens rea’ to intentionally withhold information. The Guardian’s view is that this has been error as opposed to conspiracy and whilst the seriousness of the consequences for the child and his family are not for a moment minimised the seriousness of the consequences do not elevate an error in judgment to misfeasance.
176. As with other issues in this judgment it is appropriate to consider a chronology of events to understand how matters played out during the proceedings regarding disclosure. I have set out a chronology of the proceedings in the essential background section of this judgement. Some of that chronology is repeated below together with other events that add some context to the hearings.
177. Proceedings were issued in April 2023. The 1<sup>st</sup> CMH was listed in May 2023. The Initial SWET and the Case Summary for that hearing were entirely silent as to previous allegations having been made in the late 1990s. At the first hearing a number of disclosure directions were made including disclosure of previous proceedings in 2018 and 2020. There was no direction for the Local Authority to obtain and disclose the historic records from the proceedings in respect of the complainant’s children or any historic records relating to the allegations. This was despite the fact that the Local Authority knew by that point that historic allegations had been made as per the PPN in August 2022. The case recordings make clear that the Local Authority knew that information but none of the parties knew. I understand that the case recordings were not uploaded until 29 August 2023.
178. The 2<sup>nd</sup> CMH was listed on 11 September 2023. The case summary for that hearing was again entirely silent in respect of the late 1990’s allegations. I am told by Miss Hughes KC that at the Advocates Meeting on 8 September 2023 junior counsel for the Local Authority stated that the Solicitor for the Local Authority had informed him that the Local Authority held in archives material relating to the historic allegations made



by the complainant and that all of the advocates attending the meeting, agreed that all material held in respect of the historic allegations needed to be disclosed. Miss Hughes KC also tells me that during the pre-hearing discussions at Court on 11 September 2023, junior counsel for the local authority provided an update in relation to this direction; he stated that his instructing solicitor had informed him that there was “information in the files of the complainant’s children”, “including disclosure from the late 1990’s, relating to the allegations the complainant made against the grandfather” that led to the removal of the complainant’s children from his care during the care proceedings and his instructing solicitor had noted “reference to a risk assessment”. He confirmed that disclosure of those documents could be completed within 2 weeks, by 25 September 2023.

179. At the FCMH on 11 September 2023, it was recorded on the order that “if the complainant does not wish to participate in these proceedings and the Local Authority make a C2 application to withdraw proceedings, the Court expects the Local Authority to identify the package of support that could be provided to the first and second respondents, to support them in the child returning to their care”. The Local Authority was directed to file a statement from the complainant by 25 September 2023. There was also a direction for the Local Authority to disclose to the parties all material it holds in respect of the historic allegations of sexual abuse made by the complainant in relation to the first and second respondents by 25 September 2023. The Local Authority did not comply with this direction.

180. Again, the decision making of the Local Authority and the rationale for it is confusing. By this time the child had been out of the care of his Grandparents for over a year. It is clear that the Local Authority had still not considered its own records; had not spoken to the complainant despite their threshold entirely depending on her and had not carried out any assessment of the quality of her allegations or any scrutiny of the evidence they already had available to them.

181. At 17:00 on 6 October 2023, the solicitor for the authority sent an email to the parties, stating [dates redacted in quote]:

*“I have also been gathering together the records from when the original allegation were made in the late 1990’s. It appears that there may also be police disclosure from this period that would be relevant. I have located a number of case recordings but am concerned that our electronic file is not complete and so am in the process of locating the paper records in archives to ensure that the disclosure is as complete as possible and so this has taken longer than anticipated.”*

182. A further CMH took place on 12 October 2023. The case summary for that hearing stated that the Local Authority were yet to obtain the records that relate to historical allegations made by the complainant. This is entirely contrary to the information given pre-hearing on 11 September 2023 that documents had been considered and could be disclosed in 2 weeks. The case summary went on that the Local Authority had obtained the digital records but that upon consideration of the same it was clear that various documents were missing and that 2 files from secure storage had been requested which would take 2 weeks to consider. At the hearing I was informed that the historical records had now been retrieved (including a risk assessment from the late 1990’s) and

could be disclosed in 2 weeks. The order from that hearing extended the time for disclosure of the 2018 and 2020 proceedings and the historical records (to include the late 1990's risk assessment) to October 2023. The matter was listed for final hearing for 5 days commencing in January 2024 and FCMH on 27 November 2023 (subsequently moved to 6 December 2023).

183. The case summary for the 6 December 2023 FCMH set out that the Local Authority sought to file a further statement from the complainant addressing the historical information and the late 1990's risk assessment. It also argued that the Local Authority had complied with the previous direction regarding disclosure of historical records. The material disclosed amounted to 23 pages parts of which were heavily redacted. The redactions were said to relate to third party information, legal discussions and general case discussions not relevant to the allegations of sexual abuse. The case summary said [names redacted in quote]:

*“The Local Authority solicitor performed a search on the Local Authority’s system and went through all of the available historic records. The case notes which have been disclosed were those that were scanned onto the system and are all that exist in respect of the allegations. It was from looking at these recordings that it became apparent that there was likely to be information held elsewhere. The Local Authority solicitor therefore searched the Local Authority’s archived records. The Local Authority solicitor had to identify where the files were stored and physically retrieve the same. This is where the late 1990’s risk assessment was located. The Local Authority solicitor checked whether any other documents relating to the allegations had been archived but only the risk assessment was present. The Local Authority solicitor also looked through the bundle to see whether there was any additional information relating to the allegations and there was not. The author understands that it was made clear at the last hearing that there was not a huge amount of historical information available.”*

184. At the hearing on 6 December 2023, the Local Authority argued that historical disclosure was always limited to the risk assessment document of the late 1990's and challenged the disclosure of the remainder of the historical documents. The Local Authority argued that there was no probative value in permitting the full disclosure of the historical documents. The issue had to be dealt with on submissions. Junior Counsel for the grandparents submitted that allegations had been made in the course and context of care proceedings in respect of the complainant's children and therefore of course any documents in the proceedings relating to those children and any social services records would be relevant in this case. I agreed with that submission and ordered disclosure. The Local Authority argued that the parties to those proceedings needed to consent to the disclosure. A number of directions were made to the Local Authority to place those parties on notice of the intention to disclose the documents from the proceedings in the late 1990's and the subsequent discharge proceedings into these proceedings. I was clear that the Local Authority would need to bring the matter back immediately before the Court, in the event that there was any difficulty or delay in seeking the consent of those parties to the disclosure.
185. The grandfather filed a C2 application on 8 January 2024 seeking an urgent hearing to deal with ongoing disclosure issues by the Police and the Local Authority. That

application was listed for hearing on 9 January 2024.

186. The Local Authority case summary for the hearing said [dates redacted]:

*“60. The LA have actively sought to gain the consent of the previous respondents to the late 1990’s proceedings, however; have only been able to contact one respondent. The Risk Assessment of the PGP’s has already been disclosed.*

*61. The LA have identified 2 further documents within the late 1990’s proceedings: the psychological report of the claimant and the Residential Assessment. Updating instructions will be taken at Court as to whether the LA could redact the documents to avoid the need for the previous respondent’s consent. The consent of the complainant will be sought.*

*62. Any and all historic case recordings relating to the late 1990’s have been disclosed to all parties. Updating instructions shall be taken about material from the discharge proceedings.”*

187. It became clear at the hearing on 9 January 2024, that the Local Authority had not served notice as required by the order of 6 December 2023 nor had it returned the matter to court. Instead, it had issued a C2 seeking a DWP direction on 2 January 2024. It also became clear that the discharge proceedings remained in archive and that there remained significant issues as to whether all material had been disclosed in respect of the historic allegations. The Local Authority initially maintained that the hearing due to commence 6 days later could be maintained. By the end of the hearing they agreed that this was not possible given the issues.
188. The chronology of events thereafter is set out at paragraphs 39-46 above.
189. It is clear now that for almost the entire duration of the proceedings the Local Authority, and only the Local Authority, knew that the original allegations had been made in the context of care proceedings and that it was not until the disclosure of P1-23 did it become apparent to other parties.
190. It is also clear, in my judgment, that as Ms Reed KC submits, the Local Authority were under a duty to disclose all the records now appearing in the bundle right from the outset of proceedings, and until very recently they had not done so. That duty is independent of any specific order for disclosure. In the pre-proceedings period the Local Authority had a corresponding duty to be conscientious and prompt in its search for relevant evidence, and to be frank about the evidence base. On any basis there has been a significant failure of disclosure.
191. As I have said at various parts of this judgment in the initial SWET there was no reference whatsoever to the fact that the allegations had been made previously in proceedings; that the allegations had been retracted; that a risk assessment had been carried out followed by the placement of children in the care of the grandparents ; that in the 2020 Special Guardianship Suitability Report all of the children cared for by the grandparents (including the complainant ) were spoken to and were supportive of the child being cared for by the grandparents

192. I am still unclear as to why there was no mention of these matters. The Local Authority were fully aware of these issues and had been since the date of the notification in August 2022. I am drawn to the inescapable conclusion that in the 7 months before issuing proceedings the Local Authority had not properly considered its own records as to what had happened historically. Nearly all of the evidence that the Local Authority considered in February 2024 in making its withdrawal decision was available to them from the outset. They placed inordinate reliance on the police investigation without conducting their own analysis of matters. Not only had they not considered the material from the late 1990's, they had also not properly considered the material from 2018 and 2020. Failure to do so is, in my judgment inexcusable. The application in April 2023 was not an emergency application yet there was nothing to alert the Court or other parties as a result of the Local Authority failing to undertake even the most rudimentary of checks of its own records.
193. It was not until the September hearing that it became apparent that there needed to be an order for full disclosure of the Local Authority's historic records, triggered in part by the Local Authority indicating it had located the risk assessment. It is unclear when this document had been located as it was referred to by the fostering panel as long ago as 1 August 2023. Again, it is unclear why it was not raised and disclosed by the Local Authority at that point. When the Local Authority belatedly complied with the order for disclosure they only disclosed 23 pages parts of which were inappropriately redacted. I say that the redaction was inappropriate as unredacted copies were provided following the hearing on 6 December 2023. The unredacted copies revealed information that was clearly of relevance to the allegations that had been made by the complainant in the late 1990's and 2022 and should never have been redacted in the first place. The Local Authority maintained up to and including the hearing on 9 January 2024 that this 23 pages represented all of the relevant material. It is now clear that this was not accurate. I ordered the Local Authority to bring all of their files to Court on 15 January 2024 when it became apparent that they were significantly more documents that should have been disclosed. In total 664 pages have now been included in the bundle from that time.
194. Some of the delay in disclosure post 6 December 2023 hearing was a result of the Local Authority raising issues as to third party consent and then requesting a DWP Order unnecessarily, when its own records would have established that some were deceased and that the Local Authority already held contact details for others. It was only on receipt of these papers that it immediately became apparent that the grandparents, unbeknown to all, were actually parties to the late 1990's proceedings, and therefore entitled to copy documents regardless of the consent of other parties. Had the Local Authority properly considered their records this would have been known earlier and the delay avoided.
195. Ms Reed KC identifies a number of relevant matters that were revealed when full and proper disclosure was provided including
- a. The Local Authority rehearses in its position statement the observation that the 'counsellor' in the late 1990's had indicated she believes the allegations (there is in fact no direct record of this, and it appears this is based upon a record of the Guardian's report to the social worker that the unnamed counsellor was

‘convinced’. Quite apart from the fact that the hearsay report of the ‘belief’ of a counsellor is of very limited forensic use, we do not understand why other entries in the same records which point in the opposite direction were not disclosed until recently. These include:

- i. the fact that the allocated social worker had multiple lengthy discussions with the complainant and reached the clear view that the allegations were internally inconsistent, changing over time and unreliable, and which evidence the complainant’s ‘tendency to raise allegations against others, and their highly volatile, changeable presentation/demeanour. She concluded her explanations were ‘unconvincing’. Her records also make clear that the allegations followed (as in 2022) an argument with her father.
  - ii. We also cannot help but note that when properly scrutinised the professional apparently identified as a ‘counsellor’ is in fact a social worker undertaking a small number of direct work sessions with the mother primarily concerning domestic abuse, and that she appears to be the same social worker whose credibility was later substantially undermined in the 2008 case of [citation redacted](owing in part to an undisclosed serious conviction).
- b. Records showing the complainant’s positive accounts of her parents care of her children were not disclosed. For example, records from 2018 (the subject child’s proceedings) when the parenting assessment was carried out by the Local Authority’s assessor and the complainant was entirely positive about the grandparents caring for the child. This is first apparent when the assessor files her repeat connected carers assessment in mid July 2023. The 2018 proceedings were not shared until 31 October 2023.
- c. It was not until the discharge proceedings papers were disclosed in full (January 2024) that the parties and court could read the complainant’s witness statement from the s31 discharge proceedings in respect of the grandchildren, where the complainant says in their statement dated 4 December 2013 that the arrangements between her and the grandparents and the children have continued to work well. They are all very relaxed in each other’s company. “In particular the grandfather has long since forgiven me for accusing him of abuse as referred to on page 9 of the social worker’s statement”. The complainant states that the grandfather had been very supportive and encouraging which helped them end a domestic violence relationship. The complainant states further, “the children are thriving in the grandparents’ care” and the complainant supported their application for a residence order for the three of the grandchildren. The complainant is referred to having said to the social worker that they had done a “brilliant job” bringing up the children. This has obvious relevance to the key issue in the case.
- d. It was not until the Local Authority disclosed its historic records that the substantial disparity between the accounts given in the late 1990’s and 2002 was apparent to the other parties (the most obvious example being how old the complainant was when the abuse is said to have happened, though there are others). The further recent police disclosure adds further layers of inconsistency.

196. There is no dispute or doubt that there have been multiple failings by the Local Authority both before and during proceedings. There has been a complete failure to properly consider documentation and records in their possession and control. This has been compounded by decisions to redact documents and to decide what should be disclosed and what should not be disclosed. The Local Authority knew from the outset that was a significant history to this matter including previous allegations. As soon as the Local Authority's legal department were alerted to the allegation, the previous proceedings should have been requested and thoroughly reviewed to ensure that all decision making was carried out in context of the previous welfare decision making made in respect of the child. This was clearly not carried out until January 2024.
197. The impact of this failure on the child cannot be overstated. He was deprived of living with his Grandparents for a significant period of time which, I have no doubt, caused him emotional harm. In addition, it has caused emotional harm and distress to the grandparents.
198. I have no doubt that there were failings. I have no doubt that many documents should have been disclosed much sooner by the Local Authority. I have no doubt that had these documents been properly considered and properly disclosed these proceedings would have taken a different trajectory and would have resolved much sooner than April 2024. However, I am not persuaded or satisfied that there was any intent on the part of the Local Authority to mislead the court or to withhold documentation that it knew was relevant. For whatever reason I accept that the Local Authority didn't think it needed to disclose all relevant material, or failed to appreciate the relevance of what it had (or both). Either way they were fundamentally mistaken.

## **Reunification**

199. The final area which requires some consideration in this judgment is the manner of the child's transition back into to the care of the grandparents following the Local Authority reaching its decision to withdraw care proceedings. The Local Authority filed its position statement in February 2024. That the document acknowledged that the consequence of the Local Authority's position was that the child ought to be returned to the care of the grandparents but did not set out any detail as to how this was to be achieved.
200. That day the legal representatives of the grandfather wrote to the local authority asking for confirmation of the process by which the child would be returned. The response of the Local Authority was to refer them to the care plan with no clear position as to the return of the child and no acknowledgement that it no longer had a basis to require his accommodation.
201. The same day the Guardian's solicitor raised on behalf of the Guardian firstly whether there were any residual bail conditions in place which prevented the child's return home and secondly what the transition plan would be. The reply advised that it was the Local Authority's understanding that there were no bail conditions and instructions would be taken regarding transition, but it was anticipated that this would be as per the care plan. At that point the care plan had envisaged return taking place after a trial and therefore it had proposed the trial concluding on the Friday and the child being back

with the grandparents on the Monday after being told of the decision over the weekend and having a 'goodbye tea' with his carers.

202. During the course of the next day numerous emails were exchanged in respect of the child's return. That afternoon an email from grandfather's legal representatives made it clear that it was their intention to advise grandfather to withdraw section 76 consent. Ultimately consent was not withdrawn and the child remained with his carers that weekend.
203. Three days later in February grandfather was provided with 5 separate and different plans by which the child might be returned home, none of which, I am told allowed for an immediate return.
204. The Guardian returned from leave that day and spoke to the grandparents. They informed her that they had no intention of withdrawing consent in an unplanned way regardless as to whether they were legally entitled to do so.
205. During the course of that day there were further discussions about the transition plan. The Local Authority initially indicating that they were looking to complete the transition in February 2024. The Guardian did not support a drawn out plan but considered it was important that the return was managed so the child was properly prepared and the grandparents were properly supported. There was also formal communication via email to advise the Guardian didn't agree the plan proposed whereby rehabilitation took place in February 2024 and again emphasised that the original plan envisaged return home in 2 days. The Local Authority then responded by advising that the grandparents had contact that afternoon (Monday) and the child would then return home on Wednesday after Holiday Club after the social worker had informed him of the decision. What wasn't communicated was that the contact on the Monday took place in the Grandparents home. The child had not been to the home for many months and the Guardian was not advised before that decision was taken.
206. There was further confusion then with the Local Authority indicating that it would file a C2 adopting the proposal of the Guardian which had been return after a period of 2 days as per the original transition plan yet at the same time emailing with other proposals for the child's return.
207. The following day it was confirmed that section 76 would be withdrawn that day and the child's return after his holiday club at 3pm was sought. The child therefore ultimately returned home to the grandparents at 3pm on that day.
208. The Guardian sought confirmation that afternoon after the return had already taken place as to who had spoken to the child about the plan. She was advised 2 days later that 'it was the Grandparents who informed the child of the plan. The social worker had intended to do this once there was agreement from the parties'. The Guardian also queried when a decision had been made regarding contact taking place at the family home and was told 'there was no specific discussion in the emails on this'.
209. The events in February 2024 were unplanned and chaotic with seemingly little regard for the impact decisions being made would have on the child. He had been out of the care of the grandparents for 17 months at this stage. I agree with Miss Jones that, whilst

it was inevitable that the child would be returned to the care of the grandparents in light of the Local Authority's position, there should still have been a managed and reasonable process for that to happen in the child's interests. It shouldn't have been about who was entitled to take what legal position, it should have been about the plan that best met the child's interests and in that evaluation the voice of the Guardian (who was still appointed as the representative for the child in these proceedings) should have had some value.

210. The Guardian visited the child at the family home on an afternoon in February 2024 a week after his return. During that visit grandfather advised that he and grandmother had informed the child that he would be returning home and that they had done so during the contact in February 2024. The Guardian asked who had visited since the child had returned home and was advised that the social worker had visited the day before and that was the only visit since the child's return six days earlier.
211. The unfortunate outcome of this chaos was that the child went from unsupervised contact to attending at the home for contact in February 2024 in an unplanned way with no apparent preparatory work or explanation despite not being there since August 2022. He was told that day by the grandfather that he would be returning home the following day and then the next day he returned to their full time care with no explanation from a professional.
212. The Guardian sets out, and I fully agree with, disappointment that the return of the child to his Grandparents care happened in such a chaotic manner. The instigation for this chaos stems from the Local Authority making a decision to withdraw proceedings without giving any coherent thought to the manner in which the child should be reunited with the grandparents. Thereafter, inconsistent and contrary plans were put forward. This was exacerbated by suggestions of unplanned withdrawal of section 76 consent to force the hand of the Local Authority. Neither position actually focused on the child's welfare interests and the consequence was that the return lacked proper planning where the views of the Guardian were ignored.
213. It is also concerning that following such an unplanned move no social worker visited the child until 6 days after his return to check he had settled or to try and provide him with an explanation.
214. **Conclusion**
215. I have already granted permission for the Local Authority to withdraw proceedings. The child is now back in the care of the grandparents and thankfully I am told has settled well.
216. This judgment is the last part of events that started over 17 months ago. The child was removed in chaos with little regard to his welfare or the impact upon him. Sadly, he was returned 17 months later again in chaos and again with little regard to how it would impact on him.
217. The impact that these proceedings have had upon him cannot be underestimated particularly given his own life limiting condition. He has missed valuable time in the loving care of his family. He has missed numerous occasions and events with his



family. His health needs have changed and deteriorated in that time. He is not the same child who was removed 17 months ago. That time cannot be recovered.

218. The Local Authority's actions have been a serious interference with the private life of the child and the grandparents and the interference cannot be said to have been proportionate to the legitimate aim of safeguarding him. The Local Authority failed to consider matters in an appropriate way throughout. It is acknowledged that the complainant made serious allegations against the grandparents that are still being investigated by the Police. Those allegations raised a legitimate safeguarding obligation, but the Local Authority still had a duty to discharge that obligation fairly and responsibly. The making of an allegation does not automatically mean that the child would not be safe in the care of the grandparents. It was incumbent upon the Local Authority at all stages to assess the evidential basis for their threshold; the risks that arise and the proportionality of their actions. They clearly did not do so as their decision to withdraw was largely based on information that would have been available to them in August 2022.
219. There are many failings identified in this judgment on the part of the Local Authority and the Police. I do not find that such failings were intentional or in any way malevolent. They are likely to be the result of professionals genuinely thinking they were not doing anything untoward in their actions in this case. I agree with Miss Jones that the fact that such interactions were freely recorded is indicative of a lack of awareness that they were flouting the legal framework and any guidance on best practice.
220. This judgment should be considered at the appropriate level within the Local Authority so that lessons can be learnt; systems can be amended and training can be given in the hope that a situation such as this can be avoided in the future.
221. This judgment should also be read by any professional dealing with this matter in the future. The investigation of the Police remains underway. There will be a decision at some point as to whether to charge the grandparents. Such a decision should not be the catalyst for further emergency protection powers being initiated without robust analysis of risk.
222. The child's health needs will continue to deteriorate. The grandparents are likely to need support in meeting those needs particularly given their own advancing age. That is in no way a criticism of them. Such a need for support or services does not mean that the child should be removed from their care. It means that they should be supported to care for him as long as they can properly do so.