

Neutral Citation Number: [2025] EWFC 242 (B)

Case No: PR24C50389

IN THE FAMILY COURT AT LANCASTER

George Street
Lancaster
LA1 1XZ

Date: 27th June 2025

Before :

HIS HONOUR JUDGE GUITE

Re AC and BC (Care Proceedings: Permission to Withdraw)

Between :

LANCASHIRE COUNTY COUNCIL

Applicant

- and -

MOTHER

Respondent

- and -

FATHER

Respondent

- and -

**CHILD, BC, THROUGH THEIR CHILDREN'S
GUARDIAN**

Respondent

- and -

CHILD, AC

Respondent

Miss Irving KC and Miss Wall for the Local Authority

Mr Jones KC and Miss Moody for the Mother

Miss Mayle for the Father

Miss Bowcock KC and Miss Perplus for BC and the Children's Guardian

Ms Bentley for AC

Hearing date: 27th June 2025

APPROVED JUDGMENT

His Honour Judge Guite:

Introduction

1. In this matter I am concerned with two children, AC aged 17 years and BC aged 12 years, who are subject to an application for public law orders by Lancashire County Council (the Local Authority). I am determining an application by the Local Authority for permission to withdraw their application. The application was supported by all the parties.

Background

2. The Local Authority were notified by the police on 17th May 2024 that the Crown Prosecution Service (CPS) had authorised the police to charge the Mother with 42 counts of sexual abuse involving two complainants, ME and LE, who were children when the alleged offences took place.
3. The parents were separated, the children were living with their mother, and they spent regular time with their father. As a result of the referral, the Local Authority visited the mother the same day and both parents expressed a willingness to work with the Local Authority, with the mother agreeing to move out of the family home whilst investigations were undertaken, and the father moving into the family home to provide primary care of the children. It was also agreed that the mother's family time with her children would be supervised.

4. The Local Authority, in those early stages, became aware that AC and the parents had previously been involved in public law proceedings commenced in 2007 and which had been dealt with in the High Court. The allegations that led to those care proceedings being issued were allegations made by ME and LE that they had been sexually abused by the mother. Mr Justice Charles delivered a judgment on 17th October 2008, who summarises his determination at the beginning of his judgment as follows:

“In short, on the evidence I have heard, I accept the mother’s denial of the allegations made against her, and therefore I accept her evidence that she did not behave in any inappropriate way towards either the child I shall be referring to as ‘M.E.’, or the child I shall be referring to as ‘L.E.’.”

5. Practice Direction 12G of the Family Procedure Rules 2010 provides that a transcript of a judgment in the family court may be disclosed to a police officer or member of the CPS. It soon became clear to the Local Authority that the judgment of Charles J, which preceded the 2010 rules, had not been disclosed to the police or CPS. This was quickly rectified by them.
6. The police investigation in relation to the allegations by ME and LE had in fact first commenced in 2021. The Local Authority and Children's Guardian agree that the significant length of the police investigation, over a number of years, has had a significant detrimental impact upon the parents and, more importantly, the welfare of both their children. The mother moving out of the property had a further impact upon the children, though the parents accepted that the Local Authority was acting in a necessary and proportionate manner in

needing to take a protective approach until more detailed information was known about the circumstances of the allegations.

7. The Local Authority made extensive enquiries to understand the full scope of the allegations made by ME and LE. Indeed, the Local Authority, over many months in 2024, endeavoured to identify and consider the precise nature of the evidence which formed the basis of the charging decision. In particular, the Local Authority wanted to identify whether any new allegations were being made in addition to those previously determined in the 2007 proceedings, the Local Authority being aware that they needed the permission of the court to seek to relitigate any of the allegations previously determined by Charles J.
8. Sadly, this was not achieved through the Public Law Outline pre-proceedings process and the necessary police disclosure only became available following them issuing their application. I have not investigated the cause of this, though I am aware that the police constabulary in this area are currently under significant pressures arising from the level of disclosure requests made to them and the police force has been prioritising those requests made within court proceedings over those made by local authorities in cases at the pre-proceedings stage.
9. In addition to the criminal investigation, the Local Authority remained keenly aware of the extra pressures upon the family of their involvement and the additional negative welfare impact upon the children that their own investigation was having. However, until such time as the Local Authority had the full information it required regarding the allegations, it was unable to determine and assess the risk that the mother may allegedly pose to the

children. In those circumstances, the Local Authority considered, rightly in my view, that it was appropriate and proportionate to issue proceedings to successfully progress their investigation forward. This also facilitated the parents and children having access to experienced and specialist legal representation. The Local Authority also issued an early application for the court to consider whether the findings (or non-findings) made by Charles J should be re-opened.

10. The matter came before me on 2nd December 2024 when, notably, the Local Authority sought no orders and considered it was in the best interests of the children for the mother to return home to care for them, subject to compliance with a schedule of expectations. The Local Authority recognised that the ongoing separation of the children from their mother was having an ever increasing detrimental impact upon them and, on balancing their welfare needs, considered that this was unnecessary.
11. The Local Authority invited me to direct the collation of all evidence from the previous court proceedings and third party full disclosure from the police investigation / criminal proceedings to enable them to reach a considered and informed decision regarding what allegations the family court may be asked to determine and whether it sought to pursue its application to reopen the findings which were made by Charles J in 2008, which. The parents did not oppose this proposed direction of the case. I approved such directions and also the plan for the mother to return home.
12. To ensure early allocation and continuity of judiciary, I referred the case to the designated family judge, highlighting the factors that may suggest the case

should be transferred to the High Court. The Family Presider subsequently provided direction for the case to be transferred to the High Court and the case was allocated to Mr Justice Trowell. The matter came before Trowell J on 27th January 2025, when it was recognised that there was still outstanding material from the police and CPS which would be essential to allow the Local Authority to undertake a comprehensive analysis of their applications.

13. Upon final receipt and consideration of the full police disclosure, it became apparent to the Local Authority that the allegations made were, in the main, identical to those which had previously been the subject of judicial determination in 2008. Following their assessment of the totality of the evidence and the welfare circumstances for the children, this led the Local Authority to apply to withdraw its application to re-open the findings of Charles J. This application was supported by all parties. Trowell J granted this application on 20th February 2025. In advance of that hearing the Local Authority also issued an application to withdraw their application for a care order. The proceedings were re-allocated back to me to determine that application.

The Law

14. The law in relation to the withdrawal of care proceedings is uncontroversial and has been the subject of a number of reported judgments. In [*re A Local Authority v X, Y and Z \(Permission to Withdraw\) \[2017\] EWHC 3741 \(Fam\)*](#), Mr Justice MacDonald distils the legal position from paragraph 47:

“47. The law that the court must apply when considering whether to grant permission to a local authority to withdraw care proceedings can be summarised as follows.

*48. Pursuant to FPR r 29.4(2), a local authority may only withdraw an application for a care order with the permission of the court. Where an application for permission to withdraw is mounted in proceedings in which the local authority is unable to satisfy the threshold criteria pursuant to s 31(2) of the Children Act 1989, then that application must succeed. However, where on the evidence before the court the local authority could satisfy the threshold criteria, then the court must consider whether withdrawal is consistent with the welfare of the child such that no order is required pursuant to s 1(5) of the Children Act 1989 (see *Redbridge LBC v B and C and A (Through His Children’s Guardian)* [2011] 2 FLR 117). An application made pursuant to FPR r 29.4 involves the court determining a question with respect to the upbringing of a child for the purposes of s 1(1) of the Children Act 1989. In the circumstances, when considering an application for permission to withdraw an application for a care order, the child’s welfare is the court’s paramount concern (see *London Borough of Southwark v B* [1993] 2 FLR 559 at 572). However, an application for permission to withdraw proceedings falls outside the scope of s 1(4) of the Children Act 1989 and therefore there is no requirement to have regard to the welfare checklist in s 1(3) of the Children Act 1989.*

49. With respect to the former situation where an application for permission to withdraw is mounted in proceedings in which the local authority is unable to

satisfy the threshold criteria, in considering whether the threshold criteria can be made out it is important to recall the reminder given by the President in Re A [2015] EWFC 11 at [12] of the need to link the facts relied upon by the local authority with its case on threshold:

“The second fundamentally important point is the need to link the facts relied upon by the local authority with its case on threshold, the need to demonstrate why, as the local authority asserts, facts A + B + C justify the conclusion that the child has suffered, or is at risk of suffering, significant harm of types X, Y or Z. Sometimes the linkage will be obvious, as where the facts proved establish physical harm. But the linkage may be very much less obvious where the allegation is only that the child is at risk of suffering emotional harm or, as in the present case, at risk of suffering neglect. In the present case, as we shall see, an important element of the local authority's case was that the father "lacks honesty with professionals", "minimises matters of importance" and "is immature and lacks insight of issues of importance". May be. But how does this feed through into a conclusion that A is at risk of neglect? The conclusion does not follow naturally from the premise. The local authority's evidence and submissions must set out the argument and explain explicitly why it is said that, in the particular case, the conclusion indeed follows from the facts.”

50. With respect to the latter situation, where on the evidence before the court the local authority could satisfy the threshold criteria, in J, A, M and X (Children) [2014] EWHC 4648 (Fam) at [30], Cobb J considered that in order for a case to fall into the category of cases in which the local authority

is unable to satisfy the threshold criteria, and hence into the category of cases in which 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”.

51. Within this context, in J, A, M and X (Children), Cobb J considered the proper approach to an application for permission to withdraw care proceedings in a case where it was possible that the threshold might be crossed, depending on the court’s construction of the evidence. In such a case, Cobb J concluded that, before considering whether the local authority should be given permission to withdraw, 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 A County Council v DP, RS, BS (By the Children’s Guardian) [2005] 2 FLR 1031. Those factors, which in their totality embody the concepts of both necessity and proportionality, are as follows:

- a) the interests of the child (relevant not paramount);*
- b) the time the investigation would take;*
- c) the likely cost to public funds;*
- d) the evidential result;*
- e) the necessity of the investigation;*
- f) the relevance of the potential result to the future care plans for the child;*

g) the impact of any fact-finding process upon the other parties;

h) the prospects of a fair trial on the issue;

i) the justice of the case.

52. Having considered the factors set out in A County Council v DP, RS, BS (By the Children's Guardian) within this context, and determined whether a fact-finding enquiry should be undertaken, the court should then cross-check the conclusion reached having regard to the best interests test under s 1(1) of the Children Act 1989 in reaching its decision on the application for permission to withdraw proceedings (J, A, M and X (Children) at [35]).

53. Finally, it is important to note that, notwithstanding the emotive subject matter of these proceedings, the courts power under FPR r 29.4 to grant a local authority permission to withdraw proceedings constitutes, to paraphrase Cobb J in J, A, M and X (Children) an objective and dispassionate check on whether the local authority should be entitled to disengage from proceedings.

The Parties' Positions

15. I am grateful to counsel for all parties for having the benefit of detailed and comprehensive skeleton arguments. They are unanimous in submitting that the court should give permission to the Local Authority to withdraw the proceedings and that this is a case where the Local Authority is unable to satisfy the threshold criteria pursuant to s31(2) of the Children Act 1989. If the court agrees, then the application must succeed.

Discussion and Analysis

16. There are a number of significant features to this case that go to the heart of my consideration of the Local Authority application.
17. On a full reading of the judgment of Charles J, it is clear that, despite the introductory summary cited above, he did not hear evidence and determine any allegations of sexual abuse which are now made by LE to the police. This is accepted by all parties. As such, this court can determine those allegations without re-opening the findings of Charles J. However, the allegations made by ME stand determined and this court properly proceeds on a binary basis that the mother did not sexually abuse her and, furthermore, the mother gave a truthful account to the family court. Therefore, whilst in principle, this court could make findings in relation to LE that she had been sexually abused by the mother, the Local Authority accepts that it would face significant, and probably insurmountable, forensic problems. However, it removes this case from a situation where a simple conclusion is reached that threshold could not be made out as the Local Authority are not seeking to re-open the previous findings made.
18. It is in this context that I consider whether, in the circumstances of this case, it is obvious that the Local Authority are unable to satisfy the threshold criteria , or whether I need to move on to the second stage test.
19. The Local Authority recognise and accept the evidential complexities they would face in relation to the allegations made by LE, as the court has found that the allegations made by her sister are not true – particularly as LE's allegations are very similar in nature. However, even if the court made findings against the mother in relation to LE's allegations of sexual abuse, a

primary fundamental question is whether there is a evidential link between such findings and reaching an informed conclusion that AC and BC have suffered, or are at risk of suffering, significant harm – in this case at risk of sexual harm at the hands of their mother.

20. I consider the following matters are of particular importance:

- i) The allegations against the mother in relation to LE arise from a period when she was a minor herself and living together with ME and LE in a foster care placement, though the mother was much older than LE.
- ii) Since attaining her majority, the mother has cared for AC and then both AC and BC for over 17 years with no suggestion or evidence whatsoever that they have suffered from any form of sexual harm or any other treatment leading them to display sexualised behaviour or skewed sexual boundaries,
- iii) The allegations made by LE took place nearly 20 years ago, with no evidence to suggest that the mother has behaved inappropriately to any other child since then.
- iv) AC and BC have never suggested any abusive behaviours by their mother,

This case falls into that minority of cases that can properly be described as “a single-issue case”. Other than the allegations made by LE, the professionals acknowledge that the mother has provided the children with a very high quality of care and parenting (as has the father), and the Local Authority present no other evidence of harm.

- v) Against an accepted factual background where AC and BC have not been sexually abused by their mother, or subjected to any form of sexual harm throughout their minority:
 - a) There is no evidence that the mother may suddenly, after 20 years, start sexually abusing them in their late teenage years, and
 - b) The children have been raised to have normative sexual boundaries and have a very good relationship with their father. There is no evidence that they would be susceptible to allowing the mother to suddenly, after 20 years, start to sexually abuse them.

Conclusion

- 21. Taking the Local Authority case on threshold at its highest, how would findings made against the mother feed through to a conclusion that AC and BC are at risk of sexual harm?
- 22. On the totality of the evidence before me, any finding against the mother of historical sexual abuse stands alone with no supporting evidence that this would suggest any risk of harm whatsoever to the subject children. Indeed, there are overwhelming contra-indicators that they are not at risk of sexual harm from their mother. There is a total lack of evidence that AC and BC, at the point that these proceedings were issued, have suffered any form of sexual harm. On the binary approach taken by the family court, I therefore view this case through the lens that AC and BC have not suffered sexual harm from

their mother at any point in the last 17 years. The Local Authority also accept, indeed positively present to this Court, that there is also no evidence to suggest that they are at risk of future sexual harm.

23. Upon considering all the evidence of this case, I arrive at a clear and unequivocal conclusion that sexual acts committed by the mother as a child to another child over 19 years ago, even if proved, do not translate into establishing that the subject children, AC and BC, are themselves at risk of any sexual harm from their mother. I conclude that, in the circumstances of this case, it is obvious to me that the Local Authority is unable to satisfy and cross the threshold required for the making of a public law order and I must give the Local Authority permission to withdraw the proceedings.

Other matters

24. In these types of cases where serious allegations of sexual abuse are made, it can be understandable that professionals, particularly in the early stages of investigation and assessment, can have an emotive response and find it difficult to step back and engage in a holistic assessment of risk. These are difficult and challenging cases for even the most experienced social workers. However, as Mr Justice McDonald reminds us in the case of [Re. P \(Sexual Abuse: Finding of Fact Hearing\) \[2019\] EWFC 27](#), the court must resist the siren call of what has been termed the “the child protection imperative”, commenting at paragraph 240:

“Cases of alleged sexual abuse, and of alleged sexual abuse involving the number and extent of the allegations seen here, are highly emotive and can and do give rise to strong feelings and robustly expressed

views and opinions. Notwithstanding the emotive subject matter however, the task of this court is to take an entirely dispassionate approach to the process of determining whether on the relevant and admissible evidence available to the court the facts alleged by the local authority are established on the balance of probability”

25. I fully recognise and acknowledge the possibility of LE being the victim of a serious historical crime when a child and the lifelong damage and harm such experiences cause. However, the role of the family court is exclusively focused upon what is in the best interests of the children subject to this application.
26. This Local Authority is deserving of commendation and credit in its proportionate handling of its statutory intervention with this family. It is a fine example of a Local Authority taking the least interventionalist approach and regularly reviewing their decision-making in light of both the evidence as it emerges and the changing welfare needs of the children. The Local Authority worked collaboratively with the parents to ensure the children remained in the family home. They reviewed and carefully balanced their assessment of what was in the best interests of the children, subsequently reaching a decision, endorsed by the Children's Guardian and approved by the Court, that the mother should return to the family home. They took full account of the welfare impact upon the children of the mother's absence from the home and properly balanced that against their ongoing risk assessment in relation to the mother (on the basis of the developing picture as the police disclosure became

available). The Local Authority did not seek interim public law orders at any point in the proceedings.

27. As the police disclosure became available, the Local Authority took a critical and balanced forensic approach to their assessment of this family. The Local Authority and Children's Guardian have, throughout these proceedings, undertaken a thorough and objective analysis of the evidence, leading to the Local Authority application to withdraw proceedings, supported by the Children's Guardian.
28. It is also clear that the parents have been pivotal in this process. The mother continues to face the prospect of a criminal trial regarding the allegations made by ME and LE. The family have now been under the strain of a police investigation for several years, latterly faced with the criminal prosecution against the mother. The ongoing pressure of this upon the family over such a long period has been significant. However, both pre-proceedings and during this case, it is to the parents' great credit that they have worked openly, honestly and collaboratively with social work professionals. I have no doubt that this has facilitated the Local Authority's ability to dynamically review its case as it has developed on the ground. It has long been my experience that when parents fully engage with social work professionals, it facilitates the Local Authority doing all they can to support children to remain with their parents. This case is a fine example of that.
29. Finally, this case highlights the very different jurisdictions of the family and criminal courts. The family court, in focusing upon making the right welfare decisions for the children can lead to conclusions, as manifested in this case,

where what is in the best interests of the children is unconnected to and not dependent upon a parent's innocence or guilt of a serious crime. It also highlights the often-difficult interface between the family and criminal jurisdictions and the importance of timely decisions regarding the admittance of evidence from one jurisdiction into the other. The provision of full disclosure from the police has been essential to the parties to properly assess the case and to this court in carrying out its judicial functions. I have also made orders for the supply of important documents from these family proceedings to those involved in the criminal proceedings.

30. *Post script: After providing draft judgment to counsel and handing down of this judgment, I was informed that the criminal case had been before the Crown Court and the CPS offered no evidence leading to the proceedings being discontinued.*

His Honour Judge Guite

27th June 2025