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(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

IN THE MATTER OF P AND OTHERS (CARE ORDER: SCHEDULE OF FINDINGS SOUGHT: FAIRNESS OF THE HEARING: ALLEGATIONS AGAINST NON PARTIES: ISSUE ESTOPPEL)

GILLEN J

[1] I direct that there be no identification of the name of any of the children in this case, the names of either of the parents or any other name or material that may lead to the identification or whereabouts of these children or the family. I make a further such order in relation to those persons discussed in paragraph 15(1) of this judgment.

[2] A Health and Social Services Trust, which I do not propose to name ("the Trust") makes an application before me for a Care Order under Article 50 of the Children (Northern Ireland) 1995 ("the 1995 Order") in relation to four children namely a boy P who is now 14 years of age, a girl S who is now 10 years of age, a girl C who is now 8 years of age and a boy R who is now 3 years of age. I shall identify the mother as E, the father as M and the family name as X.

[3] Ms Walsh QC, who appeared on behalf of E, and Mr Long QC who appeared on behalf of M, conducted this case with commendable skill on behalf of their clients and made it clear from the outset in the course of their submissions and skeletons arguments, that a number of finite issues were at large in the case. Mr Long accepted that rehabilitation of the children to either respondent was not a realistic option. Ms Walsh accepted, that although the mother would love the children to be returned to her, the court would not make any order facilitating this. In essence a number of matters relating to the threshold criteria were not materially contested by either of the two respondents and the strength of their case and submissions were confined to allegations of sexual impropriety against the parents, aspects of the care plan and contact.

[4] **Preliminary Matters**

(1) At the outset of this case Mr Long drew my attention to a report of Mr Quinn Consultant Clinical Psychologist of 24 August 2005 in relation to M's capacity to fully engage in the proceedings. Mr Quinn indicated that M suffers a severe learning debility and mental handicap with intelligence in the bottom 5% of the population. His intellectual ability was such that he was severely disadvantaged in all areas of life function. While Mr Quinn concluded that he had the ability to consult, assist the lawyer and to provide a reasonable account of his behaviour prior to and during the issues of concern in this case, he would require considerable assistance and support throughout the proceedings especially in the area of complex legal terminology and procedure. Similarly he felt that it was likely that he would experience the proceedings as extremely stressful and might exhibit adverse mental health reactions given his flimsy and volatile mental state. In order to ensure that not only children but the adult participants in family proceedings cases are afforded a fair trial, it is imperative that all family courts ensure hearings are tailored as far as possible to meet the intellectual limits of those involved in the hearings. Consequently not only did I permit this man to have beside him throughout the hearing an advocate from Bryson House in Belfast, but, after careful consideration with counsel, it was agreed that proceedings should be halted periodically to allow his attention span to be refocused and to have the hearing explained to him as the case progressed. This resulted in the trial being elongated and disrupted to some extent but if the rights of participants are to be observed then such disruption is a small price to pay to ensure justice is done. I observe that it is extremely important that at the termination of this judgment extreme care is taken to explain the full contents to him in terms which are appropriate for his understanding. I add in this context that it is equally important that at the termination of this judgment someone is appointed, and subject to representations to the contrary I nominate the Guardian ad Litem, to explain in detail to the children in child appropriate terms the meaning and contents of this judgment. It is imperative that the courts do not overlook in family cases the overwhelming necessity to ensure that the reasoning of a judge or magistrate is carefully explained to each child in circumstances where, as in this case, it was not deemed appropriate for the children to be present in court during the hearing.

(2) In a recent authority in the Court of Appeal in England namely Re D (Children)[2005] EWCA Civ 825, the court approved the concept of a "Schedule of Findings Sought" being made by the applicant Trust. Although that was in the context of a court directing a preliminary fact finding hearing, nonetheless I believe that it is of general application and should be adopted by Trusts in cases such as they where a series of separate allegations are made. I respectfully adopt the guidance of Ward LJ at paragraph 13 when he said:

> "Just how detailed that schedule should be must be a matter left to the judgment of the local authority's legal team. There is obvious merit in condescending to as much detail as possible not only to give the parents notice of the case against them but also to focus the lawyers' attention on the issues and the evidence needed to establish or rebut those allegations. On the other hand some restraint may be necessary to prevent the document becoming too unwieldy."

I consider that this case is a classic example of where such a schedule is important so that separate determinations can be made on individual allegations. In this instance the Trust relied on a list of the allegations contained in a comprehensive report made by the Guardian ad Litem on 11 November 2005 at para 5.27, I consider that to have been an inadequate approach on the part of the Trust. In the first place, the schedule ought to have been prepared earlier than this and in the second place it should be prepared by the Trust so that the parents are fully aware of what precisely the Trust is relying on and not merely the assertions of the Guardian ad Litem. Accordingly this is a matter that should be prepared in similar future cases by the Trust and directed by judges, magistrates and masters at direction hearings in appropriate instances.

(3) Since the investigation of allegations of sexual impropriety by the parents against young children was a central issue in this case, it is important at the outset that I draw attention to the legal principles governing the standard of proof in such cases set out by Lord Nicholls in Re H and R (Child Sex Abuse: Standard of Proof) [1996] 1 FLR 80 and adverted to in two recent Northern Ireland cases of South and East Belfast Health and Social Services Trust v E and C (Unreported) MCLF5399 18 November 2005 and Re J, T and C (Care Orders: Concurrent Criminal and Family Proceedings: Burden of Proof) (Unreported) GILF5118 17 November 2004. In a matter as important as this I make no apology for quoting in extenso what Lord Nicholls stated at pages 95h-97c:

> "The Standard of Proof.
>
> Where the matters in issue are facts the standard of proof required in non criminal proceedings is the preponderance of probability, usually referred to as the balance of probability. This is the established general principle. There are exceptions such as contempt of court applications, but I can see no reason for thinking that family proceedings

are, or should be, an exception. By family proceedings I mean proceedings so described in the 1989 Act. Despite their special features, family proceedings remain essentially a form of civil proceedings. Family proceedings often raise very serious issues, but so do other forms of civil proceedings.

The balance of probabilities standards means that a court is satisfied that an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury. A stepfather is usually less likely to have repeatedly raped and had non-consensual oral sex with his underage stepdaughter than on some occasion to have lost his temper and slapped her. Built into the preponderance of probabilities standard is a serious degree of flexibility in respect of the seriousness of the allegation.

Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established. Ungoed-Thomas J expressed this neatly in Re Dellow's Will Trusts, Lloyd's Bank v Institute of Cancer Research [1964] 1 WLR 451 at p455:

> `The more serious the allegation the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it. This substantially accords with the approach adopted in authorities such as the well known judgment of Morris LJ in Hornal v Neuberger Products Limited [1957] 1 QB 247 at p266. This approach also provides a means by which the balance of probability standard can accommodate one's instinctive feeling that even in civil proceedings a court should be more sure before finding serious allegation proved than when deciding less serious or trivial matters.'

No doubt it is this feeling which prompts judicial comment from time to time that grave issues call for proof to a standard higher than the preponderance of probability. Similar suggestions have been made recently regarding proof of allegations of sexual abuse of children: see Re G (No 2) (a minor) (Child Abuse: Evidence) [1988] 1 FLR 314 at p321, and Re W (Minors) (Sexual Abuse: Standard of Proof) [1994] 1 FLR 419 at p429. So I must pursue this a little further. The law looks for probability, not certainty. Certainty is seldom attainable. But probability is a unsatisfactorily vague criterion because there are degrees of probability. In establishing principles regarding the standard of proof, therefore, the law seeks to define the degree of probability appropriate for different types of proceedings. Proof beyond reasonable doubt, in whatever form of words expressed, is one standard. Proof on a preponderance of probability is another, a lower standard having the in-built flexibility already mentioned. If the balance of probability standard were departed from, and a third standard were substituted in some civil cases, it would be necessary to identify what the standard is and when it would apply. Herein lies a difficulty. If the standard were to be higher than the balance of

> probability but lower than the criminal standard of proof beyond reasonable doubt, what would it be? The only alternative which suggests itself is that the standard should be commensurate with the gravity of the allegation and the seriousness of the consequences. A formula to this effect has its attraction. But I doubt whether in practice it would add much to the present test in civil cases, and it would risk causing confusion and uncertainty. As at present advised I think it is better to stick to the existing, established law on this subject. I can see no compelling reason for a change. I therefore agree with the recent decisions of the Court of Appeal in several cases involving the care of children, to the effect that the standard of proof is the ordinary civil standard of balance of probability."

That is the approach that I have adopted in this case. I pause to observe however that it is important to distinguish between on the one hand a finding by the judge at first instance that on the balance of probabilities an injury to a child has or has not been inflicted by one or other of the parents, and on the other hand a medical expert who diagnoses the cause of a child's self-evident emotional damage. It would be quite wrong for such a doctor to cease treating a child appropriately on the basis of his own diagnosis merely because a judge had failed to find allegations sustained to the level of proof required by the law. The two disciplines – law and medicine – are quite different in terms of diagnosis outcome and treatments required for children.

[5] **Background**

Consideration of the making of a Care Order involves a two stage process. First, the court must consider whether or not the criteria for making a Care Order ("the threshold criteria") have been satisfied. The court may only make a Care or a Supervision Order if it is satisfied that the child concerned is suffering or is likely to suffer significant harm and that the harm or likelihood of harm is attributable to the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him pursuant to Article 50(2) of the 1995 Order.

[6] For ease of reference, I shall set out in extenso the allegations relied on by the Trust and which were adumbrated the Guardian ad Litem having been suitably anonymised by me to protect the identity of the children and their family.

"(1) Chronic, persistent neglect and failure by Mr and Mrs X to meet the basic needs of the three children and their brother P. This was evident in their educational, health, social and emotional functioning.

(2) Physical abuse of the three children by Mr X and also their brother P. It is also alleged that S told her mother that she and her siblings had been beaten with a belt and punched around the head by Mr X.

(3) Extensive domestic violence between the parents throughout their lives witnessed by all three children and also their brother P.

(4) Sexual abuse of the three children perpetrated by their brother, P, while in the care of Mr and Mrs X. P has admitted to having penetrative sex with S and C and oral sex with all three of his siblings.

(5) There are a series of allegations regarding sexual abuse in relation to Mr X.

- That S witnessed Mr X watching a male DK touch P inappropriately.
- That S witnessed Mr X touch P between his legs.
- That Mr X had intercourse, oral sex and was masturbated by S.
- That Mr X was videotaped having intercourse with S.
- That Mr X watched videos of S being sexually abused.
- That Mr X threatened to let other people see these videos if S told.
- That Mr X threatened S with a "Big Knife" if she told.
- That Mr X consented to a male BW's request to have sex with S aged 7.
- That Mr X threatened to hit S if she did not agree to have oral sex and masturbate BW.
- That Mr X laughed when S told him that BW had had intercourse with her.
- That Mr X had sexual relations with a range of partners at parties watched by the children.

- That the children witnessed their parents having intercourse and other sexual acts on a number of occasions.

(6) There are a series of allegations regarding sexual abuse in relation to Mrs X.

- That S told Mrs X that "Dad sexed me".
- That S told Mrs X that GW raped her.
- That Mrs X was present during sexual abuse of her children including intercourse between Mr X and S.
- That Mrs X encouraged her children to learn to complete sexual acts properly eg masturbation and oral sex. This included Mrs X demonstrating oral sex and intercourse with Mr X.
- That Mrs X did not respond to cries for help from C when being abused by P.
- That S and C watched their parents have intercourse and other sexual acts on many occasions.
- That Mrs X watched videos of S being sexually abused.
- That S watched Mrs X having sexual relations with a range of partners during parties.
- That S witnessed Mrs X watch DK touch P inappropriately.
- That Mrs X sent S a teddy through her relatives which had been used as "sex toy".

(7) There are a series of allegations regarding sexual abuse by friends of the parents while in the care of Mr and Mrs X.

- That S and C were raped and indecently assaulted on a number of occasions by B and GW.
- That S was forced to masturbate and give oral sex to BW.
- That BW took videos of Mr X having sex with S.
- That P was inappropriately touched, forced to masturbate and have oral sex with DK.
- That P was forced to masturbate and have oral sex with DD."

[7] As I have indicated, there was a clear distinction between the issues taken up with the allegations of sexual abuse involving Mr and Mrs X and S

and the remaining allegations including the sexual abuse of the three children perpetrated by P found at paragraphs 1-4 above.

[8] Not only was there virtually no cross-examination of any issue arising out of numbers 1-4 but crucial concessions had already been made by both E and M in the course of skeleton arguments presented on their behalf and in their statements to the court. In the skeleton argument prepared on behalf of the second respondent paragraph 1 revealed:

> "The second-named respondent (M) will make admissions as to the standard of care provided to the children before the commencement of these proceedings but he denies the allegations of sexual impropriety involving both respondents either individually or collectively."

At paragraph 5 it is baldly stated:

> "This respondent accepts that rehabilitation of the children to either respondent is not a realistic option."

The skeleton argument on behalf of the first respondent E essentially deals with the denial of the allegations of improper sexual conduct made against her. At paragraph 4 it states:

> "The first respondent accepts that, although she would love the children to return to her, the court will not make any order facilitating this."

[9] Nonetheless it is necessary for me to assess the evidence put before me grounding paragraphs 1-4 above. The account give by the Trust social workers RW and NMcB of 3 October 2004 summarises the history of this matter in a manner which I cannot better. I therefore propose to set it out in full between paragraphs 3 and 7 again appropriately anonymised to protect the identity of the children and the family:

> "3. Previous Social Services Involvement With The G Family
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> Another Trust has been involved with the X Family for approximately fifteen years in respect of the family's eldest son, G. G (aged 15) was placed in foster care fifteen years ago due to concerns about non-organic failure to thrive. G was born as a twin but his twin died at birth. G

has severe learning disabilities, Spina Bifida and Epilepsy and his parents were unable to manage his medical needs. A Deemed Care Order, previous Fit Persons Order was granted on 23.05.90. G has been with his current foster carers since he was one year old. His parents have contact at Christmas, Easter and on his birthday. This is supervised contact. The Trust decided at the last LAC Review that Mr and Mrs X would no longer be invited to LAC Reviews as they failed to attend any meetings in respect of G. The Trust does not have any involvement with the family in respect of the other children.

4. Trust Involvement With The X Family.

This Trust's Initial Assessment Team has been involved with the family periodically since 2002. A referral was made on 22.05.02 from the Ulster Hospital in relation to R. R was admitted to Ulster Hospital on 17.05.02 after an ear infection had got so bad he needed resuscitated at the hospital. The parents appeared to have a lack of understanding of the severity of R's illness and had been treating him with Calpol. The family's Health Visitor had visited the family on 17.05.02 and advised the parents to contact their GP. The child was then admitted to hospital, on the GP's advice.

A second referral was received on 05.12.03 by the Health Visitor highlighting Mr and Mrs X's own learning difficulties and concern about their ability to provide adequate parenting for the children. The house was described as very basic. The Health Visitor raised concerns about the health of the children in relation to their teeth, head lice and clothes. The children's attendance at school was also concerning.

The family Health Visitor made a third referral to the Initial Assessment Team on 23.01.04. She highlighted concerns about the house, being filthy, with bags of rubbish in the kitchen, dirty clothing littering the house and dog faeces in the family's yard. She also reported concerns from school that P smelled badly, his clothes were in poor condition

and he was walking six miles to school. At this point all the children had head lice. M frequenting the William Hill bookies was also an issue of concern.

The Initial Assessment Team referred the family to the NSPCC on 10.03.04 for help with managing the children and to work with S and C regarding their relationship with their brother G. LY worked with Mr and Mrs X on behaviour management of the children. This work ended on 06.08.04 as it was felt that the parents would not be able to focus on this, as the children were no longer in their care. SMcC is currently carrying out individual work with the children although the focus of this work has now changed to helping the children develop positive relationships and talk about experiences at home.

The case was transferred to the local Children and Families Team on 10.06.04 and it was allocated to the current social worker, RW on 16.06.04.

The concerns at the point of transfer were as follows:

- Mr and Mrs X appeared to have learning disabilities although not assessed or involved in adult learning disabilities services.
- The school reported concerns about the health of the children in relation to their teeth, head lice and their dirty clothes.
- The school reported P walked six miles to school, as he had not money for his fare. P's school attendance was also very low.
- Concerns were noted about the family home. It was very basically furnished, unhygienic and untidy.

On reassessment by Social Services, the same concerns were identified. In addition to this, the presentation of the children, lack of furniture, inappropriate bedding and general poor hygiene gave rise to serious concerns in respect of neglect and parental capacity to care for their children.

During a social work visit on the 14.07.04, the house was observed to be in poor condition:

- There was dog excrement covering the back yard and also observed on the floor mat in the kitchen.
- There was a general unhygienic smell emanating from the house.
- The children did not have adequate clothing and presented as dishevelled and unkempt.
- P was using a mattress on the floor to sleep. There was inadequate bed linen, with no under sheet and a very dirty duvet, without a cover. His sleeping facilities were filthy and wholly inadequate.
- R did not have his own bed and shared a single bed with one of his sisters at night.
- The house was very sparsely furnished and several areas were uncarpeted.
- The family had no rubbish bin and bags of rubbish were stacked in the kitchen and yard, causing a health and safety hazard.

In light of these concerns, the social worker and senior social worker visited the family home on the 16.07.04. By this visit Mr and Mrs X had cleaned and tidied the house. It was significantly better in terms of presentation and hygiene.

It was agreed that Social Service would provide a bed and bedding for P and buy clothes for all the children. Social Services also applied for grants for beds, furniture, carpets, clothes and toys for the family. It was also agreed with the parents they needed to maintain the house to a reasonable standard and conditions could not deteriorate as observed on 14.07.04.

Mr X was due to commence a 2-week programme with Gateway on 19.07.04. However, he went home sick on the first day and did not return on 20.07.04. The DHSS stopped his benefits. On Friday 23.07.04 Mrs X contacted the Trust to request financial assistance. She said she spent her money on electricity, gas and nappies and had no food in the house for the children. This request

was denied by the Trust and the extended family reportedly provided food and essentials. A community care grant was awarded by the DHSS and Mr X's benefits were reinstated on 30.07.04. The Trust has concerns about the family's money management and budgeting ability.

The parents and children present with learning difficulties to varying degrees. The children have special needs input at school.

The School reported P often looked neglected and uncared for and his uniform often looked untidy and unkempt. They identified the main concern as P walking to school, as he had no bus pass or money to get the bus. His attendance in December 2003 was approximately 30% and improved to 82% in March 2004. The school principal felt school was a happy place for P and he had good relationship with is special needs class teacher. She commented that P was often very tired and had fallen asleep at his desk on occasions. The teacher was concerned about P missing school as she felt he had made friends and settled well in school. She has now retired from teaching so P will have a new teacher in September.

The school reported that S and C's attendance and punctuality were very poor. The Principal also reported both girls often presented as dishevelled and unkempt.

R is too young for school and does not attend Nursery or Play Group. Social Services would be concerned about R being socially isolated in the home. The Initial Assessment Team made a referral to a Family Centre Nursery for R on 10.03.04. The parents accompanied him on 20.04.04 but declined the placement stating that he would cry.

On 28.07.04, Mrs Q (maternal aunt) contacted Social Services to say that she had S and C staying overnight with her family. R had spent the night with a family friend, D. Mrs Q explained they were at a party the previous night and the two

girls disclosed that their brother, P, was sexually abusing them. Mrs Q also reported that a family friend at the party had confronted P about these allegations. He allegedly admitted to the offences but could not offer an explanation. He then allegedly stated he saw his parents engage in this type of activity and wanted to experiment himself. Mrs Q also stated that when the parent became aware of the disclosures, they did not react in any way. When asked by Social Services the following day, they said they felt sick about it. They said they had not discussed this with any of the children.

When staff investigated this further, the girls alleged P had sexually abused them.

Clarification interviews took place with a Police Care Unit. The children were interviewed and examined by a Forensic Medical Officer on 28.07.04. The children repeated the allegations, gave explicit details and clarified that it also involved R. They said this happened when their parents were asleep.

On 29.07.04 S attended the Care Unit to give videotaped evidence. However she did not want to talk on this occasion. C was video-interviewed on 29.07.04 and clarified the disclosures made the previous day.

During the children's interviews at the Care Unit on 28.07.04, Mr X presented as extremely distraught and was primarily concerned that he himself would not get arrested. Constant reassurance from staff (Social Services and Police) did not console Mr X and the children were oftentimes left to confront him.

P was arrested and questioned by the police in relation to the allegations on the 30.07.04 at the police station. P admitted to penetrative sex with both of the girls but did not admit to oral sex with R. Another interview at the police station was arranged for 26.08.04.

Following P's arrest, Mr X told local people in a local bar that his son had been sexually abusing his daughters. On 31.08.04 P allegedly was threatened and was removed into Police Protection for his own safety. P was accommodated in a children's home. Mr and Mrs X also moved in with a family friend, as they were frightened to go back to their own house.

When P was accommodated in a children's home it was agreed that Mr and Mrs X would have one hour supervised contact with him per week.

An Initial Case Reference was held on 02.08.04 in relation to the X family. As a result of this meeting the children were placed on the Child Protection Register under the following categories:
R, S and C – neglect and confirmed sexual abuse.
P – neglect and suspected sexual abuse.

Following the Initial Case Conference the following referrals have been made:

- Referrals to the Child Care Centre for S and C.
- Referral to Young People's Therapeutic Project for P, individual work to commence on 28.09.04.
- Referral to Psychologist, for assessment of Mr and Mrs X's level of functioning.
- Paediatric assessments in respect of all the children.
- Referral to a Family Centre Nursery for R. R will start his nursery place on Monday 6 September. R will attend nursery on Monday and Thursday 10.00-1.30pm.

It was arranged that the parents would contact Mr and Mrs Q to arrange to see the children. Mr and Mrs X were advised that contact could only take place in their house and it was to be supervised at all times.

A Looked After Children Review was held on 11.08.04 in relation to P. As a result of this meeting the decisions included:

- Referral to Speech and Language Services for P, the Family Health Visitor has been asked to follow this up.
- Referral to NIARCO Mentoring Scheme for P.
- Some of the contact visits between P and his parents would be videotaped, parents to check this out with their solicitor.

Since the Looked After Children Review there have been further concerns and issues and these are as follows:-

- P attended a Care Unit on 16.08.04 to give clarification. He then returned on 17.08.04 to give Video Evidence.
- S, C and R were accommodated with Mr and Mrs Q on 20.08.04. It was agreed that contact with the parents would be two sessions a week for one hour each session and supervised.
- On 26.08.04 Social Services had a meeting with Mr and Mrs X and Mr and Mrs Q regarding the care of the children. It was explained to the parties that due to the children needing a long term placement, Mrs Q's older daughter at home with severe leaning disabilities who needed a lot of care and attention, concerns in relation to Mr and Mrs Q's ability to meet the children's needs on a longer term basis and Mrs Q's physical health needs, that the children should be placed in foster care. Mr and Mrs X were also advised that the Trust were going to make an application for Interim Care Order due to the nature of the concerns.

5. Children's Foster Placements

The children were placed in foster care on 02.09.04, introductory visits went well.

6. Police Action

Social Services had a Strategy Meeting with the Police on 23.08.04, the Police confirmed they have taken statements. No other information is available at present."

[10] As further corroboration of this, to a limited extent both respondents put before the court a number of concessions by way of proposed threshold criteria. M made the following concessions:

> "1. The second named respondent used inappropriate discipline in relation to the children P, S and C, which included hitting them on the head with an open hand.
>
> 2. Domestic violence, including physical and verbal abuse, towards the first named respondent, some of which was witnessed by the children.
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> 3. On occasions the children failed to attend school as they had slept in.
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> 4. On occasions the second named respondent engaged in excessive gambling.
>
> 5. On occasions the first and second named respondents held parties in their home late at night and the four children would have been present.
>
> 6. On occasions part of the parties home was unhygienic.
>
> 7. On occasions P was not properly dressed for school.
>
> 8. On occasions household items had to be sold due to the respondent fathers gambling."

E made similar limited concessions which, suitably anonymised, I shall set out as put before me (sic):

> "1. The Respondent mother was subjected to physical and verbal abuse by the father, some of which was witnessed by the children.
>
> 2. On occasions part of the parties' home was unhygienic.

3. On occasions P was not properly dressed for school.

4. On occasions household items had to be sold due to the Respondent father's gambling.

5. On occasions the children failed to attend school as they had slept in."

[11] The evidence of Mr Quinn, Consultant Clinical Psychologist, building on three reports already put before the court dated 3 December 2004, 24 August 2005 and 24 August 2005, underlined the strength of the threshold case submitted by the Trust. His evidence was not the subject of significant challenge and the salient points emerging from his evidence and his reports were as follows:

1. He made it clear that he was dealing with an assessment of the two adult parents M and E and not the children. Moreover he had not been made aware of the recent sexual abuse allegations involving the child S.

2. Dealing with E, he described her as suffering from a mild learning disability with an IQ of 66. She requires a great deal of positive support in the community and also practical supports in order to lead a good quality of life and care for children. Whilst her learning disability would not be a bar to parenting, her background had had an enormous deleterious impact upon her. She had been seriously sexually assaulted when a young girl and this had had a marked affect upon her. She was dependent on others and in fear of living independently. This was all compounded by her learning difficulties. The factors in any partners she chooses can be very significant. In this instance her husband M has significant problems and the combination of these problems and her frailties lead to difficulties with the children.

3. M has an even lower IQ, being 59. It is the lower end of the scale and the 6 point difference between his IQ and that of his wife's can be very significant. The mother is more capable than he is in a family context. He is in the bottom 0.5% of the population in terms of intelligence. An IQ over 60 can provide reasonable parenting though there can be aspects of anxiety. His background is a damaging feature. He has very poor experience of parenting himself, he was severely physical abused as a child, he left home early, was alienated from his family and is an isolated person. He admitted to Mr Quinn strong addictions to gambling, alcohol and was violent to his wife and children.

4. They generally have a dysfunctional relationship. The mother is the more dominant in terms of caring for the children but her ability to protect

herself is poor. On the other hand M is highly dependent on her, and would not know what to do if they were separated. On the other hand he tried to isolate and control her. E was very open about the high level of domestic violence that M had visited upon her and described in detail the violence and her fear of her husband. However she is still dependent on him, and hoped he would change within the relationship. This family environment was likely to sustain harm to the children. There was strong physical abuse of P, neglect through lack of money on account of M's gambling, strong emotional abuse contributed to by the heavy element of domestic violence and inappropriate sexual behaviour.

5. In Mr Quinn's opinion it was not safe to allow the children to be returned to these parents. He was sceptical about the suggestion that they had separated. He felt it would be very difficult for them to separate. It is the only relationship they have had, they are tied to each other, the mother has tolerated totally unacceptable behaviour, and he is highly dependent upon her. At the interview with Mr Quinn recently the mother asked to be interviewed separately so she could leave before him. M became extremely agitated and Mr Quinn observed that after he had finished interviewing him, M literally ran after her even though she had long gone. In this context I accept entirely the evidence of the Guardian ad Litem who gave evidence of seeing the two of them walking down the Ravenhill Road together in Belfast during the course of this hearing despite E's protestations that they were apart. Her account to me that he was simply following her was implausible and I disbelieved her in this regard. Mr Quinn is correct in my view in concluding that they are inextricably connected at this time.

6. Mr Quinn recommended that the children would be traumatised if exposed to this environment. He did not see a point were M could care for these children. He recommended therapeutic work for him. It is impossible to say what his position would be in the long-term, but he is a young man and may be involved in future relationships thus making therapy absolutely crucial for him. Equally E requires therapy. She needs work in the family centre lasting at 4 to 6 weeks before any consideration of contact could be considered. Even then Mr Quinn was concerned about supervised contact since this might be confusing for the children in the wake of the sexual allegations and impede if the recovery if the move was made too quickly. Children could receive wrong messages from such meetings. In general terms he recognised that if sufficient preparation is made to enable her to understand appropriate boundaries some measure of supervised contact could be contemplated in the future but the interests of the children would have to be taken into account.

[12] Mr HB, Senior Social Worker with the Trust and a specialist in the adolescent team gave evidence before me primarily in the context of P. As in the case of Mr Quinn, much of his evidence was unchallenged. He described

how P had been known to Social Services for some time and he had taken responsibility for the boy in April 2005. Since his removal from the family home he had been progressing excellently and there was now a proposal to move him to a foster placement on 12 November 2005. He was now doing well at school and was clearly an above average student. He had expressed no wish to have contact with his mother or father, wishes to put the past behind him and is happy with his current situation. Whilst he had recognised that he would like to see his mother at some time in the future, he has indicated no wish to do so at the moment. The boy suffers low self esteem and self blame for his behaviour and he has substantially lost contact with all of the people in his life who love him. He needs time to settle into his new surroundings and the current placement is open ended. The witness recognised that whilst P had abused his sisters, and indeed there is an ongoing situation of police review with regard to a possible prosecution (which has now been delayed by the Public Prosecution Service for several months), he did wish to make contact with S and had written a letter to her. That letter was retained by Social Services and will be passed onto the child when appropriate. S has indicated that she does not wish to see him at the moment and this is not a major issue with him. It was the witnesses view that whilst at some time in the future he might have contact with his mother, that would have to start with some supervised contact in a neutral venue. Work would have to commence with E before such a meeting could take place. The witness felt that M had been complicit in the abuse that was taking place and had brought the boy into contact with disreputable people. The boy does have a good relationship with M's brother P2 and wishes to see him. Any contact between P and his sisters would have to be subject to the therapeutic work being carried out with them and acquire validation with the young people themselves.

[13] I pause to observe at this stage to indicate that on the evidence before me including that of E to which I will later refer, the Trust had satisfied the court that the threshold criteria had been established on the grounds set out in paragraphs 1-4 in paragraph 6 of this judgment. However, it was the view of the parties, with which I concurred, that even though these facts would have been sufficient to satisfy the threshold criteria, it was an appropriate exercise of the courts powers to conclude that a further determination of the allegations of sexual abuse involving S should now proceed, it being in the best interests of the children that this should be done. (See Re M (Threshold Criteria: Parental Concessions) [1999] 2 FLR 728 and Re W (Children) (Threshold Criteria: Parental Concessions) [2001] 1 FCR 139).

[14] I turn now to consider the allegations of sexual impropriety against E and M which arose principally out of the statements made by S.

[15] In looking at the issue of the credibility of S's information in this matter, I make no apology for repeating what I had said in Re J, T and C (Care

Orders: Concurrent Criminal and Family Proceedings: Standard of Proof) (Unreported) (GILF5118) at page 16:

> "(iii) In looking at the credibility of witnesses I derive assistance from what Lord Pearce said in *Onassis and Calogeropoulos v Vergisi* [1968] to Lloyd's Law Reports p.431;
>
> > " 'Credibility' still now in general involves wider problems than mere demeanour "which is mostly concerned with whether the witness appears to be telling the truth as he now believes it to be." Credibility covers the following problems. First, is the witness a truthful or untruthful person; secondly, is he, though a truthful person, telling something less than the truth on this occasion, or, though an untruthful person, telling the truth of this occasion? Thirdly, though he is a truthful person telling the truth as he sees it, did he register the intentions of the conversation correctly and, if so, has his memory correctly retained him. Also, has his recollection been subsequently altered by unconscious bias or wishful thinking or by over much discussion of it with others? Witnesses, especially those who are emotional, who think that they are morally in the right, tend very easily and unconsciously to conjure up a legal right that did not exist. It is a truism often used in accident cases, that with every date that passes the memory become fainter and the imagination becomes more active…. . And lastly, although the honest witness believes he heard or saw this or that, is it so improbable that it is on balance more likely that he was mistaken? On this point it is essential that the balance of probability is put correctly into the

> scales in weighing the credibility of a witness. And motive is one aspect of probability. All these problems compendiously are entailed when a Judge assesses the credibility of a witness; they are all part of one judicial process.'"

(iv) The complexity of the task was well summed up by Hutton LCJ in *R v Murphy Moen and Gilmour* (Court of Appeal. Unreported 4 January 1993) at p.7 when he said;

> "Where a trial judge considers that a witness has told a lie or a number of lies in relation to part of his evidence, no general rule can be laid down as to whether the reminder of his evidence should be accepted or rejected by the trial judge. That will depend on the particular facts and circumstances of the individual case (the judge then quoted from Phipson on Evidence 14th Edition which is replicated in the 15th Edition at para. 6-16)
>
> 'Unlike admissibility the weight of evidence cannot be determined by arbitrary rules, since it depends mainly on common sense, logic and experience. 'For weighing evidence and drawing inferences from it, there can be no canon. Each case presents it own peculiarities and in each common sense and shrewdness must be brought to bear upon the facts elicited.' 'The weight of evidence depends on rules of common sense.'"

This is the approach that I have adopted in this case and the principles to which I have applied my mind when considering the credibility of this child.

Evidence of sexual impropriety between S and her parents and others (with the exception of P)

[16] This evidence grounded the allegations set out in the proposed criteria for thresholds listed at paragraph 5.27 at sub-paragraph 5, 6 and 7 of the guardian's report to which I have already referred in paragraph 6 of this judgment. Before dealing with this material, I should make some preliminary comments:

(1) Apart from the children in this case and the mother and father, the criteria referred to a number of other named individuals. Although the matter was never raised before me I have considered the position of these non parties in light of the serious allegations made against them. A court may join a non party to proceedings giving him full party status or to provide a right to intervene, short of being a party in the proceedings. In Re S (Care: Residence: Intervenor) [1997] 1 FLR 497, the Court of Appeal in England and Wales refused to allow a step-parent to be joined as a party to care proceedings where allegations of sexual abuse were made against him but he was allowed the status of intervenor which provided him with the ability to attend with legal representation for such parts of the evidence that related to the allegations against them and to present his case. It was held that solicitor and counsel should be provided with those parts of the evidence which related to the allegations and should attend on the first day of the hearing to establish when it would be convenient for that part of the evidence to be heard. In Re H (Care Proceedings: Intervenor) [2000] 1 FLR 775, the Court of Appeal refused to allow a 17 year old who was a complainant of sexual abuse against her father to intervene in the proceedings in relation to her 7 year old sister where allegations were made against her to the effect that she had been telling lies, had made her sister tell lies and was seeking to pervert the course of justice. Dame Elizabeth Butler-Sloss P said at page 777 para h:

> "… Each of these cases clearly has to be looked at on its own merits. One has to identify, if leave to intervene is given, what is the particular reason why it is necessary for a person to intervene. It is not a run-of-the-mill application. Clearly it is not an application that should be granted because somebody is a victim or maybe, as an alleged victim, the subject of robust cross-examination in care proceedings to the effect that the allegations are a pack of lies. That would only happen with older children, since generally in care proceedings the children who are younger do not give evidence. Quite clearly, as I have said, all victims as such cannot intervene and ought not to be given the right to intervene. There may be cases where

> victims might be given the right to intervene in care proceedings. What is clear is that they cannot intervene in criminal proceedings. In this case D is clearly at risk of being said to have set her sister up in a shocking fabrication in which case she may be at risk. That may mean, in purely civil proceedings in the Family Court, that in certain circumstances she should have the protection of being allowed to intervene. But against that possibility has to be weighed in the balance a number of other factors. First, there is no right as such to intervene because you are a satellite party and allegations are made against you. … There is another element. The care proceedings are civil proceedings and are largely, if not entirely, funded by the State, one way or another, either through the local authority, by ratepayers and State money. Both the parents who are separately represented for care proceedings, and if this girl is allowed to intervene, D, will no doubt be represented on legal aid. There will, inevitably, be a proliferation of documents because, although it is suggested that they should be edited and she might not get all the documents in the case, since she is crucial to the case she has to have all the documents which concerned her. I would have little doubt that they would be at least half, if not the majority of the documents in the case. Of course her counsel would have the right to examine his client in chief and to cross-examine every other witness in the proceedings. No doubt he would exercise the restraint that counsel always does, but he would have the right where relevant, to deal with these matters in some detail. This would be an increase of the expense of these proceedings which is a relevant factor … ."

I considered that it was unnecessary to incur the expense and delay which would be incurred in notifying these persons of the allegations made and that in any event their names should not be revealed in any report of these proceedings. It should be clear however that these matters must be looked at in the fresh circumstances of each new case and that this should not be considered as a precedent for ignoring the rights of such persons in other cases.

(2) It is also relevant that I advert at this stage to the principle of issue estoppel in family proceedings in general and in particular in the context of the allegations of sexual impropriety in this case involving the child S. The path of the authorities on this matter lead me to the conclusion that if such a doctrine has a place at all in the Family Division, it is a very limited one. In B v Derbyshire County Council [1992] 1 FLR 538 at 545c Sir Stephen Brown P stated:

> "I find it very difficult to conceive of any situation or circumstance in which the application of the doctrine of res judicata could be applicable, but it is impossible to consider every hypothetical set of circumstances which might come before a court. However, in the context of care proceedings, it is most unlikely ever to be applicable. It will certainly not be applicable where time was elapsed since the proceedings which it is alleged have previously resolved the issues before the court. That must follow because there is a continuing and developing situation in the life of a young child."

In Re B (Minor) (Contact)[1994] 2 FLR 1 Butler-Sloss LJ (as she then was) said at paragraph 5f:

> "It seems to me that the weight of Court of Appeal authority is against the existence of any strict rule of issue estoppel which is binding upon any of the parties in children's cases. At the same time, the court undoubtedly has a discretion as to how the inquiry before it is to be conducted. That means that it may on occasions decline to allow a full hearing of the evidence on certain matters even if the strict rules of issue estoppel would not cover them. Although some might consider this approach to be a typical example of the lack of rigour which some critics discern in the family jurisdiction, it seems to me to encompass both the flexibility which is essential in children's cases and the increased control exercised by the court rather than the parties which is already a feature of the court's more inquisitorial role in children's cases …".

Accordingly, if a care order is to be made in this case, or if a variation in any contact is sought, the application will be considered on the basis of the risk of harm existing at the date of discharge hearing and therefore there can be

instances where the court may question the soundness of antecedent findings reached at an earlier hearing particularly if new evidence has come to light. Where a question of estoppel is raised in a child's case, the court must balance the two-fold public interest of the need for a certainty of decision and the protection of a litigant by being vexed twice with the same complaint, against the countervailing public interest in the protection of children which must, under the 1995 Order be given paramount consideration. I therefore make it clear that my determination of these allegations of sexual impropriety is based entirely on the evidence currently before me and I do not rule out further developments or additional evidence coming to the surface in these matters.

The evidence grounding the allegations made by S was contained partly in a series of interviews with police officers referred to in bundle 7 of the police transcripts before namely:

1. Interview with S 19 August 2004.

2. Interview with S 26 August 2004.

3. Interview with S on two occasions on 22 August 2004.

4. Interview with S on 10 November 2004.

5. Interview with S on 13 May 2005.

I also read interviews with C of 29 July 2004 and with P of 17 August 2004.

In addition I had the benefit of viewing a number of the interviews with S by way of a video recording which were dated 19 August 2004, 26 August 2004, 10 November 2004, 22 October 2004, 13 May 2005 and with C of 29 July 2004 and P 17 August 2004. There were also signed notes of discussions with S from the foster father of 18 October 2004 and 23 October 2004.

[17] The sequence of events was the Trust became concerned about the ability of Mr and Mrs X to provide adequate care and protection for their children. The Trust suspected that P had been sexually abused and was neglected whilst in his parents' care. It further believed that S, C and R had been sexually abused by P and neglected whilst in their parents' care. It recorded this in a report of September 2004. In July 2004 S and C disclosed that their brother P had been sexually abusing them. They also disclosed that P was also abusing their younger brother R. They were interviewed under "Gaining Best Evidence" procedures in July 2004 and both girls confirmed their original disclosures of abuse including inappropriate sexual touching of the girls' breasts by P, penetrative sex P and the two girls and oral sex between P and his three siblings. These disclosures were confirmed by C in

interviews with the police on 29 July 2004. P was arrested and questioned by police in relation to the allegations and rape of both of his sisters. He admitted to having penetrative sex with both of his sisters but denied having oral sex with R at this point. On 19 August 2004 S disclosed further information about inappropriate sexual behaviour and further sexual abuse. These allegations included inappropriate touching between Mr and Mrs X, their friends and P. The suggestion was that Mr and Mrs X were aware of this and permitted the behaviour witnessed by the children. In the interview of 19 August 2004 S was interviewed in the care unit and confirmed her previous disclosures during video evidence. She also gave further information about the role of her parents in the abuse and other perpetrators involved. In particular she said that on P's birthday they had gone to another man's house to have a party and there she witnessed some adults touch each others genitalia and that her father engaged in this kind of behaviour with them and with P. She also alleged that she saw her mother having sexual relations with one of the men. On this occasion she said that she had been hiding in the bath with curtains and looked out to observe what was happening. This became an issue because in the course of the case Mrs X stoutly denied that there was ever any bath with curtains on it in any house to which she had visited.

[18] I observe at this stage that Professor Bull gave evidence on all of the interviews. He holds a degree in Psychology and is a Professor of Forensic Psychology at the University of Leicester. He has a considerable background in child development and has taken a particular interest in interviewing techniques of children and has researched and taught widely on this subject. He was commissioned by the Home Office to write the first working draft of the "Memorandum of Good Practice" and was part of a team that produced the 2002 Government document "Achieving Best Evidence in Criminal Proceedings: Guidance for Vulnerable and Intimidated Witnesses, Including Children". Having viewed the video of this report it was his view that the incriminating information provided by S was not the result of inappropriate interviewing.

[19] The child was re-interviewed on 19 August 2004 in the Care Centre and confirmed her previous disclosures during video evidence concerning P's behaviour. She said she did try to tell her mother who was downstairs during some of these events but she said that the children were simply playing.

[20] S was again interviewed on 26 August 2004 in the care unit and disclosed more information in relation to abuse by P.

[21] Mr and Mrs X moved out of the family home at the end of July and went to live with a family friend. S went to live with her maternal aunt and uncle Mr and Mrs Q on 27 July 2004. This was arranged directly by the family as a result of the disclosures of sexual abuse by S and C. This remained the case until 20 August 2004 when the children went to live with foster carers.

[22] I note at this stage that Professor Bull, reviewing the interviewing of 19 August 2004 indicated that in his view the incriminating information provided by S was not the result of inappropriate interviewing.

[23] While staying with her new foster carers, S allegedly made further disclosures to them raising grave concerns in relation to Mr and Mrs X and other male friends of the family. These included:

(a) Further incidents where S and C were sexually abused by their brother P. This included rape while they were in the bath.

(b) Rape, forced masturbation and oral sexual abuse of S by a man known to the parents.

(c) Domestic violence at home – describing incidents the children witnessed when Mr X assaulted their mother and then blocked their way out of the house when they tried to get out to ring the police.

(d) Physical abuse of S by Mr X. This included Mr X punching S on the head and beating her with a stick on her back and legs.

(e) Mr X agreeing to his friend taking S upstairs to have sex with her when he was asked by the friend if he could.

(f) Mr X laughing at S when she told him that she had been raped by the male friend.

(g) Mrs S laughing at S when she told her that she had been raped by the male friend.

(h) C crying out to her mother for help when P was abusing her. Mrs X was downstairs but would not come up to help C.

(i) P tried to suck S's nipples because he had seen his father do this to his mother.

[24] A report from a senior social worker of 20 October 2004 not only recorded these matters in relation to S, but indicated that C was becoming increasingly sexualised in her behaviour and engaging in sexually inappropriate behaviour in her placement, in school and during contact. She also began to touch herself in the vaginal area when speaking to the Guardian ad Litem about another male friend of her parents. C confirmed that her brother had sexually abused her but it is right to say that she has not specifically corroborated the disclosures made by S in relation to her parents

and has confined her allegations of sexual abuse to those made against P. Similarly P has not corroborated S's allegations against her parents.

[25] It is significant at this stage to turn again to the statements made to the male foster carer Mr Y on 18 October 2004, the female foster carer Mrs Y of 19 October 2004 and again on 22/23 October 2004 and finally arising out of a statement of the male foster carer dated 5 November 2004. Subsequent allegations in these later disclosures allegedly made to the foster carers included:

1. S reinforced the sexual abuse by her brother when he raped her and made her perform sexual acts.

2. Mrs X being fully aware of the sexual abuse and taking no action. Mrs X not believing S when she told her about the sexual abuse.

3. Videos were made of the sexual abuse.

4. Incidents when another male filmed Mr X having sexual relations with S and then they would swap places and Mr X would film a third person having sex with S.

5. Mrs X coaching S during these sexual abuses and praising her calling her "good girl" when she performed masturbation and oral sex on the men.

6. Mr X forcing S to watch these videos in her pyjamas with her mother and father present. During the videos Mr X to masturbate and perform oral sex on him.

7. Incidents when friends of the father raped her. These incidents also included forced masturbation and oral sex with the men. One of the men threatened S that if she told anyone about the abuse he would show everyone the videos. Another man told S to keep it secret and told her if she didn't he would tell everyone what she had done.

8. Incidents when the father had forcibly raped S even when she told him it hurt her and asked him to stop.

9. Mr X having sexual relations with S everyday after school and at night and at weekends including forced masturbation and oral sex.

10. Occasions when Mr X threatened S when she refused to have sexual relations with him and he told her to "grow up" and called her a "slut" and "a bitch". There are also occasions when Mr X threatened S with a knife and a baseball bat if she ever told anyone about the sexual abuse.

11. Mr X giving consent to a third man having sexual relations with S and giving her to yet another man for sex. On one occasion Mr X told S "do what ___ tells you or I'll give you a smacking".

12. Incidents when P would have kissed S on her mouth and forced her to kiss him back.

13. S described watching her mother and father having sexual relations a large number of times.

[26] Professor Bull did make comment on these notes recorded by the foster carers. He indicated that it was always difficult to determine how well a conversation was conducted if it was not tape recorded. However the foster carers notes appear to him to have been relatively comprehensive and did not indicate that the conversations were conducted inappropriately. He expressed some concern as to suggestions by the carers that the child was being praised/rewarded for what they had said and this could influence what they might say later. Professor Bull went on to record:

> "Where the foster carers notes/statements provide (apparently) comprehensive accounts, they do include detailed information concerning what the children are alleged to have said. If these statements are correct, then it would appear that the children (especially S) provided incriminating information that was not caused by inappropriate questioning by the foster carers. Although in his statement of 23 October Y reports that he told S it would be/was `a very good thing to get all the bad secrets out', I do not consider that this would have unduly biased the account that he says she provided."

Professor Bull went on to say that he noticed nothing in the children's behaviour or in what they said that caused him concern about fabrication.

[27] It was Professor Bull's view that in light of the detail of the accounts that S provided, what Mr Y said was unlikely to have precipitated such full accounts. If her accounts had been merely sketchy outlines, he would have been more suspicious. It was suggested to him by Ms Walsh QC that these statements have to be seen against a background where the aunt and uncle had been making derogatory statements about the parents referring to them as being useless and clueless. Whilst Dr Leddy accepted that if a child accepted such comments it could influence her thinking about her parents, he felt that the child would repeat the denigration if it had a great impact. Here she had presented a detailed account which was different from the

denigration which had been communicated to her by the aunt and uncle. Accordingly he felt that this criticism was unlikely to have influenced her. Ms Walsh QC on behalf of the mother raised a similar line of questioning arising out of the relationship with the foster carers. Professor Bull recognised that it was important to know what had been asked and what had been replied. That was what was missing in the notes made by the foster carer. Professor Bull doubted if at this stage the foster carer could really recall the manner in which he had asked the questions but nonetheless he felt that he could still look for any indication of inappropriate words, ideas or constraints in terms of the maturity of what the child was saying. He noticed nothing in these matters that raised his concerns.

[28] In the subsequent police interviews of 22 October 2004 and 16 November 2004 these allegations surfaced again. The interview of 22 October 2004 took place a few days after S had made disclosures to her foster carers. It was Professor Bull's view that the incriminating information provided by S in these interviews was not the result of inappropriate questioning during the interviews. Much of the material which had been disclosed to the foster carers were not fully repeated in the interviews with the police but without listing the specific details, I am satisfied by reading these interviews through that they provided sufficient corroboration and repetition of what had been disclosed to the foster carers to show a consistent approach. Counsel raised a number of concerns arising out of these later issues. In particular on 10 November 2004, the following exchange occurred between the child and the interviewing police officer:

"Police - So I sort of know S you know, some of the things but I need you to tell me today in your own words, you understand okay. Do you understand what I need to know.

S – why today?

Police - Why today, well I mean because you asked to speak to me today but its okay if you don't want to speak to me today about it. Mm hmm.

Em would you prefer to come back another time and talk about it?

S – but Y (*the foster father*) would be able to tell you more.

Police - what?

S – Y'll be upset because I wouldn't tell, tell you.

Police - No I mean you have shared secrets with Y, alright, and because of my job it is very important, alright, and he knows that I am like a friend to you, you had to tell me that and then you asked to come to see me you see S so I

need you to tell me too. Don't be annoyed if you don't tell me about Y, I'll sort Y out, he'll not be cross with you, don't worry about Y, I know its."

Professor Bull recognised that there could be a variety of pressures on a child and there could be undue pressure exercised by a foster carer. However here he felt that the child was simply being told to tell the truth and he could not say that this was inappropriate pressure. However in principle he accepted that suggesting that the foster father could be upset if she didn't tell him, could in principle suggest pressure. However he felt that these disclosures did not make it possible to say if any pressure had been applied.

[29] Arising out of the interview of 22 October 2004 , when the child was alleging that she had seen marks on C and R as well as P, the following exchange is recorded:

> "S – I saw a red mark on C's body and R's and P's on not mine.
>
> Red marks on their bodies. And whereabouts on P's did you see this red mark?
>
> S - On the hand, body and back.
>
> On the hand, body and back and it was red was it and what caused that?
>
> S – a belt.
>
> The belt. What about C where was it on.
>
> S – the same.
>
> On her, on her back and where else.
>
> S – body and hand.
>
> Body and hands and R, wee baby R. What did he do to baby R.
>
> S – Uh.
>
> Did he use the belt on baby R. Now tell me about when he used it on you, where was it all.
>
> S – the same hand, back, body and leg.

And did you ever tell anybody in school or anything about that. And.

S – the teacher saw my red mark.

She saw the red marks, and was it, when he hit you was it hard or.

S – hard.

Yeh and was there ever any bruising.

S – yeah.

And did you ever have to go to the doctor or anything because of these marks. Mmm did you. What are you saying yes or no.

S – yes – yes.

And did you tell the doctor or did your mummy tell the doctor.

S – my mummy.

And what did the doctor say.

S – he said em you have to phone the police.

Right, and did, and so the doctor seen your bruises and she told your mummy that in future that she had to phone the police and when was (inaudible) can you remember when that was or why you were at the doctors.

S – no.

No. And what did your mummy say to the doctor when she said that.

S – she said my husbands been beating up my kids.

She says my husbands been beating up my kids and when the doctor told her to phone the police what did mummy do.

S – she phoned the police.

She phoned the police.

S – and the police couldn't do anything about it.

Why couldn't they, but if they saw the bruises S and they saw that your daddy was cross all over the body and all if the doctor, if you went to the doctor the doctor would tell the police anyway wouldn't they. And did the police come out. They didn't come out. So how do the police know then do you know.

S – cause the doctor told him.

The doctor.

S – said (inaudible) the police came out and said if there is any more bruises that (inaudible), they'd put him in prison.

The police came out to where.

S – us.

To yous and said if there was any more bruises just put him in prison and can you remember when that was the police came out.

S – No.

And was it ah, what were they like the policemen.

S – mmm.

Policewomen.

S – mmm.

Policewoman were they policemen or policewoman.

S – policewoman and a policeman.

And what were they dressed like.

S – police uniform.

Did they and how many times did they come to your house.

S – twice.

Twice, okay. Mmm and did, that was when you lived in ___ Avenue was it in number, I can't remember the number what number.

S – (number given).

Number __ and what did daddy say to all that.

S – he said she's telling a lie, she's telling lies.

Right and did the police see any bruising or any marks. And what did mummy say.

S – said to my daddy she's not telling lies why's.

She.

S – the bruises there. Oh I bet you she fell.

Oh he told the police that you had fallen.

S – but I didn't.

But you hadn't. And did the police know about R and C and all. Did they see their bruises. Okay well S I am to have to check back to see exactly if the police and and when they came out alright and what happened and the reasons why.

S – mm.

Okay and it will all be recorded anyway and maybe check with your doctor to see was there any bruising and stuff, alright and I'll check into that for you."

[30] I pause to observe here that there absolutely no evidence that the child's teacher or doctor had ever been so informed and certainly there was no evidence before me that police officers were ever called in the manner described. Professor Bull was taxed about this and he accepted that if there was nothing to show a reference to the doctor, teacher or police you could conclude that she was making this up. He had no specific idea why she would be making it up. He saw nothing in the evidence nothing to indicate that she was being untruthful. He accepted that if she was making this up she could be making other matters up.

[31] He was further questioned about the incident described by the foster carer of two women observing the child in distress on 5 November 2004 on the occasion when these disclosures had been made. Indeed such was their concern that a police car had stopped and questioned the foster carer about what was going on. Apparently the women had seen the foster carer speaking with the child and noting that she was distressed had called the police. Professor Bull had seen nothing of consequence in this matter. It had confirmed to him that there had been interaction between S and the foster carer and he was unaware what had caused her distress other than perhaps the nature of what she was conveying.

[32] Ms Walsh also questioned Professor Bull about inaccuracies in the child's story when she had related an incident about a teddy bear being used by her parents as a sex toy. The child was mistaken about the name when later relating details about it, gave inconsistent stories about who had given her the teddy bear (a note which was before me indicated that her mother had given it to her whereas to the police it was suggested that her aunt had given it to her) and the note referred to the bear's name whilst she had indicated to the police that she did not know its name. Professor Bull accepted that there clearly was some inconsistency in what the child was saying.

[33] In answer to Mr Long QC who appeared on behalf of the father in this case, Professor Bull said that whilst he took all these points into account, children didn't usually go into the kind of detail that this child did and given the nature of the accounts, he felt it difficult to conceive that there was a desire to please as representing the main reason for her making these disclosures. Professor Bull went on to say that assumptions which were made by experts a few decades ago laying down criteria for deciding if children were being truthful have now evolved and fewer and fewer things are now relied on as validating accounts. You must allow for some inconsistencies. Typically when interviewing children on several occasions, their stories evolve over a series of interviews and in this case the child revealed more and more as the interviews went on.

[34] Dr Leddy, MRCPsych, a Consultant Child and Adolescent Psychiatrist, who is employed in the Royal Victoria Hospital for Sick Children, gave

evidence before me. She had conducted interviews with each of the children. She dealt in detail with the care plan to which I will turn later in this judgment together with the question of contact. In the course of her evidence, she made a number of points relevant to the issue of S's allegations:

1. In her view it is not unusual for a child who is exposed to abuse to add extra material which is not true. In the literature, it is well recognised that children may say something that is true but other untrue matters. Children may take refuge in obtaining mastery over the situation. The great detail that this child went into is out of keeping with a child of this age and knowledge. This child has been self-evidently abused. Whilst it is possible that she is transposing allegations to her mother, in Dr Leddy's view it was very unlikely that she would pick out her parents for these allegations. Children such as this tend to have close relations with their mother and father. The child is unlikely to have been influenced by the foster carers to transpose to her parents something that has occurred in different situations and with different people.

2. Dr Leddy was concerned about the manner of the disclosure to the foster parents. While she accepted that it is difficult to hear disclosures of sexual abuse and not lead a child, nonetheless foster carers ought to be given appropriate training in this area. Dr Leddy was familiar with children in foster care making allegations and foster carers enabling the children to hold onto the information and speak to social workers about it. It is a much better method in dealing with such disclosures for foster carers to bring the matter immediately to the attention of social workers rather than handling the allegations themselves. That is not to say however that the allegations are incorrect. It did surprise Dr Leddy that the conversation about these allegations with the foster carer went on for some time and that it was preferable that it should have taken place with people who are skilled. I pause to observe at this stage that I fully endorse the comments by Dr Leddy. It is absolutely imperative that this Trust, and other Trusts, take steps to ensure that foster carers are sufficiently trained and advised about these matters. Allegations such as these are best handled by those who are professionally trained and hold social work qualifications. Foster carers must be advised against engaging in detailed exercises to illicit information no matter how well intentioned those may be.

3. It was Dr Leddy's view that children have a great feeling of loyalty to their carers. It can be diminished by anger against the parents. It was suggested to her that in this case the children had been moved to a better standard of home materially with better care and protection and that this could have led the child to rationalising the making of sexual allegations falsely against her mother. Whilst Dr Leddy accepted that there was an outside possibility these allegations had been made up, she had never in her experience come across such an event occurring, albeit she had come across

instances where children had been the subject of multiple abuse and had added in abusers who had not been involved.

4. In answer to Mr Walsh QC, Dr Leddy accepted that it was a possibility that these allegations about the parents were fantasy, but she felt that they were unlikely to be total fantasy. Whilst she had been unhappy about the manner in which the disclosures had been made to the foster carers as children can work hard at pleasing such carers, it did not make her come to the conclusion that the whole of this story had been made up. In essence while she thought fabrication was a possibility, it was her view that it was unlikely that in these circumstances she had embellished the story to involve her mother and father simply because she thought her foster carers wished her to say these things against her parents. She told Mr O'Hara QC who appeared on behalf of the three younger children, that not only would it be very unusual to fabricate allegations against parents, but that it would likely happen only in circumstances where there had been a break-up of a marriage and a child was wrongly accusing one of her parents. She found no such circumstances in this instance.

[35] Dr Winifred Maguire who is a registered Medical Practitioner and Forensic Medical Officer gave evidence of examining C, S and R in August 2004. Examining the hymen of S, inter alia, she found no breaks or tears noted and no injuries to the genital area. However she emphasised that this did not exclude attempts or acts of penetration. In evidence before me she said that there were a number of studies showing that there may be no signs following penetration of children even in instances where adults have admitted the act being caused. On examination, up to 40% of children who have been abused show no signs regardless of repeated penetration. This area in a child heals very quickly and in a number of cases there can be no signs within a few days if there was minor trauma and within a few weeks if there was more major trauma. I must also bear in mind in this context that it is common case arising out of the admissions of P and the statements S that P sexually abused S and this adds weight to the propositions propounded by Dr Maguire to the effect that in one so young, physical signs might well be absent even though there is admitted sexual penetration.

[36] In this context I must also take into account the evidence of E. She had made two statements of 20 January 2005 and again of 2 November 2005 both of which I have read. In the course of those statements and in her evidence before me, during the course of examination in chief and cross examination, the following matters emerged:

1. She steadfastly denied that she had ever been aware that P had been abusing the other children. She also denied any of the allegations that S had made.

2. Insofar as S had alleged that other men had been present at the birthday party, (during the course of which S alleged sexual activity involving and with these men), she admitted that the same men mentioned by S had been present at a children's birthday party. There was a dispute as to the location of that party but the fact of the matter is that she agrees that S was correct in the names of the persons who were present at it. I found her explanation for the presence of adults at a children's party to be quite disingenuous. Why would a group of adult males be invited to a young girl's birthday party?

3. E denied ever seeing the teddy bear which was allegedly part of the sexual abuse of this child.

4. The witness emphasised that there had never been a mark on the child's leg which was shown to the police, general practitioner or teacher.

5. E asserted that she and M had separated in October 2004 and she had obtained a Non Molestation Order on 19 November 2004. She told me that he continues to follow and harass her hanging about the house where she lives. She asserted she had not been back to court because he had threatened to smash the windows. I believe this to be a deliberate lie on the part of the witness. There was evidence before me which I entirely accept that P had observed his parents together on 19 August 2005 at a shopping centre and again on 1 October 2005. I reject entirely her suggestion that she was simply being followed on these two occasions and that the child was mistaken in believing that they were together. Similarly the Guardian ad Litem had seen them walking together on the very morning of the hearing when she was giving evidence on the Ravenhill Road. Having originally denied that this incident had occurred, she later changed her story to say that he had simply been following her. This is but one illustration of a number of instances where this woman clearly displayed a selective relationship with the truth. I place very little reliance upon anything that she said to me as a result of the repeated untruths in the witness box.

6. She readily recognised and accepted the domestic violence visited upon her by her husband. However she denied ever seeing any marks on the children despite the numerous instances of beatings described by P and S. I have absolutely no doubt these beatings took place having read what the children said and heard them speak of these matters. I disbelieve entirely this witness's assertion that she never saw any mark whatsoever of these beatings either when she was bathing the children or changing their clothing.

7. Referring to DK who has been described by S as being involved in sexual abuse, she admitted that she still continues to see this man at his home despite the nature of the allegations made against him.

8. She could offer no explanation for S's use of sexual imagery and the use of sexually fuelled vocabulary. She said that she had never heard such words used in the house and had no idea where it came from. I have not the slightest doubt that S has acquired this vocabulary from sources which at the very least must be well known to this witness and indeed I believe it comes in part directly from her.

9. The witness accepted that S was not telling lies about the physical violence visited upon her and did not deny the concessions made by P although she said she was unaware of them. I find it completely implausible that this activity of P could have been carried on in the relatively small household in which they were living without this woman having at least some suspicion of what was being done.

[37] In short, I found E to be evasive and unreliable. She displayed a serious want of probity throughout the course of her evidence. In particular when the allegations of S were put to her, I observed her to be shifty and uncomfortable and her denials attacked any conviction. This was a classic case of the court being greatly assisted by observing the witness in person being confronted with a child's allegations.

[38] In resisting the Trust case that these allegations of sexual impropriety made by S had been proved on the balance of probabilities, Ms Walsh and Mr Long in essence made the following arguments:

1. Ms Walsh stressed the lack of any medical evidence to substantiate S's claims. As I have indicated however I found this point to be considerably diluted not only by the evidence of Dr Maguire but also by the fact that P's allegations of sexual abuse of S were unchallenged throughout the hearing.

2. Counsel argued that the evidence which I have quoted at length of S fabricating comments to the GP, the police and her teacher fatally flawed her evidence. I reject that argument. I am satisfied that Dr Leddy is correct in stating that it is not at all unusual for children to embellish the account which they are giving. I could quite understand a child who is being subjected to such horrific abuse escaping into a flight of fantasy where someone is rendering help to her. I believe that this may well be a classic example of a child taking refuge in circumstances where she was obtaining some mastery over her circumstances. I watched this child on the video and read carefully again the transcripts. I am satisfied that the embellishment concerning the teacher etc does not flaw the fundamental weight of the evidence which she presented.

3. The child gave conflicting accounts about the teddy bear which was used as a sex toy. It is not clear who gave her the teddy bear and she gave differing accounts as to the name of the bear. I pause simply to observe that

one must bear in mind the tender years of this child and the trauma to which she has been subjected may obviously cause her to lose recall of all the minutiae. A mistake over the provenance of a toy does not dispel the essential truth of her overall account.

4. Ms Walsh argued that there was no evidence of the photographs or videos which allegedly were taken. There of course may be many explanations as to why these videos were secreted away from inquiring eyes or even destroyed before the police were involved.

5. Counsel submitted that there was no validation witness who interviewed the child and formed a view as to whether she was telling the truth or not. The fact of the matter is however that the ultimate issue relating to credibility rests with the judge. The judge must never lose sight of the central truth that the final decision is for him and a court can safely and gratefully rely upon such evidence as is before it irrespective of whether that is expert evidence or not. I recognise that the onus is on the Trust in this matter, but the absence of a witness to validate the truth or otherwise of this witness did not in my opinion fatally flaw the account which I observed and read. Professor Bull was able to say that the incriminating evidence provided by the child did not emerge as a result of inappropriate interviewing and whilst Dr Leddy was not dealing with the question of validation, she was able to indicate that in her experience and opinion it was unlikely that S would fabricate allegations of sexual abuse against her parents to the degree recorded here simply to please her foster carers. Ms Walsh comprehensively drew my attention to a number of inconsistencies in the accounts given by S. Illustrations are as follows. On 18 October 2004 in the disclosures to the foster carers, the child had indicated that after she had been sexually abused by P and another male, she had told both her mother and father who had simply laughed. When describing the same incidents to the police on 22 October 2004, no mention was made of this. She also of course reminded me that on 22 October 2004 the false suggestions had been made that the police/general practitioner and teacher had been involved. She went on to draw my attention to the statement of the foster carer of 23 October 2004 where the child related that when she told her mother about the behaviour of another man who had sex with her, her mother had dismissed it by saying "you must be joking". The foster carers' statement of 5 November 2004 describing the walk that the foster carer had with the child when she made disclosures suggests that her mother knew everything that was going on.

6. However when she was interviewed by the police on 10 November 2004 in the joint protocol interview, she indicates to the police that the foster carer would be upset if she did not tell the police what had happened. The implication was that this is a child who is confused, fantasising and under some pressure from the foster carer. I have already indicated that I have some concerns about the manner in which the foster carer elicited the information

on this matter. However I see no evidence whatsoever before me to justify the suggestion that this child was fabricating wicked allegations against her parents simply to please her foster carers. A child of such tender years will almost inevitably vary in the accounts which she gives depending on the person to whom she speaks and the confidence she reposes in that person. Professor Bull made it clear that the unfolding nature of allegations of a child over a lengthy period is a typical scenario. The fact that C and P have not corroborated all aspects of what S has said conceivably may be an example of this and is not enough to make me dismiss S's assertions. Children do have a great feeling of loyalty to carers but in the absence of any positive evidence that she was doing this to please the carers are out of loyalty to them, I regard the chances of fabrication as being remote. Without being in any way being critical of counsel, it is my firm view that her submissions in this regard were founded on pure speculation.

[39] Mr Toner QC and Mr O'Hara QC made a number of submissions the burden of which was that I should be satisfied to the requisite standard of the truth of S's allegations. In summary the arguments were as follows:

1. Mr Tower relied upon the evidence of Professor Bull who validated the procedure of the interviews. He therefore urged that there was absolutely no reason why these interviews in which S made her various statements should not be accepted.

2. He emphasised that much of what the child said had been corroborated in terms of the admissions by P about his activities with her. In other words this was not a case where one was relying entirely on everything the child said alone but that what she had said about P was self-evidently true given the admissions by P. The same applies to the violence of which she spoke.

3. He relied very heavily on the detail and content of the allegations by the child. Where would this child have obtained the knowledge of this adult sexual behaviour? Whilst of course P had performed acts of sexual abuse upon her, the detailed description of homosexual behaviour with the other men is something that one would have thought foreign to the nature of a 9 year old child. Similarly the appalling language used by this little girl can only have been acquired from adults. I do not believe she could possibly have been aware of all the sexual activities she described without having been exposed to them.

4. These allegations have been made against parents. Both Professor Bull and Dr Leddy pressed the inherent unlikeliness of a child making up allegations against her parents except in particular circumstances. Merely to please the foster carers was in Mr Toner's submission an implausible proposition.

5. Both Professor Bull and Dr Leddy made it clear that a child fantasising about part of her evidence eg the question of reporting to the doctor/police etc, is neither unusual (according to Dr Leddy) nor necessarily flaws the rest of her evidence.

6. Mr Toner emphasised that the child describes events particularly in the home of DK involving direct adult sexual behaviour and abuse of P which predated her foster placement with her current carers.

7. Mr Toner met head on the fact that P had not corroborated her allegations against her parents nor had C. However Mr Toner emphasised that P had not been directly asked about his parents' involvement and in any event disclosures by children, even at P's age, are an evolving process which have to be handled very delicately and at the child's pace. It may well be that P and C have further allegations to make but the absence of any direct involvement of the parents does not dilute the affect of S's evidence.

8. Mr O'Hara QC reminded me that the case has to be looked at in its wider context. I am mindful of what Lady Justice Smith said in Whalley v Montracon Limited [2005] EWCA Civ 1383 where she said:

> "Where the civil standard of proof applied, it was not necessary for every piece of the evidential jigsaw to fit. To require that was to apply a high standard of proof."

Mr O'Hara QC also reminded me that this child was outlining these matters in the context of a home where there was clear evidence that P had been abusing his sister and brother and through the normal course of events children such as P would not behave in this manner unless he had seen sexual intercourse or been the victim of such abuse himself. He questioned why one would doubt S's allegations against her parents in a context where her allegations against P were clearly credible given the corroboration of the statements of P.

9. Counsel challenged the suggestion that S had simply transposed her parents into a situation which she had suffered at the hands of other adults. This involved a proposition that the child was somehow confused about those who had abused her and simply because her parents had failed to protect her, or because she wanted to please her foster carers, she chose to insert their persona into the abuse she had suffered. This child only turned 10 years of age at this summer and revealed a depth and wealth of sexual knowledge and abuse to the extent that it seems almost inconceivable that she could have fantasised this kind of behaviour accompanied as it is by the use of predatory and sexually charged language. One would have thought that her parents, if

they were kind and caring for her, would have been the last people that she would have been involving in such allegations. The nature of the therapy that this child requires is clear evidence that this child has been subjected to prolonged sexual abuse by adults.

[40] Whilst I would clearly have entertained doubts if the standard of proof had been the more exacting one of beyond reasonable doubt, I am satisfied that on the balance of probabilities the allegations made by S and contained in the proposed threshold criteria to which I have referred are correct. In so concluding I recognise that these are grave allegations and the consequences for these parents are serious. I see no guiding hand to help this child in what she has said and I consider that the facts as a collection of raw material tell their own bleak story of the abuse to which this child has been exposed. They paint a haunting picture of a household subsumed in an atmosphere of sexual malevolence. I am not persuaded despite the eloquence of Ms Walsh and Mr Long, that their arguments carry any or sufficient strength in the face of such cogent and compelling evidence. I believe that Mr Toner and Mr O'Hara have compellingly deployed the evidence available and have satisfied me to the appropriate standard. I therefore endorse all of the essential criteria set in paragraph [6] at pages 7 and 8 of this judgment. I reiterate that even had I been satisfied only on the matters contained in sub-paragraphs 1-4 I would still have been satisfied that the threshold criteria was crossed. Needless to say with the additional material which I have found, I am further convinced that this is the case.

[41] The threshold criteria having been satisfied the court must then consider whether a care order should be made in light of the care plan and the welfare checklist in Article 3(3) of the 1995 Order. I commence my deliberations by recognising the draconian nature of the legislation which is now being invoked by the Trust. It is difficult to imagine any piece of legislation potentially more invasive than that which enables a court to break irrevocably the bond between parent and child and to take steps which are inconsistent with the aim of reuniting natural parent and child. I recognise that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life and that domestic measures hindering such enjoyment do amount to an interference with the right to such protection under Article 8 of the European Convention of Human Rights and Fundamental Freedoms (EHCR). I also recognise that taking a child into care should normally be regarded as a temporary measure to be discontinued as soon as circumstances permit and that any measures of implementation of temporary care should be consistent with the ultimate aim of reuniting the natural parent and the child wherever possible. I have derived great assistance from the two recent decisions in the Court of Appeal in Northern Ireland namely AR v Homefirst Community Trust [2005] NICA 8 and Homefirst Community Health & Social Services Trust v SN [2005] NICA 14.

Equally so I recognise the principles set out in Yousef v The Netherlands [2003] 1 FLR 210 at 221 para 73 where the ECtHR stated:

> "The court reiterates that in judicial decisions where the rights under Article 8 (of the European Convention) of parents and those of a child are at stake, the child's rights must be the paramount consideration. If any balancing of interest is necessary, the interests of the child must prevail."

[42] Accordingly it is important to remind myself that the Trust in this court as public authorities have an obligation to comply with the provisions of Article 8 of the European Convention on Human Rights which was incorporated in our domestic law on the coming into force of the Human Rights Act 1988. Article 8 provides:

> "(1) Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of … or for the protection of the rights and freedoms of others."

[43] Against that background I have considered the care plans in this case. It is not planned by the Trust that any of these children will be rehabilitated to the care of their parents at any time and that there should as yet be no direct contact between any of the children and their parents. Leave has been granted on 22 October 2004 by the court for the Trust to refuse direct contact between all of the children and their parents and there has been no direct contact since that date. It was Dr Leddy's view that now that P has been moved to a long-term foster placement (since 12 November 2005) this is an entirely appropriate care plan for him. It was her view that it would be in P's interests that steps should be taken to build towards direct contact with his siblings although in the more immediate future indirect contact from him may be the best way to commence. He has already sent a letter to C and this should be the start of a process when appropriate. However this is a delicate process of rebuilding relationships which has to be taken at the speed of all the children involved bearing in mind the background of the dreadful abuse that P visited upon these children. I share the view of Ms McGrenera QC, who appeared on behalf of the Guardian representing P, that this child has also been a victim and at 14 years of age great sensitivity should be brought to bear upon his unfolding progress in the future. Therapy has a large part to play in his future and any steps concerning him should be guided by the

therapist. This was a view shared by Ms D a social worker who gave evidence before me on the matter. P is clearly very ambivalent about contact with his mother and in this regard also it needs to be handled with some sensitivity as time progresses to cater for his sense of isolation and sense of loss as well as the therapeutic needs of his siblings. Accordingly it is my view that in terms of contact, the therapists for all of these children should liaise with the Trust and their recommendations should guide the approach of the Trust. For that reason in the case of P, I not only approve the care plan suggested by the Trust for him, but in terms of contact, which I must consider also, I am satisfied that there should be no direct contact at present. However the no order principle should operate in the context of the future contact given the fluid nature of the developing therapy and the need for the Trust to be guided by the appropriate therapist. For the removal of doubt in this area I should indicate that I was very impressed by the evidence of HB. He had not only reported but had given evidence before me to the effect that P is progressing excellently with his current foster placement. He wishes to put the past behind him and involve himself in the future. I agree with the view of HB that if P does indicate that he wishes to have contact with his mother then the Trust will take appropriate advice. It is not appropriate that he should have contact with his father. His uncle is another feature in this case and similar criteria to that applicable to the mother should be applied in looking at contact with him.

[44] In considering the care plans for C, S and R, I take into account the evidence of Ms D, senior social worker with Trust, who gave evidence that the Trust plan is for long-term foster care for S and C and adoption for R. C and S are children who have clearly been unspeakably abused. I was chilled to hear the evidence of Ms D who recorded that as recently as the previous week, when driving C past the home of one of the alleged miscreants in this whole affair, she observed C touching her genitalia in an animated fashion. This is but one illustration of the significant harm which has been occasioned to this child. I therefore have no hesitation in recognising that rehabilitation is not appropriate for her or indeed any of these children. Unlike C, S does not want any direct contact with her parents and is very angry with them. She has said she would like to live with C but her foster carers simply cannot accommodate this. The Trust has tried to secure placements together within their own resources using links with Barnardos and other Trust teams but no long-term placements are yet available who would take these children together. The need for therapy for C is absolutely vital. This child needs individual and determined attention. Dr Leddy suggested that S and R should be together in long-term foster care with potential for C. While the Trust would try and achieve this situation, and recognise that ideally they should be placed together, it is not always possible. It may not be even in their best interest to be together. The fact of the matter is that two of these children namely S can C are exhibiting sexual aberrations. Three of them need ongoing work of a therapeutic nature with individual attention,

especially for C. It is very difficult to conceive of one set of carers providing this for all three of them. Certainly there is no likelihood of finding a placement for all three together. It is difficult according to Ms D to get a single placement much less three. The concept is simply not an achievable one to keep these children together. I agree entirely with the Trust's recommendation that R should be placed for adoption if all three cannot be found a long-term placement together. He will have continuing inter-sibling contact, weekly until placement and at an appropriate level thereafter. I believe that an adoptive placement will offer R the best means of securing permanence. I therefore approve of the care plan in regard of these children.

[45] Considering the welfare checklist, I am satisfied that the ascertainable wishes and feelings of these children, with the exception of R who is too young to give a view, are such that these children ought to be taken into care. Their physical, emotional and educational needs disclose that these children are reliant on those around them and will benefit from having a safe harmonious environment of which they have been deprived in the past. I am absolutely satisfied that all of these children have suffered significant harm and will continue to be at risk of suffering significant harm if exposed to the behaviour of these parents.

[46] For the reasons I have set out in the findings on the threshold criteria, it will be clear that I am satisfied that neither of these parents has the capability to meet any of the needs of these children. The sexual abuse, neglect, physical and emotional abuse to which these children have been subjected is such that rehabilitation is inconceivable. It is clear from the evidence before me that these parents need great help and assistance themselves. The children are undergoing therapy and any steps as to their future should be taken only after close consultation with those who are treating them. I have no hesitation in saying therefore that a consideration of the welfare checklist points irresistibly towards a care order.

[47] I am satisfied that no other order eg a supervision order would be appropriate in these circumstances and that the no order principle would be damaging for these children. The paramount interests of these children, which overarches all else in this case, dictates the making of a care order. I am satisfied that I have taken into account appropriately the Article 8 rights of the parents as already referred to earlier in this judgment. My conclusion is that a care order is a proportionate response to a legitimate aim namely the welfare of these children. I have already dealt with contact. I have indicated in essence that there should be no direct contact with any of these children and their parents without the approval and imprimatur of those therapists who are dealing with the children. The Trust, whilst being therefore the ultimate decision-maker, should bear this advice very much in mind. For that reason as I have indicated I do not intend to make any order about contact

save to say that the views already expressed by the Trust appear to me to be wholly appropriate.

[48] In the circumstances therefore I order that there shall be a care order in each of these cases. For the removal of doubt, I indicate that my decision would have been precisely the same even had I determined that the matters set out in the threshold criteria at paragraphs 5, 6 and 7 had not been established.