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IN THE FAMILY COURT
(Sitting at East London)
[2024] EWFC 88 (B)

No. [redacted]

11 Westferry Circus
London
E14 4HD

Friday, 15 March 2024

Before:

HER HONOUR JUDGE SUH

(In Private)

B E T W E E N .:

LONDON BOROUGH OF TOWER HAMLETS

Applicant

- and -

(1) THE MOTHER

(2) THE FATHER

(3) THE CHILDREN (by their Children's Guardian)

Respondents

ANONYMISATION APPLIES

MR N O'BRIEN (instructed by Legal Services, London Borough of Tower Hamlets) appeared on behalf of the Applicant.

MS V ROBERTS (instructed by Copper Stone Solicitors) appeared on behalf of the First Respondent.

MS T BARRAN (instructed by Hanne & Co. Solicitors) appeared on behalf of the Second Respondent.

MR G DAVIES (instructed by Law Legal) appeared on behalf of the Children.

J U D G M E N T

(Transcript prepared without the assistance of documentation)

JUDGE SUH:

- 1 Today I am concerned with OP, who turns [redacted age] next week, born on [redacted] ; with QR, who was born on [redacted], and with ST, born on [redacted]. All the children are now in foster care pursuant to an ICO (an interim care order) made on 24 May 2023.
- 2 Their father is not in court but is represented by Ms Barran. Their mother is in court, represented by Ms Roberts. Mr O'Brien represents the local authority and Mr Davies represents the children through their Guardian, who, I am glad to say, is also in court and listened to the mother's evidence. I want to thank all the representatives for the very calm, clear and courteous way they have conducted this hearing. They have all been of immense assistance to the court.
- 3 May I also thank the local authority worker who prepared the bundles. There are voluminous bundles in this case and it has been of immense assistance to the court to have access to them in a timely manner and to be able to view all the written and video material on them.

Background

- 4 By way of background, let me set out why this case has come to court for this fact-finding hearing that was held partly in the autumn of 2023 and completed on 12, 13, 14 and 15 March 2024.
- 5 According to the local authority, the boys have suffered chronic neglect. They have got two older sisters, UV, who was born on [redacted], and XY, born on [redacted]. The family first came to the attention of the local authority in 2005 following a drug warrant raid at the family home, which resulted in the father's arrest for the possession of cannabis. There have been recurring concerns about the children's exposure to domestic abuse, allegations of sexual abuse and the parents' use of physical chastisement.
- 6 The children were first made subject of child protection plans in July 2018, and again they were made subject to a child protection plan in July 2021 under the category of "neglect". That was as a result of poor school attendance, say the local authority, QR falling asleep in class, poor academic performance, a failure by the parents to keep medical appointments, the boys' enuresis and concerns that QR, OP and XY were overweight. There were also concerns about the state of the family home and the children's routine and boundaries.
- 7 It is accepted that UV, the parents' daughter, then aged [redacted], was reported missing. The mother said that she had gone missing in the early hours of 16 March 2022. UV texted her parents and alleged that she had been abducted in the middle of the night when she went outside. Police officers ultimately found her at a Lonsis shop in the afternoon of 16 March 2022. When spoken to by the officers, she said she may have woken up with her private parts feeling sore. I note there was a core group meeting on the morning of 16 March 2022 which the mother attended. No mention is made of UV being missing and, indeed, at the meeting it was agreed that UV would be closed to Children's Services. The mother called the police at 3.30 in the afternoon on 16 March 2022 to report UV missing.

- 8 It is accepted that as a result of UV's allegation of abduction by a number of unknown males, and saying her private parts were sore, the early evidence kit was taken to UV's home address and her knickers were seized and tested for a semen sample on the inside front gusset area. Both parents accept the seizure of the knickers as a matter of fact, but the father's various responses differ as to whether he was at home at the time of the seizure or not. It is accepted there was a DNA match between the semen sample taken from UV's knickers and the father and that the probability of such a match is 1 in 100 million.
- 9 It is accepted that UV took out and destroyed the SIM from her phone after the 16 March 2022 incident. The reason she gave the police was wanting to avoid those who kidnapped tracking her, which she also told the mother.
- 10 On 21 March 2022, UV and her mother were visited by TDC Davies, DC Tanner and DC Bridges. On the same date, an indecent image of UV was found on the father's phone and messages between the daughter and the father, in which UV asked if she should oil her body before coming to bed and stated, "I love you bad." The existence of these messages on the father's phone is not disputed by the parents. The issue is who sent them. It is agreed that the father was arrested on suspicion of rape at 23 minutes past midnight on 21 March 2022. He provided a pre-prepared statement and gave a "no comment" interview on 21 March 2022, and he was released on bail with a condition not to have any contact with the children.
- 11 Before this, on 17 March 2022, the daughter, UV, had undergone a forensic examination at [redacted], which showed bruises on her left breast, back, arm, shoulder and neck, and laceration and bruises in the vestibule near the hymen.
- 12 UV later withdrew her allegation of kidnap and tells the police she went to a party, had sex with someone and then fell asleep. She had a bad dream and, on waking, thought that she had been kidnapped.
- 13 I do not need to resolve exactly what happened to UV during that period she was missing or why she went missing, but I note at E4 of the evidence master bundle the father messages her at 20 minutes past 8 on 16 March, saying: "Don't destroy what we have as a family." That could be construed as some kind of falling out or there may be another explanation. I also note that in the disclosure of his messages with third parties, there is a discussion prior to UV's incident of someone being kidnapped, which could be interpreted as somehow being drug-related. On 27 October 2021, somebody called [redacted] messages the father: "They knocked on th£ door she opened tye door and they snatched her (sic)", which bears an uncanny reality to what UV herself reported. He goes on: "G, his daughter got kidnapped, bro once he paid so much money to the reb to get his daufhters back and he got her bak alhamdulliahor coz of money (sic)." I do not need to make findings about that, but it is part of the background. The mother accepted in the witness box it was most likely that UV had made the whole story up and this could have been due to a falling out with her father.
- 14 There was the Public Law Outline ("PLO") process that the father and the mother went through and signed a safeguarding agreement, in which they agreed the father would not have contact with the children. During that PLO process, Eva Armsby provided a parenting assessment, dated 8 August 2022. The father failed to engage properly with that assessment. Dr Maguire carried out a global psychological assessment of the family in July 2022. By way also of background, UV had a baby born in [redacted].

Procedural chronology

- 15 I now turn to the procedural chronology. The application was issued on 29 September 2022. At the hearing on 4 October 2022 I made an interim supervision order. On the face of my order of that date, it is recorded that the mother agreed she will not facilitate any contact between the children and their father other than that contact organised by the local authority and she will notify the local authority of any attempts by the father to have unauthorised contact with the children and the father agrees that he will not seek any contact with the children other than that organised by the local authority. I explained to both parents that in the event of a breach of these agreements, it is likely that the local authority will apply for an interim care order and the interim removal of the children from their care.
- 16 The mother made an application for an intermediary on 1 November 2022. I noted that Dr Maguire's report did not expressly recommend an intermediary, so I approved the putting of a question to Dr Maguire about whether this was necessary for the mother. In January 2023, I made a police disclosure order. On 26 January 2023, I had a non-compliance hearing about police disclosure. The police indicated at that hearing that the phone downloads from the father would not be available for nine months. On 3 March 2023 I made a further disclosure order against the police. On 26 March 2023, I ordered the local authority to provide a schedule of findings with the police material that they did have, which included TikTok messages which were alleged to be between the father and UV and the local authority says were indicative of a sexual relationship.
- 17 It seems to me, reading back on that order of March 2023, that Dr Maguire had not been asked by that stage whether the mother needed an intermediary, so I gave permission to put that question again. I directed a report from Communicourt by 20 May 2023, and gave the mother until June to respond to the schedule of findings. She did not attend the first intermediary assessment in May 2023, but attended a second one, and a report was produced by Communicourt on 2 June 2023. The mother responded to the schedule of findings, which included the verbatim cut and paste of the TikTok messages, on 28 June 2023.
- 18 On 24 May 2023, Recorder Anderson made an interim care order. In August there was a pre-trial review and further police disclosure ordered. An intermediary had been appointed by this stage. On 3 November 2023, I ordered further police disclosure.
- 19 The fact-finding hearing about the father's relationship with UV began on 31 October 2023. The father did not attend that hearing, reporting through counsel he was so unwell that he had been unable to leave his home for ten days and was bedridden. I made a witness summons for his attendance. The evidence of the process server was that at 10.39 on 3 November 2023 they served the witness summons at the father's address. An adult male, not thought to be the father, answered the door and the papers were left with him for the father. On 7 November 2023, the father did not attend court. The officer in the case was in court herself to address the matter of police disclosure and informed the court that on hearing of the father's non-attendance she had ascertained he had left the UK on a flight to [redacted country] at quarter-past six on 3 November 2023, the date on which the witness summons was served. He travelled on a single ticket. I recorded, on the face of my order of 7 November 2023, that if the father does not attend the hearing on 15 November 2023 the court may draw an adverse inference from his non-attendance and his non-engagement with this fact-finding hearing, and the court may make such findings in his absence as it sees fit, including findings about his non-attendance. I made it very clear that he should attend on 15 November 2023. He did not. He has not given details of when he plans to return to the UK.

20 [Redacted]

- 21 The father has not given a reason for his speedy departure to [redacted country], his failure to attend the fact-finding hearing listed in 2023, or the case management hearings that followed it, and has not made a request to attend by video link.
- 22 The other problem that meant that it was difficult to complete the fact-finding hearing in the autumn of 2023 was that the Metropolitan Police did not provide full disclosure of the results of the seizure and analysis of the father's mobile phone. The difficulty was that once an indecent image was found the phone had to go to a specialist unit for inspection and, throughout these proceedings, the court has made disclosure orders against the police. At the fact-finding hearing in autumn 2023, the Family Court discovered that the phone contents had been processed and were ready to be viewed by the officer in the case. The officer in the case made a statement setting out the chronology of the police investigation of that phone and, ultimately, the Crown Prosecution Service decided not to assert public interest immunity over those full disclosures and a full download was given to Evidence Matters whom the court approved as experts to assist.
- 23 What emerges from DC Phillips' statement is what appears to the Family Court to be a lack of urgency and inefficiency at every stage of the process of this phone download, and the total absence of cover when an officer is on leave for some reason. We have now received all the material downloaded from the police, so it cannot be argued that the trial of this matter has in any way been unfair due to this disclosure issue but, sadly, this has led to significant delay for the boys. I make no criticism of the officer in the case, she has come to court repeatedly and done her best to assist. However, the systems and processes within the police for examining the phone and responding to disclosure requests have led to real delay which is detrimental to the children's welfare.

Procedural Fairness

- 24 I turn to procedural fairness. Dr Maguire reports that the mother is of a low cognitive ability. Her IQ is 71. That is only 2 points higher than individuals who are considered to have a formal learning disability. In particular, she processes information slowly, has poor understanding of verbal material and difficulties with how well she can remember information for short periods while she processes it. The psychologist felt that her lower ability is not immediately evident. When asked an additional question, she gave a clear recommendation that the mother would benefit from having an intermediary and, indeed, she has one now. In accordance with Family Procedure Rules 3A and PD 3AA, we have taken regular breaks and made sure that the mother can take part fully. No one has alerted me to any unfairness arising from the procedure and I have not been warned that any part of this process was in need of modification or told to conduct the hearing a different way. We have got a written set of ground rules, dated 31 October 2023. I have had those in front of me and ensured that the mother has familiarised herself with the courtroom.

Submissions

- 25 In relation to the advocates' submissions, I remind myself of the case of *Re H* [2021] EWCA Civ 319, that I have to identify the best points that have been made in relation to a finding and explain, if appropriate, why those have not prevailed. Mr O'Brien seeks me to find the local authority case as pleaded. Mr Davies supports the finding of sexual abuse on the evidence that the Guardian has heard, has provided me with a very helpful chronology and assisted the court with his analysis of the issue of failure to protect. Ms Barran, of course, was without instructions from the father but she quite properly highlighted aspects of the father's written case that I should bear in mind. Ms Roberts' submissions were ones

of great detail and granularity and so I will address those and weave them into my judgment as I go along.

Law

- 26 I remind myself of the law. The burden of proving a fact rests on the person who asserts it. The standard of proof is the balance of probabilities; is it more likely than not that an event occurred? Neither the seriousness of the allegation nor the inherent probabilities alters this. I remind myself to consider the broad canvas when considering findings of fact and I must only proceed on the basis of findings of fact or inferences properly drawn, not on suspicion or speculation. The case of *Re T* [2004] EWCA Civ 558 reminds me that evidence cannot be evaluated and assessed in separate compartments. A judge in these difficult cases must have regard to the relevance of each piece of evidence to the other so as to exercise an overview of the totality of the evidence.
- 27 I remind myself of the law about adverse inferences in *Re C (A Child)(Fact-Finding)* [2022] EWCA Civ 584 and, in particular, the guidance given by the Court of Appeal at para.21 of that judgment and at para.27.

“21. With regard to ground (ii), Mr Singh cited the observations of Brooke LJ in *Wiszniewski v Greater Manchester Health Authority* [1988] PIQR 324 in summarising the correct approach to the drawing of inferences from a failure to attend or give evidence:

‘(1) In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.

(2) If a court is willing to draw such inferences, they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.

(3) There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue.

(4) If the reason for the witness's absence or silence satisfies the court, then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified.’

Mr Singh submitted that the father had been entitled to a fair hearing and his belief that a process in which he had not had an opportunity to challenge A's allegations was unfair amounted to a satisfactory reason to remain silent. Accordingly, the judge had been wrong to draw an adverse inference from his failure to attend the hearing and give evidence.

...

27. I turn finally to the argument about adverse inference. The summary of the principles in *Wiszniewski* is consistent with observations in earlier authorities, including that of Lord Lowry in the House of Lords decision of *R v IRC and another, ex p T.C Coombs and Co* [1991] 2 AC 283 at page 300 F to H:

‘In our legal system generally, the silence of one party in face of the other party's evidence may convert that evidence into proof in relation to matters which are, or are likely to be, within the knowledge of the silent party and about which that party could be expected to give evidence. Thus, depending on the circumstances, a prima facie case may become a strong or even an overwhelming case. But, if the silent party's failure to give evidence (or to give the necessary evidence) can be credibly explained, even if not entirely justified, the effect of his silence in favour of the other party may be either reduced or nullified.’

But as Holman J observed in *Re U (Care Proceedings: Criminal Conviction: Refusal to Give Evidence)* [2006] EWHC 372 (Fam), [2006] 2 FLR 690 at paragraph 30, in a passage approved by this Court recently in *Re T and J (children); A mother v A Local Authority and others* [2020] EWCA Civ 1344, Lord Lowry's observation does

‘no more than describe and illustrate the very broad discretion of the court to draw adverse inferences, which must be exercised in a very fact-specific context’.”

Evidence

- 28 I look now at the evidence. I may not mention every piece of evidence in the voluminous bundles in what is already an over-long judgment, but I do bear it all well in mind.
- 29 A decision was taken by the local authority to not seek to compel UV to give evidence. She is vulnerable. She has a history of self-harm and the local authority describe her as a victim in this case. She has not engaged fully with the police investigation and has withdrawn her allegations about abduction. She deflected attention away from her father when he was arrested by asking the police, “why do they not look for the people who abducted me?” She removed the SIM from her phone, sending the clear message that whatever was on her phone she did not want it to be found.
- 30 There is evidence in the bundle, the makers of which have not been called to give oral evidence, and when I consider this hearsay evidence, I consider its potential weaknesses. It has not been tested by cross-examination and the weight for it to be assigned is for me to determine. Into this category of hearsay evidence falls what the children have said (none of them are giving evidence), particularly what UV has said, the parenting assessment, the expert report. The anonymous referrals I treat with particular conspicuous care given that the identity of the referrer is not known and the parents have not had a chance to challenge the maker of these referrals in the witness box. I make it clear I place no determinative weight on these referrals, but I weight them in the balance and do not disregard them altogether. I will correlate them carefully with the other available information.

- 31 I have had access to a number of bundles which have been updated as more evidence has been added, and I have been able to refer to them all. I have been able not only to refer to my own notes of the evidence heard in autumn 2023, but it has also been transcribed and I have had access to that full transcription in preparing this judgment. I have watched the interviews of UV, the police interview of her father, two sets of body-worn camera footage of his arrest. I have listened to the 999 call the mother made when UV was missing. I have viewed the material seized from the father's phone and read or watched all the evidence exhibited with the expert report.
- 32 Because it has been some time since this fact-finding hearing started, I think it is important to summarise the oral evidence. DC Tanner attended the family home to speak to UV about the semen that had been found in her underwear. She was a straightforward witness who was clearly trying to assist the court fairly. She recalled UV did not seem to want the police there and was agitated and, although she was not unpleasant, she did not want to speak to the police and certainly not about her dad. She described UV as "anti-police". She described the mother as "appropriately shocked and open with the police". She believed she asked the mother about whether she had had any sexual activity with the father and she remembered the mother telling her it was two months after the baby was born and working it out from ST's date of birth. She was confident she had accurately recorded her conversation with the mother. She said her notes were not taken contemporaneously but written up the next morning. She accepted that it would have been best practice to take notes while another officer spoke to the victim, but she painted a very vivid account of sitting on UV's floor and having a sensitive conversation with her.
- 33 DC Merrill was given the job, on 17 March 2022, of obtaining the CCTV in the surrounding area of the located abduction. He spoke to the father on 17 March 2022 in relation to any information he could provide in relation to UV's disappearance. He was also the initial officer in the case, whose job it was to follow reasonable lines of enquiry. He was a witness who inspired confidence. He was affronted at the hint of a suggestion that he would do anything other than record the facts in his statement, which he made after he was aware that the father was a suspect. He was forthright in his protest that to embellish it would be misconduct in public office. He accepted that the father had gone from being a witness to a suspect between the time the notes were taken and writing his statement, but he was clear he would treat any suspect and witness equally and his role was to investigate both towards and away from guilt.
- 34 He fairly accepted there could be things in his statement that he recalled that were not in his note, like voices in the background speaking [redacted language], and he helpfully explained he would log the conversation with the father contemporaneously in the "actions" part of the police system. He alerted the court to the fact that someone appeared to have cut and pasted extracts of the actions log into the police disclosure rather than providing it as it was created with appropriate redactions. He provided the original entries at court and I made an order that required him to do so.
- 35 TDC Phillips was the officer in the case from 21 March 2022, and I believe she remains so. She was a reasonable and balanced witness. She clearly has a good working knowledge of the case. She was taken to the actions logs by Ms Barran and agreed that when UV went missing she left home at around 2.42 in the morning and was in touch with a key number during that period. The location of her mobile phone and a key number would suggest she is not at home at the time. She accepted the evidence in the bundle in 2018 suggested that UV had been approached by males for images online and the concerns that were raised about this in the police Merlin records. She gave evidence that it may well have been the case that

UV did not have her own phone in 2018 but used her parents', but as far as she was aware, UV did have her own phone in February 2022 and disposed of the SIM.

- 36 PC Patel (who was PS Patel by the time his evidence was given in court) was one of the officers present when the father was arrested. His body-worn camera footage is some of that disclosed in the case. He was the officer having a conversation with the father. He said, up to the point when they were having a discussion about the father washing his hands, there had been no discussion of DNA. He did not hear any of the other officers, like PC Gardiner, telling the father about DNA. His written evidence states that the father was trying to talk to his daughter. In the witness box, he said he was not able to identify who he was trying to talk to when he was shouting about "DNA" and "rape" but later, when answering questions from Ms Roberts, he got the impression he was trying to talk to his daughter rather than his wife, and that was his final position.
- 37 DDO Khaled Miah is the custody officer. He records that the father asked to speak to his sister. After speaking to a female named [redacted], "I asked the female what her relationship was with the father", he says, "and she confirmed it was her brother and she would like to speak to him." He stated to her she must not discuss the case and explained the need to speak in English to the father. The father was warned during the call to speak English. He continued to speak [redacted language] and the custody officer then heard him say something in [redacted language] which he translated as "Pass the phone to that lady." At this point he took the phone from the father's hand and put the phone down.
- 38 PC Miah gave evidence in court. He could not recall whether he said, "Is that [redacted]?" or whether he asked the person to tell them her name. He had confirmed the recipient of the call was the father's sister but there was nothing else he was able to use to confirm that the phone call was to the lady identified as the father's sister. He confirmed in court that the number dialled had the last digits 446 and the court now knows this to be the mother's number.
- 39 Karen Taylor is a forensic scientist who is employed by the Metropolitan Police and analysed the samples from UV's knickers and internal swabs. Her report is at p.738 of the bundle. No semen was found on the vaginal swabs, she reports, but semen was found on the front and on the inside of the gusset of the knickers. She gave evidence that there are two layers of fabric in the gusset of the knickers and the sperm was found on the inner layer of fabric. However, she could not say whether it was deposited on the inside or the outside. A chemical screen was carried out on the inside and the outside of the knickers and the positive reaction was only identified on the inside surface. The semen from the gusset gave a complete major DNA profile match to the father by reference to the national DNA database. She explained that there was a good amount of semen to obtain a DNA profile. She explained that if the knickers had been worn by the mother for a day then maybe her DNA would be on them, but if she touched them briefly or handled them, then possibly it would not. It would depend on the amount of wear and the length of wear.
- 40 TDC Davies gave evidence that he attended the home on 21 March 2022, with DC Tanner and DC Bridges. His written evidence was that after telling the mother her husband was suspected of having a sexual relationship with the daughter, that she was "not that surprised". He gave evidence that he wrote the mother's statement on his laptop at that address, and it was read out and signed by the mother using a digital pen. His own statement was made on 9 March 2023. He said he made it from memory without revisiting the CRIS or any other notes. He described the mother as calm and collected. He had expected a response to such news as being raging or upset. He gave evidence that he was new to the

detective world at this point and was getting assistance from DC Bridges to record his statements.

- 41 The impression I formed was that he was relatively new to this type of work and maybe came to it with an expectation of how somebody might present. His evidence was less detailed and confident than his colleagues and, where they differ, I prefer DC Tanner's evidence.
- 42 Ms Ahmed was the social worker from 2021 to May 2023. She gave evidence that at the core group meeting on 16 March 2022 no report was made of UV going missing. She was a social worker who did not strike me as closed in her thinking or unduly critical of the family. She said she noticed a pattern of things going up and down, periods of good engagement followed by relapse. The mother would say "yes" but it would not be followed through. "We discussed so many times the home conditions. It would be okay on the next visit and then back to normal on visit 3 to 4." She readily accepted positive aspects of the family. She was always allowed to speak to the children alone. She was always allowed into the home.
- 43 Looking at the pattern of her visits, following the first anonymous referrals, Ms Barran pointed out that there were no visits between 9 and 26 August 2022 to the grandmother's home, despite the anonymous referral suggesting the family were living there. That, to me, does not suggest an obsessive desire by Social Services to catch the family out, but rather a balanced approach to weighing up the anonymous information given, and, indeed, Ms Ahmed was measured and balanced in her evidence.
- 44 Finally, PC Staff gave evidence about her involvement as a sexual offences officer. She records having a conversation with the father about whether anyone had been located in relation to the kidnap, and he was appropriately concerned about his daughter. She records that the mother was cooperative and tried to get UV out of bed, but UV would not cooperate with her.
- 45 The Family Support worker who attended with the Social worker in May 2023 and reported seeing the father on that occasion was a credible and convincing witness, whose evidence I will consider in more detail when I look at that occasion.

Family Background

- 46 Before I turn to an analysis of the parents' evidence, I want to set out some of the family background. I must, among other things, look at the family circumstances and the quality of parenting, and I remind myself of the case of *Leeds City Council v YX and XZ* [2008] EWHC 802 (Fam).
- 47 I look at the broad canvas and the bigger picture. I have already set out the long history of social work involvement with this family. Not all of the matters pleaded in the interim threshold are accepted by the parents, but there is a partial acceptance of some of the issues by both of the parents. There have been concerns historically about physical abuse and domestic abuse. On 1 December 2013, the police were called and the father smelt of alcohol on arrival. He demanded that the mother and the children leave the address and the mother alleged being hit round the face and pushed in the chest.
- 48 On 13 September 2016 the police evidence shows that CCTV picked up the father and his brother fighting in the street. Neither wished to press charges. In 2017, on 19 January, the school noticed red marks on QR's face. QR alleged that the father pinched his cheek. On 1

May 2018, UV alleged that her father had hit her with a belt on the legs after finding out about her message to a Year 11 boy. She said the father twisted her arm behind her back and slapped her across the face. She moved to live with the paternal grandmother, with a safety plan in place.

- 49 The child protection plan in 2018 was based on physical and emotional harm. On 13 June 2018, the school for UV phoned the police after the father came to the school threatening staff about a boy, over messages he had found between the boy and UV asking for naked pictures and apologising for slapping her after she refused to touch him. On 24 June 2018, the father was arrested and found guilty of being drunk and disorderly. On 8 June 2021, UV alleged she was assaulted by the father at the home address. The police were called by a third party who said that they could hear a loud argument taking place between a male and a female. UV alleged that the father had whipped her with a wire after noticing love bites on her. The father was arrested in relation to this.
- 50 Not all of those matters are accepted but they are part of the concerns that have been recorded over the years. There is a message in the more recent disclosure where the father says to UV: “Tell OP to come down now and I’ll fuck him up”, which the mother accepted in evidence may have made OP scared.
- 51 Some of these reports of physical abuse relate to when the father perceives that UV has been communicating with boys of her own age. I do not need to make findings about these because my focus in this fact find is of sexual abuse, but they are part of the wider canvas. There are reports of the father under the influence of alcohol and violent on occasion, and the bundle as a whole suggests that the father is an influential figure in the family and that no one wants to do anything that causes him a problem. When I look at the messages between him and UV, they often seek reassurance from him in their messages that is rarely forthcoming.
- 52 By way of background, there is a previous missing episode for UV in 2021. There is a previous report of sexual abuse by a lodger at the paternal grandmother’s home. This allegedly took place between May 2014 and July 2014 but did not come to the police attention until July 2015. The description given to the police by the girls is one of rape and sexual assault. One of them says that they wanted to tell the police but their parents did not want to, as they said there were concerns about Social Services at the time and because of family honour. It seems that the police record separate assaults involving this lodger in 2015, at which point the parents wanted to report the sexual assault. The mother tells the police that the father invited this man to stay at their address. The father told the police he was only aware of the incident that happened at his mother’s house, where the suspect had been seen trying to kiss UV and this was seen by a family friend. At the time they did not wish to involve the police as they wanted to deal with this as something that had happened between the family.
- 53 The mother is recorded as telling the police that she said it was in May 2014 she noticed the change in UV and at the time the family learned of the disclosure they made the decision not to report it to the police or the authorities. At other times in the police investigation the mother appears very supportive of the children giving evidence by VRI.
- 54 During the public law outline process, I have already talked about the parenting assessment. The father failed to engage with that properly. He confirmed during that assessment that he no longer uses cannabis and had stopped over a year ago. His GP records refer to him having been diagnosed with alcohol dependence and his PNC check shows a number of criminal offences relating to alcohol and drugs misuse, such as being drunk and disorderly,

driving with excess alcohol and possession of crack cocaine and the supply of crack cocaine.

- 55 During the assessment with Dr Maguire, the mother tells her that she was unaware of the father's criminal history. A hair strand test conducted in these proceedings show that, contrary to the father's assertion to the parenting assessors, he continues to use cannabis and cocaine.
- 56 Looking at the police disclosure, there have been concerns in the past that there may be an abusive dynamic between the parents. The references for that in the police bundle are at PDF 342, 353 and 362. Certainly, the messages going between the mother and father do not suggest a supportive relationship of mutual respect.
- 57 There are also, by way of background, signs of distress in UV's behaviour and presentation. After the father's arrest in May 2023, a neighbour alerts the police to an argument going on at the property. It turns out this is between XY and UV. On their attendance, UV had locked herself in the bathroom and cut her wrist with a razor. There, in short, had been an argument between her and her sister. The police note the following on 31 May 2023:

"She [UV] stated she called because she wants to speak to somebody about a previous incident that happened whereby she was a victim of sexual assault and her father is the suspect. She has no one to speak to and needs help and she is not coping or dealing with what's happened. As a result of that she wanted to go to hospital so she was taken voluntarily to the Royal London where officers booked her in for a mental health assessment and the wounds to her wrist were superficial and cleaned up."

However, when she later attends the police station, on 6 June 2023, she does not seem to support what the officer wrote down in that conversation recorded on 31 May 2023.

- 58 The body map taken by [redacted] shows old self-harm scars and Dr Maguire's report of July 2022 describes how UV would experience difficulties in her social relationships at school and did not engage well with school. "I felt", says Dr Maguire, "she can find it hard to describe her feelings and her mother has noticed that she appears emotionally disconnected. She finds it hard to regulate her emotions", so this reports, describing her emotions are "up and down". Dr Maguire notes as part of her presentation, "I think it reflects a pattern of trauma and attachment difficulties. UV has memories of sexual assault" – I think that is referring to the lodger incident – "and she feels that these come out of nowhere and experiences the same physical sensation she did at the time of the assault." Dr Maguire concludes that: "UV shows difficulties reflective of a response to trauma within her attachments." She recommends DBT or trauma-based programme for UV.
- 59 By way of background, the mother herself sadly was the victim of sexual abuse herself as a child. When I look at all of that background, I am reminded of the guidance of Jackson J in the case of *BR (Proof of Facts)* [2015] EWFC 41. All of that helps the court to understand the relevant background factors that might decrease or increase a risk to children but the factors themselves prove nothing and I must look with granularity at the facts of this case.

Parents' evidence

- 60 I turn to the parents' evidence. When I look at the evidence of the parents, I remind myself that the burden of proof is not reversible. As Mostyn J said in the case of *Lancashire*

County Council v R and W [2013] EWHC 3064 (Fam), there is no pseudo burden on a parent to come up with an alternative explanation. I remind myself that a blameless person might cast around for all manner of explanations simply as a means of seeking to understand the situation they find themselves in and of which they have no culpable knowledge. I have re-read the case of *Re P (Sexual Abuse: Findings of Fact Hearing)* [2019] EWFC 27, and the guidance of MacDonald J and particularly the authorities he cites in relation to the fallibility of memory.

- 61 The evidence of family members is of utmost importance and it is crucial I form a clear assessment of their credibility and reliability: see *BR (Proof of Facts)* [2015] EWFC 41. I remind myself that Macur LJ said in *Re M (A Child)* [2013] EWCA Civ 1147 that when it comes to demeanour it is advisable that any judge appraising witnesses in the emotionally charged atmosphere of a contested family dispute should warn themselves to guard against any assessment solely on the basis of the behaviour in the witness box and expressly include that they have done so. I make it clear that I direct myself accordingly.
- 62 Whatever else you might say about the mother's evidence, I want to acknowledge at the outset that it takes a degree of courage and commitment to her children to come to court and be cross-examined about very sensitive matters. She answered every question, no matter how intrusive, and she, from memory, has come to court every single time the case has been listed and I see that as an indicator of a commitment to her children, who are important to her.
- 63 In the witness box she struck me as being quite flat but I bear in mind that this is an intensely stressful experience for her, and at other times in court she has been openly tearful. What struck me about her evidence is that she did not seem to be able to put herself in UV's shoes at times or imagine what it might have been like for UV to be the victim of abuse by the father (if, indeed, she was) and the complex process that might have led to this. It is fair to point out that the intermediary assessment had not taken place when the mother filed her first statement in November 2022. The intermediary assessment is dated 2 June 2023. By the time the mother had responded to the schedule of allegations in June 2022, her solicitors would have been aware, therefore, that she needed an intermediary, but it is not crystal clear to me if, indeed, she had one when she gave her June response.
- 64 She made an application, on Form C2, on 4 October 2023 to provide a revised response and cited the assistance of an intermediary as one of the reasons she wished to do so. Of course, I gave her permission to do that and she provided a revised response in October 2023, with intermediary assistance, before the fact-finding hearing. I therefore caution myself that the mother did not have an intermediary clearly involved in the preparation of all her responses and statements until October 2023. That said, the issues raised by and large are not complicated ones. For example, the TikTok messages, which are key to this case, are written in everyday text speak and not lawyer language, but I am conspicuously cautious when I look at any material the mother prepared without obviously having intermediary assistance.
- 65 When it came to her evidence, I found it to be shifting and contradictory. I noticed a pattern in the witness box where she would only accept something in evidence if she was confronted with the evidence in such a way that she had no choice but to do so. So, for example, when she was asked if she was aware that the father had been married, she said "no" to Mr O'Brien initially. When she was then told about the messages on his phone from her, when they talked about his wife in [redacted country], she said: "He was speaking about getting married in [redacted country] in 2021 and, as far as I know, he did get married." Her

text messages between her and the father in 2021 clearly show she was aware of the marriage. At D21, she talks of his “cunt wife in [redacted country]”.

- 66 What she said in the witness box often sat uncomfortably with what she has put in messages contemporaneously to the father. For example, she told Mr O’Brien she was not aware the father was buying or selling stuff like bikes and clothing, but it is clear at D11 and 12 of the bundle that she and the father discussed a customer collecting something they had purchased from the father and online reviews. She maintained in the witness box that she was aware that the father used cannabis, but this contradicts what she told Dr Maguire, that she was unaware that the father was using drugs. There is a pattern of a lack of openness in her written evidence. For example, she gives no substantive response to the allegation that the father made a call from custody. She said that was for the father to respond to. However, it became clear in the October 2023 hearing that the number he dialled was hers. She then accepted in the witness box that he did call her phone from the custody suite. That is something that she could have volunteered earlier in the court process.
- 67 Certain aspects of her evidence struck me as improbable. For example, she said no one had heard from the father since he went to [redacted country]. Given the sheer volume of the communication between family members in the messages, that seems to me unlikely if their historic behaviour is anything to go by. Her evidence was that when she called UV a “cunt” in the messages, she had not meant to put it there. This was unconvincing. It is a word she uses in other messages. It is not misspelt or retracted. And it was equally unconvincing when she said she referred to “crack” in the messages but she was unaware that the father was using crack cocaine. It was also improbable that she said there were no tensions with the baby and UV living with her given the possibility that the baby is the father’s.
- 68 In her evidence she said she knew really very little about the father. When asked what he did for a living, she said, “Nothing really.” There was a safe at the property but that was “just money” that he put in there. She had not been invited to his flat, did not know if he sublet it, did not know where he got the money from for cannabis, did not know about the woman that the father appears to have married in the UK, whose divorce papers are discussed in the messages. She told Mr O’Brien in the witness box that there was not much she knew about this man but that is hard to reconcile with the fact that she has known him since she was fifteen years old (I think that is over twenty years) and has had five children with him.
- 69 I want to look at the messages that go between the mother and the father. I first remind myself that there are strengths and limitations to this type of message evidence. Some of the strengths of this evidence is that it is contemporaneous, it is unfiltered, it is done on the basis that it is private and nobody is expecting a Family Court Judge to read these messages. It is spontaneous, it is not prepared with court in mind. However, I warn myself it is only one facet of a relationship. People do still talk and meet each other face to face, and it is difficult to place these messages in context because I do not know what is happening offline, in the real world, as it were, and I caution myself not to read too much into messages in isolation. They are a snapshot. But I can look, I think, at broad patterns in these messages and highlight themes that come up repeatedly. I have reproduced the messages verbatim with the typographical errors and abbreviations which appear in the original.
- 70 The first theme is that the mother gives the impression that she is really at the end of her tether. She is feeling taken for granted, sad, alone and unappreciated, and I will give you a few references for that. These are all in the Evidence Matters bundle: C3, D5, D79, D42, D43, D47, D48.

- 71 Another theme is that the mother not infrequently threatens to leave and there are some texts that could be interpreted as her threatening to hurt herself. These are D5, D4, D68, D69, D50, D70.
- 72 The third theme is that UV is mentioned far more than any other child in the discussions between the mother and the father. The others are rarely, if ever, mentioned by name. Some references to UV at D4, D9, D10, D15, D16, D24.
- 73 A fourth theme is that there are suggestions from the mother that UV receives preferential treatment – so, for example, on C4, D14, D65 and D71 – and that her relationship with the father is somehow of a different quality and nature to his relationship with her or, indeed, the other children. For example, she says: “So don’t bother start missing me now the only person u missed so much was ur older daughter and it still is.” The mother accepted the father might have treated UV differently because of the relationship that they had when she gave evidence, but she did not think that at the time.
- 74 A fifth theme of the messages is that UV is a source of tension between the parents. There are suggestions that the mother finds her behaviour problematic (C3, C4, C12, for example) and there is a theme that the mother feels disrespected and undermined by the father and, on one analysis, this is particularly acute when it comes to UV. “You said to your daughter when I said no so you’d better make sure that you tell her no”, is an example of that perception of being undermined.
- 75 A sixth theme is that the mother speaks aggressively and in a crude, derogatory manner about UV and the father. One interpretation of this is that she sees them as aligned against her in some way. There are some examples of this at D15, D16, D65, D56. I will read out the November 2021 at D15 example:

“When ur back makr esure you shove your daughter up your fucking
ass hole

She goes on later:

“If us say so it wondr be to long until u stick ur daughter up your as
anyways”.

D16:

“Take your older duaghe with you [this is January 2022]”.

And

“Us keep on trying to sitkc ur daughter up ur ass
And you keep on trying to stick urself up your daughter ass too”.

The father replies “WTF”, which I think means “What the fuck”, and the mother:

“exactly what I said is what I meant. Coz that is clearly what you do
day in and day out”

The reference for that is D61. The father also speaks of UV in a derogatory way at D20:

“Lave her. Fuck that little slag.”

And I have already referred to, at D52, the mother talking about her daughter as a “cunt”.

- 76 Mr O’Brien asks me to interpret some of these references as references to anal penetration, and suggests that the mother is using highly sexualised language suggestive of her knowing of the sexual relationship between the father and UV. Understandably, in submissions it was said that the Guardian was troubled by the mother’s response to messages on D61, which she explained by saying, “It was about UV, because she overruled what I said about her not going out.”
- 77 I have read and re-read several times the entire chain of these messages, and I am not satisfied that these messages should be read literally. The mother’s foul language lacks precision and it seems more likely than not, it is littered with typos and clearly fired off in a hurry. If she were aware of a sexual relationship between the father and UV, she would have been even more vitriolic and specific.
- 78 I look at where the mother says: “I’m not going to say a word to you, what you’ve done or what you’re doing, but I will never talk to you again.” That is on 12 January 2022. When she was asked about this, she said that she was talking about what he had done in general and specifically to him smoking cannabis. This message is sent after forty-seven of what appear to me as blank messages. That means the contents of those messages I cannot see what was in them. This is a high volume of communication in very quick succession. There is then a break of two hours before the mother’s response that I have just read out, “I’m not even going to say a word on what you’ve just done.” The father’s response to the mother is, “I’m going to come. Very horny. Can you help?” Whatever was going on, I did not find the mother’s explanation for it credible. However, without knowing the full details of the preceding forty-seven messages, and whatever was going on “offline”, in the real world at the time in person, it is a step too far, I think, for the court to draw an inference that the mother was referring directly to sexual abuse. She is frequently condemnatory of the father throughout the messages for a variety of reasons relating to his behaviour, and there are many aspects of his behaviour which, according to her messages, which might be open to criticism. Although the mother’s answers to these messages, which I have looked at with real care and specifically, were not entirely convincing, I do not think it suggests a direct knowledge of sexual abuse and that would be an inference too far for the court to draw safely.
- 79 The father has provided a response to the threshold documents, witness statements, which I have read, and I have had the benefit of submissions made by Ms Barran on his behalf, and it is clear that he disputes all the allegations. The nature of the allegations made by the local authority are serious. They relate to whether he has had an incestuous relationship with his oldest daughter. He has given evidence in writing and his reasons for denying the allegations. He knows we have the download evidence from his phone. He knows all his sons are in foster care awaiting a decision of the court. He has not given a reason for his departure to [redacted country] or for staying there now for over four months. He has chosen not to attend. He has been given every opportunity to do so.
- 80 He has not provided medical evidence of the bad back that prevented him coming to court in October 2023. He provided a GP letter with a previous failure to attend a case management hearing, and I do bear in mind he has been diagnosed with mixed anxiety and depression and last saw a GP for this in April 2023 when there was a flare up of his anxiety. He was given medication for this. This is medication with which the court is familiar. It is often seen in the treatment of those with anxiety. But there is no evidence in the bundle to assert his anxiety or depression has stopped him from going out or engaging with life generally.

Indeed the messages he has sent over time suggest otherwise. He has come to court bar one occasion every time before the fact-find and the importance of him attending has been underscored by the issue of a witness summons warning him also that the court may draw adverse inferences and will continue without him. He should have been in court. He has given no credible reason for his failure to attend and has effectively disengaged from the process. He is clearly well versed in tech, judging by the messages, and could have asked to attend remotely. Up until January 2024 he was in touch with his solicitors.

- 81 Of course, one explanation for his absence is that he is entirely innocent but very scared. However, if this were the case you would have expected him to understand from the witness summons and the committal proceedings that, in fact, his non-attendance was making things worse for him and not better, and that he should attend and assist the court.

(Short break)

JUDGE SUH:

- 82 When I look at the findings the local authority seeks, it is probably helpful for the intermediary at this stage to have the documents with the parents' responses set out to hand. What I am going to do is, in relation to each finding, set out what the parents' responses have been and I think this is particularly important because for the mother's first response it was not clear to me that the mother had an intermediary; for her second response, in October 2023, she clearly did, and in relation to the father, he has not come to court so his response and witness statements are all the evidence we have from him.

- 83 **The local authority seek a finding that the father has sexually abused UV.** The mother's response is that:

“Neither UV nor the father has admitted to me about any sexual relationship between them. If UV was sexually abused by the father she would have disclosed this to me immediately. I have never witnessed the father and UV being sexually involved with each other.”

The father's response is simply: “Denied”.

- 84 Looking at the issue of the father's semen in UV's knickers, the local authority say, and want the court to find, that UV was wearing small-sized knickers, size 10-12. The local authority contends that the knickers that were taken by the police were UV's, not her mother's, and her mother takes a larger size, at least 12-14. The mother's response is:

“I agree that the knickers UV was wearing are a size small, 10-12. However, these are my knickers. I wear knickers that are size 10-12 as well as a size 12-14. UV and I have similar knickers. I showed the police officer my drawer with my underwear. UV may have mistakenly picked up the knickers which she thought were clean and wore them because she thought they were her knickers. I'm offended that the local authority have assumed my size by a judgment on my appearance. I can fit into both a small and a medium size.”

The father's response:

“The mother fits into some size 10-12 underwear and it is possible that UV was wearing her mother’s underwear. The father asserts that some of the mother’s underwear is exactly the same as UV’s and they also have some similar underwear.”

85 What does UV say about her underwear in her conversation with DC Tanner in March 2022? DC Tanner said:

“I have been told that on her clothing there is some DNA belonging to her father. I was being cautious to explain this discovery as sensitively as possible. Before I had the opportunity to explain this further, that the DNA was semen and it had been found in her underwear, UV quickly responded by saying that she knew why this was and it was because her dad had hugged her. I went on to say that the clothing that had been examined was her underwear. UV said something similar to, ‘Nah, my dad is respectful. He hasn’t done anything’. She said though her mum is a size 12-14, she (UV) is more like a size 10 but her size 12-14 knickers that she used to wear. I asked her if she could show me what she means by her and her mother having similar underwear. She took a lace thong from her wardrobe and took me next door to her mum’s room. She opened a small chest of drawers and her mum’s underwear was in there. UV pulled out a similar lace thong to show me what she meant. I asked her whether she had ever worn her mum’s underwear by mistake. She says she has. I asked her whether she has ever gone into her mum’s room and borrowed a pair of her mum’s knickers. She says she has. I asked her if she was wearing her own knickers on the day she gave them to the police and she said she was. I asked if those knickers were clean in the morning and she said yes. I asked her where she got those clean knickers from and she said her wardrobe.”

86 DC Phillips, when making an entry at PDF 88 of the police records on 10 April 2022, records that UV said something different. On this occasion she stated that she had picked them (ie the knickers) up from the sofa as she had no knickers in her drawer, and they were her mum’s. She could not remember if they were dirty or not. She continued to state they belonged to her mum and that her mum wore a size 12-14 and she wore a 10.

87 What has the mother said about her knickers? According to the first social work statement, the mother said UV had worn the mother’s used underwear, which explains why the father’s semen was found on the inside of the underwear. The reference for that is C7. The mother has a conversation with DC Tanner, which is at G64 of the bundle, in March 2022.

“I asked her [the mother] when they last had sexual intercourse. She said it was about two months after her youngest baby was born and so we established this to be around [redacted] . I asked the mother if she had engaged in any other activity with the father since then. She paused a moment and told me about seven days ago he masturbated in her bedroom. She said he was lying on the bed and I asked her if he ejaculated. She said he did ejaculate. It was into his hands and he went into the bathroom and cleaned it up.”

They spoke about hers and the girls' underwear. She said that the washing does get all mixed up together on occasion. Her underwear has ended up in her daughter's room and vice versa.

88 The notes by DC Phillips on the CRIS, dated 22 March 2023 at G68 of the bundle, the statement that is recorded here is:

“The mother does not usually wear UV's underwear but they are different sizes, so she would know if she did and she would take them off if they were small. Additionally, the mother stated on this occasion her daughter was wearing orange knickers at the time of disappearance and the mother had worn those on the day and if the victim, UV, was to put the underwear on they would be clean.”

89 The witness statement the mother gives to the police is at G167:

“UV is known for taking my knickers and she does wear them.”

She then goes on to explain about the father masturbating and his boxers being in the wash, potentially with UV's underwear.

90 What the mother says about the relationship with the father fluctuates. I look at the child protection conference on 3 March 2022, before any of this came to the police attention:

“The mother shared that she is not in a romantic sexual relationship with [redacted].”

This seems to be contradicted when she speaks to a social worker at a home visit on 9 August 2022. The reference for that is F149.

“The mother said she was sexually active with the father and believes UV was wearing her underwear and so does not believe the allegation to be true.”

91 In her final statement, written in October 2023, after the intermediary assistance, she says:

“I accept the evidence that the father's semen was found on my knickers. I think they were my knickers, that UV had worn my knickers by accident as we both have the same knickers. UV told me she took the knickers out of my drawer. I don't know how the father's semen has got onto the knickers. It could be I placed the dirty knickers into my drawer by accident or it could be the father used my knickers to clean himself after he masturbated.”

92 The evidence that she gave in the witness box was that she was not sexually active with anyone other than the father, and so it is hard to explain the semen of the unidentified person on the knickers as being linked to the mother in some way in the light of this. She says in relation to the father, in her October statement:

“I am not in a relationship with the father. I ended my relationship with him in around July 2021. We grew apart. Since July 2021 until his arrest in March 2022, I would describe our relationship as friends

with benefits, as demonstrated in the TikTok messages, but I have not been in contact with the father since his arrest.”

I would also just note in passing that different years are given for the date of the parents’ separation. In PDF 340 it is 2008. In the father’s statement, in March 2022, that was prepared for his interview, he says that the parents separated in 2010. That is ten to eleven years ago.

93 In her March 2024 statement, the mother says:

“UV told me she took the knickers out of my drawer. However, on reflection, these could have been her knickers that were placed in my drawer by mistake as we have similar knickers.”

The evidence the mother gave in the witness box is that she had not had sex with the father before the knickers were taken from UV, and she could recall that it would have been some time before that she was wearing the knickers after sex with the father. She accepted in the witness box that she thought it more likely than not that the semen that got into the knickers came from UV.

94 The father’s evidence about the knickers starts on C157.

“I accept that DNA was found in UV’s underwear but it is possible that the underwear is contaminated. It was amongst the mother’s unwashed clothes. I believe that either UV was wearing her mother’s underwear or there was cross-contamination from the clothes being mixed in the dirty laundry.”

95 When UV is interviewed, and it is recorded, she says:

“This is going to sound very weird, but I’ve worn my mum’s underpants, you know, when I don’t have any in my drawer. I’ve gone to her drawer, I’ve taken out hers and I’ve worn them and clothes get mixed up, whatever. I mean, that could be possible that it was -- it was from her. I don’t know if they did the nasty or not and I accidentally put it on.”

The detective says:

“When -- when was the last time you”----

“I dunno”, says UV.

She says to the detective that she had a bath before she went out but explains she took:

“Underwear from my mum’s drawer because my mum hadn’t done the washing.”

96 The family collectively, when I look back at all of that evidence, have come up with different explanations for the DNA found in UV’s knickers. When I look at what I know of UV as a whole, she is a girl who seems to take her appearance seriously, as well as her grooming, and, on one level, it seems unlikely that she would have put on a pair of dirty underwear having bathed before getting ready to go out. She was wearing the knickers when

she left the home and I think it is forensically significant that the DNA inside the knickers is in the gusset area. Although no DNA was found on UV herself, I notice the examination record: "Bath x 1, washed genitals multiple times." Should semen have been deposited onto the knickers after the father ejaculated following masturbation, one might have expected a wider distribution of semen if he used the cloth as a wipe.

97 The various explanations and examples given by the family are unconvincing. Of course, I remind myself they bear no burden of proving anything. But the evidence does allow me to draw an inference that the semen in the gusset of the knickers is more likely than not to have come from vaginal discharge following penetrative sex.

98 **The father's arrest:** the father was arrested on suspicion of rape on 23 March at 23 minutes past midnight. This is agreed. What is not agreed is what was said at the time. PC Patel's evidence was that he did not think there was any discussion between the officers and the father in relation to DNA before the father mentioned it. He gave evidence that there were two women at the window and one downstairs at the gate. He said that, from memory, the shouting was coming from the upstairs window. He said that the father was shouting a lot but he thought he was speaking to his daughter, but was unable to be more precise as to who he was speaking to when he called out [nickname redacted]. The translation of what the father said in [redacted language] is as follows:

02:00 Male [by calling someone/[redacted]] they are talking about the rape...

02:12 Male They have found DNA...DNA...

03:14 Male They are talking about that...

04:00 Female Why are they arresting you?

04:01 Male Because they found [something in you?]...

04:05 Female Found what?

04:12 Male They are saying...you know the incident happened...and they have found [something]...

05:03 Male Hey, [redacted], they are saying they have found DNA in that...

99 The interpreter confirmed in court that the translation was accurate and she only translated the words in [redacted language].

100 Looking at the mother's response, she says:

"I agree the father was arrested on suspicion of rape. The arresting officer did mention to the father why he was being arrested and they had found semen in the knickers. When the father was being arrested outside the family home, he mentioned the reason for this arrest to me and UV."

That is the mother's first response.

101 The father's response:

"The father accepts he was arrested on suspicion of rape but asserts he did not know the reason why. He was shocked and guessed it could be he was arrested due to DNA following a sample having been taken from UV's clothing. He speculated that this was possibly from him

hugging UV at hospital or contamination as he spent time in the family home, but did not verbally communicate this. The father was communicating with the mother, although UV and XY were also present”.

102 The mother’s revised response (this is the October 2023 one):

“The officer did not inform us of the reason why the father was being arrested, so the father communicated the reason for his arrest to me in [redacted language] and UV was present at the time. I can’t recall exactly what the father said to me. I was in shock and lost for words so I did not say anything.”

In the witness box, the mother said that she was inside the house and that was when the father was doing the talking.

103 The father’s response to this conversation is that the father initially was communicating to the mother the reason why he thought he was being arrested. He responds to UV’s questions by saying, “They found something on you or in you”, as this was the only thing he could guess as the reason he had been arrested for rape. The father’s witness statement, at C158:

“I accept during my arrest I was communicating with the mother in [redacted language] and I mentioned I believe the police found DNA. As set out in my initial response to the allegations, I assumed the police would have found my DNA in UV’s clothing, either due to hugging her or being present in the family home.”

104 I have listened several times to the body-worn camera footage from two officers, each of whom are at different angles and capture different aspects of the arrest. On neither of the recordings can I hear the arresting officer, or any other officer, mentioning DNA or who the rape victim was in relation to the offence and they do not mention DNA inside UV. The father’s comments upon arrest indicate he realised why he may have been arrested and he communicates this to family members. One interpretation is that he has put two and two together and is then trying to communicate with the family to cover his back. He is trying to get a message across and continues even when he is told by the officers to stop. In my view, it is an early attempt to try and alert the family to the fact that the police have found DNA inside UV even before that has been communicated to him. The scene was chaotic, with UV screaming and hysterical and mother in and out of the house getting tissues, clothes and the father’s phone. I accept the mother may not have heard exactly what the father said at the time and what the father said does not allow me to infer that the mother herself knew about the incident that led to the semen deposit. “You know that incident that happened” seems to be said in relation to UV’s question and could be, of course, interpreted by the mother, if she heard it, as relating to UV’s “missing” episode rather than any other incident.

105 When I look at the **phone call from police custody**, the custody officer records the father became aggressive when they terminated the call. DC Phillips confirmed the number dialled, as redacted in DDO Miah’s statement, was the one that Ms Roberts read out to her, which belonged to the mother. DDO Miah gave evidence that the person he called for the father and the father were told not to speak [redacted language] before the call started. He believed the father was using derogatory language to try and intimidate a witness. He was unable to explain why the phrase translated, “Pass the phone to this lady” was derogatory, and the interpreter was unable to assist on this point too. But he said he had to intervene because the father was speaking in an aggressive manner. The clear impression he gave is

that the father was acting aggressively albeit the statement does not mention aggression until the call is terminated.

106 The mother's response is: "This is for the father to respond." The father says that he called his sister and he denies he was trying to speak to UV. The mother did not volunteer the evidence that the father dialled her phone from custody until she was in the witness box. I do make due allowance for the fact that the mother, of course, was unable to comment on whether the father called his sister but she could have provided information that there was a received call from him on her phone, which she did not take, and that that information came out for the first time in the witness box. This information from the mother was given to the court when it was clear that the court had already been told that the number that had been dialled from custody was the mother's. She said none of the children told her that they answered the call but thought that UV could have done so. She said she asked the children who took the call but received no response. All of this detail given in the witness box is detail which could and should have been provided at an earlier stage and her evidence was unconvincing.

107 The phrase "Pass the phone to that lady", could, of course, refer either to UV or to the mother, depending on who answered the phone, and it seems to the court that this is an example of the father trying to control and manipulate the process by tipping someone off at home as to what is going on. He goes against what the officer says by using [redacted language]. He is dishonest about the purpose of the call and kicks the door aggressively when returned to his cell.

108 **The messages that the father and UV have sent each other, which are retrieved from his phone:** The local authority say that UV is saved on the father's phone as "Big baby [redacted nickname]", and her TikTok account is "[redacted] 2003". Neither of the parents have contested this issue and the mother accepts that "[redacted nickname]" is UV. DC Phillips gave evidence that it would be possible to change your username on TikTok but you would only have one profile. She said:

"The downloads that we have are people messaging in the direct messaging function".

She says that you can log on to TikTok on more than one device as long as you put your username and password in. Ms Barran asked DC Phillips to confirm that if you are logged on on more than one device, that on each device you will be able to see the full string of TikTok messages. DC Phillips confirmed this. This means that a parent, for example, monitoring their child's account from another device would be able to see everything in that account. What we have in the screenshots, and on the video scroll, which DC Phillips has painstakingly recorded for the court, is, as I understand it, what anyone would see if they opened that TikTok chat.

109 I look at what have the parents have said about the TikTok messages. In the mother's updated October statement she says:

"In regard to the TikTok messages, I wish to clarify that UV and I were sharing the same TikTok account at the time. I shared my TikTok account with my children so that I could monitor their activity and what they were watching. I did not think UV would see the messages between myself and the father, so I gave her my account details."

She goes on:

“UV and I would message the father by TikTok. The messages are between myself and the father, apart from the messages which address the father as ‘dad’. I did not send those messages that say ‘dad’. As far as I’m aware, only one person could be logged onto a TikTok account at a time.”

She goes on:

“I believe UV sent the messages to the father earlier in the day but she did not have wi-fi so her message shows as not being sent but would have delivered at that time. When UV logged back into the TikTok account late at night, her messages were delivered to the father as there was wi-fi. I was automatically logged out of the account as only one person could be logged into the account at a time. When I logged back into the account, I did not see those messages.”

This is a rather convoluted and confused description in her statement and does not sit with DC Phillips’ understanding of how TikTok works.

110 In her March 2024 statement, having seen the Evidence Matters downloads, the mother says:

“I did message the father on TikTok at times. I do not remember sending these specific messages and I cannot be sure whether I sent them. In the past I thought I must have sent them. I now realise there could be some other explanation.”

111 The father’s witness statement, in relation to the TikTok messages:

“The TikTok account was shared by everyone in the household. I would often speak with the mother on TikTok and the messages that have been disclosed in these proceedings are messages shared between me and the mother. UV changed the mother’s username to ‘[redacted]’ as she would regularly use the account.”

Having looked at the TikTok account, I cannot see evidence that it was shared by everyone in the household. For example, none of the other children seem to chip in in any of the conversations. The Samsung WhatsApp account could, on one analysis, be an account that other family members have access to, although the majority of the messages appear to be between the father and UV. The message that reads as if UV is sending a message to her mother actually seems to have been sent to her mother on a separate account, and appears to have been shared with the father in draft. Certainly no response from the mother is forthcoming on the Samsung account.

112 On the balance of probabilities, it does not seem to me that the Samsung account is a shared one and there are messages on there of a sexual nature, for example, “I can’t send you nothing other than my boobs because I’m on my period”. That is G76. The mother states in her March statement that she was not aware of UV having this phone.

113 Having reviewed the collective narrative of the TikTok accounts, I would observe that it is unconvincing and if the mother was, indeed, sharing an account to monitor what UV was

doing, which I think unlikely, she appears to have missed many of the messages that she might have been looking out for of a concerning nature.

114 The messages of relevance are as follows:

- a. G715 13.2.22, 20:55¹, 'I f-ing love you too' from father.
- b. G676, 25.2.22, 21:13, 'our luv is here forever. I mean it too' from father.
- c. G650 3.3.22, 07:13, UV: 'come lay with me for 5 min please'
- d. G643 4.3.22, 23:42, father: 'I want you nowwww' aubergine and water emoji
- e. G609 11.3.22, 03:34, from father: 'I want it on the table again'.
 - i. UV replies: 'we can do it',
 - ii. father: 'gooooood coz I'm cuming', and then 'can or can't'.
 - iii. UV: 'can't for 1 week' he says 'lol'
 - iv. G608 UV: 'remember' 'co I'm still bleeding and can easily fall pregnant
 - v. again'
 - vi. Father: 'true'
 - vii. UV: 'and I ain't tryna go thro Tha again honestly'.
- f. G606 11.3.22, 03:45, father: 'I cam to ur room?'. She says she is downstairs. He says, 'get to bed right now' G605, and 'text me if u cum up in 10 minutes' 'otherwise I'm sleeping' and at 03:47 'ok bye see u wen u get to bed'
- g. G567 17.3.22, 03:24 father: 'do you want my baby or what'. UV: 'I don't want a baby now to be 100 but I do maybe soon inshallah'
- h. G565 17.3.22 03:29 from F: 'I try. I really do. I just hav mad luv for you' and she says 'lk but still you need to take a breath sometimes'. F at 03:30: 'I'm still in ur bed'. She says 'are you sleeping there'.
- i. G564 17.3.22, 03:35 from father: 'hurry' 'up' upstairs' 'now' and she says '2 min'
- j. G562, 17.3.22, 16:13, father: 'you will look absolutely gorgeous for meeeee'
- k. G557 18.3.22, 02:05: UV: 'shall I get out without washing and dry and put oil on?' and 'hello dad' (G PAF 461)
- l. G552 18.3.22, 11:27, father: 'I'm sorry my big baby. I fall asleep lol. And why was you still up at 4:00am'. G552 18.3.22, 11:27, father: 'I love you so much. But get back in a pattern on sleeping and waking up'.
- m. 20.3.22, 02:27, father: 'Awww I want one Wiv u' and 'what about you' G540. UV: 'not nowww'. Father: 'Wen wud u wan 2'. Reply: 20V21. Father: 'will u change your mind' then 'I'm guessing yes'. She says, 'yes dad'. He says G538 'yes dad. What??'. She says, 'I do want a child yours but not yet' G538. He replies 'Sexyyyy

words' G538. 20.3.22, 02:28, G539 reply: ' I do but ik im not ready yet'

n. 20.3.22, G537, 04:44, father: 'I just had to have a bloody wank'

o. 20.3.22 G536 'nite nite luv u more' at 4:45 from father replying to 'night love you'
G536

p. G536 20;3.22, 04:48: father: '10 cigarettes and £40 hash £100 weed and bang bang''

q. 20.3.22, 21:08 G529, father: 'you have to make efforts on 3-4 times sex in one day' (G PDF 544)

r. 20.3.22, 21:09 G528, father: 'I'm gona fuck you 3-4 times. Before you go get your belly done'

115 DC Phillips' statement of 3 March 2023 says that these messages are direct messages between the father and an account named "[redacted] 2003", which belongs to UV. The father's response is that most of these messages are between the mother and father. The mother's first response is:

"This is denied. The majority of the messages mentioned are between the father and I, apart from 12(k), 'Hello dad' and 12(l). UV and I were using the same TikTok account and were both sending the father the messages at the same time."

At C46 she says:

"It is not unusual for UV to send such messages to me or the father. I'm sure I would have similar messages from UV, saying she is coming out of the shower and going to bed."

In the mother's revised response of October 2023, she says:

"These are messages between me and the father, except for the messages 12(k) 'Hello dad' and 12(m), 'Yes, dad', as explained in my statement."

116 The mother was taken through each of these messages in the witness box and said that messages (a), (b), (d), (e)(i) and (r) were from her but the others she does not recall. She seemed to accept that the majority were not between her and the father. I would observe that the tone of the TikTok messages between UV and her father are of entirely different tone to the ones that I read between the mother and father. The messages between the father and UV read as if they are teenagers with a degree of immaturity at times. The messages between the mother and the father, even those which are sexualised, are blunt and to the point, and often without any element of affection in them. Looking carefully at the two sets of messages, between the father and mother and the father and UV, the spelling and use of abbreviation of whoever is sending those messages are different; the emojis that the mother and father use in their conversations are different to those that the father and UV use. The mother gave evidence that she genuinely thought some of the messages were hers because it was her TikTok account, but with more evidence and reflection she went through every single one of them.

117 The first time we hear about the messages in such details is in DC Phillips' statements of March 2023. They are set out verbatim in the local authority schedule of findings drafted by Ms Pepper in March 2023, dated 29 March 2023, so they were available to the parties. Should the mother have wished to go back and re-read and try and ascertain what was going on she has had time to do this. Mr Davies asked her: "If you were shocked when you first read those messages, what made you lie?" The mother replied: "I didn't want to believe it, not so much about me lying but when more evidence came forward with the download of the phone, that's when it sank in." "You don't say", notes Mr Davies, "in your response, that they are yours." "I should have said in more details on that", said the mother.

118 I have gone back to each of the messages and read them in their full context. In relation to message (q), sent on 20 March 2022 at 21:08, the father says: "You have to make more efforts on 3 to 4 times sex in one day", the mother said she could not recall sending that message. The next message is (r), sent a minute later on the same date, from the father: "I'm going to fuck you 3 or 4 times before you get your belly done." The reply that is sent to this is: "You do know I am damaged a little", which would fit with the injuries that UV had that were recorded by [redacted], I note in passing. It is illogical to suggest that (q) is UV and (r) is mum, given that these messages form part of an ongoing stream of conversation and are one minute apart.

119 In relation to the belly piercing message, the social worker notes (and this is C121) that:

"UV shared with me during March 2022 she was going to get a belly piercing with the mother".

The time of this messages fits with the social worker's recollection.

120 The parents' response on this is that UV had not had her belly pierced. "I had my belly pierced in January 2021", is the mother's first response. "Unfortunately a few weeks later it became infected and so I had it removed. In March 2022, I wanted to have my belly pierced again." The father asserts that the mother was having her belly done after it healed over after having ST. Each of the parents have given different reasons why the mother might be having her belly pierced again. Overall, those reasons appear to me to be unconvincing in light of the social worker's conversation with the mother and UV at that time.

121 It seems to me that it is more likely than not that all of the messages are between the father and UV, and even in the witness box I was not convinced that the mother was being entirely straight with me. Now, that could be because she has a lot to process and she was put on the spot in cross-examination. But this is not the first time that she has seen these messages. She has had months to read over them should she have wished to do so.

122 **The text messages, the local authority assert, have made UV complicit in the incestuous sexual abuse.** I am going to record the parents' response to this. The mother's first response is:

"I do not believe the father has sexually abused UV. If she had been sexually abused by the father I'm sure she would have informed me. She didn't mention the incident to me. I would have noticed a change in her behaviour. She would have been distressed. I would have immediately taken necessary steps to safeguard my daughter and report the incident to the police."

Her revised response is:

“This is neither accepted nor denied. If there was an incestuous relationship between the father and UV, I did not know about it. I had no reason to suspect such a relationship. I had never seen anything inappropriate between the father and UV.”

The father’s response is that this is denied.

- 123 **I move on to the allegation that UV attended the urgent treatment centre at the Royal London on 27 January 2022 and on 3 February 2022 for an abortion.** The father was nominated as her “over 18 support person”. The local authority contends that this is the termination UV refers to at 12(e) of those messages, and she fell pregnant as a result of sexual abuse by her father. The mother’s response is:

“Partially agreed. I accept UV was pregnant but this was with her ex-partner, [redacted]. She informed me her ex-partner Z was present and at the clinic as her nominated over 18 support person.”

The mother maintained this position in the witness box. The father said he was not aware that UV had attended the Royal London. He asserts the message at 12(e) was between him and the mother.

- 124 Let me put that message at 12(e) in context. On 5 March 2022, in the messages, UV and the father seemed to be discussing a previous pregnancy. UV: “A child came out of me. Maybe it wasn’t fully developed but it was still my child.” There is an exchange of messages where father asks her what she saw. “It’s not funny. I ac watched it. I cried when I saw it.” What strikes me about that interaction is the lack of sensitivity that the father seems to show to UV when she describes that episode.

- 125 Following this, on 11 March 2022 in the messages, the father appears to be asking UV to have sex, to which she responds she is bleeding and can easily fall pregnant again. The social worker’s statement sets out in full her interactions with the Royal London and the British Pregnancy Advisory Service. It is the Service that stated they were unaware of any safeguarding concerns and they had spoken to the father as a nominated over 18 support person following the treatment they gave UV on 3 February 2022 and then at the scan on 7 February 2022. The social work statement also shows that the social worker spoke to UV during a home visit on 3 February 2022 about pregnancy. UV denied being pregnant or having an abortion. She insisted that she did not want either parent to know about the pregnancy, which sounds contradictory. The notification from the Royal London on 27 January 2022 is at F144 of the bundle and is dated 2 February. The father’s statement is:

“I was surprised to read in the local authority’s schedule of allegations that UV had an abortion in 2022. I was not aware she was pregnant or had a termination. I didn’t attend the hospital. There has been no evidence disclosed to show I attended the hospital with UV.”

There is no evidence, of course, that he physically attended the hospital, but the evidence of the social worker is that the British Pregnancy Advisory Service spoke to him.

- 126 There is a message between the father and UV on 12 March 2022, in which she tells him: “I have to come back in 2/3 days for a proper internal scan as I have an infection.” It seems on this occasion UV was sharing something of a medical nature with her father.

- 127 Z, I accept, appears to be a real person. The father mentions him in a conversation he has with DC Merrill. However, there is very little mention of Z in the messages or in the evidence otherwise in general, and the only reason that the mother has to believe it was Z was because that is what UV told her.
- 128 **I will go on to look at the image of UV on the father's phone.** The local authority say it is an image of her topless, standing in a bedroom near a wardrobe. DC Phillips gave evidence that this was not a selfie. Whoever was taking this picture was holding the phone from a distance. She says you can see UV's torso, her face and her arms. She gave evidence that it would not have been possible for UV to take that photo herself due to the angle at which it was taken and the fact that you can see her arms.
- 129 The mother's first response is:

“This is one of the pictures that UV had accidentally sent to the father. She informed me she intended to send these photographs to her partner [redacted] at the time but accidentally sent it to the father. The father showed me the photo that UV accidentally sent to him. We were both extremely concerned about this. I spoke to UV regarding the photo.”

In her revised response, that is the October 2023 one:

“When the father found the indecent photo on his phone he immediately told me. As far as I am aware, the father deleted the photo from his phone afterwards.”

The father's response is that he asserts that UV took the photo on one of the devices in the house and he downloaded it to show the mother the photo that UV had been taking of herself. The father is concerned that UV was sending topless photos to people on Snapchat.

- 130 The mother's statement is at C45:

“Around February 2022 UV was using her father's phone to send a picture to who I believe was her partner at the time as her phone was broken and being repaired. UV told me she tried to delete the photos off her father's phone but was unable to do so. When the father found the images on his phone he questioned UV. She admitted she had sent the photos. I was also present during their conversation.”

Her statement of October 2023 says:

“I note there were inaccuracies in my previous statements regarding how the indecent photo of UV was found on the father's phone. I wish to clarify this. UV took a photo of herself topless on the father's phone as her phone was broken at the time. UV sent the photo to her ex-partner, [redacted], but forgot to delete it from the father's phone. UV initially told me she had sent it to her father accidentally. However, later she admitted to me she had actually taken the photo on her father's phone as her phone was broken but forgot to delete the photo from the father's phone. The father showed me the photo but I wasn't paying much attention at the time because I was very

disappointed in UV for taking the photo. Later the father told me he deleted the photo from his phone.”

131 The father’s witness statement, at C158:

“I accept there was a topless photo of UV on a device in the family home. I downloaded the photo to show the mother that UV was taking indecent pictures of herself and sharing them on social media. I believed the photo had been deleted. However, it was most likely recovered from my phone and remained in the deleted items folder.”

132 The evidence from the parents shows a difference in the narratives they give about which device the photo was taken on, whether it was deleted and by whom, whether the intention of UV was to send it to Z or share it on social media, and whether the photo was singular or plural. The Evidence Matters states that the examiner is unable to discern the original creation date of images 1 to 3 and if they were taken using the handset of a camera or received by or downloaded to the handset. Images 4 and 5 were created on 1 March 2022. The photos are associated with a video that shows UV naked from the waist up getting dressed. The photos and videos were either taken using the handset or received or downloaded using the handset’s camera roll. There is no suggestion, contrary to the father’s evidence, that the image has been found to be deleted as far as I can see.

133 The mother, in the witness box, gave a different account and said she did not see the image at the time, which does not sit easily with what she said in her written case. She then said that the father showed her the image but she could not remember when. She said she was shocked and mortified by the photo. Again this does not sit easily with her written case that she was not paying much attention at the time and was merely disappointed that UV had taken the photo. Ms Roberts submits that the video evidence made it clear to the mother that what she had been told about the photo was untrue, but the mother’s evidence relied on not just what she was told but what she said she saw herself, and she contradicts herself in the various accounts that she gives. Maybe that was because she was repeating what she was told by others or maybe because she was colluding with the father and UV in framing a narrative. Ms Roberts submits that we do not know whether the police image was the one that the mother was shown but the mother appears to accept in her evidence it was, and refers to it being “one of the pictures that UV had accidentally sent to the father”.

134 From the summary of the responses that the parents have given over a period of time, I notice a high level of fluctuation and contradiction and shift. Drawing all the evidence together in relation to the nature of the relationship between the father and UV, I find that the TikTok messages were between the father and UV and not the mother. I do not think the mother has been truthful about this. The reasons given by the family for the semen being in UV’s knickers are incredibly and deeply unconvincing. During his arrest and at the police station, the father was trying to warn the family and manipulate the situation to control it. The images taken and the videos recovered from the father’s phone are highly suggestive of a sexual relationship between the father and UV.

135 I decline to draw adverse inferences from the father’s “no comment” interview to the police. He could not have reasonably foreseen that it might be relied on in the Family Court and used against him at the time he provided his “no comment” responses. But I do draw adverse inferences from the father’s failure to attend in the early days of the fact-finding hearing and his departure to [redacted country] within hours of a witness summons being served. He has failed to return or to engage in these proceedings.

- 136 I find that the father was UV's appointed contact for the abortion and I accept that the mother was told it was Z's baby. I have found that the father and UV discussed having a baby together after the abortion and the father, I find, was having an incestuous sexual relationship with UV. He was in a position of power and authority over her. She was vulnerable due to her age, her past experiences and, we see from Dr Maguire, her psychological background. He made her complicit in this incestuous relationship, in part through the text messages that I have read.
- 137 It is possible that the aborted child and [redacted] are related to the father and are the father's child. I cannot obviously make a finding in relation to that but, given the health and developmental implications of having a child with such a close relative potentially, it is the court's strong view that steps should be taken to ascertain [redacted]'s parentage. The mother says: "I am not confident about [name of UV's child]. I don't know whether it is [name redacted] or the father". Given the amount of disinformation provided in this case, I cannot be confident either and a DNA test would resolve that. Of course, UV's child is not subject to these proceedings and that is beyond my gift.
- 138 I find that the existence of this incestuous relationship was emotionally harmful to all the children.
- 139 What I will go on to analyse now is the mother's understanding of that relationship. The local authority allege that the mother has failed to protect UV. Her response is:

"I have not failed to protect UV. My children are my world. I will always protect them. If UV was sexually abused, or I suspected this incident occurred, I would have taken appropriate action immediately."

The mother, the local authority allege, sees herself with a future with her children and the father in her life. Her only form of social support comes from the father and his family. The mother is otherwise isolated. It is likely she will have some difficulty accepting and addressing the risks the father poses as it means she would lose her only form of support.

- 140 The mother's first response is:

"This is denied. The father and his family are not my only form of social support. The reason I see a future with the father is because he is the biological father of my children. I don't agree I am isolated. I have my immediate family. I have six siblings and my father. I am rebuilding my relationship with my father. I have a maternal cousin I have a close relationship with."

Her revised response of October 2023 is:

"I do not see a future with the father. The only reason I would communicate with the father in the future would be for the sake of the children if he is permitted to have contact with them."

In her closing submissions, Ms Roberts accepted that the mother was isolated at the time but is not now.

- 141 The family group conference involves only the father's family members and the mother's family members, I think, have not attended one. Various family members from the father's

side, who were put forward for viability assessments, have either disengaged or withdrawn. It is fair to note that at the family group conference the social worker approved that plan with the paternal family, that they should support the mother, so it would be unfair to criticise the mother for accepting that support if it were to be offered. But from the evidence before me, and the text messages in which the mother perceives herself as clearly being so unsupported and unappreciated, I do not see, in practice, that either the paternal or the maternal family have helped out in day to day ways. The paternal grandmother has carers herself and the paternal family care for her, so the offer of help from her in the family group conference is sadly quite unrealistic. I do not have evidence that they have sought to support the mother practically with childcare, guidance or in other ways. Neither do the family seem to have the support of a wider community, for example, from the mosque or more broadly in the local community.

- 142 The mother met the father when she was a teenager and at a time when she was very low herself after the sad death of her own mother, and she told Dr Maguire that at that time she even thought of taking her own life. She described to Dr Maguire that they continue, she and the father, to have some sort of romantic relationship, and the thrust of Dr Maguire's report is that the mother finds it hard to manage without the father and she comes across as somewhat socially isolated, according to Dr Maguire. Dr Maguire says:

“She is of a lower cognitive ability and I think that this, and her having no other people from whom she can seek support, means she is more vulnerable to accepting poor treatment from others.”

Certainly, I interject, the messages between her and the father suggest there is a strong theme of her feeling unappreciated by him whilst also relying on him. Dr Maguire goes on:

“Acceptance of the professionals' concern about the risk presented by the children's father would mean that she loses her only source of social support and some financial support. Because the children express views about wanting to remain in contact with their father and their wider family, this could mean that she risks damaging her relationship with the children who are the centre of her life and possibly them displaying behaviours that she finds hard to manage.”

- 143 I am particularly mindful, when I am quoting Dr Maguire, that her evidence has not been tested in cross-examination, so I use it as background only and do not make findings specifically on it. But when I look at all the evidence across the time the proceedings started, it seems to me that the mother was highly reliant on the father for money and practical and emotional support, which often, according to the messages, she did not feel was forthcoming. She does seem to be somewhat isolated socially and his family appeared at that time to be her main support.

(Short break)

JUDGE SUH:

- 144 I go on to look at the patterns broadly in the mother's evidence. There were a number of significant things that the mother might have been expected to tell the social work team who are involved with her children on a child protection plan that she did not. I would not characterise these as lies but rather as a lack of openness. Firstly, that the father was in [redacted country] in 2021 to get married. Telling the social work team this might have helped them to support her and understand the dynamic of the parents' relationship.

- 145 Secondly, she did not tell them that UV was pregnant. The social worker gave evidence that she was the social worker until May 2023. By my calculation, [redacted] would have been conceived in late 2022. The first the social worker knew of the pregnancy was when she attended court in autumn 2023 to give evidence. I understand that UV was not a child under Social Services at this point but her siblings were, and it is highly relevant to the allegation that the father had a sexual relationship with her. I asked the mother about this in the witness box, and she said she was surprised that UV had not told the social worker but did not pick up on the point that she should have shared the information. It was not shared with the court in a timely manner either.
- 146 Thirdly, the mother does not mention UV going missing at the core group meeting of 16 March 2022, the day that UV was I think stepped down by Social Services.
- 147 Fourthly, she did not share the fact that the father had called her number from custody until she was confronted with this evidence and was in the witness box.
- 148 Fifthly, the social worker gave evidence she did not know that UV has a voluntary job and, sixthly, if the mother saw the image of UV on the father's phone, she did not tell the social workers about it prior to the father's arrest. I find a pattern of not being completely open during her involvement with the social workers.
- 149 The next thing I will look at is the number of things that the mother has said that are actually untrue. In a situation like this, where the mother is known to have lied, I remind myself that there may be particular reasons for lying and that the lies do not necessarily mean that her evidence is untruthful about other matters. People lie for a variety of reasons; to bolster a just cause, out of shame or a wish to conceal disgraceful behaviour from their family.
- 150 Mr O'Brien structured his submission by reference to the case of *A, B and C (Children)* [2021] EWCA Civ 451, and he said these are the deliberate lies on which he seeks to rely; that the mother had no knowledge of the father's relationship with UV, that she lied about the context in which the text messages were sent by the father and UV, that the father was seen in the family home in breach of a written agreement, and that the father was married. I might also add to those the following that the mother did not mention drug use by the father. In her position statement she purports to be shocked by the hair strand test. However, in her oral evidence she said she was aware of cannabis use and the text messages suggest that she was aware of crack cocaine use, which is consistent with the hair strand test. Her original responses, and those given in October 2023, have largely unravelled. In them she sought to align her narrative with the father and possibly with UV. Her explanation about the knickers and the semen, and who sent TikTok messages, and whether she saw the topless picture and when, and her response as to who accessed the TikTok account, may well have been influenced by others, but they are not true and they are misleading and she has rowed back from many of them.
- 151 I consider the significant issue to which these lies may relate. Mr O'Brien submits the reasons for the lies is the mother is trying to cover up for the father and suggest she knows more than she is letting on. He says that her lies are an attempt to distance herself from knowledge. The basis on which it can be determined that the only explanation for lies is guilt, Mr O'Brien submits that the mother knew of the incestuous relationship with the father. I would add that, alternatively, it might suggest that the lies are indicative of the mother thinking that it is best for her to align herself with the father and closing her eyes to the evidence of abuse as it has emerged during these proceedings.

- 152 **I look at specific issues about the mother and the father and contact with the children.** The local authority's case is that the children have had contact with their father when they should not have done. The mother says the father has only had contact with the children as permitted by the local authority, at the contact centre and for assessments. Since the father's arrest in 2022, the father has not been in the family home. The father's response is to deny seeing the children other than as arranged by the local authority.
- 153 The bail conditions, which I have seen, clearly set out no contact with any of the family, including the mother, and not to attend the family home. A "working together agreement" was dated 23 March 2022, and it says the father must not have any contact with the children, direct or indirect, and must not enter the family home. The mother must inform the social worker and the police if he does so. The bail conditions continued till August 2022 and then the father was released under investigation. Following the bail conditions being dropped, the mother agreed, on 11 August and 23 August 2022, that the children would not have contact with their father until the local authority did a risk assessment. The reference for that is C9 of the bundle. The father agreed to this on 14 September 2022.
- 154 Contact was then set up for the father twice a week in a contact centre from October 2022, and I have looked at the records of contact and a number have been missed. Between October 2022 and January 2023, there were only twelve sessions of contact. The reference for that is C106. The social work statement from May 2023 says that since the last hearing there have been a total of fourteen contact sessions offered and the father had only attended six of them. Now, it could, of course, be that the reasons he gives for missing contact and illness, for example, are genuine or it could be that he has a lack of commitment to his children, or it could be that he is seeing them some other way and so that the contact centre contact is not quite so necessary for him to see them.
- 155 The social worker, Ms Ahmed, sets out her visits to the children at the family home between October 2022 and May 2023. Dr Maguire explores the impact of the father not being able to come home with the mother. She spoke of parenting alone and how it had been harder and "I don't know what I will do if he can't visit", because she feels this will "destroy my children". Dr Maguire says: "I think this will leave her socially isolated with little support." At E29, she said she felt anxious when the father was first asked not to have contact with the family.
- 156 It is alleged that the family have breached these agreements and the local authority received anonymous referrals in respect of this. Ms Ahmed's evidence was that it was the same anonymous source each time, and she took steps to investigate the information. The mother shared it could be malicious, but she took the professional view it was not. She replied to Mr Davies that when she took over the case she reviewed the social work files and there was no history of anonymous referrals and these reports all started after the father's arrest. Her written evidence was that on many unannounced visits, one or other of the children were having a shower, and this is at various times of day. She gave oral evidence. She said she stayed for around an hour and the mother would knock on the bathroom door and the children would put their head around. However, she would not be able to see the whole room. She gave evidence that these visits would take place at different times of day. She would ask if she could wait until they came out, but they did not. On a couple of occasions she visited she was not able to see every room in the house namely 11 November 2022 and 4 November 2022. She was told on one occasion it was because XY was asleep. On the following unannounced visits, one child was in the shower: 6 January 2023, 26 January 2024, 1 February 2023, 13 February 2023, 24 February 2023 and 21 March 2023. There is

no record that I can find in the social work evidence that the children were routinely in the shower during the day before this period of time.

157 Of course, one interpretation is that the children were seeking to avoid the social worker and they did not want to speak to her, but that does not fit with the general pattern in the social work conversations with the children where they do answer her questions and they do speak to her, and they tell her face to face very often that they do not like social work involvement. It is also strange and noteworthy that it is a different child on each occasion, so it is not one child, for example, who wants to avoid the social worker but there seems to be an element of taking turns on one interpretation. This was not put to the mother so I approach this issue with conspicuous care, but this evidence is part of the evidential picture and I cannot disregard it altogether. I weigh it very carefully in the balance.

158 The anonymous referrals may, of course, be malicious and Ms Roberts fairly notes that the anonymous referrals were not put to the mother in evidence and they are disputed. By that I understand her to mean that the veracity of those referrals is disputed rather than the fact that they were made. There are contemporaneous notes on phone calls and emails from the person making the referral. I weigh them with conspicuous care and the weight, of course, I can attach to the notes of those referrals is reduced because they were not put to the mother and the maker of those referrals was not identified or called. But I do not disregard them altogether. I calibrate them carefully with other evidence and the social worker was robustly cross-examined on them.

159 I have seen the notes of all of those referrals. The first is 9 August 2022. On a visit of the same date, the social worker records:

“QR said he has not seen his dad or spoken to him since the police took him. OP said he hadn’t seen dad in months. ‘I don’t really ever visit dadu’ [that is the paternal grandmother]. QR and OP both presented very on edge [wrote the social worker] when I shared the information about the anonymous reports and I noticed QR immediately looked over behind me at the window and continued staring there for the duration of our conversation whilst occasionally glancing over at me.”

Ms Roberts asked the social worker whether OP was presenting as shocked and frustrated, as the social worker recorded on p.754. She said: “I think he was uncomfortable.” When challenged robustly by Ms Roberts, the social worker maintained that OP gave the impression he did not want to speak to her and was uncomfortable during the discussions. I note that OP spoke to the parenting assessors in August 2022, saying: “I last saw my dad on [redacted date], my birthday. I feel really sad.”

160 On 26 August 2022, the paternal grandmother says to the social worker that the children very rarely see the father. However, after the social worker noted that the children are not allowed to have any contact with the father, the grandmother said: “Oh, they don’t see him. They only come over when he is not at home.”

161 There is a conflict of evidence as to how often the children visited the grandmother after the father’s arrest. The grandmother told the social worker that the children come over to her house sometimes but do not stay the night. The mother’s evidence seems shifting. She suggested once every few days she visited the grandmother but, in response to threshold, she said:

“Since the father was arrested I have not taken the children to the paternal grandmother’s home apart from one occasion in August 2022,”

which was the occasion when she was seen there. But the overall thrust of her evidence in the witness box was that she did go there but only when the father was not there.

162 The second anonymous referral was made on 8 September 2022, that the father is back in the family home. An anonymous referral is made on 18 October 2022, saying that UV was living with the paternal grandmother with the father. In response to this, the mother explained that UV was not present because she was working many hours. I have looked for evidence in the bundle of UV’s working patterns but it is not there. Of course, the burden is not on the mother to prove anything but the social worker noted she was not told that UV was working.

163 On 13 February 2023, the social worker says:

“I observed an item of clothing in the house which I have previously seen the father wear, as well as a bike that looked similar to the bike belonging to the father.”

The social worker’s oral evidence is that it was a green jacket she saw hanging on the door in the boys’ room that she had seen the father wearing. It was different from the jacket that she had seen the boys wear at school, which had fluffy hoods. It appears to be different from the jackets that they were wearing on the phone download, I note in passing. She described the bike as a black bike and that she had seen dad using this bike. Looking at the contact notes, they record repeatedly that dad comes on a bike and stores it before contact starts. When she followed this up with the children, she said they did not have a bike. The mother’s response is that the bike belonged on OP.

164 On the social work visit of 13 February 2023, at F155, both QR and OP tell her that dad was sleeping and that is why he missed contact on Tuesday, but they could not tell her how they knew this. On 10 March 2023, QR said that things are better at home since the father has returned to live there and OP did not deny his father was back home. The mother, in her response document, accepted QR said this but said it was because she had not allowed him to use the internet.

165 On 10 March 2023, the anonymous referrer stated that the father has temporarily been residing at the paternal grandmother’s but now has moved back into the family home for over a month. That case note again was emailed over during the social worker’s evidence. The social worker then carried out the visit that I have cited, when the social worker went on 10 March 2023 to the boys’ school. It is a very detailed account and it may be better if I actually quote it in full:

“It was discussed with QR about the anonymous referral and that the father had moved back into the home. QR said things are better at home since dad had come back. I asked when had dad come back and he said, ‘I’m not sure’, but he clarified it had been a while. We spoke about what dad does and as a routine at home he explained dad sleeps all day and sometimes goes out. He said, ‘Since dad’s been back home he’s very bossy. He makes everyone do things like clean up and tidy’. We spoke about where everybody sleeps. He said the girls sleep

together, he and OP downstairs and mum and dad sleep with ST in between them.”

I would note that this is an account of some detail. The social worker said:

“I spoke to OP about the anonymous report. OP did not deny his dad was at home but rather questioned, ‘Is he allowed to be back home?’ and ‘What would happen if dad is back?’ OP then became frustrated and said social workers are destroying the family. He continued, ‘The police have said my dad is allowed back home. It’s just you guys that are stopping him.’ OP then continued that it was unfair.”

166 Ms Roberts asked the social worker how she introduced the topic with the boys and she said to the boys that they had received information that their father was at home, and this is how they responded. I did not get the impression that the social worker had a particular agenda when she spoke to the boys but she was listening to their description, and her conversational cues strike me as an open way of starting discussions with a child.

167 The next anonymous referral (number 5) was on 27 March 2023. This was a detailed description of the [redacted] arrangements of the family.

168 I am going to turn to the incident of 20 May 2023 that led to the children being removed from their parents’ care and Mr O’Brien confirmed he sought a specific finding about this at the beginning of the fact-finding hearing. The mother’s statement is:

“I deny the father was at the family home on 20 May. I would not allow the father in my house. I don’t want him to have contact with the children unless in a contact centre.”

169 Ms Tomisin was the social worker who attended the family home on 20 May 2023 at 9.45am. She was a clear and straightforward witness who was credible. She had not worked extensively with the family and so was coming with fresh eyes to an extent. It was an unannounced visit. “I am familiar”, she said, “with what the father looks like and I am certain it was him who I saw”, she says in her witness statement. In court she provided the stills from UV’s ABE interview and stills from the father’s arrest, which she had received from her manager so she could identify them when she visited. The quality of the stills is sufficiently good that you can recognise the father and identify him, in my view.

170 In the witness box she explained that she went up on tiptoes to look over the frosted windows and saw UV serving some food to the father. She was adamant that she had not been mistaken when repeatedly pressed in cross-examination. She explained that someone shorter than her would not be able to see over the frosted window but she could stretch her neck and look over. She said she told the social worker it was the father and the social worker confirmed that she was told this. She said it was impossible it was OP she saw. He was a teenager who did not have a beard or facial hair at the time, and the boys were in the bedroom when she arrived. She told Mr Davies that she made contact with UV and the father and they looked startled. She confirmed he was not seen in the property when they searched it. UV briefly opened the wardrobe doors and did not let them look inside. They were standing about three to four metres away at the time. She did not know where the father went. She confirmed that the mother came to the door in pyjamas and she had no reason to believe that the mother was being untruthful when she said she had been asleep. She said that the mother was not uncooperative but she was not surprised or concerned and

gave the impression that the father, if he was in the house, she would not have known because she was asleep.

- 171 The social worker gave evidence that Ms Tomisin looked over the frosted glass and told her she could see the father. She knocked on the grey front door and UV answered it. It took several minutes for the mother to come down, during which time that front door was closed.
- 172 The mother gave evidence that UV came to wake her up when the social workers arrived and she accepted that two people had been having food, but it was not her, the boys were in their bedroom and it was not XY. She accepted no one else it could be except for the father.
- 173 This allegation depends, to a large extent, on the identification of the father by Ms Tomisin and, of course, he says that that was mistaken. I must, therefore, remind myself of the need for special caution when looking at identification evidence. Of course, an honest witness can make a mistaken identification, so I look carefully at the circumstances where this took place. Ms Tomisin saw the interaction of serving food. It was not a fleeting glance. She was in close proximity. It was daylight. There was nothing obstructing her view. Although she had not seen the father before, she had got a picture of him and actually it was her express purpose in visiting that she should be able to identify him if necessary and she said she made contact with him. I accept the evidence of Ms Tomisin. It is vivid and compelling.
- 174 It is not necessary for me to make a finding about exactly where the father went when the social workers arrived but there was time before the door was opened for him to hide and a period whilst everybody was in the hall and the front door was closed when he could have left through the sliding doors. UV also generated noise and distraction in relation to the examination of the wardrobe. I, from the evidence before me, can be satisfied on the balance of probabilities that the father was there on that occasion.
- 175 The mother did not obstruct the social workers in their search and I accept her evidence that she was asleep when they arrived. But the social worker notes that the mother did not deny the father being in the home and said, "I will speak to UV." It seems to me from the totality of the evidence that both the father and UV are quite strong personalities and the mother does not have a track record of standing up to either of them particularly effectively when you look at the text messages, but rather is manipulated by the father and frustrated with UV. She has perceived them as aligned against her. It seems more likely than not that father did what he wanted on this occasion.
- 176 The fact that the father was eating a meal with UV suggests that he was, to a certain extent, treating the place as if it were his home. The impression is not, from Mr Tomisin's evidence, that he had briefly popped in to collect something but there was a degree to which he was going about what could be seen as a routine daily activity.
- 177 I have found as a fact that the father was in the house in May 2023 and I look at the background of five anonymous referrals over a period of months, and the things that I have quoted that the paternal grandmother and the boys have said that suggests they were seeing their dad. What the boys have said is detailed and has been carefully recorded. Of course, I remind myself it is hearsay. The broad pattern of hiding in the shower, or a child hiding in the shower when the social worker came, only started in early 2023 and the last occasion this happened was in early March 2023. The end of this period of January to March 2023 in which the shower is a feature coincides with the report from the anonymous referrer and QR say that dad has moved back in (made in March 2023). It is during this period of January to March 2023 that the social worker was routinely unable to see all of the house. It was during this period that the presence of the bike and the coat were noted.

- 178 The dynamic of the family, in my view, is one in which the father does what he wants and it seems to me more likely than not that his presence in May was not an isolated occasion. It seems unconvincing to me that the father was only in the house once in all of this time and that the social worker just happened to catch this one isolated occasion over a period of time when he was there for a meal. The father is a manipulative and powerful figure who has had police involvement for violence, and I think it would be the dynamic of the family that seems to allow him to do as he wishes. It is the careful calibration of all the evidence that leads me to this inescapable conclusion. It would be odd indeed if he only attended the home once when all the broader indicators seem to suggest that this was not a one-off.
- 179 The issue of **whether the parents have manipulated QR and OP into believing a lie about the father's DNA being found following UV's abduction**. QR said that it was on his father's DNA on UV's clothes, that he believes it was not his father who hurt his sister. The parents do not dispute that QR said this. OP said his father hugged UV and the DNA came onto her clothes. He said that the mother said if they stick together things will get better. OP has also been frustrated at Social Services and said they are destroying his family. I note the reference for this, E71 and C114, and, of course, on conversation with the foster carers at F410 on 17 June 2023, I think OP says: "Dad hugged her and he got arrested because they thought it was him." It was QR who said that while OP was listening at the dining table. OP then says: "It's because he hugged her they found DNA on her clothes. They're so stupid."
- 180 The theory that the father's DNA was on UV's clothes because he hugged her was actually first raised by UV herself in a conversation with DC Tanner that is recorded in March 2022. The social worker gave evidence that she did not know where OP and QR got the idea about the DNA but she accepted the boys' room was next to the front door and they may have heard something when the father was arrested. I have no evidence that they were woken up at that time and, given the location of the father in the alley and the level of confusion and shouting during his arrest, I doubt very much they would have heard anything coherent during this process even if they were awake. But the social worker also gave evidence that OP was aware of the father's bail conditions and Social Services had said that dad should not be there. She had not told the boys that.
- 181 I look at the approach of the children to the local authority generally, and this goes back a number of years. Social work visit in 2021 records:

"On 16 June UV appeared impatient and was confrontational, informing me it was illegal to undertake unannounced visits and appeared on a call or recording me."

That is F45 of the July bundle. "In 2021, OP was visibly not happy to see me", F46. Another example is what XY says to the parenting assessor at Eva Armsby.

"Their presence [meaning the social workers] forced me to experience tension and I feel pressurised as they make me feel I'm in a wrong environment when I'm happy to be as I am. I feel as though they manipulate us into thinking our family is bad but we are grateful to our parents and we are happy."

OP says:

“I don’t like social workers visiting my house because social workers will come at any time, even though you say no. They think they are allowed. Social workers make us come home early, stop us having fun, stop us doing things that we like to come home. The social workers are messing with my mum’s life for no reason. She can die from that.”

182 The evidence does not support a finding that it was the parents who told QR and OP that Dad hugged UV. UV appears to be the first person who expounded this theory but it is later picked up in the father’s evidence. However, the boys have a general approach to the social workers who are involved in their life and view it to be without good reason and, of course, there are a number of factors that might have led to this but it is very important now that they are given an age-appropriate explanation of why the social workers have been involved.

183 I look now, specifically having surveyed all of that information, at the **broad allegation that the mother has failed to protect UV.**

184 I remind myself of the case of *L-W (Children) [2019] EWCA Civ 159* the Court of Appeal highlighted that failure to protect comes in innumerable guises. The court should be alert to the danger of ‘failure to protect’ becoming a ‘bolt on’ finding and of assuming that if a parent is living in the same household as the perpetrator that such a finding is inevitable. The court is specifically referred to paragraphs 62-4:

“62. *Failure to protect comes in innumerable guises. It often relates to a Mother who has covered up for a partner who has physically or sexually abused her child or, one who has failed to get medical help for her child in order to protect a partner, sometimes with tragic results. It is also a finding made in case where continuing to live with a person (often in a toxic atmosphere, frequently marked with domestic violence) is having a serious and obvious deleterious effect on the children in the household. The harm, emotional rather than physical, can be equally significant and damaging to a child*

63. *Such findings where made in respect of a carer, often the mother, are of the utmost importance when it comes to assessments and future welfare considerations. A finding of failing to protect can lead a Court to conclude that the children’s best interests will not be served by remaining with, or returning to, the care of that parent, even though that Parent may have been wholly exonerated from having caused any physical injuries.*

64. *Any Court conducting a Finding of Fact Hearing should be alert to the danger of such a serious finding becoming ‘a bolt on’ to the central issue of perpetration or of falling into the trap of assuming too easily that, if a person was living in the same household as the perpetrator, such a finding is almost inevitable. As Aikens LJ observed in *Re J*, “nearly all parents will be imperfect in some way or another”. Many households operate under considerable stress and men go to prison for serious crimes, including crimes of violence, and are allowed to*

return home by their long-suffering partners upon their release. That does not mean that for that reason alone, that parent has failed to protect her children in allowing her errant partner home, unless, by reason of one of the facts connected with his offending, or some other relevant behaviour on his part, those children are put at risk of suffering significant harm.”

- 185 I want to be really careful in this judgment to be as accurate as possible and to set out an analysis of the mother’s actions in light of what was known at the time. It seems to me that there are three broad time periods. There is pre-arrest, there is post-arrest but pre-proceedings, and, of course, these time periods go to the threshold question of whether, as of October 2022, when proceedings started, the children were suffering or likely to suffer significant harm attributable to the care given to them by their parents. Then we have during proceedings. What happened during proceedings and the approach of the mother is maybe of more relevance to the welfare assessment that will follow and will inform any risk assessment needed after this hearing. Mr Davies has really helpfully characterised it this way, that a failure to protect a child can encompass a spectrum of behaviour from direct knowledge of harm to reasonable suspicion of harm to failure of curiosity to being oblivious.
- 186 **Before the arrest** there are certain red flags which, with hindsight, might have alerted the mother, or indeed the social work team, to the need to look at what was going on for UV more closely. There is the preferential treatment the Father gives her as we see in the text messages. The mother got angry at this but did not seem to explore the underlying reason for this with the father or UV. The mother perceives on one level that the father and his wife are a threat to her in the messages and directs a similar level of anger at UV from time to time, but, as I have already observed, it is an inference too far, in my view, to say that she was directly aware of a sexual relationship between the father and UV from those messages alone.
- 187 UV’s behaviour, by any analysis, is troubled. She goes missing overnight but, in fairness to the mother, the child protection conference says that the mother took appropriate measures to report this. This is in the missing episode prior to the kidnap one, if I can describe it that way. They live in a small house and, on one level, it might be thought surprising that the mother did not notice anything. UV is self-harming. She has been asked for naked pictures of herself as far back as 2018 and in 2021 the father was so cross with her when he finds love bites that there is an allegation that he physically hurt UV as a result. These are flags that might lead a reasonable parent to have a particular scrutiny of their child’s phone and to check their child’s online activity, either for sexual content or, indeed, to check that they have not been viewing self-harm material, which is sadly very widely available on the internet.
- 188 UV had an abortion in early 2022. There is a past history of UV reporting sexual abuse in 2014. There is, on one level, poor boundaries in the home and the impression I have very clearly formed is that father did what he wanted and came and went as he saw fit. The father masturbating in mother’s bed when he chose to stay over is suggestive of questionable sexual boundaries by the mother in allowing this. Of course, I am mindful that the children did not see this. And that sadly the mother herself has experienced abuse as a child, which might alert her to the possibility that these things do happen.
- 189 Balanced against this, of course the courts are very familiar with the issue of sexual abuse but the average parent does not spend time looking out for it and no doubt would not want to countenance that their child could have experienced it. When a victim is groomed by

someone, it can often be very subtle and incremental. The social worker did not seem to spot any signs and the child protection conference on 3 February 2022 says that the children have all reported good relationships with both parents and their siblings. The notes record the “close relationship between parents and children have been observed during home visits, when they are all sitting together in the living room making jokes and engaging in conversation together”. At that child protection conference and, more broadly, the feedback from the schools and the health visitor, do not raise any concerns of a sexual nature.

- 190 The father, it seems, had multiple devices and accounts and now, of course, we have the totality of the disclosure but it is not reasonable to expect the mother to check the father’s devices. Similarly, trying to monitor the online life of a teenage girl is very difficult for any parent. The mother has cognitive challenges. She has five children to care for and comes across as somewhat overwhelmed in her messages and the household appears to be somewhat chaotic.
- 191 The favouritism that the father showed to UV and about UV being rude to her mother, are around UV doing things that are typical of teenage children, like going out. The mother sounds genuinely concerned for UV’s welfare in the 999 call and there is no evidence in the bundle to suggest that the father had an interest in children sexually or, indeed, incestuous relationships generally. The material downloaded broadly suggested an interest in adult women and the mother received herself a number of messages from the father in which he sought to engage her in sexual activity with him. I prefer the evidence of DC Tanner that the mother was appropriately shocked when she heard about the DNA.
- 192 I find that at the time prior to the arrest the mother failed to be sufficiently curious about what was going on in her daughter’s world, both online and in person, and the reasons that her behaviour was so troubled. She could have raised any particular concerns with the social worker and sought her guidance, and there is a pattern in the evidence of the mother not asking questions about the father and drugs, about the father and money, about father and his house, which suggests she is avoidant of topics that maybe she does not want to know too much about or cannot cope with.
- 193 The mother, through Ms Roberts in closing submissions, accepts that she should have done more. She showed, in my view, a lack of compassionate curiosity for a teenage girl who was obviously struggling emotionally and did not show sufficient concern to find out more about what was going on in UV’s inner life and her online presence.
- 194 I now look at **after the arrest**. The father was arrested on 21 March 2022 at 24 minutes past midnight. Later that day the mother is told by DC Bridges, Tanner and Davies about the semen in UV’s underwear. Later that day too, the topless image is found by the police on the father’s phone. I have been unable to ascertain from the evidence before me when the mother was informed about this image. It is not mentioned in the pre-proceedings letter of 13 April 2022 or in the meeting of that date. The father and UV, of course, are told about this image and the TikTok and the semen in their interviews, but that does not necessarily mean the mother knows about it, and if she was told about it by the father or UV in March 2022, she may not have been given an accurate account. The first time I can find that the local authority refer to the topless image and the messages about UV oiling herself, and the TikTok exchanges, is with the social worker’s initial social work statement served for the application in late September 2022.
- 195 Looking at the pre-proceedings meeting, where I think a lawyer was present for the parents, on 13 April 2022, the local authority expressly says:

“We are not trying to treat this as a sexual abuse case. We see it as a neglect case.”

That may have been the message that the mother received and took away from the meeting. The instructions to report for the Eva Armsby and Dr Maguire do not mention, as far as I can see, the UV allegations and nor do the body of their reports. The local authority take, I think, over six months to issue proceedings. The father has denied the allegations throughout. He emerges from the evidence as somebody who gets his own way and tries to control the narrative. The mother had few other sources of support. No “keep safe” work was done by the local authority. XY does not report seeing anything to the mother, from the evidence before me, and UV consistently says that the father has not abused her. I have re-watched her VRI with the detective and she is quite convincing in her disdain for this idea when he puts it to her. The officer in the case says: “I can see from your face what you think of that idea.” The information has emerged piecemeal. It is unclear what the mother was told and exactly when from the police and Social Services documents, bar the DNA issue. The mother is vulnerable and I have already noted her particular difficulties on E28, which are not immediately apparent.

- 196 Against this, she knew how seriously the social workers and the police were taking this issue of sexual abuse because of the bail conditions and the working together agreement. She had spoken to the police and social workers about it. DC Phillips says on 10 April, at G70 of the bundle:

“The mother was spoken to and she states she does not believe the suspect is capable of the allegation. She has known him for 20 years and has never had any concerns for the welfare of her children.”

The social worker, at C15, says:

“Mum is adamant that the allegations are not true despite the semen being found.”

- 197 In my view, the existence of father’s semen DNA in UV’s underwear is sufficient information to cause real suspicion and concern. The knowledge of the DNA alone was enough to cause a reasonable parent to ask questions and to challenge and to investigate, and the mother does not do that, on the evidence before me, but rather seems to share a narrative with the father and, to some extent, UV. On her own evidence, she says she was shown the image of UV topless by the father which, of course, was before his phone was seized. If she is telling the truth about this, then she has not told the social workers about it and is covering up in some way. If she is lying about this, similarly she is not investigating and has been misleading in her evidence. Either way, whether she saw it or she did not, knowing of its existence should have rung alarm bells for her and caused her to investigate.

- 198 All of those red flags which were existent pre-arrest are there after the arrest and continued to be there. UV has another episode of self-harm to her wrists post-arrest. It seems to me, and I find, that after the arrest but pre-proceedings the mother failed to understand the gravity of the situation. She was made aware of semen from the father in UV’s underwear and does not challenge or investigate or explore this situation to act protectively of UV and to assess the risk to her children. She seems to close her mind to the possibility of sexual abuse.

- 199 **Post proceedings being issued in October 2022**, the mother’s first response of June 2023 is:

“I continue to deny the allegations. I don’t believe the father has sexually abused UV. If he has sexually abused her, she would have mentioned this to me but she did not ever mention this to me.”

In her revised response of October 2023:

“I accept that I previously mentioned I did not believe that the father is capable of sexually abusing his daughter. However, after reconsidering the evidence, I do not know what happened. If UV was involved in a sexual relationship with her father I believe she would have mentioned this to me as we have a very close bond.”

Her final statement of March 2024:

“Having viewed the police disclosure and Evidence Matters, I think there is a possibility of an incestuous relationship between the father and UV.”

200 There has, looking at her written response, been a very slow evolution of her understanding. She has had a solicitor, of course, throughout and I do make full allowance for the time before she had an intermediary. But the absence of an intermediary does not account for her position after October 2023, when she had the assistance of an intermediary, and the issues are not overly complex about TikTok, DNA and pictures. In the witness box, the mother accepted that, “Going by the evidence that something has gone on and I was not aware of it.” She said in chief that she should have been aware but there were no signs that it had happened. When asked if she chose not to ask too closely what was going on, she accepted she could have asked. The mother gave evidence that she did not think there was a sexual relationship between the father and UV before she saw the Evidence Matters report. She said it was more the TikTok messages that shocked her, but these were the messages that were mentioned, albeit not reproduced in full, in the original social work statement and that statement reported that UV asked her father if she should oil her body before coming to bed and told him, “I love you bad.”

201 The TikTok messages have been available to read in their entirety since at least the local authority’s first schedule of allegations, dated 30 March 2023. That is some eleven months ago now. The mother accepted that she had seen these messages before the Evidence Matters report and she was unable to give a convincing answer to Mr Davies’ questions about what might have brought it to light, replying: “All of the normal messages.” It seems illogical to me that the messages would begin to sink in for her after a very long report from Evidence Matters (I think 390 pages), much of which is highly technical or irrelevant, when she had already had the smaller volume of TikTok messages provided to her as they appear in that message and reply form for almost a year before she came into the witness box at the fact-finding hearing. Her failure to take responsibility for making sure that she read and, if necessary, re-read all of those TikTok downloads and asked questions properly about what they suggest earlier in the proceedings, suggests that she simply did not take the issue seriously or, alternatively, she was prepared to be led or fed a line by the father in her responses.

202 UV was pregnant, and that must have been in late 2022. The mother does not share that with the social worker and does not seem to link this to the relevance of the police investigation. There was a lack of sympathy or understanding for UV’s position in the witness box. I find that the mother has been misleading, lacking in openness and sometimes untruthful in her

evidence. She has consistently denied the allegations, as we see from her responses, and there has only been a meaningful shift in her thinking at the door of the court. I think it more likely than not that she has aligned herself with the father and closed her eyes to the mounting evidence of abuse as it has emerged during these proceedings. She has breached the working together agreement by allowing the father into the house, and the strongest evidence for the father being present is actually during these proceedings rather than at an earlier stage.

- 203 I find that during the course of these proceedings the mother has continued to align herself with the father in her written case. She has been provided with more and more evidence that there was a sexual relationship and she has only properly been able to consider that this might be true after UV has given birth, the father has left the jurisdiction and gone to [redacted country] and the evidence has become, in my view, compelling and unavoidable. Her approach during these proceedings has not been protective of her children and UV in particular.
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CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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