Neutral Citation Number: [2020] EWFC 58

Case No: BW19C00125

IN THE FAMILY COURT

Sitting Remotely

Date: 11/09/2020

Before:

THE HONOURABLE MR JUSTICE MACDONALD

- -

Between:

Cumbria County Council	**Applicant**
- and -	
AT	**First Respondent**
-and-	
CB	**Second Respondent**
-and-	
T (By His Children's Guardian)	**Third Respondent**

- -

Mr Michael Jones (instructed by **Cumbria County Council**) for the **Applicant**
Ms Gillian Bundred (instructed by **Clarkson Hirst**) for the **First Respondent**
Ms Ginny Whiteley (instructed by **Makin Dixon**) for the **Second Respondent**
Mr Patrick Gilmore (instructed by **Bendles**) for the **Third Respondent**
Ms Vanessa Lau (instructed by **Isherwood and Hose**) for **PR**
Mr Salim Ibrahim (of **Russell and Russell**) for the **JJ**
NN appeared in person
JS appeared in person

Hearing date: 9 September 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Mr Justice MacDonald:

INTRODUCTION

1. The court is concerned with the welfare of T, now aged 6 years old. T is represented by Mr Patrick Gilmore of counsel through his Children's Guardian. The mother of the T is AT, represented by Ms Gillian Bundred of counsel. The father of T is CB, represented by Ms Ginny Whiteley of counsel.

2. The substantive application before the Court is Cumbria County Council's application for a care order dated 8 July 2019. The local authority is represented by Mr Michael Jones of counsel. Prior to this there were private law proceedings in respect of T concerning the father's application for a child arrangements order, issued on 13 November 2018. On 10 July 2019 the private law proceedings were stayed and T was made subject to an interim care order. The interim care plan provides for T to remain in the care of the mother, which he has done to date.

3. A number of persons have been invited to intervene in these proceedings in circumstances where the mother, but not the local authority, seeks findings against them of the sexual abuse of T and others. On 14 May 2020, HHJ Forrester joined eight individuals as intervenors to these proceedings. I discharged one of those intervenors, CR, at the last hearing. At present, the following remain intervenors in these proceedings:

   i) NN;

   ii) JJ;

   iii) JS;

   iv) LB;

   v) PZ;

   vi) PR;

   vii) HS.

4. To date only NN, PR, JJ and JS have sought legal advice. None of the other intervenors have made contact with the local authority. Before the court today, NN appears in person, PR is represented by Ms Vanessa Lau of counsel and JJ is represented by his solicitor, Mr Ibrahim. Mr Ibrahim helpfully informed the court that he had also been approached by JS. but that it had not been possible to secure legal aid for him. Mr Ibrahim made clear that JS. denies the allegations said to have been made against him, as do each of the other intervenors who have appeared at this hearing.

5. This matter now comes before the court to consider whether or not it is necessary and proportionate for the court to determine the findings of fact sought by the mother against the current intervenors and, accordingly, whether or not it is appropriate for each of the interveners to be discharged as interveners in these proceedings.

BACKGROUND

6. For the purposes of the case management decision that falls to be made by the court, the background to this matter can be taken largely from the comprehensive Case Summary prepared by the local authority for this hearing. At this interim stage I make clear that I have made no findings with respect to the matters that I now proceed to set out.

7. Private law proceedings in respect of T commenced in 2018 when contact between the father and T ceased following the mother asserting that T had made allegations against the father, indicative of sexual abuse having taken place. With respect to the allegations said by the mother to have been made by T, these involved alleged statements by T that he had been sexually abused by his father. The allegations were also said to encompass T's elder half-sibling, NN. T is also said to have made allegations concerning graphic violence and allegedly gave accounts of being exposed to bizarre actions of a sexual nature when in his father's care. As I have noted, NN, and adults against whom T is alleged to have later made allegations, have been joined as intervenors to these proceedings.

8. The majority of the allegations said to have been made by T have been made to the mother alone. T has also made limited statements to the social worker. On 11 February 2020 he told the social worker that his father had abused him anally. The local authority submit that it is notable that this was during a school visit to see T that the social worker was undertaking in order to share indirect contact from his father and that the mother had been made aware that this visit would be taking place when at a court hearing on 10 February 2020. The mother disputes that she was made aware of the date of the visit.

9. T also, to a limited extent, made allegations to police officers during an ABE interview. T was the subject of three ABE interviews by the police. The local authority and the Children's Guardian submit that an objective assessment of these interviews demonstrates numerous and repeated breaches of the ABE guidance. With respect to the substantive allegation made by T in the second ABE interview undertaken on 12 October 2018, T stated that his father touched him inappropriately. The local authority submits that it is notable that this allegation is made immediately upon his return to the ABE interview suite, T having been allowed to leave the room for a period of three minutes, during which absence he spoke to his mother.

10. Within the foregoing context, it is important to note that T made no *direct* allegations either to the social worker or in his ABE interview regarding the alleged actions of any of the intervenors in this matter. Whilst it is the case that T mentioned NN during the course of one of the ABE interviews, as Ms Bundred conceded during her submissions at this hearing, at no point does T make a *direct* allegation of sexual abuse against RN, certain of T's statements during the course of the ABE interview are contradictory and certain of his descriptions involve the use of dolls without an accompanying clear narrative of sexual abuse. In addition, as I have noted, the local authority and the Children's Guardian submit that an objective assessment of the ABE interview in which NN was mentioned by T demonstrates numerous and repeated breaches of the ABE guidance.

11. On 9 October 2019 T was subject to a child protection medical by a Dr Tee. Dr Tee considered that her findings, namely that perianal scars were evident, were strongly suggestive of anal abuse in the absence of other convincing history of witnessed trauma. Dr Tee also noted a reddening of T's penis. The local authority invites the court to note that, with respect to the anal findings, no differential diagnosis such as constipation was considered by Dr Tee. A subsequent report was provided by Dr Thornton within the private law proceedings. Dr Thornton concludes that:

> "With regard to the anal images, again these are of very good quality. I agree that there appears to be a deviation of the median raphe as it meets the anal margin. In my opinion this could represent a healed scar, but it could also represent a variation of normal. It was very close to the median raphe, and in my opinion it is not possible state with certainty that it was a scar, nor is it possible to exclude that it was a scar."

Dr Tee has expressed agreement to Dr Thornton's further observation that the reddening to the child's penis was within normal limits.

12. On 14 February 2020 it was confirmed by the police that no further action would be pursued against the father. The intervenors have never been subject to any police investigation resulting from the T's alleged statements to the mother relating to them.

13. Within the foregoing context, the local authority seeks findings that the allegations said to by the mother to have been made by T in relation to the father engaging in, and facilitating acts of sexual abuse are untrue and that they are the result of either (i) the mother having developed an unreasonable and false belief that T was sexually abused by the father, or (ii) the mother deliberately fabricating false allegations of sexual abuse and inducing T to make false allegations of sexual abuse against the father. No findings of sexual abuse are sought in the by the local authority in the alternative, either against the father or the intervenors, the local authority contending that, on a neutral and objective analysis of the available evidence, it is simply not possible to making findings on the balance of probabilities that the sexual abuse said to have been alleged by T took place.

14. Within this context, and in opposition to the case against her, the mother herself seeks findings in this case that T has been sexually abused by the father and by the intervenors in the manner she states T has alleged to her and in the limited statements made by T to the social worker and to the police in his second ABE interview. To this end, the mother has filed and served a 'Scott Schedule' of findings sought against the father and the intervenors.

15. At the last hearing, and having examined the documentary evidence, this court engaged in a detailed review of the 'Scott Schedule' provided by the mother. This was necessary due to the schedule in its original format being unclear as to what positive findings were being sought against the various intervenors in the case, in addition to the need to clarify the precise nature and ambit of the findings sought against the father. The court was able thereby to crystallise the mother's position at the last hearing and a finalised schedule of findings was produced at the hearing that pleaded specific facts against the father and against the intervenors, with which schedule the intervenors were served.

16. The father denies all allegations that T has been sexually abused in his care, including by way of being exposed to sexual activity between others or to pornographic material. Likewise, as I have noted, those intervenors before the court deny the allegations of sexual abuse made against them by the mother.

17. These proceedings have been the subject of considerable delay. In particular, the impact of the Covid-19 pandemic has caused further delay to what were already protracted proceedings. It is now 14 months since care proceedings were issued and eight months since the finding of fact hearing was first due to be heard. A further finding of fact hearing listed in May 2020 had to be adjourned as a result of the Covid-19 pandemic. The current situation is that T does not wish to see his father and there has been no contact between them since September 2018, save for some items of indirect contact that have passed from father to T via the social worker. T has, accordingly, not seen his father for two years, a significant proportion of his life.

SUBMISSIONS

The Local Authority

18. The local authority submits that each of the intervenors should now be discharged, it being neither necessary nor proportionate for the court to determine the allegations of sexual abuse that the mother makes against them. The local authority submits that an objective analysis of the available evidence leads inevitably to the result that the court could not make findings of sexual abuse against the intervenors to the requisite standard of proof. The local authority submits that the evidential deficiencies are numerous and include the repeated failure to adhere to the ABE guidelines during ABE interviews, the timing of the allegations in relation to issues regarding contact, the evidence produced by the mother in the form of recordings of the allegations, in which numerous leading questions are asked of T, and the seemingly bizarre nature of some of the allegations themselves.

19. If the court determines that it is not necessary or proportionate to determine the findings sought by the mother against the intervenors and discharges them as intervenors, Ms Bundred indicated that the mother will still seek to have those persons appear as witnesses before the court and to challenge their denials in support of her case that the local authority's findings are not made out. In the circumstances, an additional issue arises as to whether this justifies continuing intervener status. With respect to that question, on behalf of the local authority Mr Jones submits that the local authority will be actively advancing a case pursuant to its schedule of findings and, thus, the local authority's case will be supportive of the position of each of the intervenors, namely that either (i) the mother has developed an unreasonable and false belief that T was sexually abused by the father, or (ii) the mother has deliberately fabricating false allegations of sexual abuse and inducing T to make false allegations of sexual abuse against the father. Accordingly, Mr Jones submits that the local authority's case is, in effect, identical to that of the intervenors and that the local authority will challenge any assertions made by the mother regarding the intervenor's denials by way of testing the evidence through cross examination and by way of submissions. Mr Jones further points out that this position is mirrored by the father, who will in effect, likewise be advancing the same case.

20. Within this context, Mr Jones submits that, particularly when considering the paucity of the evidence against the intervenors, the rights of each of the intervenors can be sufficiently protected in this case without them having to be maintained as intervenors putting forward individual cases, even in circumstances where the mother seeks to put allegations to them as witnesses.

21. Each of the foregoing submissions by the local authority was adopted by Ms Lau on behalf of PR and by Mr Ibrahim on behalf of JJ. Each was content that their clients' respective rights would be protected in circumstances where their respective cases are mirrored by the case of the local authority and the father.

The Mother

22. The mother now concedes that, save in respect of NN, she is the only person to whom J has made allegations in relation to the persons who are now intervenors in this case. Ms Bundred further, and sensibly, accepted on behalf of the mother that there is no other evidence corroborating the allegations said to have been made against any of those intervenors. Whilst stopping short of expressly conceding that it is not necessary and proportionate for the court to determine the findings in respect of those intervenors, Ms Bundred made clear that were they to be discharged as intervenors by the court the mother would still seek to put certain matters to them in support of her case as witnesses.

23. Ms Bundred further sought to draw a distinction with respect to NN. Ms Bundred submitted that that distinction lies in the fact that NN is, at points, referenced by T during the course of one of his ABE interviews. Ms Bundred submitted that T made allegations against RN from an early stage in the criminal investigation and has since expanded and repeated them. Against this however, during her oral submissions Ms Bundred reasonably conceded that at no point has T made a direct allegation of sexual abuse against NN to anyone other than the mother, that certain of T's statements during the course of the ABE interview are contradictory and that certain of his descriptions involve the use of dolls without an accompanying clear narrative of sexual abuse. As I have also noted, the local authority and the Children's Guardian submit that an objective assessment of the ABE interviews demonstrates numerous and repeated breaches of the ABE guidance. Ms Bundred did not, in her submissions, seek to gainsay that assertion.

24. Within this context, Ms Bundred accepted on behalf of the mother, again reasonably, that it is unlikely that the evidential result of the court examining the material relating to NN will be a finding on the balance of probabilities that NN sexually abused T, that he subjected T to and/or exposed him to inappropriate and/or abusive behaviour and/or to inappropriate materials, including sexual and violent conduct and that he sexually abused others in T's presence. Again, whilst stopping short of conceding that it is not necessary or proportionate for the court to determine the findings sought by the mother against NN, as I have noted Ms Bundred made clear that the mother would still seek to put certain matters to NN in support of her case were he to be discharged as an intervenor.

The Father

25. The father submits that it is unnecessary and disproportionate for the court to determine the findings sought by the mother against the intervenors and that, accordingly, it is not necessary for them to continue to be intervenors in these proceedings. Within this context, on behalf of the father Ms Whiteley adopted the submissions made by the local authority.

The Children's Guardian

26. On behalf of the Children's Guardian, Mr Gilmore likewise adopted the submissions of the local authority. Mr Gilmore further submitted that, having carried out a neutral evaluation the ABE interview, the Children's Guardian is clear that the ABE interview of T failed to comply with the requisite guidance. Mr Gilmore points to the fact that, on his submission, these were clearly a difficult interviews with a young child who at times appeared disinterested in the questions asked and that this led to an increasing number suggestive and at times openly leading questions. Mr Gilmore further submits that it is plain that the allegations made are lacking in any sufficient detail in terms of timing, date, nature and location.

THE LAW

27. In *Re W (Care Proceedings: Functions of Court and Local Authority)* [2014] 2 FLR 431 Ryder LJ (as he then was) observed as follows:

> "[72] ... It is the court which decides what the key issues are, that is the matters of disputed fact and opinion that it is necessary to determine in order to make the ultimate decision asked of the court."

28. Where the decision for the court, when identifying the issues, is whether or not to determine a disputed finding of fact the courts have continued to apply the approach set out by McFarlane J (as he then was) in the seminal decision of *A County Council v DP, RS, BS (By the Children's Guardian)* [2005] 2 FLR 1031. In that case McFarlane J held that, when deciding whether to order a fact-finding hearing in care proceedings, the following factors (which, as I observed in *A Local Authority v X, Y and Z (Permission to Withdraw)* [2018] 2 FLR 1121, in their totality embody the concepts of both necessity and proportionality) fall to be considered:

> "[24] The authorities make it plain that, amongst other factors, the following are likely to be relevant and need to be borne in mind before deciding whether or not to conduct a particular fact finding exercise: (a) the interests of the child (which are relevant but not paramount); (b) the time that the investigation will take; (c) the likely cost to public funds; (d) the evidential result; (e) the necessity or otherwise of the investigation; (f) the relevance of the potential result of the investigation to the future care plans for the child; (g) the impact of any fact finding process upon the other parties; (h) the prospects of a fair trial on the issue; (i) the justice of the case."

29. In *Re F-H (Dispensing With Fact-Finding Hearing)* [2008] EWCA Civ 1249, [2009] 1 FLR 349 Court of Appeal endorsed this approach as being the correct analytical

framework where the court is deciding whether to determine a disputed finding or findings of fact:

> "[26] There is no doubt that in family proceedings the court has a discretion whether to hear evidence in relation to disputed matters of fact with a view to determining them. In *A County Council v DP and Others* [2005] EWHC 1593, [2005] 2 FLR 1031, McFarlane J, at para [24], helpfully identified, by reference to previous authorities, nine matters which the court should bear in mind before deciding whether to conduct a particular fact-finding exercise."

30. As I have noted above, if they are discharged as intervenors, Ms Bundred makes clear that the mother will still seek to have those persons appear as witnesses before the court in support of her case, namely that the local authority cannot demonstrate on the balance of probabilities that either (i) the mother has developed an unreasonable and false belief that T was sexually abused by the father, or (ii) the mother deliberately fabricated false allegations of sexual abuse and inducing T to make false allegations of sexual abuse against the father. In the circumstances, an additional question for the court (or, alternatively, part of the examination of the justice of the case within the framework provided by *A County Council v DP*) is whether a person appearing as a witness in public law proceedings who will face allegations being put to him or her during the course of the hearing, but against whom findings are not sought, justifies maintaining their intervener status. With respect to this question the following legal principles are relevant.

31. It has been long established that it may be appropriate to give a person leave to intervene in proceedings for a specific purpose (see *Re S (Care: Residence: Intervener)* [1997] 1 FLR 497 CA). In the context of a case that involved allegations of sexual abuse, the Court of Appeal in *Re H (Care Proceedings: Sexual Abuse)* [2000] 2 FLR 499 held that where specific allegations of sexual abuse are made in care proceedings against a non-party and brought before the court by the local authority for trial as a preliminary issue, it is vital that that person's evidence is before the court at that stage, even if he or she is unlikely to have party status at the substantive hearing, Lord Justice Thorpe observing:

> "[31] If there is any generalisation to be drawn from an investigation of the history of this case, it seems to me to be this. Local authorities bringing a specific allegation of sexual abuse against a named individual for trial at a preliminary issue must at the very least apply to the court to consider whether that individual should be joined, even if he is unlikely to have party status at the substantive hearing, when welfare considerations will predominate and long-term will be decisions taken as to the future of the children. This case seems to me to demonstrate a general proposition that unless the accused adult deliberately absents himself from the proceedings, thereby inviting condemnation, it is vital that his evidence should be before the court. Unless he is made a party, that is left to the discretion of the other parties marshalling their cases. Unless he is a party, he will not be sufficiently represented and protected during the forensic process. Unless he is a party, he will not be joined in the collection of essential expert evidence."

32. However, with respect to non-parties against whom specific allegations of sexual abuse are made, it is important to note that the same year, in *Re H (Care Proceedings: Intervener)* [2000] 1 FLR 775, the Court of Appeal made clear that there is no *right* for non-parties against whom allegations are being made by a local authority in public law proceedings to intervene. In that case Butler-Sloss P made clear that each case has to be looked at on its own merits and that the court has to identify the particular reason why it is *necessary* for a person to intervene. Within this context, there are a number of examples in the authorities where intervener status has not been considered necessary notwithstanding allegations may be made against the person in question during the course of proceedings.

33. In *Re H (Care Proceedings: Intervener)*, the Court of Appeal allowed an appeal against a decision to accord a non-subject sibling intervener status where the proposed intervener was a witness in the proceedings against whom an allegation of perverting the course of justice was to be put, and who was at risk of being prosecuted for conspiracy. In *Re BJ (Care: Third Party Intervention)* [1999] Fam Law 613 the Court of Appeal upheld the judge's ruling refusing to allow a non-subject 12-year-old boy to intervene in care proceedings relating to his nephew where allegations of sexual misconduct had been made against that 12-year-old child and, where, accordingly, he was at risk of findings being made. In *T (Children)* [2011] EWCA Civ 1818 consideration was given by the Court of Appeal to how the evidence of a former intervenor would have to be treated if he was no longer an intervenor but his alleged conduct was nonetheless relied on by one party and disputed by another within the context of public law proceedings. At [26] and [27] Ward LJ observed as follows with respect to the effect of hearing former intervenor, identified in the case as DH, as a witness rather than as an intervenor, pursuant to the decision of the judge under appeal:

> "As things stand at the moment, it would be for the judge to judge the credibility of this boy. He may be able to say "I am not satisfied by him, therefore I cannot be satisfied that the complaint against the father is made out." That is the end of it. He can, of course, come to a conclusion that, having heard DH, he is quite satisfied that DH has in fact abused KE and N and, although he said he is not intending to make findings, he may be driven not to make findings in the care proceedings as such, but to explain his judgment by expressing his conviction in that way. In any event, he, the judge, will deal with this on the disposal. He will have seen four weeks of this case. He will know full well how much weight to place upon the various factors and how important it is in the life of these five children whether or not this boy has done what is alleged against him."

34. Also relevant to the question of whether it is appropriate to accord a person intervener status in proceedings will be the provisions of the overriding objective in FPR 2010 r 1.1. The overriding objective requires the court, when making case management decisions, to have regard to the need to ensure that the case is dealt with expeditiously and fairly, dealt with in a way that is proportionate to the nature, importance and complexity of the issues, in a way that ensures the parties are on an equal footing, in a way that saves expense and in a way that allots to the case an appropriate share of resources, whilst taking into account the need to allot resources to other cases. In this

context, I note that in *Re H (Care Proceedings: Intervener)* Butler-Sloss P observed as follows at [12]:

> "Another element is this. These are of course ... proceedings which are largely, if not entirely, funded by the state, one way or another, either through the local authority, both ratepayers and state money. Both the parents, who are separately represented for care proceedings, and if this girl is allowed to intervene, D, will no doubt be represented on legal aid. There will be, inevitably, a proliferation of documents because, although it is suggested they should be edited and she might not get all the documents in the case, since she is crucial to the case she would have to have all the documents which concerned her. I would have little doubt that they would be at least half, if not the majority of the documents in the case. Of course, her counsel would have to have the right to examine his client in chief and to cross-examine every other witness in the proceedings. No doubt he would exercise the restraint that counsel always do, but he would have the right, where relevant, to deal with these matters in some detail. This would be an increase of the expense of these proceedings which is a relevant factor, even when one is urged (as we are in this court) to uphold the judge, whose primary task was looking at the welfare of this not yet 18-year-old girl."

35. Within this context, and having regard to the pressures currently placed on the family justice system by the COVID-19 pandemic, I must also bear in mind paragraph 46 of the President's Guidance entitled '*The Family Court and COVID 19 – The Road Ahead*', which makes clear as follows:

> "[46] Parties will not be allowed to litigate every issue and present extensive oral evidence or oral submissions; an oral hearing will encompass only that which is necessary to determine the application before the court."

36. Finally, two further matters must be borne in mind when considering whether a person appearing as a witness in public law proceedings who will face allegations being put to him or her during the course of the hearing, but against whom findings are not sought, nonetheless requires intervenor status.

37. First, where the allegations concern conduct that is criminal, the question of self-incrimination. The privilege against self-incrimination is a common law privilege. At common law, no person is bound to answer any question in civil proceedings where the answer may tend to expose them to any criminal charge or penalty or forfeiture which the judge regards as reasonably likely to be preferred or sued for (*Blunt v Park Lane Hotel* [1942] 2 KB 253 at 257). However, this common law rule can be qualified by statute. Within the context of these public law proceedings, the common law privilege against self-incrimination is qualified by the Children Act 1989 s 98. The protection afforded by s 98 of the Children Act 1989 is not absolute as s 98 does not prevent the use of a statement or admission made in proceedings under Part IV or V of the Children Act 1989 from being used in a criminal investigation. In *Re EC (Disclosure of Material)* [1996] 2 FLR 725 the Court of Appeal held that transcripts of an admission made by the father when giving evidence could be disclosed to the police, who would then be free to use the transcript in interview. The admissibility of

the contents of the interview would then be, ultimately, a matter for the trial judge in the criminal proceedings.

38. Second, in general, the answers of an opponent's witness on matters of credit or other collateral matters will be treated as conclusive and may not be contradicted by calling other evidence (see *Harris v Tippett* (1811) 2 Camp. 637 and also *Palmer v Trower* (1852) 8 Exch. 247). However, this rule is not absolute. More importantly in this case, the reliability of a witnesses' denial of sexual abuse is not a matter going simply to the credit of that witness, nor a collateral matter in circumstances where the issue to be tried is whether (i) the mother developed an unreasonable and false belief that T was sexually abused by the father, or (ii) the mother deliberately fabricated false allegations of sexual abuse and induced T to make false allegations of sexual abuse against the father. In the circumstances, the mother would not be bound simply to accept the denial of the witness and could seek to contradict the denial with other evidence, *if* such evidence exists.

DISCUSSION

39. Having considered carefully the submissions made by the parties on the case management decision that is before the court today, I am satisfied that it is not necessary or proportionate for the court to determine the findings of fact sought by the mother against the intervenors in this case. Within this context, I am further satisfied that it is appropriate to discharge each of the current intervenors as intervenors in these proceedings. My reasons for so deciding are as follows.

40. There is no suggestion in this case that it is not possible to have a fair trial on each of the disputed findings sought by the mother against the intervenors. Further, it is plainly in T's best interests for decisions regarding his future welfare to rest on a clear and reliable factual foundation. Within this context, it is important that those facts that constitute that foundation are determined where those facts are in dispute.

41. Within the context of the task for this court of determining whether the threshold are met in these public law proceedings pursuant to s 31(2) of the Children Act 1989 and, if so, whether the care plan advanced by the local authority is in T's best interests, the *key* factual issue before the court is whether, as contended for by the applicant local authority on whom the burden of proof rests, the mother has developed and irrational belief that the father has sexually abused T or has fabricated the allegation by T that he has done so or, as contended for by the mother, the father has in fact sexually abused T. Whilst the additional findings sought by the mother against the intervenors are not entirely without significance in this context, it is not in my judgment *necessary* to determine those findings in addition to the central issue of fact before the court in order to come to an properly considered view on the question of threshold and, if the threshold is met, the question of T's future welfare. This is particularly so in circumstances where, none of the intervenors seek the care of, or contact with T and therefore the relevance of the potential result of the investigation into the allegations against the current intervenors to the future care plans for the child is marginal from the perspective of determining T's welfare. In addition, having regard to the pressures currently placed on the family justice system by the COVID-19 pandemic, I am also mindful of the clear injunction at paragraph 46 of the President's Guidance entitled '*The Family Court and COVID 19 – The Road Ahead*' that parties will not be allowed to litigate every issue and present extensive oral evidence or oral

submissions and that an oral hearing will encompass only that which is necessary to determine the application before the court.

42. In any event, even were I to have concluded in this case that it was necessary to determine the findings sought by the mother against the intervenors, or some of them, and that that determination would potentially inform the future care plan for T, the court cannot avoid the forensic difficulties in that course of action when looking, as it must, at the likely evidential result of proceeding in that manner.

43. In the context of the findings set out in the revised 'Scott Schedule', and as I have noted, Ms Bundred conceded in her oral submissions that with respect to all the intervenors save for NN, the mother is the only person to whom T has made allegedly allegations in relation to the persons who are now intervenors in this case and that there is no other evidence corroborating these allegations, the medical evidence being, on the face of it, equivocal. Further, with respect to NN, Ms Bundred also realistically conceded that, whilst mentioned by him in one of his ABE interviews, T made no direct allegations either to the social worker. As I have noted, whilst it is the case that T mentioned RN during the course of one of the ABE interviews, Ms Bundred further conceded that at no point does T make a direct allegation of sexual abuse against NN, that certain of T's statements during the course of the ABE interview are contradictory and certain of his descriptions involve the use of dolls without a clear narrative of sexual abuse.

44. In addition to these matters, and whilst at this stage I reach no definitive conclusions as to the quality of the investigation of the ABE interviews of T, it is appropriate to note for the purposes of the case management decision I am tasked with making that both the local authority and the Children's Guardian submit that an objective assessment of the ABE interviews demonstrates numerous and repeated breaches of the ABE guidance *and* that Ms Bundred did not seek to gainsay that assertion during the course of her own submissions.

45. Within the foregoing context, the court is faced with a situation where, beyond he allegedly having made statements to his mother, T has not directly alleged sexual abuse against *any* of the intervenors to any other person. There is no cogent evidence to corroborate the allegations that he is said to have made to his mother. Those asserted allegations are lacking any specificity in terms of detail, date, time and location. Where other children feature in the allegations, those children are not named. Further, those allegations made by T in his ABE interview fall to be considered in the context of contended for repeated failures to adhere to the ABE guidelines during ABE interviews. In addition, on the face of the papers before the court, there are additional forensic issues concerning the timing of the allegations against the intervenors, the approach of the mother to the allegations made by T against the intervenors and the nature of some of those allegations themselves.

46. Taking each of the foregoing matters into account, it is very difficult to see how the evidential result of determining the findings of sexual abuse made by the mother against the intervenors could be anything other than that those findings cannot be proved to the requisite standard of proof.

47. In addition to these matters, whilst where there is in respect of all intervenors save for NN a complete absence of corroborating evidence, and in respect of NN a paucity of

such corroborating evidence, I must also bear in mind that it is nonetheless the case that the addition of seven intervenors to the finding of fact hearing will lengthen the time estimate for that hearing and, particularly within the context of the current public health emergency, accordingly lengthen the time before the court can accommodate a hearing of sufficient length. I must also have regard in this context to the inordinate delay that these proceedings have already suffered as a result of the aforementioned public health emergency.

48. In addition to the further delay, the cost to the public purse of seven intervenors participating in a finding of fact hearing is not inconsiderable. That cost arises not only out of legal aid for the respective intervenors (if they are entitled to the same on a means tested and merits tested basis) but also in terms of the use of court resources. In addition, the continued intervention of the current intervenors would result in a further proliferation of documentation in this matter.

49. Finally I have considered whether, in circumstances where Ms Bundred has made clear that the current intervenors will be required by the mother to attend as witnesses and will face allegations being put to them in support of her case that the local authority has not made out the findings its seeks on the balance of probabilities, the justice of the case requires their intervener status to be maintained notwithstanding the matters I have set out above. I conclude that it does not.

50. In these public law proceedings, no findings are sought against the intervenors by the local authority which brings the proceedings. Accordingly, this is not a case in which the court is being asked in public law proceedings to determine on the balance of probabilities a specific allegation of sexual abuse made against a non-party by a local authority and brought before the court for trial as a preliminary issue. Rather, in this case the local authority, upon whom the burden of proving the findings its seeks rests, simply points to the denials of sexual abuse maintained by the current intervenors as supportive of a finding that either (i) the mother developed an unreasonable and false belief that T was sexually abused by the father, or (ii) the mother deliberately fabricated false allegations of sexual abuse and induced T to make false allegations of sexual abuse against the father.

51. Further, and the for the reasons I have set out above, this court has determined that it is neither necessary nor proportionate to determine the findings sought by the mother against the current intervenors. Within this context, the mother now seeks to examine as witnesses the current intervenors in support of her own case that she has not developed an unreasonable and false belief that T was sexually abused by the father and/or has not deliberately fabricated false allegations of sexual abuse and induced T to make false allegations of sexual abuse against the father.

52. Within this context, insofar as the local authority seeks to point to the denials of the current intervenors as supportive of its case and the mother seeks to challenge the credibility of those firm denials in support of her case (which challenge will be necessarily circumscribed by the fact that there is no cogent evidence to gainsay those firmly maintained denials), the task of the court will be to assess whether the evidence of those now witnesses is sufficiently credible to support the findings sought by the local authority or sufficiently lacking in credibility to be capable of lending support to the case run by the mother. Whilst I accept that, in challenging the credibility of a given witness's denial, the mother will be entitled to put to the witness that their

denial is false and should not be believed, and that the implication contained in within that challenge is that T is telling the truth about what it is said he has alleged, the judgment of the court on the question of the reliability or otherwise of the denials maintained by the witnesses in question does not amount to a finding of fact on the balance of probabilities. Rather, in the current context, it amounts simply to an assessment of the reliability of the evidence before the court within the overall exercise of determining whether the *local authority* has, or has not discharged the burden of proving its case to the requisite standard.

53. Further, and as Mr Jones comprehensively articulated during the course of his submissions, in this case the denial by the current intervenors of any inappropriate behaviour with T or any other child is co-terminus with the case of the local authority, and indeed the father. In these particular circumstances, I am satisfied that the rights of each of the intervenors can be sufficiently protected in this case without them having to be maintained as intervenors putting forward individual cases, even in circumstances where the mother seeks to put allegations to them in the witness box. I am reinforced in this view by the fact that, at all times when giving evidence the witnesses will have the protection of s 98 of the Children Act 1989. Any statement or admission made by the witnesses in the course of giving evidence in these proceedings will not be admissible in evidence against that witness or his or her spouse or civil partner in proceedings for a criminal offence other than perjury. Whilst I accept that the protection afforded by s 98 of the Children Act 1989 is not absolute, prior to giving their evidence each of the witnesses can be given the relevant warning by the court. Further, in the unlikely event of an application by the police or CPS for a transcript of the evidence of the relevant witnesses, this court retains a discretion whether to permit the disclosure of such material to the police or CPS. Whilst it would not be appropriate to pre-judge any such application, were such an application to be made, then amongst the factors the court would have to take into account would be the fact that no findings were sought against the witnesses in question before this court, that the conclusions reached by the court regarding the witnesses' evidence do not amount to formal findings made by the court on the balance of probabilities and that, in appearing before the court the witnesses were just that, witnesses, and not interveners and represented before the court by a legal team. In addition, during the course of their evidence, the court will, of course, remain vigilant to ensure that the proceedings remain fair for the witnesses who are required to give evidence. In particular, the court can intervene if the counsel for the mother strays into areas of cross examination that are not appropriate having regard to the evidence before the court.

54. Finally, having regard to the factors set out in FPR 2010 r 1.1, whilst the overriding objective rightly balances against matters of time and expense the need to ensure that the court deals with proceedings fairly, for the reasons I have given, I am satisfied that the current intervenors can be dealt with fairly as witnesses without the need to maintain their intervenor status.

CONCLUSION

55. When determining whether or not it is necessary and proportionate to determine a given finding or findings, the court applies the analytical framework set out by McFarlane J (as he then was) in *A Local Authority v DP*. When considering whether to accord a person intervener status on a specific issue within proceedings, each case

has to be looked at on its own merits and the court has to identify the particular reason why it is necessary for a person to intervene or to remain an intervenor.

56. As I announced at the conclusion of the hearing yesterday and for the reasons set out herein, applying these principles I am satisfied that it is not necessary or proportionate for the court to determine the findings of fact sought by the mother against the intervenors in this case. Within this context, I am further satisfied that it is appropriate to discharge each of the current intervenors as intervenors in these proceedings.

57. In the circumstances I direct that the intervenors shall be discharged as intervenors in these proceedings. I further direct that at the finding of fact hearing the court will determine *only* those findings set out at Paragraphs 1., 1a., 1b., 1c., 1d., 2., 2a., 3., 4., 5. and 6 of the final version of the Scott Schedule. I invite counsel to submit a draft order accordingly, to include the other case management directions made by the court at the conclusion of yesterday's Case Management Hearing.

58. That is my judgment.