Neutral Citation Number: [2024] EWFC 48

Case No: ZC22C50508

IN THE FAMILY COURT
SITTING AT THE ROYAL COURTS OF JUSTICE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/03/2024

Before :

MR JUSTICE MACDONALD

- -

Between:

ROYAL BOROUGH OF KENSINGTON AND CHELSEA

Applicant

-and-

NM

First Respondent

-and-

PR

Second Respondent

-and-

AB

Third Respondent

-and-

CD AND EF
(By their Children's Guardian)

Fourth and Fifth Respondents

- -
- -

Mr Nicholas Goodwin KC and Mr James Norman (instructed by **Bi-Borough Legal Services, Kensington & Chelsea Council**) for the **Applicant**
Ms Martha Gray (instructed by **Dawson Cornell LLP**) for the **First Respondent**
Mr Richard Anelay KC and Ms Helen Compton (instructed by **Freemans**) for the **Second Respondent**
Mr Mark Twomey KC and Dr Bianca Jackson (instructed by **TV Edwards**) for the **Third Respondent**

Ms Laura Bumpus (instructed by **Miles & Partners Solicitors**) for the **Fourth and Fifth Respondents**

Hearing date: 5 March 2024

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Approved Judgment

This judgment was handed down remotely at 3.45pm on 7 March 2024 by circulation to the parties or their representatives by e-mail.

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MR JUSTICE MACDONALD

This judgment was delivered in private. The Judge has given permission for this anonymised version of the judgment (and any of the facts and matters contained in it) to be published on condition always that the names and the addresses of the parties and the children must not be published. For the avoidance of doubt, the strict prohibition on publishing the names and addresses of the parties and the children will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court.

Mr Justice MacDonald:

INTRODUCTION

1. These proceedings concern AB, born in January 2008 and now aged 16, CD, born in October 2013 and now aged 10 and EF, born in July 2017 and now aged 6. AB is currently placed at a residential children's home. She is separately represented in these proceedings by Mr Twomey of King's Counsel and Dr Bianca Jackson of counsel. CD and EF are placed together in foster care. They are represented through their Children's Guardian by Ms Laura Bumpus of counsel. The mother of the children is NM (hereafter 'the mother') represented by Ms Martha Gray of counsel. The father of the children is PR (hereafter 'the father'). He is represented by Mr Aneley of King's Counsel and Ms Helen Compton of counsel. The proceedings are brought by The Royal Borough of Kensington and Chelsea (hereafter 'the local authority) represented by Mr Nicholas Goodwin of King's Counsel and Mr James Norman of counsel.

2. At this hearing, I am concerned with a difficult case management decision regarding the proper ambit of the finding of fact exercise in this case. The proceedings are currently listed for a combined hearing in six days' time on 11 March 2024 before HHJ Cox with a time-estimate of 13 days. HHJ Cox has held a *Re W* hearing in the proceedings and determined that AB will give evidence. AB currently expects that to happen on the second day of the final hearing. Given the nature of the case management decision that falls now to be made at this late stage in the case, the proceedings have been reallocated to me for the purpose of considering that case management issue.

3. The case management issue before this court is whether the court should engage in a fact finding exercise with respect to allegations made by the mother against the former allocated social worker, WR, and two residential workers, TT and KS, arising out of an email sent to the mother on 14 November 2023 by the residential placement in which AB then resided, the details of which I will come to below. In short, the mother contends that the email demonstrates that the social worker colluded with one or other or both of two residential workers to elicit negative evidence from the placement and to achieve the deletion of records regarding the case. The mother has filed and served a schedule of findings in respect of that issue and contends that the court should now undertake a finding of fact exercise to determine the same. The local authority and the Children's Guardian contend that, applying the principles set out in *Oxfordshire CC v DP, RS and BS* [2005] 2 FLR 1031 and *Re H-D-H (Children)* [2021] EWCA Civ 1192, a finding of fact exercise is not necessary or proportionate. The father and AB are formally neutral on the issue, although both Mr Anelay and Mr Twomey made short submissions on factors specific to their respective clients that may inform the court's decision.

4. In circumstances where I have determined, by reference to the factors set out in *Oxfordshire CC v DP, RS and BS* and *Re H-D-H (Children)*, that it is not necessary or proportionate for the court to engage in a fact finding exercise with respect to allegations made by the mother arising out of an email sent to her on 14 November 2023, this matter will remain listed before HHJ Cox for the final hearing due to commence on 11 March 2024.

BACKGROUND AND EVIDENCE

5. The parents married in 2010 and separated in 2019. The mother alleges that the father was physically violent towards her during their relationship and the father likewise alleges domestic abuse by the mother. Following the separation, the children lived with the mother. In November 2019, the mother left the children with the father to attend a family funeral. The mother accepts a subsequent finding made by the court in previous proceedings that this was done without proper preparation, leaving the children confused and distressed.

6. On 22 June 2020, the local authority issued care proceedings. At the conclusion of these previous care proceedings on 19 March 2021, HHJ Wright found that the children had suffered emotional harm due to exposure to the parents' long-term and ongoing conflict and by reason of the mother's poor decision-making and impulsivity. HHJ Wright was not invited to make further findings in relation to domestic abuse or coaching by either parent and did not do so. HHJ Wright determined that all three children should live with the father and spend reasonable time with the mother.

7. During the course of the first set of care proceedings, there were reports on two occasions of the mother apparently encouraging AB to make false allegations about the father. On an unannounced home visit on 28 April 2020, AB reported that her mother told AB that an injury to AB's ear had been caused by her father, notwithstanding that AB had reported that it had been caused by EF and the mother was not present at the time. On 18 May 2020 the mother is recorded as having contacted the Emergency Duty Team to report that the father had hit AB, causing a bruise to her arm. When AB and CD were spoken to during the welfare visit undertaken in consequence of the mother's referral, CD reported that she often scratched herself and that the mother had told her "if you say your father has done this then you can come and live with me". Both CD and AB reported that they felt sad about lying regarding their father and were happy living with him. On 29 May 2020, the mother reported to the Team Manager that all three children have arrived at contact with scratching and bruising and sent photos. The mother stated that AB had said that EF caused her scratches, CD has caused the ones on EF and CD would not say who had caused her bruises.

8. In February 2021, subsequent to the incidents described in the foregoing paragraph, WR became the allocated social worker for the children.

9. On 25 October 2021, the mother emailed Children's Services stating that AB had a bruise on her wrist, which AB had told her aunt had been inflicted by the father. WR visited AB on the morning of 25 October 2021. AB denied that her father had caused the injury and reported that she had had a fight at school with another pupil on 20 October 2021. AB told WR that she had informed her mother four times about this but that her mother had not believed her and, in the end, AB had just agreed with her. AB asked WR not to say anything to her mother, who she said would be angry if AB contradicted her. AB reported that CD wished to live with the mother and that CD had told her mother that it was the father who injured AB's wrist.

10. AB was taken to the Emergency Department on the evening of 25 October 2021 by the mother. At the hospital AB reported that her father had twisted her right arm, hurting her wrist and had done so on four other occasions. She stated that a bruise to her leg had been caused by her father hitting her with a wooden spoon and that her father had called her "a disappointment". AB reported to WR later that she had told a female doctor about the incident at school but that the first doctor and her mother had said the injuries had been caused by her father.

11. On 28 October 2021, WR again spoke to AB on her own and AB repeated her claim that her wrist had been hurt at school, demonstrating how this occurred. However, AB then also said that her father had grabbed her wrist on 18 October 2021 in order to stop her hitting her sister. She described this as "not hard" and being the same as when teachers prevent pupils from hitting other students. AB said she did not know how she got her bruise to the leg. AB claimed to WR that her mother and a doctor told her the injury was caused by a spoon. A day later, on 29 October 2021, AB telephoned WR and stated that her father had twisted her wrist, hit her with a wooden spoon and that the doctor had told her it was not safe for her to return to her father's care. WR considered that AB was being prompted by people in the background.

12. On 1 November 2021, AB informed a pastoral support teacher that her father had twisted her wrist, that her father always did such things and blackmailed her to say she wanted to live with him when she really wants to live with her mother. AB alleged that her father called her and shouted at her and threatened her. When WR visited AB at school on 1 November 2021, AB repeated those allegations and further alleged that her father punched, kicked and hit her, attacked her with a plank of wood, locked her in the bathroom, attacked CD following an incident with a tablet, punched her and gave her a black eye and hit her head with a metal spoon. WR was informed by school staff that AB's aunt was listening to the conversation on AB's phone and that AB was speaking to someone on the phone when she went to the toilet. It is contended by the local authority that at an interview with WR and a police officer on 8 November 2021, AB and CD retracted their allegations, although a recently received CRIS report does not bear this out.

13. At the child protection medical on 12 November 2021, AB was asked by the paediatrician about the incident leading to the bruise to her wrist and stated that at school a boy called G had slammed the table on her wrist on the 15 October at around 2.45 or 2.50pm, causing the bruise. She stated that the teachers were aware and gave her an ice pack. AB stated that she said the bruise had been caused by her father because she wanted to stay with her mother. AB reported that there have been no previous incidents of being hurt physically by her father.

14. On 24 December 2021, WR and her Team Manager completed a s.47 report which concluded that the allegations against the father had not been substantiated but raised concerns about the risk of emotional harm, and possibly neglect, arising whilst the children were in the care of the mother.

15. Following the completion of the s.47 report, family therapy sessions were commenced with an FCS therapist and WR. On 26 May 2022, a report was prepared by the therapist. That report recorded that during the family therapy work CD provided a detailed explanation of the way in which she and AB were coached by the mother and two of their maternal aunts to make false allegations of physical abuse against the

father. The therapist reported that this account appeared to provide AB with reassurance to join CD in providing this narrative.

16. In June 2022, the local authority provided a report pursuant to s.7 of the Children Act 1989 within private law proceedings that had been commenced by the mother. The court made a child arrangements order providing that the mother spend time with the child for three hours per month, not to include the wider maternal family. The rationale for the recommendation with respect to contact contained in the s.7 report was the mother's "capacity to persuade the children to fabricate allegations of physical abuse."

17. On 13 November 2022, the police were called to the father's home following a report of physical abuse. Police officers attended the address following a call to police reporting that the "crying of children" was coming from the property. The anonymous informant making the report believed that this was a result of the children at the address having been beaten. A further call was received by a friend of AB's, who reported AB had sent them a voice note of their father beating her. The friend added that AB had previously shown them bruising from being beaten by her father. The Emergency Duty Team were alerted by the police to an incident occurring at the father's home.

18. The father initially refused entry to the police officers. When police officers gained entry both CD and EF were sleeping. When police officers attempted to check on AB, it is said that the father stood in the doorway of AB's bedroom to prevent access and that officers then observed AB shout over her father's shoulder "help me". The police considered that the father appeared aggressive and agitated. AB told the police that her father had punched her on her arm and hit her in the face several times and that her father had hit her numerous times throughout the day and had previously strangled her and beat her on the legs with a crutch. AB showed police officers bruising to her legs and marks to her left upper arm. The father was arrested on suspicion of assault and taken into police custody. The police placed the children under their protection. The children were thereafter first placed with a maternal aunt before being placed in foster care. The father has admitted slapping EF on 14 November 2022 but denies physically assaulting AB.

19. On 14 November 2022, it was reported to a Multi-Agency Strategy Meeting that CD had spoken to teachers at school and retracted her allegations and stated she had been encouraged to make them by her maternal aunts. She stated that her aunts had attended Aunt T's house on the evening of the incident and that her aunts were "trying to make her say something about daddy" and had told EF that "he wants to stay with his aunts, not daddy". CD was concerned she would not be safe if her maternal aunts were to discover what she had said to her teachers.

20. When duty social workers spoke to the children at school on 14 November 2022, EF struggled to articulate coherent information regarding the incident on 13 November 2022. CD said she was asleep when the police arrived and woke up when she heard AB speaking to the police. AB was saying 'daddy hits and chokes us.' CD said that AB had bad behaviours at home and that her father was trying to stop her. She said that AB sent inappropriate images to others and her dad discovered a video that she sent to her crush, J. CD stated that her father was angry and took away AB's phone to remove the camera. CD said that her father had never hit her. She asserted that AB

was lying that she was hit by her father, that AB got her bruises from school and she was lying when she stated the father caused these. CD said that it was a usual day on 13 November 2022 and there was no argument between AB and the father. She reported that she and EF were sleeping on the bed until the police came. They did not hear any shouting or other things unusual. CD said that she knows AB's friend, J, called the police, but she had no idea why he did that. She stated that children's services should not believe if EF said he wants to stay with Aunt T because the children had been told by the aunties to say that. CD requested that what she had said be kept secret as she did not want her aunties to know.

21. When spoken to by duty social workers on 14 November 2022, AB made a number of historical allegations, alleging that her father had 'strangled' her, hit her around the head and hit her with crutches. AB stated her father had been physically abusing her since 2019 and said that she did not tell anyone as she feared she would not be believed. AB said that on 13 November 2022, she was speaking to a group of friends on Snap Chat. Her father had come into her room and accused her of sending inappropriate videos to a male friend. AB denied this and stated she was talking to a group of young people via Snap Chat. AB showed a video from her phone. AB said she rejected her father's stated view that the video was provocative, and he began to hit her. She then showed a photograph of bruising on her arm and stated the bruising was a result of her father hitting her on Friday. AB said that the bruising became more prominent after her father struck her on the same location of the previous bruise on the 13 November 2022. AB stated her father also hit her younger brother EF on the head, which caused him to cry.

22. During ABE interviews on 17 November 2022 both CD and AB made allegations of physical abuse against the father. In these interviews, both AB and CD said that they were physically abused by their father. EF was not interviewed as it was felt he was not suitable for such an interview, however the CAIT investigating officers informed WR, they were considering carrying out an interview with him using an intermediary. Child Protection Medicals were carried out on 23 November 2022. AB and CD reported that their father hit them. EF did not say that his father hit him but said that his father pulled his ear when he was not listening.

23. The local authority applied for care orders on 1 December 2022. Within the foregoing context, and in summary, the local authority contends that the threshold criteria pursuant to s.31(2) of the Children Act 1989 is met by reason of the following matters:

    i) The mother has encouraged the children to make false allegations of physical chastisement against the father.

    ii) The mother has not engaged in recommended therapeutic intervention for the parents and the children that focuses on the parent-child relationship by seeking to increase the parents' capacity to reflect and respond to their children's emotional needs.

    iii) The mother is unable or unwilling to put boundaries in place to control AB's access to and use or social media thereby exposing her to a risk of emotional and physical harm.

iv) On 13 November 2022 the father struck EF 9 times on his buttocks for being naughty. The local authority contends that this is not reasonable physical chastisement.

24. The mother denies the findings sought by the local authority, save insofar as they relate to the father. The father accepts the findings sought by the local authority save insofar as they relate to EF. The father contends that he lightly smacked EF three to four times on his buttocks on 13 November 2022. In her response to threshold, AB denies that the mother has encouraged the children to make false allegations and maintains her allegations against the father. She considers that her mother does set appropriate boundaries and contends that the father did assault EF. She invites the court to make further findings of physical abuse against her father.

25. The care plans for the children are for AB to return to the care of her mother and for CD and EF to return to the care of their father. The mother seeks the return of all three children to her care. The father seeks the return of CD and EF and contends that it is in AB's best interests to remain in the care of the local authority.

26. Within the foregoing context, the case management question before this court is whether there needs to be a fact finding exercise arising out of an email sent to the mother on 14 November 2023 from the residential children's home in which AB was placed and which, the mother asserts, demonstrates what is in effect a conspiracy between WR and the staff at AB's placement to manufacture evidence against her and destroy records pertaining to the case.

27. Prior to the email being sent, on 8 October 2023 one of the placement workers, TT, had telephoned the mother by mistake and, thinking she was speaking to another member of staff, began to speak about an allegation that the AB's behaviour was a consequence of "playing games" under the influence of her mother. The mother made a complaint to the local authority and on the evening of 14 November 2021, TT had called the mother to apologise.

28. The email in question, sent at 21:14hrs on 14 November 2023, reads in its entirety as follows:

> "From: [The placement's email address]
>
> Date: 14 November 2023 at 21:14:12 GMT
>
> To: [the mother's email address]
>
> Subject: AB Mum
>
> Good evening [WR],
>
> Futher to our discussion regarding [the mother] as agreed we will contine to raise concerns at scheduled meetings in regards to her negative influence on AB. Could you please provide us more updates via telephone as N has left now and we do not want it recorded. Just inform staff what it is you require us to continue saying negatively to support your case against [the mother]. You have informed us previously that mum does not like social services and also that the maternal family and mum are guilty for making false

> allegations against [the father]. You say mums position is to have all 3 children returned to her care however, as you have said with or without the parenting assessments the position of the local authority is to not return the children back to mums care. We have deleted some of the calls of our discussions as discussed and look forward to hearing from you when you return from AB's return home interview.
>
> Kind Regards
>
> [The placement]."

29. Whilst the body of the email is said to refer to WR, whose email address is [redacted], the email address to which the email was sent was that of the mother.

30. The email of 14 November 2023 was circulated by the solicitor for the mother on 15 November 2023. The placement conducted an enquiry into the email and the report consequent on that enquiry is before the court. The remit of the enquiry was to review all of the available evidence and to determine whether the email was sent to the mother from the placement and, if so, who sent the email and why. In conducting the enquiry the placement's computer was checked, the placement's records were examined including mobile phone logs, a Google Workspace report was obtained, and the workers on duty were asked to provide statements and were interviewed. That enquiry determined as follows:

    i) AB took the mobile phone from the office at 19:22hrs and returned it to staff at approximately 19:30hrs. Staff members confirmed that AB did not know the passcode for the phone and was being observed in her bedroom whilst it was in her possession.

    ii) The email of 14 November 2023 was sent at 21:14hrs using the email address of the placement by reference to the IP address of the placement.

    iii) The email sent at 21:14hrs on 14 November 2023 was not scheduled and was thus composed proximate to the time it was sent rather than being set up to be sent at a specified later time.

    iv) At the time the email was sent, the placement's laptop, the placement's home computer and the placement's mobile phone were all logged on to the placement's ISP.

    v) On the home computer, staff were logged onto the Gmail between 21:02hrs and 22:00 hrs. There was one activity on the mobile phone between 21:00hrs and 22:00hrs for ten minutes.

    vi) The placement's IT support team confirmed from available data that the email sent at 21:14hrs on 14 November 2023 was sent from the home's mobile telephone, which conclusion was later confirmed by the "Google Workspace" report.

    vii) The email was deleted from the sent box on the placement's email system at 02:44hrs on the morning of 15 November 2023 and the trash box on the system was also emptied.

viii) There were only two workers on duty at the placement over the relevant period, TT and KS, both undertaking a waking night shift. The only two children on site were AB and one other child. A third child was missing from the placement at the time.

ix) When spoken to, TT denied sending the email and postulated that the email could have been sent by the previous home manager, who had left the company on poor terms and had stated "they are going to mess up [the company]". TT stated that between 21:00hrs and 22:00hrs on 14 November 2023 she was using the house computer, reading emails. The "Google Workspace" report confirms that the placement's emails were being accessed from 21:02hrs to 22:00hrs. TT that she had rung the mother using the mobile phone just before 21:00hrs and a second time later as she could not locate it. It was located under paperwork in the office. TT stated that the phone was in the office between 21:00hrs and 22:00hrs.

x) Welfare calls were made from the telephone to a child missing from the placement at 21:00hrs and 21:31hrs on 14 November 2023 but the log did not record who made the calls. As noted below, TT suggested that KS was responsible for making those calls.

xi) TT stated that AB came into the office during this period but TT reported that she was only present for one minute and accessed the fridge. The placement log confirmed that AB came downstairs to talk to staff at 21:18hrs. Thereafter, AB was in her room all night playing on the PlayStation and then falling asleep.

xii) TT stated that between 02:00hrs and 03:00hrs on 15 November 2023 KS had the mobile telephone in order to call every hour a young person who was missing from the home. The log book confirmed that KS had made all of the entries during the night. She had not signed each entry as she should have.

31. The enquiry report from the placement concluded that a malicious email was sent from the placements IP address at 21:14 on 14 November 2023, using the home's mobile phone. The report further concluded that it appeared that the email was sent by either TT or KS, although both denied sending the email and there was no specific evidence to identify which of TT and KS had sent the malicious email, or which had later deleted it from the system.

32. On 14 December 2023, HHJ Sapnara directed statements from both WR and TT and KS. HHJ Sapnara also directed the disclosure of and copies of all email correspondence between WR and the placement. WR categorically and vehemently denies ever requesting any staff member to say anything negative about the mother or telling staff members what to say about her. She considers the email to be a malicious falsehood. Both TT and KS deny in their respective statements sending the email and deny having any interaction with WR at any point.

33. On 20 February 2024, KS notified the placement that she would not be able to attend this hearing (HHJ Cox having made provision for her to do so in order to make any representations she wished), telling the placement that "I have lost my immediate

brother in Africa" and she was "going for treatment". TT has likewise not attended this hearing.

SUBMISSIONS

The Mother

34. Within the foregoing context, the mother now seeks findings that the social worker sought to elicit negative evidence about the mother from the staff and that she was knowingly involved in the deletion of records.

35. In her Skeleton Argument, Ms Gray submitted that the options available to the court comprise those provided by FPR 2010 r.22.1(2), which permits the court to exclude previously admitted evidence, by FPR r.22.1(3), which permits the court to refuse to allow cross-examination on a given issue and the power of the court to permit a finding of fact hearing. On the mother's behalf, Ms Gray's primary submission is that, having regard to the factors set out in *Oxfordshire CC v DP, RS and BS* and *Re H-D-H (Children)*, this court should now direct what Ms Gray termed a "ring fenced" finding of fact exercise, to be conducted at the outset of the currently listed finding of fact hearing, to determine the following findings sought by the mother arising out of the email:

    i) AB did not send or delete the email.

    ii) The email was sent at 9.14pm on 14 November 2023 from the home mobile phone by a member of staff at the placement and the intended recipient was the social worker.

    iii) The email was deleted at 2.44am on 15 November by a member of staff at the placement.

    iv) The most likely explanation for the email is that it reflected discussions which had taken place between the author and the social worker.

    v) Insofar as the composition of the email is denied by TTand KS, the most likely explanation is that either TT or KS is lying.

    vi) It follows that (a) the social worker sought to elicit negative evidence about the mother from members of staff at the placement in order to support a case against her and (b) the social worker was knowingly involved in the deletion of records regarding the case.

36. In her Skeleton Argument, Ms Gray submitted that the foregoing findings admit of "a limited factual enquiry into the email" and do not require the court to engage in an exhaustive fact-finding exercise, in circumstances where the findings sought by the mother are principally against WR, save for a single finding against TT and KS (that they have lied). However, during the course of her oral submissions, Ms Gray accepted that the case advanced by the mother against WR, and the findings set out above, necessarily include by implication the allegation that TT and/or KS colluded in seeking negative evidence about the mother in order to support a case against her and

were knowingly involved in the deletion of records regarding the case. Ms Gray further accepted that, in the circumstances, in advancing the mother's case against WR, and in the face of the denials contained in their respective statements, the mother would need to put that allegation to both TT and/or KS and invite the court to find it was made out. Ms Gray was not able to assist the court with whether the mother's case is that it was TT or KS or both who had colluded with WR.

37. In support of her case that there should be a discrete finding of fact hearing on the provenance of the email of 14 November 2023, on behalf of the mother Ms Gray submits that beyond the email itself, there is much wider and cogent evidence that supports a finding that WR sought to elicit negative evidence about the mother from members of staff at the placement in order to support a case against her and was knowingly involved in the deletion of records regarding the case. In her Skeleton Argument, these matters were itemised by Ms Gray as follows:

i) WR was present on nearly every occasion when AB or CD made allegations and, notably, when they are said to have retracted their allegations. On many occasions the children spoke to her directly and she was the only person present.

ii) WR conducted an informal joint interview with police on 8 November 2021 and thereafter falsely reported that CD and AB had retracted their allegations of physical abuse during their interviews to professionals at the strategy meeting on 14 November 2021 and in the s.47 report authored with the Team Manager and has failed to correct the record.

iii) WR arranged and was present during CP medicals to investigate concerns of possible physical abuse of the children at which the father was present while the doctor took the children's history.

iv) WR undertook the s.47 investigation authored with the Team Manager without having had contact with the mother during the assessment period and at the conclusion of the assessment concluded that the allegations against the father had not been substantiated and that there were concerns about emotional abuse by the mother.

v) WR conducted family therapy sessions in January 2022 with the therapist where the father was present, notwithstanding that the children had made serious allegations of physical abuse against him and in which the view was taken that whatever the children said in his presence was reliable.

vi) WR completed a report pursuant to s.7 of the Children Act 1989 in June 2022 which recommended the children should remain in the care of the father and have contact with the mother for three hours per month on the basis that the mother had persuaded the children to fabricate allegations of physical abuse, with a final order being made in line with the report.

vii) On 28 November 2022 CD told the social worker that her father hit her but when questioned about it, she expressed reluctance about telling WR because "she told her dad".

38. Within the foregoing context, Ms Gray submits that from the outset assumptions have been made about the mother, and about the credibility of AB's allegations, with the local authority's approach having been to emphasise the negatives and accuse the mother of 'coaching' the children. Ms Gray submits that WR, for whom she submits the email of 14 November 2023 was intended, has led the local authority's case in this regard in circumstances where she was the allocated social worker for over two years and during that period was responsible for all the evaluative judgements in the case. In these circumstances, Ms Gray submits that the email of 14 November 2023 is not a peripheral issue but rather a vital piece of evidence that is corroborative of WR's approach to the case, her methodology, her record keeping and her evaluation of the evidence and requires examining when the court is considering the extent to which it can be satisfied that WR's evidence and analysis is balanced and fair. Ms Gray further submits that, in light of the litigation history in this case, it would be potentially contrary to the children's long-term interests for the issues arising from the email of 14 November 2023 to be left undetermined.

39. If the court is satisfied that a finding of fact hearing is merited on the issues arising out of the email of 14 November 2023, for the reasons set out in her Skeleton Argument, on behalf of the mother Ms Gray nonetheless resists any order for disclosure with respect to the mother's telephone or AB's telephone, as contended for by the local authority in the event that a finding of fact hearing is directed.

40. If the court is not satisfied that a finding of fact exercise is required in relation to the email of 14 November 2023, Ms Gray's secondary submission is that the court should nonetheless permit the mother to put the contents of that email to WR in cross-examination.

The Local Authority

41. The local authority submits that, having regard to the principles set out in *Oxfordshire CC v DP, RS and BS and Re H-D-H (Children)*, the litigation of the issues with respect to the email of 14 November 2023 would be wholly antithetic to the welfare of all three children having regard to the delay that this course of action would engender, that there are very limited prospects on the evidence available of any finding being made adverse to WR and, more fundamentally, that the core factual and welfare determinations in this case do not require the issue to be resolved in order for the court to deal with the proceedings justly. In seeking to make good these submissions, on behalf of the local authority Mr Goodwin and Mr Norman make the following points.

42. With respect to each of the children's best interests, Mr Goodwin and Mr Norman submit that if the court were to determine that a fact finding exercise should take place in respect of the allegations made by the mother against WR, TTand KS this would inevitably result in further and unconscionable delay for three children who have been in foster care since November 2022 and involved in this second set of care proceedings, and third set of legal proceedings, since December 2022. With respect to AB, this further delay would also be in the context of her expecting to give oral evidence and be cross-examined at the final hearing next week.

43. In seeking to demonstrate that the delay would inevitably follow from the court determining that a fact finding exercise is now necessary, Mr Goodwin and Mr

Norman point to the following steps that would have to be taken to ensure a fair trial of the issue:

i) The mother's schedule of findings would need to be amended to make explicit the allegation, necessarily contained in the mother's case, that TT and/or KS colluded with WR to elicit negative evidence about the mother in order to support the case against her and to delete records relating to this case.

ii) The amended schedule of findings would need to be served on WR, TT and/or KS and, given the potentially grave consequences of any finding on their respective professional standing (and possibly, in the case of TT and/or KS, their immigration status) each would need to be provided with the opportunity to take legal advice and to make an application to intervene in the proceedings in respect of this issue.

iii) The court would need to direct an expert report to analyse the contents of the work and personal mobile phones owned or operated by WR, TT and/or KS and, given the evidence suggesting that AB had the opportunity to access to the phone at the placement at the relevant time and the evidence that the mother was in contact with the placement on the night the email was sent, the phones owned by AB and the mother. That report would need to identify communications between these individuals and between relevant phone numbers and email addresses for the period 14 October 2023 to 21 November 2023. Insofar as the expert is unable to do so, any report would need to be redacted before distribution in order to protect each individual's non-relevant private messages. If the identified expert ('Evidence Matters') could be instructed by 6 March 2024, they could not produce a report until 11 March 2024, the first day of the final hearing.

iv) The court may need to consider further expert evidence with respect to the electronic devices in use at the placement on 14 November 2023 in circumstances where not only the phone but also the placement home computer and the placement laptop were logged into the placement ISP during the relevant period and the only analysis of those devices currently before the court is contained in the enquiry report prepared by the placement itself.

v) Oral evidence and cross-examination of WR, TT, KS, the mother and the author of the enquiry report (where it is relied on by the mother) would be required. Given the gravity of the findings sought by the mother against WR, TT and KS, and the evidence suggesting AB had the opportunity to access the placement phone during the relevant period, it is likely that AB would also have to give evidence on the issue.

44. In this context, Mr Goodwin and Mr Norman submit that if the court determines that a fact finding exercise is required on the discrete issue of the email of 14 November 2023, there is no prospect whatsoever of the thirteen day final hearing listed as commencing on 11 March 2023 remaining effective. This, they submit, will result in the welfare interests of all three of the children being critically affected in circumstances where the proceedings have been on foot since December 2022 and the children have remained in care throughout that period.

45. With respect to his submission that the likely evidential result of a fact finding hearing is that the court will not be able to make a finding on the balance of probabilities with respect to the findings sought by the mother against WR, Mr Goodwin and Mr Norman pray in aid the following matters:

i) The email is striking in that it carefully spells out each of the elements necessary to establish a conspiracy between the placement and WR. This speaks less to a conspiracy (it being a very curious conspirator who sets out, in carefully itemised terms, their machinations) and more to a malicious communication (a malicious individual being far more likely to itemise the elements of a plot in an effort to falsely incriminate).

ii) The email address to which the email was sent is that of the mother not WR. The mother and WR have very different email addresses, such that it is unlikely that the sender would have accidentally typed the mother's address of mistake when attempting to type WR's email address, the relevant letters not being proximate to each other on the keyboard and predictive text not likely to have substituted the latter with the former given the different first letters. This indicates it is likely that the email was deliberately sent to the mother.

iii) The email of 14 November 2023 is incongruent in style to all other emails sent between the placement and WR. The first letter of her name is not capitalised, in contrast to all other emails, and the email is not signed by an individual, in contrast to all other emails. That it is, unlike all other email communications from the placement, deliberately unattributable to any individual increases the probability that the email is malicious.

iv) Only two workers were on duty during the relevant period, TT and KS, and the only children present were AB and another child.

v) The accounts provided by TT and KS demonstrate uncertainties as to which of them was in the possession of the phone and as to the whereabouts of the phone between 21:00hrs and 22:00hrs on 14 November 2023 and between 02:00hrs and 03:00hrs on 15 November 2023.

vi) The enquiry report prepared by the placement appears contradictory with respect to whether AB could have accessed the phone, the report stating at one point that she did not know the passcode for the phone and at another that AB had removed the phone from the office at 19:22hrs and returned it to staff at around 19:30 hours.

vii) The enquiry report details that AB came downstairs and spoke to staff briefly at 21:18hrs and that she came into the office, looked into the fridge and left within a minute for the bathroom before going back upstairs *and* that TT had to ring the mobile phone at 21:30hrs because she could not locate it, it being located thereafter under papers in the office.

viii) Whilst, according to the enquiry report, TT stated she telephoned the mother at just before 21:00hrs on 14 November 2023, the enquiry states that TT used the phone to call the mother at 21:47hrs.

ix) The local authority instructed junior counsel to review the copies of all email correspondence between WR and the placement disclosed pursuant to the order of HHJ Cox. There is nothing in the hundreds of emails sent between WR and the placement that supports a finding of collusion. WR received five emails from TT(contrary to the bare assertion in TT' statement that she never sent any emails or phone calls to WR about AB) but has herself sent no emails either to TT or KS save for a short exchange with TT about contact on 9 October 2023. The emails showing requests for information evidence her openly and properly asking for feedback about the mother's interactions with staff.

x) There is no other supporting evidence in any other document to imply WR's complicity in a conspiracy. As to the matters relied on by Ms Gray as being cogent evidence beyond the email to support the allegation that WR conspired with TT and/or KS, Mr Goodwin and Mr Norman submit that, whilst the discrepancy evidenced by the CRIS report will need to be examined, none of the other matters relied on by Ms Gray either particularise any action on the part of WR to elicit negative evidence about the mother from the children, the paediatrician or the family therapist or otherwise in order to support a case against the mother nor to secure the deletion of records regarding the case or constitute evidence of such conduct.

xi) The placement was not assessing AB or the mother. In the circumstances, the placement was not assessing the question of whether the mother had a negative influence on AB or whether the mother had caused AB to fabricate allegations.

xii) WR has a long and unimpeached track record as a social worker about whom there has never been a concern raised regarding her professional integrity.

46. Within this context, Mr Goodwin and Mr Norman submit that even were the court to embark on a fact finding hearing sought on behalf of the mother by Ms Gray, the likely outcome of that fact finding exercise is that the court will not be able to conclude on the balance of probabilities that WR, TT or KS colluded to elicit negative evidence on the mother from the placement and caused the deletion of records regarding the case.

47. Finally, Mr Goodwin and Mr Norman submit that a finding of fact hearing is not necessary having regard to the relevance of the findings sought by the mother to the future care plans of the children and the need to achieve a fair trial. In this regard, Mr Goodwin and Mr Norman rely on the following matters:

i) With respect to the question of threshold, Mr Goodwin and Mr Norman submit that a finding of fact exercise is not necessary for the court to be in a position to determine the question of threshold, in circumstances where there is ample evidence on that question independent of the evidence of WR. In the circumstances, even were the outcome of a fact finding hearing to determine whether WR had colluded with TT or KS to elicit negative evidence on the mother and caused the deletion of records to be in the affirmative, the case would continue to be pursued in circumstances where there are multiple other sources of evidence that clearly establish the facts set out in the threshold document.

ii) With respect to the question of welfare, Mr Goodwin and Mr Norman submit that the question of whether the care plans advanced in respect of each child are in their respective best interests does not turn on the evidence of WR. They point out that there have been no social work assessments of the family in this case, with all assessments undertaken to date having been completed by Independent Social Workers. They further point out that WR is no longer the allocated social worker for the children (the local authority having taken that decision in light of the impact the allegations levelled at her by the mother have had on her) and is not responsible for the care plans now placed before the court, evidence in respect of which will be given by the new allocated social worker who, whilst she co-worked the case with WR for a period, will have to justify those plans herself in cross-examination.

iii) In the foregoing context, Mr Goodwin and Mr Norman submit that a finding as to whether WR colluded with TT or KS to elicit negative evidence on the mother from the placement and caused the deletion of records regarding the case is not determinative of the issue of threshold or of the care plans for the children.

iv) With respect to the question of a fair trial, Mr Goodwin and Mr Norman submit that the court is ensuring fairness with respect to the issues arising out of the email of 14 November 2023 by considering at this hearing and by reference to the factors in *Oxfordshire CC v DP , RS and BS*, including the prospects of a fair trial on the issue and the justice of the case, whether a finding of fact hearing on this issues is necessary. Mr Goodwin and Mr Norman submit that if the court concludes, having adopted that rigorous approach that a fact finding hearing is not merited, the exclusion of the issue from consideration at the final hearing cannot amount to a breach of Art 6.

48. Finally, Mr Goodwin and Mr Norman invite the court to reject Ms Gray's secondary submission that if the court is not satisfied that a finding of fact exercise is required in relation to the email of 14 November 2023 it should nonetheless permit the mother to put the contents of that email to WR in cross-examination. They submit that as soon as cross examination regarding the email is embarked on the court will have to grapple with who sent it, to whom it was meant to be sent and the purposes behind its sending, which could not be achieved fairly without the steps outlined above being taken. In the circumstances, Mr Goodwin and Mr Norman submit that a decision that a fact finding hearing on the issue is not required followed by a decision that cross-examination of WR on the email will nonetheless be permitted would be contradictory and would wrongly circumvent the disciplined approach articulated in *Oxfordshire CC v DP , RS and BS*.

The Father

49. The father does not seek findings against WR and is formally neutral on the question of whether a finding of fact hearing should be directed in respect of the findings sought by the mother. In their written submissions however, Mr Aneley and Ms Compton highlight a number of questions that would require further investigation before the matter were ready for a finding of fact hearing on the mother's allegations. In particular, were any other emails sent from the placement's home computer between 21:00hrs and 22:00hrs; the precise time the placement's phone was in use

between 21:00hrs and 22:00hrs; whether it was the placement's phone or computer used to delete the email at 02:44hrs; the times welfare calls were made to the missing child between 02:00hrs and 03:00hrs; whether the placement office is locked when not in use; whether AB was seen between 02:00hrs and 03:00hrs on 15 November 2023; whether the placement's Gmail account can be accessed remotely if the email address and password were known; how the staff knew that AB would not have known the passcode to the placement's phone; whether there was any activity on the placement's phone between 19:22hrs and 19:30hrs; the reason AB had the placement's phone between 19:22-19:30; and whether the placement's log is based on manual entry, and when the entries would have been included.

50. Within this context, during his oral submissions Mr Anelay further highlighted the likely need for the question of whether AB was involved in the sending of the email (in circumstances where there is evidence that AB alleged she could spend many hours in the office and that AB had previously managed to take items from the office without workers being aware, or it being documented in the logs) to be addressed if the findings sought by the mother were to be litigated and the caustic effect of all three children consequent on any adjournment necessary to clarify the matters set out above of the final hearing over a year after proceedings were first issued.

AB

51. AB likewise does not seek findings against WR and is formally neutral on the question of whether a finding of fact hearing should be directed in respect of the findings sought by the mother. On her behalf, Mr Twomey and Dr Jackson point out that the enquiry conducted by the placement illustrates why AB could not have sent the email on 14 November 2023. Mr Twomey and Dr Jackson further resist on AB's behalf the disclosure of her phone records for the reasons set out in their written submissions.

52. During his oral submissions, Mr Twomey emphasised that, in considering the factors set out in *Oxfordshire CC v DP , RS and BS*, and in particular, the interests of the children, a relevant factor when considering whether to direct a fact finding exercise with respect to the allegations raised by the mother is that at present no findings are sought in respect of AB but that any fact finding exercise carries with it the potential for her to be required to give evidence on these issues, to have to give evidence twice if the mother's proposal of a "ring fenced" finding of fact exercise is accepted and to have her phone analysed against her strongly expressed objections to that course of action.

The Children's Guardian

53. Prior to the hearing the children's Guardian was, on a fine balance, supportive of the fact finding exercise in circumstances, her rationale being that it was important to deal with the issue to avoid it hanging over the family moving forward. However, that position was taken on the basis that any fact finding exercise could be accommodated within the current fixture commencing on 11 March 2024. During the course of the hearing I indicated that I was satisfied that *if* the court concluded that a fact finding exercise with respect to the allegations made by the mother was merited then, with only three working days before the trial, the current fixture would inevitably have to be adjourned. This caused the Children's Guardian to change her position, the

Children's Guardian being clear that any further delay would be completely antithetic to the best interests of each of the children and a magnetic factor militating against a "ring fenced" hearing on the findings sought by the mother.

THE LAW

54. The law governing the case management question of whether the court should embark on a finding of fact exercise, whether in general or in relation to specific matters, is now well settled. I summarised the position recently in *A Local Authority v X* [2024] 1 FLR 225 as follows:

> "[18] As I have noted, the decision for the court is one of case management. The 'overriding objective' set out in FPR 2010 r. 1.1 provides as follows:
>
> > "The overriding objective
> >
> > (1) These rules are a new procedural code with the overriding objective of enabling the court to deal with cases justly, having regard to any welfare issues involved.
> >
> > (2) Dealing with a case justly includes, so far as is practicable –
> >
> > (a) ensuring that it is dealt with expeditiously and fairly;
> >
> > (b) dealing with the case in ways which are proportionate to the nature, importance and complexity of the issues;
> >
> > (c) ensuring that the parties are on an equal footing;
> >
> > (d) saving expense; and
> >
> > (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases."
>
> [19] Whilst it is a matter for the local authority to determine whether to bring proceedings under Part IV of the Children Act 1989 , once those proceedings are before the court, it is for the court to decide which issues require determination (*In Re W (Care Proceedings: Functions of Court and Local Authority)* [2014] 2 FLR 431). To that end, the court has broad powers of case management pursuant to FPR 2010 r. 4.1. Those case management powers include the power to direct a separate hearing of any issue pursuant to FPR 2010 r 4.1(3)(j), to exclude an issue from consideration pursuant to FPR 2010 rule r 4.1(3)(l) and to take any other step or make any other order for the purpose of managing the case and furthering the overriding objective pursuant to FPR 2010 r 4.1(3)(o).
>
> [20] One of the functions of case management under the FPR 2010 is to reduce delay in the determination of proceedings. The court is required by statute, in the form of s.1(2) of the Children Act 1989 , to have regard to the principle that any delay in determining the question is likely to prejudice the welfare of the child. In the context of public law proceedings, which

these are, the principle articulated in s.1(2) of the Children Act 1989 was reinforced by the amendments introduced by the Children and Act 2014. As a result of those amendments, pursuant to s.32(1) of the Children Act 1989 the court is required to draw up a timetable with a view to determining the application without delay and, in any event, within 26 weeks of the application being issued. Pursuant to s.32(3) of the Children Act 1989 , the Court to have particular regard to the impact the timetable will have on the welfare of the child to whom the application relates and on the conduct of the proceedings. Pursuant to s.32(5) of the Children Act 1989 , the court may only extend the 26 week time limit if to do so is necessary to resolve the proceedings justly. In this regard, only fair process or the child's welfare will suffice (*Re M-F (Children)* [2014] EWCA Civ 991).

[21] Within the foregoing context, the law governing the case management question of whether or not to conduct a particular fact finding exercise is now well settled. The question falls to be resolved by reference to the factors identified in *Oxfordshire CC v DP , RS and BS* [2005] 2 FLR 1031 (hereafter Oxfordshire) . In that case, McFarlane J (as he then was) set the following, non-exhaustive list:

> "[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."

[22] In *Re H-D-H (Children)* [2021] EWCA Civ 1192 , the Court of Appeal confirmed that the principles set out by McFarlane J (as he then was) in *Oxfordshire* continue to represent the principles by which the court should determine the question of whether or not to conduct a particular fact finding exercise. Peter Jackson LJ, noting that those principles had stood the test of time and remain authoritative, observed as follows:

> "The factors identified in Oxfordshire should therefore be approached flexibly in the light of the overriding objective in order to do justice efficiently in the individual case. For example:
>
> (i) When considering the welfare of the child, the significance to the individual child of knowing the truth can be considered, as can the effect on the child's welfare of an allegation being investigated or not.
>
> (ii) The likely cost to public funds can extend to the expenditure of court resources and their diversion from other cases.
>
> (iii) The time that the investigation will take allows the court to take account of the nature of the evidence. For example, an incident that has been recorded electronically may be swifter to prove than one that relies on contested witness evidence or circumstantial argument.
>
> (iv) The evidential result may relate not only to the case before the court but also to other existing or likely future cases in which a finding one way or the other is likely to be of importance. The public interest in the identification of perpetrators of child abuse can also be considered.
>
> (v) The relevance of the potential result of the investigation to the future care plans for the child should be seen in the light of the s. 31(3B) obligation on the court to consider the impact of harm on the child and the way in which his or her resulting needs are to be met.
>
> (vi) The impact of any fact finding process upon the other parties can also take account of the opportunity costs for the local authority, even if it is the party seeking the investigation, in terms of resources and professional time that might be devoted to other children.
>
> (vii) The prospects of a fair trial may also encompass the advantages of a trial now over a trial at a possibly distant and unpredictable future date.
>
> (viii) The justice of the case gives the court the opportunity to stand back and ensure that all matters relevant to the overriding objective have been taken into account. One such matter is whether the contested allegation may be investigated within criminal proceedings. Another is the extent of any gulf between the factual basis for the court's decision with or without a fact-finding hearing. The level of seriousness of the disputed allegation may inform this assessment. As I have said, the court must ask itself whether its process will do justice to the reality of the case."

[23] In *Re H-D-H (Children)* at [20], Peter Jackson LJ made clear that, in determining applications of this nature, it is unnecessary to refer to other authority beyond *Oxfordshire*, notwithstanding that it predates the incorporation of the overriding objective into the Family Procedure Rules and the 26-week requirement, Peter Jackson LJ considering the decision

remains valid when read alongside the statutory framework set out above. In *Re H-W (Care Proceedings: Further Fact-Finding Hearing)* [2023] EWCA Civ 149, the Court of Appeal again reiterated that it is the factors set out in Oxfordshire represent the definitive metric against which the question of whether or not a particular fact finding exercise is necessary falls to be determined. In that case, Baker LJ observed as follows at [37]:

> "The decision whether or not to hold a fact-finding hearing is one of the most important case management decisions to be taken in the course of proceedings under Part IV of the Children Act. It is not always a straightforward decision. Care proceedings are quasi-inquisitorial. They are not confined within the tramlines of adversarial pleadings. There is therefore a recurrent danger that they veer off track. In a case with a complex family history, the court will often be encouraged by one party or another to explore an issue that has been unearthed during the investigation. Judges have to be very careful before acceding to such an application to avoid the unnecessary use of the limited resources available. In deciding whether to hold a fact-finding hearing, it is imperative that they conduct a proportionality analysis by reference to the factors identified in the Oxfordshire case and Re H-D-H ."”

55. In this case, the local authority rely on extensive submissions concerning the quality of the evidence as it relates to the email of the 14 November 2023. In *Re H-W (Care Proceedings: Further Fact-Finding Hearing)* at [28], Baker LJ observed as follows with respect to the extent to which the court is able, in a hearing of this nature, to take that factor into account:

> “When considering the potential evidential result of a fact-finding hearing it may sometimes be appropriate for the judge to have regard to the apparent quality of the evidence. It will never be appropriate, however, to carry out a detailed evaluation, not least because the court can only make findings on the totality of the evidence and at the case management stage not all of the evidence will have been filed. Anything akin to a mini-trial of the allegations would therefore be wrong in principle and wasteful of time and resources. Although each decision will depend upon the circumstances of the case, the apparent quality of the evidence is accordingly unlikely to be a powerful factor in the overall decision unless it is clear without the need for detailed assessment that the evidence appears to be particularly strong or particularly weak.”

DISCUSSION

56. This case is a paradigm example of Baker LJ’s observation in *Re H-W (Care Proceedings: Further Fact-Finding Hearing)* that the decision whether or not to hold a fact-finding hearing is one of the most important case management decisions to be taken in the course of proceedings under Part IV of the Children Act and that the decision is not always a straightforward one.

57. Having considered carefully the submissions made by leading and junior counsel, and having regard to the evidence currently before the court, on a fine balance I am

satisfied that it is *not* necessary in this case to undertake a fact finding hearing with respect to allegations made by the mother against WR, TT and KS arising out of an email sent to the mother on 14 November 2023. I am further satisfied that having reached that decision, it would not be appropriate to permit the cross examination of witnesses on that email in any event. My reasons for so deciding are as follows.

The interests of the children

58. In the current context, the best interests of each child are relevant but not paramount. I am satisfied that, on the facts of this case, the best interests of each of the children constitute a powerful factor militating against holding a fact finding hearing with respect to the findings sought by the mother against WR, TT and KS.

59. These proceedings were issued in December 2022. Prior to that, the children had been the subject of a previous set of care proceedings and a set of private law proceedings. In the circumstances, the children have been involved in litigation concerning their welfare for nearly four years and involved in this latest set of care proceedings for well over a year. This means that the children have been waiting for well over a year (and much longer if the other sets of proceedings are accounted for) for certainty and security with respect to their future.

60. That the effect of delay is caustic for children caught up in court proceedings is reflected in s.1(2) of the Children Act 1989, which states in terms that any delay in determining the question is likely to prejudice the welfare of the child. This cardinal principle has been further emphasised by the amendments introduced by the Children Act 2014 by which, pursuant to s.32(1) of the Children Act 1989, the court is required to draw up a timetable with a view to determining the application without delay and, in any event, within 26 weeks of the application being issued and, pursuant to s.32(3) of the Children Act 1989, to have particular regard to the impact the timetable will have on the welfare of the children to whom the application relates.

61. The future welfare of all three children is due, finally, to be determined at a hearing commencing next Monday. Were the court to decide to permit a finding of fact exercise with respect to the findings sought by the mother, I am satisfied that it is inevitable that that hearing would have to be adjourned. I accept the submissions of Mr Goodwin and Mr Norman, and of Mr Anelay and Ms Compton, with regard to the steps that would have to be taken to ensure that such a fact finding hearing could proceed in a manner that was fair to all concerned. In those circumstances, I cannot accept as realistic Ms Gray's proposal for a "ring fenced hearing" to determine the findings sought by the mother to take place at the outset of the current fixture.

62. In the foregoing circumstances, directing the fact finding exercise that the mother now seeks would result in a further and as yet undefined period of delay before the children's future is decided. I accept the submission of the Children's Guardian that this would be wholly antithetic to the welfare of each of the children in circumstances where they would be compelled to wait through a further period for uncertainty and insecurity before their future care arrangements were finally decided. With respect to AB, who is timetabled to, and is expecting to, give evidence next week, it would mean a further period of anticipating the difficult experience of giving evidence in court and being cross-examined.

63. Given these consequences of delay, I am satisfied that it would not be in the children's best interests to direct a fact finding exercise in relation to the finding sought by the mother unless it were clearly necessary in order to deal with the matter justly and/or a fair trial could not be achieved otherwise. On the evidence before the court, I am satisfied that that is not the position in this case.

The time that the investigation will take

64. Related to the point above points is the question of the time the investigation will take. This does not simply relate to the duration of any "ring fenced hearing", but must include the steps necessary to ensure that the finding of fact exercise is properly and fairly dealt with.

65. As I have set out above, I accept the submissions of Mr Goodwin and Mr Norman, and of Mr Anelay and Ms Compton with regard to the steps that would have to be taken to ensure that such a fact finding hearing could proceed in a manner that was fair to all concerned. This would necessarily include the provision of expert evidence with respect to the contents of the telephones of WR, TT, KS the mother and AB. With respect to TT, KS their willingness to participate in the proceedings is yet to be definitively established. It is known that KS has returned to her home country in Africa. In these circumstances, securing her phone may raise issues with respect to securing evidence from a foreign jurisdiction. There remains a question mark over the extent to which further computer analysis would be required. In light of the potential consequences for the professional standing of WR, TTand KS, they would have to be accorded the opportunity to seek legal advice and decide whether to intervene.

66. In the foregoing circumstances, I am satisfied that the investigation of the findings sought by the mother would take a number of months at least, in the context of proceedings that are already over a year old.

The likely cost to public funds

67. Whilst it is not possible to arrive at a precise cost to public funds were the court to hold a finding of fact hearing in respect of allegations made by the mother, no party sought to dispute the proposition that this would result in greater expenditure having regard to the necessary tasks to be completed ahead of any finding of fact exercise, as articulated above.

The evidential result

68. As recognised by Baker LJ in *Re H-W (Care Proceedings): Further Fact Finding Hearing*), examination of the evidential result will sometimes require the court to have regard to the apparent quality of the evidence. This is not to engage in a summary determination of those findings, but rather to examine the prospects of the findings being established as part of evaluating the necessity or otherwise of any investigation. Baker LJ made clear that it will not be a powerful factor in the overall decision, unless it is clear without the need for a detailed assessment that the evidence appears particularly strong or particularly weak.

69. On the evidence currently before the court, I am satisfied that it is apparent that there are significant difficulties with the evidence relied by the mother in support of the finding she seeks on the balance of probabilities that WR conspired with TT or KS to obtain negative evidence against the mother and to destroy records.

70. The evidence to support such a grave finding at present comprises a single email in respect of which there are significant forensic difficulties, as identified by Mr Goodwin and Mr Norman during their submissions. That email exists in the context of there being no other emails or documents that tend to support the finding sought by the mother. Whilst in her Skeleton Argument Ms Gray prayed in aid other matters she submits supports such a finding, during her oral submissions Ms Gray accepted that these too present difficulties, with all but one those matters relying on the court being prepared to draw adverse inferences from particular circumstances, rather than constituting primary evidence demonstrating a conspiracy to elicit negative evidence about the mother and delete records.

71. Thus, in respect of the assertion that WR was present on nearly every occasion when AB or CD made allegations and when they are said to have retracted their allegations and many occasions the children spoke to her directly and she was the only person present, Ms Gray could point to no evidence, beyond her mere presence on these occasions, that on such occasions WR had coached the children or otherwise forced them to retract allegations. Likewise, with respect to the assertion that WR arranged and was present during CP medicals to investigate concerns of possible physical abuse of the children, beyond the fact of her arranging the medicals and being present, Ms Gray could point to no evidence that WR had sought during the medicals to elicit negative evidence or delete records. The same is true with respect to the points Ms Gray makes regarding the s.47 investigation, the family therapy sessions in January 2022, the s.7 report completed in June 2022 and the exchange with CD on 28 November 2022.

72. The question of the likely evidential result of any fact finding hearing as a factor in deciding whether such a hearing should be held requires the court to look at the impact of findings one way or another. Were the court to embark on a finding of fact hearing with respect to the findings sought by the mother in this case, there are a number of possible outcomes. The court could conclude, as the mother invites it to do, that the email was intended by TT or KS for WR as part of a conspiracy by WR to obtain negative evidence against the mother and destroy records. The court could also conclude that the email was sent by TT or KS in order to stir up trouble, conclude that the email was sent by AB using a script provided to her by the mother in order to undermine WR's credibility or conclude that no conclusions can be drawn to the civil standard of proof having regard to the evidence before the court.

73. Were the court to conclude that that the email was intended by TT or KS for WR as part of a conspiracy by WR to obtain negative evidence against the mother and destroy records regarding the case, that finding would inevitably be relevant to the credibility of WR's evidence and, in so far as the local authority's case turned on that evidence, to the court's evaluation of the local authority's substantive case on threshold and placement. If the court concluded that that the email was sent by AB using a script provided to her by the mother, in order to undermine WR credibility then the finding would inevitably reinforce the local authority's case with respect to threshold and placement as far as it relates to the mother. A finding that the email

was sent by TT or KS in order to stir up trouble or that no conclusions can be drawn to the civil standard of proof having regard to the evidence before the court would be less consequential for the ultimate determination of the proceedings.

74. This court must consider the implications of these possible evidential results when determining whether a fact finding hearing to determine the findings sought by the mother is necessary. That exercise is best undertaken by reference to the remaining factors set out in *Oxfordshire* in circumstances where, as recognised in *Re H-D-H and C*, many of the factors identified in *Oxfordshire* overlap with each other and the Court should not approach the consequences of the evidential result too narrowly but must take account of all relevant matters.

The necessity or otherwise of the investigation

75. As I noted in *A Local Authority v X, Y, Z and M*, pursuant to s.31 of the Children Act 1989, the task of the court in care proceedings under Part IV of the 1989 Act is strictly circumscribed. The court is required to determine whether the threshold are met for making a care or supervision order, pursuant to s.31(2) of the Act, to consider the permanency provisions of the care plan, pursuant to s.31A of the Act, to consider whether to make an order having regard to the matters set out in s.1 of the Act and, if making a care order, to consider the question of contact pursuant to s.34(11) of the Act. The necessity or otherwise of a finding of fact exercise with respect to the findings sought by the mother falls to be considered in this context.

76. With respect to the question of the necessity or otherwise of the investigation, I am satisfied that even were the court to conclude that on the evidence that WR conspired with TT or KS to obtain negative evidence against the mother and to destroy records, and that therefore the weight to be attached to the evidence of WR was reduced, that conclusion could not be determinative by itself of the substantive questions of threshold, permanency and contact in these proceedings, in circumstances where there is a much broader canvas of other evidence before the court with respect to both threshold and placement.

77. With respect to the question of threshold, even were the court to conclude by reason of the findings sought by the mother that WR's evidence as to threshold could not be safely relied on, there is ample other evidence on which the court could decide whether the threshold criteria are or are not made out in this case.

78. Whilst it is the case that WR has been present on a significant number of occasions when the children have made and retracted allegations, she is far from the only witness in this regard. In previous proceedings, *prior* to WR's involvement, at an unannounced home visit on 28 April 2020, AB reported that her mother told AB that an injury to AB's ear had been caused by her father, notwithstanding that AB had reported that it had been caused by EF and the mother was not present at the time. In May 2020, again prior to WR's involvement, the mother is recorded as having contacted the Emergency Duty Team to report that the father had hit AB, causing a bruise to her arm but when AB and CD were spoken to during the welfare visit undertaken in consequence, CD reported that she often scratched herself and that the mother had told her "if you say your father has done this then you can come and live with me". Both CD and AB reported that they felt sad about lying regarding their father and were happy living with him. Subsequent to WR's involvement, she is still

not the single source of the accounts relied on by the local authority to establish threshold. The Child Protection Medical report 12 November 2021 contains an account of the paediatrician's conversation with AB, the report undertaken pursuant to s.47 of the Children Act 1989 by WR and the Team Manager, the report dated 26 May 2022 from the therapist likewise address that issue, as does the account of the Headteacher of 28 November 2022.

79. Likewise, with respect to the question of permanency, even were the court to conclude that on the evidence that WR conspired with TT or KS to obtain negative evidence against the mother and to destroy records, and that therefore her evidence could not be safely relied on, there is ample evidence on which the court could decide the issue of placement which does not involve WR. WR has not completed an assessment in this case informing the final care plans and is no longer the allocated social worker. All assessments undertaken to date having been completed by Independent Social Workers. In the circumstances, WR is not responsible for the final care plans now placed before the court, evidence in respect of which will be given by the new allocated social worker.

80. On the other side, I am satisfied that the absence of any finding of fact exercise with respect to the findings sought by the mother would not prevent the mother advancing her current case as to threshold and placement, as articulated at this hearing by Ms Gray. None of the factors set out by Ms Gray in her Skeleton Argument to demonstrate that WR has sought to emphasise the negatives in relation to the mother would be prevented from being put by the absence of the findings sought by the mother arising from the email of 14 November 2024. In particular, the mother would not be prevented from putting the discrepancy between the account of the interviews on 8 November 2022 and the CRIS report. Whilst a finding that WR had sought to elicit negative evidence concerning her might *supplemen*t the mother's case, the absence of such a finding does not preclude that case being put. Her case that from the outset assumptions have been made about the mother, and about the credibility of AB's allegations, with the local authority's approach having been to accuse her of 'coaching' the children can be put effectively on the back of the other evidence currently before the court.

81. Finally, whilst I accept the submission that it would be desirable, having regard to the litigation history in this case, for the issues arising from the email of 14 November 2023 to be determined, I am not satisfied that it is *necessary* to deal with the case justly when balanced against the other factors that the court must consider.

The relevance of the potential result of the investigation to the future care plans for the children

82. Once again, and as set out above, were the court to conclude that on the evidence that WR conspired with TT or KS to obtain negative evidence against the mother and to destroy records, and that therefore the court could not safely rely on the evidence of WR, I am satisfied that that conclusion would not be determinative of the question of the future care plans for the each of the children. Once again, WR has not completed an assessment in this case informing the final care plans and is no longer the allocated social worker, all assessments undertaken to date having been completed by Independent Social Workers and WR is not responsible for the care plans now placed

before the court, evidence in respect of which will be given by the new allocated social worker.

83. In these circumstances, and having regard to the evidence that the local authority does rely on the question of welfare outcome, I am satisfied that the potential result of the fact finding exercise sought by the mother would have limited relevance to the future care plans for each of the children.

The impact of any fact-finding process upon the other parties

84. Beyond the corrosive effect on the children of delay, I am satisfied that the fact finding process sought by the mother arising out of the email of 14 November 2023 has the significant potential adversely to impact AB.

85. Given the gravity of the findings sought by the mother against WR, TT and KS, and the evidence suggesting AB had the opportunity to access the placement phone during the relevant period (including in circumstances where there is evidence that AB alleged she could spend many hours in the office and that AB had previously managed to take items from the office without workers being aware, or it being documented in the logs), I am satisfied that were the court to direct a fact finding exercise with respect to the findings sought by the mother, it is very likely that AB's phone would require interrogation, contrary to her very strongly expressed objections, and that AB would also have to give evidence on the issue, meaning she would give evidence twice if the mother's proposal of a "ring fenced" finding of fact exercise were to be accepted.

The prospects of a fair trial on the issue

86. With respect to this factor, Ms Gray rightly reminds the court of the sage words of Munby LJ (as he then was) on in *Re S-W (Children) (Care Proceedings: Final care order at case management hearing)* [2015] EWCA Civ 27) at [55] *et seq*:

> "[55] Rule 22.1 gives the case management judge extensive powers to control the evidence in a children case: see Re TG, paras 27-28. But these powers must always be exercised, especially in care cases where the stakes are so high, in a way which pays due regard to two fundamental principles which apply as much to family cases as to any other type of case.
>
> [56] First, a parent facing the removal of their child must be entitled to put their case to the court, however seemingly forlorn. It is one of the oldest principles of our law – it goes back over 400 years, to the earliest years of the seventeenth century – that no-one is to be condemned unheard: see Re G (Care: Challenge to Local Authority's Decision) [2003] EWHC 551 (Fam), [2003] 2 FLR 42, paras 28-29. As I observed (para 55) "The fact, if fact it be, that the circumstances are such as to justify intervention by the State, . . . does not absolve the State of its duty nonetheless to act fairly. It is not enough for the State to make a fair decision: the State must itself act fairly in the way in which it goes about arriving at its decision." A parent who wishes to give evidence in answer to a local authority's care application must surely be permitted to do so.

> [57] Secondly, there is the right to confront ones accusers. So, a parent who wishes to cross-examine an important witness whose evidence is being relied upon by the local authority must surely be permitted to do so."

87. Whilst Ms Gray is right to caution the court by reference to the foregoing passage, a refusal to direct a fact finding hearing with respect to the findings sought by the mother against WR, TT and KS does not have the effect either of preventing the mother giving evidence in answer to a local authority's application or, subject to what I say below, from cross-examining witnesses whose evidence is being relied upon by the local authority in respect of threshold and placement.

88. Once again, given the nature and extent of the evidence before the court, the absence of any finding with respect to the email would not prevent the mother advancing her current case as to threshold and placement as articulated at this hearing by Ms Gray. A finding that WR had sought to elicit negative evidence concerning her would supplement the mother's case but the absence of such a finding does not preclude that case being put effectively. Whilst of continuing and seminal importance, the context of the observations in *Re S-W (Children) (Care Proceedings: Final care order at case management hearing)* must be borne in mind, namely that the FPR 2010 gives the court wide case management powers when seeking to ensure that the case is dealt with *both* fairly *and* expeditiously.

The justice of the case

89. As articulated by Peter Jackson LJ in *H-D-H and C (Children: Fact-Finding)*, addressing the question of the justice of the case gives the court the opportunity to stand back and ensure that all matters relevant to the overriding objective have been taken into account. The court must ask itself whether its process will do justice to the reality of the case. Peter Jackson LJ recognised in *H-D-H and C (Children: Fact-Finding)* that most decisions will have their downsides.

90. Were the circumstances such that this application could have been brought much earlier in the proceedings, the outcome of the balancing exercise *may* have been different. However, this case is six days away from a final hearing in proceedings that have now been going on for over a year and in which any further delay would be entirely antithetic to the welfare of all three children. In these circumstances, and where the findings sought by the mother would not be determinative of the substantive application before the court one way or the other having regard to nature and extent of the evidence before the court, and where I am satisfied that the mother can receive a fair trial by reference to that existing evidence, on a fine balance I am satisfied that it is not necessary to direct a finding of fact exercise with respect to the findings sought by the mother in order to deal with this case justly. Whilst such an exercise may be desirable, when balanced against the detrimental effect on the children of the final hearing being adjourned over a year after the issue of proceedings, it cannot in my judgment be said to be necessary.

CONCLUSION

91. In conclusion, balancing each of the factors set out in *Oxfordshire* as considered above, and stepping back to consider the justice of the case overall, I am satisfied that it is *not* necessary in this case to undertake a fact finding hearing with respect to

allegations made by the mother against WR, TT and KS arising out of an email sent to the mother on 14 November 2023. In the circumstances, I decline to direct such a fact finding exercise with respect to the findings sought by the mother. The matter will remain listed for final hearing before HHJ Cox commencing on 11 March 2024.

92. I am further satisfied that having reached a reasoned decision that it is not necessary, by reference to the factors set out in *Oxfordshire*, to undertake a fact finding hearing with respect to allegations made by the mother, it would be contradictory to nonetheless permit the mother to put the contents of the email to WR in cross-examination. I accept the submission of Mr Goodwin and Mr Norman that such cross-examination would necessarily have to examine the issues that this court has concluded, by reference to the factors set out in *Oxfordshire*, it is not necessary to determine to resolve the proceedings justly. I further accept their submission that, in the circumstances, to follow a decision that a fact finding exercise on the findings sought by the mother is not required with a decision that cross-examination of WR on the email of 14 November 2023 will nonetheless be permitted would be contradictory and would circumvent the disciplined approach articulated in *Oxfordshire CC v DP, RS and BS*.

93. In the circumstances, I shall also direct pursuant to FPR 2010 r.22.1(4) that there shall be no cross-examination at the final hearing in relation to the email of 14 November 2023.