Neutral Citation Number: [2021] EWHC 1382 (QB)

Case No: QB-2017-001237

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24 May 2021

Before:

Mrs Justice Lambert DBE

- -

Between:

(1) DFX (A Protected Party by her Litigation Friend The Official Solicitor)
(2) RFX
(3) SFX (A Protected Party by her Litigation Friend The Official Solicitor)
(4) DGX (A Protected Party by his Litigation Friend, TG) **Claimants**

- and -

Coventry City Council **Defendant**

- -
- -

Ms Lizanne Gumbel QC and Mr Justin Levinson (instructed by **Irwin Mitchell LLP**)
for the **Claimants**
Mr Adam Weitzman QC and Ms Caroline Lody (instructed by **DWF Law LLP**)
for the **Defendant**

Hearing dates: 23 to 27 November, 1 to 3 December, 8 to 9 December 2020 and 7 January 2021

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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.

MRS JUSTICE LAMBERT DBE

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Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 1300 on Monday, 24 May 2021.

Mrs Justice Lambert:

Introduction:

1. This is an acutely sensitive case involving information which is private to the claimants. For this reason, the Master made an order anonymising the claimants at an early stage of the litigation. There were no representations from the press to set aside or vary that order and, given my view that the balance lay heavily in favour of protecting the privacy of the claimants, I continued the anonymity order at the pre-trial review in October 2020 and made a further order under CPR 39.2(4) preventing the disclosure of the identities of the claimants. In this judgment therefore I refer to the claimants by their cyphers and, in order to protect their identity by association, I refer to members of their family by their relationship to the claimants and to three male visitors to the claimants' household by their initials. Consistent with the principles of open justice, the identities of the defendant's witnesses and the various professionals may be reported in the usual way.

2. The four claimants are siblings:

    (a) the first claimant, DFX, is a girl born in March 1995. She is now aged 26 years. She suffers from a learning disability and brings this action by her litigation friend, the Official Solicitor;

    (b) the second claimant, RFX, is a girl born in September 1996 and she is now aged 24 years;

    (c) the third claimant, SFX, is a girl born in November 1999. She is now aged 21 years. She also suffers from a learning disability and brings this action by her litigation friend, the Official Solicitor;

    (d) the fourth claimant, DGX, is a boy born in December 2001. He is now aged 19 years. He also suffers from a learning disability and brings this action by his adoptive father.

3. In addition to the claimants, the parents had five other children. The eldest was a boy, born in January 1993. There were four other girls, all younger than the claimants, born in March 2003, August 2006 and twin girls born in February 2009. Until 2010, the claimants lived with their parents and siblings in a four-bedroomed terrace house in a suburb of Coventry where the defendant was the local authority responsible for the provision of social services, including child welfare and child protection.

4. Between 1995 and 2010, the defendant's social services department ("the SSD") were involved with the claimants and their family. The SSD responded to and, where necessary, investigated referrals and concerns; it supported the family generally by monitoring and through the provision of advice and direct work undertaken with the parents and the claimants; it assessed the risks to the claimants which were posed by family members, friends and acquaintances of the family. The SSD's involvement with the family was pursuant to the powers and duties vested in the defendant by the Children Act 1989 ("the 1989 Act").

5. Save for a hiatus between June 2001 and February 2002, the SSD's engagement with the family was ongoing throughout the 15 years from 1995 to 2010. Between 1996 and 1999, the first and second claimants were on the child protection register ("the register") and, between March and September 2002, all of the claimants were on the register. In April 2009, the defendant issued care proceedings in the Coventry County Court. Initially, the removal of the children was sought under an emergency protection order. This was not successful. Following a series of interlocutory hearings and adjournments to obtain relevant evidence, HHJ Cleary made an interim order in March 2010 removing all of the children, save for the eldest (a boy, by then aged 17), into foster care. In June 2010, full care orders were made and care plans removing the eight children from the family were approved by the court.

6. The claimants' case is that they each suffered abuse, including sexual abuse, and neglect whilst in the care of their parents before their removal from the family in 2010. In the case of the first, third and fourth claimants, it is alleged that the sexual abuse was perpetrated by the father; in respect of the second claimant, by the father and a family friend.

7. The claimants allege that their parents were unfit to be parents and that this should have been obvious to the social workers involved with the family. Between 1992 and 1997, the father was convicted of four offences of indecency towards teenage girls. He had learning difficulties and had limited insight into his offending. The mother also had learning difficulties and, it is alleged, she demonstrated repeatedly that she was either unable or disinclined to protect the claimants from their father or from predatory men who visited the home. The risks to the children were increased by the presence in the home of the maternal grandmother who lived with the family until March 2004. She also had learning difficulties and was associated with three "risky adult" men who visited the home. The home was often squalid and the children dirty and unkempt.

8. The action is brought in negligence and under the Human Rights Act 1998 ("the 1998 Act") for breach of Articles 3 and 8 of the European Convention on Human Rights. The argument on Article 8 was withdrawn by the claimants during the course of the trial.

9. The essential elements of the pleaded claim in negligence are that:

    a) the defendant is vicariously liable for the acts and omissions of the social workers, family support workers and other employees engaged by the defendant in the SSD who were involved in child protection and child welfare work;

    b) the social workers involved in the child protection and child welfare work undertaken in respect of the claimants owed the claimants a private law duty of care to exercise reasonable skill and care in the discharge of this work;

    c) the social workers failed to exercise reasonable skill and care in their involvement with the claimants;

    d) had the social workers, for whom the defendant is liable, discharged their child welfare and protection function to a reasonable standard then care proceedings would and should have been issued by mid-2002, or alternatively by no later than the end of 2003/early 2004;

e) as a matter of fact, had such proceedings been issued then, even if not on an interim basis, by the date of any final hearing by the court, orders removing the claimants from the care of their parents would have been made;

f) in these circumstances the abuse suffered by each of the claimants would have been avoided or substantially alleviated.

10. So far as the claim in negligence is concerned, there are two areas of common ground between the parties. First, there is no issue that the defendant is liable for any unlawful acts and omissions of those working in the SSD. Second, quantum, subject to liability has been agreed. The defendant accepts that the second claimant was sexually abused by two men: by AD in either 2001 or 2002 and by her father on two occasions between late 2008 and mid-2010. AD admitted the offence and was cautioned. In 2014, the father also admitted his offences and was sentenced to a custodial term. The defendant does not accept that the other claimants were the subject of sexual or other assaults either by the father or anyone else. However, I am not invited to make findings of fact as to whether and if so when/how and by whom the claimants were assaulted. For present purposes the parties have agreed a sliding scale of awards which will then be applied by the parties to any findings of liability which I may make. This is obviously sensible as it avoided the claimants giving oral evidence which, I anticipate, would have been extraordinarily difficult for them. I pause only to note that the agreed award range is £25,000 to £125,000. These figures are very substantially lower than the initial pleaded claims (which totalled in excess of £40 million) and which included losses, where appropriate, arising from the claimants' learning disabilities. It is now accepted, following investigation, that those disabilities are genetic rather than acquired, hence the reduction in the value of the claims. Save for these two issues however, each other element of the claim is disputed.

11. In their claim under the 1998 Act for breach of Article 3 rights the claimants assert that they were exposed to a real and immediate risk of sexual harm of which the defendant was or ought to have been aware, together with a failure by the defendant to take reasonable available measures which could have had a real prospect of altering the outcome or mitigating the harm. There is considerable overlap between this claim and the claim in negligence in that the operational failings alleged against the defendant mirror the allegations of negligence. Although for the purpose of the human rights claim the claimants need not establish the existence of a duty of care owed to the claimants, and the causation requirement is different, the claim is not without its own particular difficulties, not least that it was commenced many years after the expiry of the limitation period for such actions.

12. The claimants were represented by Ms Lizanne Gumbel QC and Mr Justin Levinson and the defendants by Mr Adam Weitzman QC and Ms Caroline Lody. I heard evidence and submissions between 24 November and 9 December 2020 and closing submissions on 7 January 2021. I directed further written submissions from the parties addressing the recent decision of the Court of Appeal in *Begum v Maran UK Limited* [2021] EWCA Civ 326 which I received on 15 April 2021. I am very grateful to all involved for their help throughout the case.

The Issues:

13. In the immediate run up to the trial, and during the trial itself, the issues were refined considerably by Ms Gumbel. Her case at the end of the trial bore only a passing resemblance to the case pleaded in the Re-Re-Amended Particulars of Claim (which was the claimants' statement of case at the start of the trial). I did not direct a further set of amendments to the Re-Re-Amended Particulars of Claim although the claimants' settled case on the establishment of a duty of care was dealt with by Ms Gumbel in a Note dated 4 December 2020 and, later, by the formal withdrawal of various paragraphs of the Re-Re-Amended Particulars of Claim following closing submissions. I set out below the central issues for my determination as they had crystallised at the close of the trial.

Existence of a Private Law Duty of Care

14. The first issue that I need to resolve is the existence, or otherwise, of a private law duty of care owed by the defendant's social workers (and other members of the child welfare team) to the claimants. The parties' arguments are formulated against a backdrop of a long series of cases which have examined the circumstances in which a public authority may owe a duty of care in negligence in the discharge of its public law functions. Ms Gumbel commenced her submissions with a chronological tour of the authorities starting with *X v Bedfordshire County Council* [1995] 2 AC 633. However, the legal framework which I must apply in this context is set out in three more recent cases, and for the reasons which I give later in this judgment, it is those cases which are central to my analysis of the issue.

15. The Re-Re-Amended Particulars of Claim asserted four bases upon which it was alleged that a duty of care arose. However, by the time of her closing submissions, Ms Gumbel had reduced her case to a single question: whether the defendant had assumed responsibility for "the claimants' plight" such as to give rise to a wide-ranging duty of care on the part of the defendant to keep the claimants safe and protect them from sexual harm from third parties.

16. The matters relied upon by the claimants as the foundation of the asserted assumption of responsibility in the Re-Re-Amended Particulars of Claim run to 22 paragraphs, each one identifying an action or response by the SSD to concerns raised about the welfare of the claimants. Those 22 paragraphs assert reliance by different people or agencies, depending upon the identity of the person or agency raising the concern (health visitors; school; medical specialists). The claimants now rely, however, only upon three events in support of their case that the defendant assumed responsibility for their plight and therefore owed them a duty to keep them safe:

    a) the commissioning of, and response by the SSD to, a psychology report prepared in January 1997 by Dr Sarah Warren and Mr Richard Ball of the Reaside Clinic ("the Reaside report"); and/or

    b) the "direct work" undertaken by social workers and family support workers with the parents and the children to educate them as to the risks posed by third parties; and/or

c) the assessment in February 2002 that the claimants were at risk of significant harm and the decision to commence care proceedings in March 2002. As a consequence of that assessment, it is alleged that the defendant "assumed responsibility to the claimants for competently pursuing such proceedings whilst it remained necessary to do so".

17. Mr Weitzman denies the existence of a duty of care. At this stage, I need only indicate that he deploys a number of overlapping arguments in support of his submission that no duty of care arises in this case. He submits that the essence of the claim is that the public authority failed to protect the claimants from third party harm by failing to discharge its statutory function of commencing care proceedings under section 31 of the 1989 Act. As such, the imposition of liability is inconsistent with well-established legal principle. He further submits that on an application of straightforward common law principles, there has been no assumption of responsibility by the defendant in this case.

18. The resolution of this issue involves an examination of the current legal framework and of the claimants' allegations set against the backdrop of the statutory functions of the local authority and the facts of the case.

Breach of Duty

19. The Re-Re-Amended Particulars of Claim set out 34 allegations of breach between 1995 and February 2009. There was duplication in the allegations and some are unhelpfully generic. In her closing however, Ms Gumbel focussed upon events and decisions during 2002 when (in June) the child protection conference reversed its earlier recommendation that care proceedings should be commenced with a view to obtaining shared parental responsibility with the local authority. This so-called "overriding" of the recommendation is the main focus of the claimants' case: Ms Gumbel states that the "overriding of the previous decision to commence care proceedings shows a blatant lack of understanding of the purpose of professional work in protecting children". Alternatively, it is submitted that in late 2003 and following RFX's disclosure that some years earlier she had been sexually abused by a friend of the grandmother, care proceedings should have been started.

20. In refining her case in this way, Ms Gumbel accepted that, in terms of its causative effect, there was nothing to be gained by her pursuing a case after late 2003. Also, realistically, she appeared to accept that if she were unable to establish a duty of care and a breach of that duty by reference to events and decisions during that time frame, then she was unlikely to persuade the court that events and decisions thereafter established her case. So far as the defendant is concerned, all I need record at this stage is that the claimants' case on breach of duty is denied.

21. There is no issue between the parties as to the approach I should take in evaluating whether the social workers, by their decisions and actions (or failures to act) were in breach of any duty owed to the claimants. The approach is a familiar and well-trodden one. I must apply the *Bolam* test and ask myself whether the decisions made by members of the SSD fell outside the reasonable range when measured against contemporary standards and guidance. In resolving the issue, I was assisted by expert evidence from two social workers: Ms Maria Ruegger for the claimants and from Ms Felicity Schofield for the defendant. I remind myself that, when considering expert evidence, I must be satisfied that there is a logical basis for the opinions expressed.

Causation

22. The claimants' case is that, whether commenced in 2002, late 2003 or early 2004, care proceedings would have, on balance, led to an order by the court removing the claimants from the family. Had proceedings been commenced in 2002, then an interim order seeking shared parental responsibility would or should have been sought. The expert evidence which the court would have required would have led the court inevitably to the conclusion that the parents were not fit for that role and the children removed. Although no expert psychology evidence (concerning children and parents) was deployed before me, Ms Gumbel invites me to infer that the evidence which would have been assembled (hypothetically) in 2002 would have been similar to that which was in fact obtained in 2010 from Ms Norma Howes (psychologist) and Mr Kevin McCarthy (social worker).

23. Again, all I need note at this stage is that the defendant disputes causation. Mr Weitzman draws my attention to the radical change and deterioration in the family circumstances in 2009, when compared with 2002 or 2003.

Claim under the Human Rights Act for breach of Article 3 ECHR

24. The issues that I may need to resolve in respect of this claim are: whether in all of the circumstances it would be equitable to extend the discretionary time limit for the commencement of such a claim; whether the claimants were exposed to a real and immediate risk of sexual abuse by the father, taking into account what the social workers knew at the time and, if so, whether there were any operational failures by the defendant. In addressing this last issue, it is common ground between the parties that the standard demanded for the performance of the operational duty is one of reasonableness. As such, both parties rely upon their respective cases on breach of duty in negligence.

The Legislative Context

25. Having set out the issues in the case, I turn to the statutory framework within which the SSD was operating at the relevant time. During the course of the trial, I directed the parties to provide me with an agreed note of the legislative context and what follows largely reflects the contents of that note which I found to be very helpful.

26. The relevant legislation is the 1989 Act which gives local authorities statutory powers and obligations to support children and families (Part III), to take steps, including by way of investigation, to protect children in the community, to seek orders from a court to interfere with parental rights and ultimately to seek an order from the court to remove a child from its parents.

Section 17: provision of services for children in need

27. The provision of services for children in need, their families and others are set out at section 17 of the 1989 Act where it is stated that:

> "(1) It shall be the general duty of every local authority (in addition to the other duties imposed on them by this Part) –
>
> (a) to safeguard and promote the welfare of children within their area who are in need; and
>
> (b) so far as is consistent with that duty, to promote the upbringing of such children by their families,
>
> by providing a range and level of services appropriate to those children's needs."

A "*child in need*" is defined in section 17(10) of the Act:

> "(10) For the purposes of this Part a child shall be taken to be in need if –
>
> (a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without provision for him of services by a local authority under this Part
>
> (b) his health or development is likely to be significantly impaired or further impaired without the provision of him for such services
>
> (c) he is disabled.
>
> (11) … in this Part
>
> …
>
> "development" means physical, intellectual, emotional, social or behavioural development;"

28. By providing these specific powers and duties the 1989 Act requires local authorities to support children in need, including disabled children, within the community and in accordance with section 17(1)(b) insofar as possible within the family unit.

29. Part 1 of Schedule 2 sets out the specific duties and powers given to local authorities to discharge their general duty under section 17. It starts by prescribing that every local authority shall take reasonable steps to identify the extent to which there are children in need within their area. So far as is relevant to this claim, the duties and powers of the local authority are: to take reasonable steps to prevent children in their area suffering ill-treatment and neglect (Part 1, Schedule 1 paragraph 4(1)) and to provide services designed to minimise the effect upon disabled children of their disabilities (Part 1, Schedule 2, paragraph 6(1)(a)). Local authority services provided under section 17 are provided on a voluntary basis: the local authority has no power to require a family to accept them.

30. Paragraph 7 of the same Part states that every local authority shall take reasonable steps designed to reduce the need to bring proceedings for care or supervision orders with respect to children within their area.

Section 47: Local Authority's duty to investigate

31. Section 47 of the 1989 Act is concerned with the protection of children. It imposes, by section 47(1), a duty on local authorities to investigate a child's circumstances where there is "reasonable cause to suspect a child in their area is suffering or is likely to suffer, significant harm".

32. Again, so far as relevant to this claim, section 47 states that:

> "(1) Where a local authority
>
> …
>
> (b) have reasonable cause to suspect that a child who lives, or is found, in their area is suffering or is likely to suffer significant harm
>
> the authority shall make, or cause to be made, such enquiries as they consider necessary to enable them to decide whether they should take any action to safeguard or promote the child's welfare.
>
> …
>
> (3) The enquiries shall, in particular, be directed towards establishing
>
> (a) whether the authority should –
>
> (i) make any application to court under this Act;
>
> (ii) exercise any of their powers under the Act;
>
> …
>
> (4) Where enquiries are being made under subsection (1) with respect to a child, the local authority concerned shall (with a view to enabling them to determine what action, if any, to take with respect to him) take such steps as are reasonably practicable –
>
> (a) to obtain access to him; or
>
> (b) to ensure that access to him is obtained, on their behalf, by a person authorised by them for the purpose,
>
> unless they are satisfied that they already have sufficient information with respect to him.
>
> …

(7) If, on the conclusion of any enquiries or review made under this section, the authority decide not to apply for an emergency protection order, a child assessment order, a care order or a supervision order they shall:

(a) consider whether it would be appropriate to review the case at a later date; and

(b) if they decide that it would be, determine the date on which that review is to begin

(8) Where, as a result of complying with this section, a local authority conclude that they should take action to safeguard or promote the child's welfare they shall take that action (so far as it is both within their power and reasonably practicable for them to do so)"

33. In their joint note, Ms Gumbel and Mr Weitzman expand upon the local authority's section 47 investigative powers in the following way:

> "the local authority can decide whether as a result of such investigation they need to take steps. Such steps include no further action, a child protection conference to decide if the child's name should be placed on the child protection register or applications for an emergency protection order, a child assessment order or an interim care or supervision order. Where concerns are substantiated and a child is found to be at a continuing risk of significant harm, the local authority are required to convene a child protection conference with the aim of deciding whether a child is at continuing risk of significant harm and to plan how best to safeguard and promote their welfare. The child can then be registered on the register and made the subject of a child protection plan. Children who become subject to a child protection plan following an initial child protection conference must have a key worker who is allocated to them. The key worker must always be a social worker. Thereafter protection plans are subject to continuous reassessment and review at core groups and child protection review conferences. The child protection conference can register the child under the categories of neglect, physical abuse, sexual abuse and emotional abuse. The powers of the child protection case conference are limited to registration and deregistration. It is for the local authority and their partners to carry into effect the provisions of the child protection plan."

Section 31: Care Proceedings

34. Only the local authority (or an authorised person which for this purpose is the National Society for the Prevention of Cruelty to Children) is empowered to make an application to the court for a care order. Part IV of the 1989 Act sets out the provisions in respect of care proceedings which can result in either a care order or a supervision order.

35. Section 31(2) identifies the threshold criteria for a care order:

> "(2) A court may only make a care order or supervision order if it is satisfied –

(a) that the child concerned is suffering or is likely to suffer significant harm: and

(b) that the harm or the likelihood of harm is attributable to –

(i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or

(ii) the child's being beyond parental control."

36. Pending consideration of a full order, the court may grant an interim care order if it is satisfied that there are reasonable grounds for believing that the child is suffering, or likely to suffer significant harm. Whilst investigating whether to make a care order the court may make orders in respect of contact between the child and its parents and make orders for medical or psychiatric examination of the child or other assessments.

37. Local authorities are required to produce care plans for all children who are subject to care proceedings. At the time of the initial application, an interim care plan must be filed. Such interim care plans are frequently revised during the proceedings prior to the final care plan being devised. Care plans should describe what the local authority proposes to provide for the child should the order sought be granted. There must be separate care plans for each sibling in recognition that children will have different needs as a result of the harm they suffered, depending on their age and stage of development, and any special needs they may have. Care plans will state what the individual needs are and how they are to be met, for example educational or therapeutic needs. They should set out the arrangements for the child's contact with parents and siblings in the short and longer term from the perspective of the child's needs. Reference should be made to the child's wishes and feelings, the views of others such as the court appointed guardian, and the support to be provided to parents. Care plans also set out contingency plans in the event that the care plan cannot be implemented, for example if an adoptive placement cannot be identified in a timescale appropriate to the child's needs. A care plan will specify whether the child will remain with the parents or is to be looked after by the local authority. A significant change in the care plan will require court approval. Hence, if the court makes an interim care order giving the local authority parental responsibility but leaving the children in the care of their parents, the local authority will need to return to court if it wishes to alter the care plan and remove the children from their parents' care at any point before a final care order is made. A court will not remove the children at the interim stage unless the children's safety requires removal, and removal is proportionate in the light of the risk posed by leaving them where they are (see *In re G (Interim Care Order)* [2011] 2 FLR 955 §22).

38. The granting of a final care order by the court places the child in the care of the local authority until the child reaches 18 years. The final care order gives the local authority parental responsibility and enables the local authority to decide with whom the child will live up to the age of 18 years. The parents retain parental responsibility, but this is subject to the local authority's powers of veto. If the local authority decide to move the child from one home to another, the local authority does not need to return to court, but the parents may return to court and seek to discharge the care order.

Legislative Guidance

39. During the course of the evidence I was taken to two sets of guidance which were published in conjunction with the 1989 Act.

40. "*The Children Act 1989 Guidance and Regulations*" emphasises the important principles underpinning the 1989 Act. I pick up on two such principles that are relevant to the issues before me.

41. The first is the principle that children should, if possible, be cared for within the family. Paragraph 1.5 of the Guidance states that: "*The Children Act rests on the belief that children are generally best looked after within the family with both parents playing a full part and without resort to legal proceedings. That belief ... is reflected in ... the local authority's duty to give support to children and their families".*

42. The second is the "no order" principle. Paragraph 1.11 of the Guidance sets out that: "*The Act prohibits the court from making an order unless it is satisfied that the order will positively contribute to the child's welfare".* Paragraph 1.12 continues: *"There are two aims. The first is to discourage unnecessary court orders being made ... The second aim is to ensure that the order is granted only where it will positively improve the child's welfare and not simply because the grounds for making the order are made out, as for example, in care proceedings where the court may decide that it would be better for a particular child not to be in local authority care*". The point is underlined at paragraph 3.2: "*a care or supervision order will be sought only when there appears to be no better way of safeguarding and promoting the welfare of the child suffering, or likely to suffer, significant harm. The local authority has a general duty to promote children's welfare and to avoid the need for proceedings where possible; it should have regard to the court's presumption against making an order in section 1(5) while at the same time giving paramount consideration to the child's welfare. This means that voluntary arrangements through the provision of services to the child and his family should always be fully explored*". The point is made again at paragraph 3.11: "*Local authorities should be guided by the founding principles in 3.2 above. Having identified the child's needs they should consider in each case whether any of the services which the authority provides or could provide under Part 3 in Schedule 2 or which might be available from voluntary organisations or others would be likely to improve the situation sufficiently. Where parents are struggling to care for the child, home help, day care, parenting advice, voluntary befriending and other support of like kind coupled with close monitoring of the child's welfare by a health visitor and social worker may retrieve the situation*". Paragraph 3.16 states that: "*even if the conditions (for making a care order) are met the court is not obliged to make the order. It must go on to apply the child-centred principles of section 1 of the Act namely that the welfare of the child is the paramount consideration, the checklist of factors to be considered and the presumption of no order. Thus where the prognosis for change is reasonable and parents show a willingness to co-operate with voluntary arrangements, an application for a care or supervision order is unlikely to succeed*".

43. "*Working Together 1991*", as the title suggests, emphasises the importance of co-operation between all of the agencies providing protection to children. At paragraph 5.10, the guidance requires that the co-operation must be underpinned by a shared agreement about the handling of individual cases at every stage of the process, from the initial referral and recognition through the subsequent stages of immediate protection and planning; investigation and initial assessment; the child protection conference and decision making

about the need for registration; the comprehensive assessment and planning phase; the implementation review and, where appropriate, de-registration.

44. Part 6 of "*Working Together*" deals with the child protection conference and child protection register. The following points are made. They are all self-explanatory:

> At [6.1] the child protection conference is central to child protection procedures. It is not a forum for a formal decision that a person has abused a child. That is a matter for the courts. It brings together the family and the professionals concerned with child protection and provides them with the opportunity to exchange information and plan together.
>
> At [6.8] the only decision for an initial child protection conference is whether or not to register the child. It discusses and records a proposed plan of action and it is for each agency representative to decide whether to accept the recommendations for action and their part of the plan.
>
> At [6.9] the child protection review's purpose is to review the arrangements for the protection of the child, examine the current level of risk and ensure that he or she continues to be adequately protected, consider whether the inter-agency co-ordination is functioning effectively and to review the protection plan. Every child protection review should consider whether registration should be continued or ended.
>
> At [6.36] Child Protection Register: this is not a register of children who have been abused but of children for whom there are currently unresolved child protection issues and for whom there is an inter-agency protection plan. Elsewhere it is recorded that the "register will provide a central point of speedy inquiry for professional staff who are worried about a child".
>
> At [6.39] Requirements for registration: before a child is registered the conference must decide that there is or there is a likelihood of significant harm leading to the need for a child protection plan. There is a requirement that either: (i) there must be one or more identifiable incidents which can be described as having adversely affected the child. It is important to identify a specific occasion or occasions when the incident has occurred. Professional judgement is that further incidents are likely; or (ii) significant harm is expected on the basis of professional judgement of findings of the investigation in this individual case or on research evidence. The conference will need to establish so far as they can a cause of the harm or the likelihood of harm.

Factual Background

45. Before setting out the factual background, I make three preliminary points. First, the narrative is not disputed by the claimants in any material way. What follows therefore is an uncontentious chronology of events drawn from the running records and associated documents maintained by the defendant. Second, the documentation is very extensive. The social services running records extend to thousands of pages. The chronology below is not exhaustive and has been reduced considerably in the light of the more focussed way

in which the respective cases were advanced by the close of the trial. Third, the physical condition of the home and the physical state of the children was a source of concern to the SSD during the period to 2004 (and beyond). Ms Ruegger accepted that these aspects of the family circumstances never reached the stage whereby care proceedings, with or without removal of the children, would have been indicated. I do not therefore document below the very many references in the social services running record to the state of the home and the physical state of the children.

1995: elder brother aged 2 in January, DFX born in March

46. The SSD's involvement with the family started in June 1995 when it received a referral concerning the wellbeing of DFX and her older brother. The referral was made by an "anonymous" neighbour. It was to be the first of many from that source. The referral concerned the competence of the children's grandmother as carer. A further neighbour referral was made in August 1995. It again related to the quality of the care provided by the grandparents. In August 1995, the probation service informed the SSD that the father had been bailed by Coventry Magistrates' Court for two offences of indecent assault upon a 14 year old girl, and that the father had a previous conviction for indecent assault in 1992 for which he had been conditionally discharged.

47. In October 1995, a social worker, Mr Richard Copland, was allocated. He convened a child protection conference for 15 December 1995. By this stage, the father had pleaded guilty to the two counts of indecent assault. The pre-sentence report prepared by the probation service for the purposes of the criminal court hearing recorded under "risk to the public of re-offending" that the father was not viewed as presenting a major risk in the community. The father had apparently acknowledged that what he had done was wrong. He was reported to be depressed after his own father's death and by his wife's infidelity. The probation service recommended a three-year probation order and requirement that the father should attend a sex offender programme.

15 December 1995: Child Protection Conference

48. The conference was chaired by Mr Paul Tudor. A number of agencies were represented, including the police family protection unit and the health visitor service. The parents attended along with the father's solicitor. Mr Copland reported that he had spoken to Dr Sansom, the psychiatrist instructed in the criminal proceedings who had told him that, although his focus had been on community risk rather than the welfare of the children, he did not believe that the father presented "much of a risk of him hurting his own children". He recommended that a psychiatrist with a specialisation in learning difficulties should be instructed to provide an "assessment of the overall situation".

49. The outcome of the conference was the unanimous decision to place both children on the register under the category of neglect. The key elements of the child protection plan included: continued access to the children and parents at home by social workers and family assistants; an assessment and monitoring of the consistency and quality of parental care of the children; and psychiatric assessments of both parents focussing on their ability to protect and keep safe the children in the light of father's convictions for indecent assault. It was hoped that the plan could be implemented on a voluntary basis but, in the event of non-cooperation and non-compliance, legal advice would be taken with a view to placing

the matter before the court. The key worker was to be Mr Copland. The members of the core group were identified.

1996: elder brother aged 3, DFX aged 1 in March, RFX born in September

50. A core group review took place on 28 March 1996. The parents had co-operated and all elements of the child protection plan had been complied with, including a parenting assessment which had taken place over a six week period. The parents were considered to have demonstrated a high level of commitment to the children. In spite of the "very positive progress" however the meeting agreed that the children should remain on the register as there was still work outstanding from the child protection plan. There had been a delay in arranging the psychological assessment due to the SSD having encountered problems obtaining funding for the assessment which had been refused by the NHS.

51. The psychological assessment was commissioned on 10 June 1996. It was to be undertaken by specialists from the Reaside Psychiatric Unit, a specialist forensic centre dealing with sex offenders. Initially, the instruction was only to Dr Warren, a forensic psychologist but, given the parents learning difficulties, the instruction was extended to Mr Ball from Coventry Learning Disabilities Service.

52. During 1996, Mr Copland and various family support assistants monitored the family. There were visits to the home, some unannounced. The SSD monitored the domestic conditions, the health of DFX and quality of the parental care. There were continued reports of poor home conditions and poor parental care but on each occasion that Mr Copland attended he found the home to be in an adequate condition and the children happy and well fed.

53. In September 1996, RFX was born. Mr Copland noted on the day of delivery that her siblings' names were on the register under the category of neglect. He proposed a child protection conference to consider the new-born claimant's safety and welfare but proposed that this conference should be deferred until the psychological assessment had been completed. This proposal was approved by Mr Copland's team leader.

54. On 27 November 1996, the mother made a number of disclosures to the SSD concerning her own sexual history. She revealed that she had been raped on a number of occasions. She reported her concern that one of the men, WG, was a visitor to the current home and that he had convictions for sexual offences. Although he had not had unsupervised access to the children or actually done anything to them the mother was reported to be very anxious about the SSD's response. She also said that WG had pressed himself against her. She had called out and the father had intervened.

1997: elder brother aged 4, DFX aged 2 in March, RFX aged 1 in September

January 1997: The Reaside Report

55. In January 1997, the Reaside report was received by the SSD. It was stated to be an assessment of the risk of harm to the three children in the light of father's convictions for indecent assault and of the level of the parents' learning disabilities and how this might affect their ability to care for their children.

56. For the purpose of their report the authors, Dr Warren and Mr Ball, reviewed documentation including the minutes of the child protection conference of 15 December 1995 and the father's pre-sentence report; they spoke with Mr Charles Tate of the West Midlands Probation Service Regional Sex Offender Unit who ran the group for sex offenders with learning disabilities which the father had been attending since April 1996; and they conducted an assessment which extended over 6 sessions. The authors noted that the mother refused to be interviewed alone, or to allow her husband to be seen alone.

57. A history of the father's family, educational, occupational, social and sexual background was recorded. He had met his wife when she was underage, but it was not possible to say whether a sexual relationship started when she was underage. The circumstances of the indecent assault in 1992 were recorded: the incident had taken place on the night of the wedding and the victim had been one of the bridesmaids staying at the home. In April 1996 the father had been convicted of the indecent assault of a 14 year old girl and given a sentence of two years' probation. The father explained that this assault had taken place in the context of his wife having an extra-marital affair. According to the authors he appeared to blame the victim to some extent although Mr Tate had informed them that the father had moved significantly from his initial position which had been to blame the victim entirely. A history was obtained from the mother. Her violent family history was noted and that she had been placed on the Child Protection Register because of the risk of harm to her from her father.

58. Psychometric testing of both parents was undertaken. In addition, the father completed the Beckett Children and Sex Questionnaire, a self-reporting questionnaire. The mother refused to leave the room while he completed the questionnaire and expressed impatience throughout the testing which was thought to have possibly influenced his responses.

59. The authors concluded that the father's intellectual functioning was within the range of individuals with mild/borderline learning disabilities, with an overall IQ of 68. The mother was assessed to have an overall IQ of 73, functioning within the range of individuals with borderline learning disabilities. The father was diagnosed with personality difficulties sufficient to fulfil the criteria for Personality Disorder, Borderline type. The profiling suggested that he displayed features of depressive, dependent and passive aggressive personality styles with marked anxiety and symptoms of PTSD. The results of the Beckett Questionnaire demonstrated that his degree of emotional congruence was within the normal range of non-offending fathers whilst his level of cognitive distortions was slightly above that found in non-offenders. The authors noted however that the mother had insisted on being present while the father completed the questionnaire and that this had led him to become flustered. The authors noted that the information to be gleaned from this questionnaire alone was limited and that generally this information would be collated with that obtained from other questionnaires. This had not been possible however as the mother had refused to allow the father to complete further questionnaires in that session or return at a later date to do so. Mr Tate reported that perceived rejection by his wife and the presence in the house of possibly sexually active teenage girls were risk factors in father's offending.

60. In evaluating the risk of harm to the children which was posed by the father, the authors noted that the father's convictions related to older pubescent girls and that there was no evidence to suggest that he had ever abused pre-pubescent children or boys of any age.

They stated that "*his own children are currently not at risk of being abused by him. However, when his daughters reach puberty, the probability of him abusing them might be expected to increase*". The authors concluded that, due to the incomplete nature of parts of the assessment, it was difficult to draw firm conclusions regarding the factors influencing the father's sexual offending. However, in their view "*the evidence currently available suggested that there was a low probability of him sexually abusing his own children, although the probability of him abusing his daughters as they reach puberty may increase*". The authors stated that one of the risk factors for the father re-offending would be marital difficulties, as he had informed them that one of his offences had been committed in the context of the mother having an extra-marital affair.

61. The authors recommended close monitoring on an ongoing basis. The parents had agreed to accept input from social services and both appeared to value being included in the decision making process without feeling that they were being criticised. In the opinion of the authors both parents appeared intellectually capable of understanding and meeting their children's needs. In the past they had failed to do so because they put their own needs first. Given their sensitivity to criticism, the authors considered that it would be important that the parents should feel that their views and efforts were appreciated.

62. Having received the Reaside report in January 1997, in April 1997 the SSD were informed that the father was alleged to have touched, inappropriately, a 17 year old girl with learning difficulties. The planned child protection conference was therefore deferred so the allegation could be investigated.

19 June 1997: Child Protection Conference

63. The child protection conference took place on 19 June 1997. Its purpose was to review general progress, to consider the conclusions of the psychological report and to address the recent charge of indecent assault. In the usual way, the preparation for the conference included obtaining reports from the agencies involved with the children. The Nursery Officer expressed no concerns about DFX and RFX who were appropriately dressed, alert and in good health. DFX was reported to show some developmental delay in speech and gross motor ability, but RFX was making steady progress. Mr Copland recommended that, although there had been improvement in the parents' co-operation since the original case conference and there were no longer high levels of concern about neglect, the psychological assessment indicated some areas of concern, and the children should therefore remain on the register.

64. The conference was chaired by Mr Sean Sheridan. Dr Warren, Mr Tate (from probation) and Mr Bradfield (from the police family protection unit) attended together with representatives from the school, the health visitor service and others. Mr Bradfield described the recent allegation as involving a girl with learning difficulties who was functioning at the level of a 14 year old. She was the mother's cousin. Apparently the parents would visit the victim's parents and would watch pornographic videos. The victim had agreed to babysit for the children and, when at the family home, the father had touched her back and breasts on two occasions. The father admitted having touched her inappropriately on one, but not two, occasions. Dr Warren confirmed the view expressed in the Reaside report that the father presented a low risk of offending against his own children but that this situation might change when his daughters were pubescent. She confirmed that there needed to be a close relationship between the parents and the SSD in

order to provide encouragement and support to the couple, bearing in mind that they had found it difficult to work with professional agencies. She said that if the parents were able to trust the people that they were working with, then this would be beneficial in monitoring and helping them if difficulties in their marital relationship arose.

65. The unanimous conclusion of the conference was that the children's names should be registered under the category of sexual abuse. It was agreed that the family should continue to receive social services support and that Mr Copland should continue liaising with the probation service.

66. In July 1997 the father was convicted of indecent assault and sentenced to 180 hours of community service. Mr Copland recorded that the parents were reluctant to accept guilt and suggested that the victim had given a false or at least exaggerated account to the police.

23 September 1997: core group review meeting

67. In September 1997 there was a core group review of the child protection plan when it was noted that the children appeared to be making good progress and that no fresh concerns were raised. The risk of sexual abuse by the father was to be reviewed upon the conclusion of the father's attendance at the Probation Group. The children were therefore to remain on the register.

68. Throughout 1997, Mr Copland monitored progress with the family by phone calls and home visits.

1998: DFX aged 3 in March, RFX aged 2 in September

69. The SSD received a report, dated 25 March 1998, from Roy Watson of the Probation Service, Regional Sex Offender Unit following the father's attendance upon the Learning Disability Sex Offender Treatment Programme. Mr Watson's opinion was that the father was extremely immature and that he craved praise. Mr Watson concluded that the father had neither the ability nor potential to control his behaviour but that he was willing to respond to controls set by people in authority whom he respects.

2 April 1998: Core Group Review

70. In early April there was a core group review. It was attended by the parents, Mr Copland, Mr Watson and others. Mr Watson offered his view that the family needed a high level of support and that if the risks of sexual abuse presented by the father were to be reduced then the social services would need to be involved for a long time. He reported that the father's attendance at the sex offenders' group had been very good but that the father had nonetheless committed an offence whilst attending the group. He had shown no remorse and so the risk of the father reoffending was high.

71. It was decided that the children should remain on the register; that Mr Copland would explore self-protection work with the mother to heighten her awareness of sexual abuse and that father should continue attending the sex offenders' group in Birmingham.

72. On 21 May 1998 the children's plan was reviewed. Monitoring of the home circumstances was to be continued with Gill Kane, a family support worker, taking on an outreach role

including spot checks. Ms Kane was also to start the self-protection work with the mother "*in terms of her abilities to protect children and looking at how [the mother] can help the children in age appropriate ways to protect themselves*".

73. In June 1998, Ms Kane embarked upon her protective work with the mother and children. There were different strands to the work, including training around the father's convictions, protecting the children and work to assist the mother meeting the children's needs. The first of six sessions took place 2 June 1998. Mr Copland also made regular visits to the home to assess the standards. On the whole, he found the standards to be generally acceptable and the children to be clean and healthy.

74. In December 1998 the father completed his probation order.

1999: DFX aged 3 in March, RFX aged 2 in September, SFX born in November 1999

75. In January 1999 the SSD received a report that WG had been visiting the home. WG was known by the SSD to have been convicted of sexual offences. Mr Copland and Ms Kane visited the family. The mother confirmed that WG had called on a number of occasions bringing a video player and some videos for the children because the family video machine was broken. Mr Copland advised the parents that WG should not be allowed into the home and that the children should have no contact with him because of his criminal conviction for an offence against a child. This advice was repeated in a letter. Similar advice was given to the grandmother.

76. It appears that the parents complied with the instruction. On 7 February 1999, the mother sought help from the police to exclude WG. She told them that she had been told that WG should not come to the house because of his history of offending and that she had asked him not to visit and told him why. He had been making telephone calls however and shouting abuse. She asked for someone to give him some advice.

9 March 1999: Child Protection Conference

77. In her report for the meeting on 9 March 1999, Ms Kane said that the mother refused to believe that the father could have committed the offences of which he had been convicted and believed that the victims had ulterior motives for making it up. Ms Kane anticipated that, whilst the mother would believe the children if they accused someone else, she would not do so if they accused the father. Mr Copland reported his concern that the parents had permitted a known sexual offender to visit home on regular basis and that it was worrying that the mother appeared to be still arguing that the father was not guilty of the offences which led to registration.

78. The meeting was chaired, once again, by Mr Sheridan. He summarised that the children appeared to be well cared for, although domestic standards continued to be an occasional issue; that the father was thought by Dr Warren to pose a low risk to his own children but that this risk might change as the girls reached puberty; that there was a concern that WG was a regular visitor to the home and that he posed a risk to the children either at the present time or in the future, as it may be that his showing videos to the children was a "grooming" process. The main risks were identified as "father's position, mother's attitude to his offending and the acknowledgement that WG had been a regular visitor to the home". It was decided that the children would remain on the register under the category of sexual

abuse. The recommendations included that work should be undertaken with both parents to help them understand the grooming process and to assist mother in protecting children and helping her acknowledge the implications of her husband's offending.

79. In April 1999 a family support worker raised the concern that DG may have been seen leaving the family home. DG had a conviction for having physically (but not sexually) abused his young child. Mr Copland visited the home. The father told him that he knew that DG had a conviction for assault upon a child, but that DG was never left alone with the children, nor would he be.

80. In June 1999 Mr Copland and Ms Kane started the planned work with the parents. It was to be undertaken in four sessions, each lasting 45 minutes. The first session focussed upon the father's convictions. The second session addressed the grooming process and the ways in which people can be groomed. The visitors to the house were discussed, including WG and DG. The mother told Mr Copland that WG no longer visited and that he had been "*told straight*" that he could not attend. Session 3 was a more in-depth discussion about visitors to the house. The discussion included a male visitor, AD. The parents told Mr Copland that AD was a friend of the grandmother, that they had known him for a long time and thought that they could trust him. They confirmed that he had on occasions babysat. Mr Copland used him as an example of someone who might be genuine or who might be grooming the children and so they should be careful about who they left the children with. Session 4 was described as a "*recap*" of the message "*you never know who is safe and that you should always be on your guard*".

81. In July 1999, Ms Kane reported that DG had been staying at the house at the invitation of the grandmother. The mother had sought a tenancy transfer.

7 September 1999: Child Protection Conference

82. In her report, Ms Kane noted that both parents had been very co-operative and had participated fully in the work which had been undertaken by her and Mr Copland with them. Notwithstanding this co-operation, the parents had still permitted DG to come into the home at the invitation of the grandmother.

83. The meeting was chaired by Mr Sheridan. He noted that there were clear indicators that the children were definitely "in need". However, the conference members needed to be satisfied that the criteria for ongoing registration were met. Mr Copland said that in his view deregistration under the category of sexual abuse was appropriate. He referred back to the assessment undertaken at the Reaside Clinic and the conclusion that the father presented "fairly low-level risk but that the risk might increase around the time of puberty for the children". However, whilst much work had been done and progress made, there were concerns that DG, who had a conviction for physical abuse of a child, had been allowed into the household. He accepted that work could continue with the family without registration and that social services could continue to offer a high level of support. His view was that registration under the category of neglect was justified.

84. The meeting concluded unanimously that the children's names should be removed from the register under the category of sexual abuse. Although not a unanimous decision, the conclusion of the conference was that the criteria for registration under the category of neglect was not met either. The claimants' names were therefore removed from the

register. It was however acknowledged that the family would be in need of continuing support and that if it appeared that the children were at risk then the conference would be reconvened.

85. Following the decision, Mr Copland made a referral to the Family Support Team for agency input to assist the parents and to monitor the welfare of the children. He requested that this support be provided before the birth of the new baby in November.

86. In November 1999, SFX, the third claimant, was born.

87. On 23 November 1999 the SSD received a referral from DFX's school that DFX had been moving her pants and looking at herself. The head teacher thought that DFX could be doing this because the mother had recently had a baby. Mr Copland made a home visit on 24 November and spoke to the mother. Following his visit it was agreed that Ms Kane would visit to see if she could "gently discover any more information".

88. On 7 December 1999 one of the home carers reported to the SSD that RFX had told her that she had slept in her father's bed as the mother was sleeping on the settee with the new baby. A section 47 investigation was commenced and Ms Kane was despatched to gather information and to monitor the situation. Ms Kane visited the family on 10 December and spoke to the mother concerning the sleeping arrangements.

2000: DFX aged 5 in March, RFX aged 4 in September, SFX aged 1 in November

89. Over the course of the year, the family accepted regular domestic support. Mr Copland visited the family on occasions, including on 16 May following a further referral from the neighbour concerning the mother's care of the children. Mr Copland contacted the care agency, the school and nursery but no concerns about the children's general condition were reported. He concluded that the referral was malicious, but he advised the parents that the grandmother should not be allowed to collect the children from school or babysit as she was unable to control the children. The referral was closed.

90. Mr Copland made an unannounced visit on 1 September following a concern having been raised by RFX's nursery that she was dirty and had an injury to her toe. He described the children as appearing to be healthy and well nourished, reasonably clean and clothing clean and adequate. He concluded that all the children appeared generally well cared for.

91. Towards the end of the year, the parents stopped accepting support from Care UK. Mr Copland recorded that although there had been some significant changes, he was anxious that these would not be maintained if the SSD ceased visiting the family. Mr Copland attempted to persuade the parents to continue with Care UK support. They refused. The mother informed him that she was managing the children adequately and preferred to look after them herself. Care UK support was therefore withdrawn. Mr Copland informed the school and the health visitor so that they would alert the SSD to any concerns.

2001: DFX aged 6 in March, RFX aged 5 in September, SFX aged 2 in November, DGX born in December

92. On 10 January 2001, Mr Copland made a home visit. He found the home to be clean and tidy but wrote to the parents after the visit telling them that they needed some help from

Care UK. He made another visit on 26 January 2001. The parents told him that the grandmother was babysitting on occasions and he reminded them that they should not leave the children in her care. He repeated this advice in a letter and wrote to the school asking them to let him know if the grandmother was ever used as an escort to and from school.

93. On the 25 April 2001, Mr Copland made a further unannounced visit to explain to the parents that he was transferring the support and monitoring to the Family Support Team. In his transfer summary (to the Family Support Team) he set out a summary of social services involvement, highlighting the relevant conference reports and minutes and the Reaside Report. He noted that in addition to concerns that the father might pose a risk to his own children there have also been concerns about other "risky adults" being allowed contact with the children. He expressed his view that the children would always need a service from the SSD to keep them safe from abuse/neglect and that this was not a case that can be "tidied up and then closed".

94. Following the transfer of the case to the Family Support Team, the family was assisted in obtaining a charity grant for new beds and bedding. In June 2001, Liz Rogers the Team Leader at the SSD closed the case, alerting the school, the family's GP surgery and the health visitor service to the need for monitoring by education and health providers.

95. The SSD became involved once again in October following contact from the mother informing them that she was having difficulty in coping with the children, as the father was (she reported) having a sexual relationship with DG's partner. At around the same time, the NSPCC received an anonymous referral that the mother was having difficulty controlling the children and that she was physically abusing them. Nancy Collett, a social worker, was allocated to investigate the concerns. She undertook an assessment of the situation. She visited the family and whilst it was clear that the mother was angry with the father's infidelity, the children appeared healthy. No concerns were expressed by other agencies, the school reporting that RFX was "blossoming". In the light of this information Ms Collett took no further action.

96. The fourth claimant, DGX, was born in December 2001.

2002: DFX aged 7, RFX aged 6, SFX aged 3 and DGX aged 1 in December 2002

97. In February 2002, Ms Collett was involved in the investigation of allegations that AD had been sexually abusing his granddaughter. During the course of a home visit to AD's daughter, it came to her attention that AD's girlfriend was the claimants' grandmother. She noted that the claimants had a "long history" of SSD involvement due to their father's status as a sex offender and the ongoing childcare concerns. In the light of the new information, Ms Collett made an unannounced joint home visit with a welfare officer. The father was present. He confirmed that AD was the grandmother's boyfriend but that he had not been to the house recently because the parents had learned of the allegations that he had sexually abused one of his relatives. He told Ms Collett that the grandmother was still seeing AD and that she would sometimes babysit the children.

98. Ms Collett returned to the house the following day accompanied by Mr Phil Dax, another social worker. The children were present and were spoken to. They were shy and appeared vulnerable but made no disclosures of having been abused. Ms Collett thought that the

parents and grandmother had been aware of the current investigation into AD and yet had still allowed him access to the children. Ms Collett recorded that she did not feel confident that either the grandmother or the parents had the ability to recognise risk and respond appropriately to protect the children. Although the grandmother reported that she had ended her relationship with AD, Ms Collett noted that this only followed social services involvement.

99. Ms Collett instigated a seven-day assessment. She spoke with Roy Hammersley, the police officer co-ordinating the police investigation into AD. He told her that, as the claimants had not reported abuse by AD, they could not form part of the criminal investigation. Ms Collett concluded that the children were at risk of significant harm as the most recent referral demonstrated that the parents were unable to protect them in spite of the direct work which had been undertaken with them. She therefore implemented a section 47 inquiry. This approach was approved by the team manager.

100. On 28 February 2002, Ms Collett spoke with Ann Charlton, the local authority in-house solicitor. Only Ms Charlton's note of this conversation exists but it records Ms Collett's outline of the family background and relevant history, Ms Collett's view that the children were "*not safe*" and that the family were "*heading for disaster*". Ms Charlton advised Ms Collett that, in the absence of hard evidence that the children had been abused, the children should remain on the register and the family given firm warnings that children would be removed if they did not co-operate.

101. In her report to the case conference Ms Collett recommended that the children's names be placed on the register under the category of neglect, that a core assessment be undertaken on each child and that legal advice be sought in relation to applying for an interim care order to enable the local authority to share parental responsibility with the parents.

20 March 2002: Child Protection Conference

102. The child protection conference was held on 20 March 2002. The conference was chaired by Sam Sharkey. It was attended by Mr Hammersley, the police officer leading the investigation into AD, and by Safina Din, another member of the defendant's in-house legal team. Ms Collett reported that the children were at risk, that the parents were keen to work with social services but their co-operation in the past had been inconsistent. The mother had found the involvement of the SSD intrusive in that it removed her own responsibility. It was recognised that without support the family would not be able to function as a family unit and that support may need to be ongoing for some time. Ms Din said that the local authority should initiate care proceedings in order to share parental responsibility with the intention of providing support and to complete all of the relevant assessments "within the framework of a Court process".

103. The conference determined that the children's names would be placed on the register under the category of neglect; that the defendant should initiate care proceedings with a view to obtaining an interim care order to share parental responsibility with parents; that the SSD should undertake a core assessment in partnership with the parents and professional agencies working with the family; and that further work would be undertaken with the parents to help them understand how to protect their children. Mr Dax was assigned as the key worker. The core group was set up. Mr Dax commenced work on the core assessments.

104. On 25 March 2002 Ms Collett recorded in her transfer summary to Mr Dax that legal proceedings should be started with the purpose, not of removing the children, but to enable the local authority to share parental responsibility. She noted that the Reaside assessment had stated that the family would always need SSD support and monitoring and that there may need to be a further risk assessment on the father as his own children reach puberty. The priority work was, in her opinion, the core assessments and care proceedings.

105. On 28 May, RFX was examined by Dr Shenoy, the community paediatrician, following a referral by the school nurse that she had been putting pebbles between her legs. Dr Shenoy reported on 7 June 2002. She noted that RFX had demonstrated challenging behaviour at school and at home, that she appeared to have no friends and that her mother had mentioned that she sometimes puts stones between her legs prompting both parents to ask her why she was doing so, but with no response being given. Dr Shenoy expressed no view as to whether RFX had been sexually assaulted, saying that she was planning on seeing RFX again in a month's time.

106. The task of direct work with the children was allocated to Ms Kay Kaur and she had a preliminary discussion with the family on 30 May. Further work was also undertaken by Mr Dax and Shaminder Uppal on identifying risky adults and protecting children. This work was undertaken on 30 May 2002. Later, on 30 May, another anonymous referral was made that "*a man in his 60s*" who was a friend of the grandmother "*had interfered with RF*" and that RFX had had a medical examination.

12 June 2002: Review Conference

107. On 12 June a review case conference took place. It was chaired by Paul Tudor and attended by the parents, the social worker team leader, Satish Thakor, Ms Kaur and representatives from the school and health service. It was recorded that the core assessments had been completed and that the parents had demonstrated a willingness to work with social services and had committed to protecting the children. Mr Dax reported that care proceedings had not been initiated. They had been proposed in order to share parental responsibility with the parents. He assessed that over the last three months the parents had demonstrated a clear commitment to work with social services without the need for a care order. The parents appeared to have demonstrated their ability to protect the children. In support he gave the example of an occasion when a local teenage girl had tried to take SFX out of the garden. This had caused the parents to erect a fence. Mr Dax told the meeting that he thought that the parents had taken on board all of the concerns which had been raised at the initial case conference and acted on the recommendations and concerns. He reported that the parents were working hard to keep all appointments and had demonstrated a commitment to work with social services. He recommended that the children be removed from the register but that the SSD's work with the family should continue. So far as Mr Dax was aware, AD had not been allowed to visit the home.

108. Mr Tudor noted that RFX had demonstrated challenging and disruptive behaviour but that there did not appear to have been any further incidents of sexualised behaviour. Mr Tudor also asked the parents if they had considered obtaining their own tenancy. The father apparently responded that the grandmother was content for the family to continue living in the house. Mr Tudor also raised the concern that the father had been reported to have taken some form of a rifle into the school which had raised significant safety concerns

within the school. The father told the meeting that he realised that this had been a mistake and that he had sold the rifle.

109. Mr Tudor noted that all of those who attended the meeting were in agreement that the parents had worked very hard in co-operating with the child protection plan and that as a result of that progress, the conference was unanimously of the view that court proceedings did not need to be initiated. However, given that direct work with the child had yet to start and that a further report from Dr Shenoy was awaited, there should be a further period of monitoring and a further conference should take place in three months, at which point deregistration would be considered. It was recorded that the maintaining of the names on the register had not been a unanimous decision.

110. Ms Kaur undertook the planned direct work with the children. Dr Shenoy conducted a further assessment of RFX on 11 July and provided a further report dated 16 July 2002. She recorded that her impression was that the parents believed that RFX had been sexually abused. Her view was that that was possible on the basis of RFX's behaviour alone but the fact that she had made no disclosure was an "impediment". She noted that the mother had been raped as a child but had received no counselling. Dr Shenoy recommended that RFX should be seen by the community mental health service but that in the meantime she had emphasised "positive parenting skills … along the same lines as you have already done".

12 September 2002: Child Protection Conference

111. In her report for the meeting on 12 September 2002, Ms Kaur reported that over the eight sessions of direct work she had conducted with the children, they appeared to have demonstrated a good level of understanding of their bodies and protecting themselves. They were clear as to whom to tell good and bad secrets. They talked freely about home and family, who visits and who can and cannot care for them. In his report for the case conference, Mr Dax reported that direct work had been completed and had been very successful; the children had not been left in maternal grandmother's care; the parents had continued to inform him of adults who have contact with the children. Mr Dax recommended deregistration with the SSD maintaining a presence in the form of a supportive and monitoring role.

112. The conference was chaired by Mr Tudor and was attended by Mr Dax, the health visitor, school nurse, deputy head teacher and the parents. The mother repeated her belief that RFX had been sexually abused, that RFX would talk about it when she was ready and that if she did it would be reported back to the SSD. It was confirmed by the parents that AD no longer visited and that the grandmother was no longer in a relationship with him. Mr Tudor posed the question to the father of what would happen if AD re-appeared on the scene. The father reported that he would stop him going into the house and then tell the police or social worker. Mr Dax indicated that he had no reason to disbelieve this, even though he had no fears that AD would re-appear.

113. There was a discussion concerning deregistration. Mr Dax proposed deregistration but wished the family to continue to receive support and monitoring by the SSD. Mr Tudor was concerned that the mother wished to be independent and did not therefore want to be monitored. Mr Dax said that he had discussed this with the mother and that he considered that the SSD could be supportive (checking on adults; playgroups; holiday schemes). He

confirmed that there would be monthly visits and practical support. The mother agreed that she would accept family support and support visits if the children were deregistered. The conclusion of the meeting was that the names would be removed from the register on the basis that the child protection plan from June had been successfully completed but that the children were still in need of services and oversight. The services to be offered included day care, holiday facilities and direct work with the children and the oversight to comprise of the parents checking with social services about any adults who came into contact with the children. It was also expected that the mother would accept help and support from a family support worker.

114. The family were referred to the family support team. Ms Kaur was to take on the role of family support with assistance from Ms Issy Bateman. Both visited the family on a number of occasions. In December the role was transferred to Ms Bateman when Ms Kaur went on maternity leave.

2003: DFX aged 8, RFX aged 7, SFX aged 4 and DGX aged 2. Another daughter born in May 2003

115. Ms Bateman commenced working with the family in January 2003. She made regular home visits. On 7 February the SSD received a referral from the school concerning RFX who had been disruptive and used foul and sexual language. A social worker was sent to investigate and a home visit was made.

116. The parents suggested that RFX may have learnt this language from the grandmother, and possibly from AD, during his previous visits. Concerns were raised by the health visitor about SFX and DFX. Both suffered from developmental delay and the parents did not appear able by themselves to meet their special needs. A play therapist and nursery places had been rejected. Ms Bateman visited the parents on 7 March to discuss support. On 10 March a review meeting was held. It was agreed that RFX's outstanding referral to the mental health service would be chased and that if an appointment was not available within six months, Ms Bateman would carry out direct work with her, that the mother would look at a local nursery for SFX and that DGX would be assessed by CDU. On 20 March Ms Bateman phoned CAMHS, no appointment was available for six months.

117. In March the parents found inappropriate photographs of the grandmother, one of which was seen by RFX. They destroyed the photographs and informed social services. Ms Bateman passed this information on to Roy Hammersley (the police officer involved in family protection).

118. On 24 March the school wrote to the SSD with information that RFX had said that the father punched her and SFX. RFX had bruises on her leg. A section 47 investigation was commenced. At a home visit on 25 March RFX was interviewed without her parents present and said that the father had punched her and tried to strangle her brother. The police were contacted and medical examinations were arranged.

119. The children were examined on 26 March 2003 at the Gulson Clinic (a specialist facility for suspected child abuse). On examination, the doctor found no injuries to the other four children. RFX was described as having two small finger-tip bruises on the outer side of her right knee and an "oldish" bruise on the inside of her right knee. On the left leg there was a blue bruise over the upper part of the thigh and a bruise over the top of her knee cap.

No other injuries were noted. It was reported that "most of the bruising noted around the knee area on both sides are accidental. She also has accidental bruises over the shin area on both legs". The SSD record of the same examination describes a medical having been performed by Dr Kaur. Ms Bateman and Mr Stewart (police) were also present. The author of the running record noted that RFX had "two marks on right knee which could indicate punching. She also said the two marks were not conclusive of non-accidental injury. Small children crawl a lot so it could be from crawling. Dr Kaur said she was satisfied to conclude that the bruises were accidental". Apparently, RFX also reported itching to her vagina, which Dr Kaur indicated could result from an infection caused by poor hygiene. A discussion with the parents followed. They suspected that RFX had ADHD. Dr Kaur agreed to expedite the outstanding referral to the mental health service.

120. Mr Stewart's note of the medical examination was also dated 26 March. He noted that "*all children medicalled by Dr Robert. No obvious marks. RF did have bruises on her lower legs and knees. She did not give explanation how she got these except she crawls around a lot. Dr feels there is nothing to suggest these injuries were non accidental. Dr feels she is quite an attention seeking child. Education are already involved with RF and this will continue. No offences disclosed. Accidental injury. I request this report is filed pending further information coming to light*".

121. Following the medical examination, the case was discussed with the police. It was agreed that there was no need for child protection investigations but that the children were in need and would require monitoring and support, particularly given the father's history and the potential that he might be a risk to his daughters when older. Ms Bateman continued to liaise with the school about RFX's behaviour and the doctors to chase an appointment with CAMHS. An appointment was not available for two months so, after speaking to RFX she commenced direct work. Five of the six sessions of direct work were conducted at the school, the last session was not completed because RFX had an appointment with CAMHS. In the second session RFX disclosed that the father had tried to strangle her and her newborn sister. Ms Bateman discussed this allegation with her manager and then sought to obtain a more detailed disclosure, but RFX did not repeat or elaborate on this statement in any of the next three sessions. A sibling was born on 21 May.

122. On 14 November RFX told the child minder that AD had touched her private parts. A typed record of the conversation was produced in which RFX was reported to have said that on one occasion the grandmother had taken her to AD's house and AD had asked her whether she would sit on his lap and then he touched her on her private parts. She said that this had happened when she had been in nursery school. On 17 November this disclosure was reported to Ms Lesa Arms who, in turn discussed the referral with her Manager who advised her that due to the fact that it had happened some time ago, she should speak to the duty social worker and contact the police Child Protection Unit. On 18 November Ms Arms conducted the second session of direct work at the school and RFX again disclosed that AD had abused her by touching her privates over her clothes. She also indicated that she had disclosed this abuse to her mother who had told her that she should tell the police so that AD would be arrested. During the subsequent discussion about good and bad touching RFX stated, "Mum and Dad don't bad touch me. I wash my privates. They just wash my back".

123. A social worker, Andrea Sabin, was assigned to the section 47 enquiry. She and Ms Arms liaised with the police and the family. The police interviewed RFX on 21 November when

she described an incident when she was four or five years old when AD had pulled her on to his lap and touched her over her clothes. She disclosed that the grandmother had been in the room when it was happening and that she was watching. She had also talked to the mother about it the day before.

124. On 25 November 2003, Ms Arms recorded that the police were still investigating the offence and that she was troubled by the fact that the mother had said she did not know anything about it. RFX was back at school and seemed "okay". RFX was clear that her parents did not touch her inappropriately. Ms Arms continued her direct work with RFX. A number of home visits were undertaken in which the father was adamant that he would not leave the children in the grandmother's care. The co-habitation of the grandmother with the family was discussed and the father said that he would be happy for grandmother to move out. Ms Arms contacted the housing office and discovered that the parents had been on the housing list for six years.

2004: DFX aged 9, RFX aged 8, SFX aged 5, DGX aged 3, younger sister aged 1

125. In the early part of the year Ms Arms continued to liaise with the housing office to try to find an alternative property for the grandmother. The grandmother finally moved out of the home on 12 March.

126. The police interviewed AD on 7 March. He admitted the allegations and was cautioned. He was living in a residential unit. Ms Arms continued to support the family, making regular visits. She continued her direct work with RFX and sought counselling from CAMHS. On 9 January the school reported that RFX had said she was bleeding "down below". On investigation it was revealed that the mother had taken RFX to the GP who had prescribed cream for thrush. On 28 January Ms Arms spoke to the GP who confirmed that RFX was either suffering from eczema or an infection and that cream had been prescribed. It was agreed that the GP would make a referral to a dermatologist. Eczema was diagnosed and a prescription given.

127. On 11 March, Ms Bateman, who had returned from secondment, replaced Ms Arms as family support worker. She continued to visit the family regularly until September 2004 when she was replaced as family support worker by Caroline Darroch. From 2004 onwards, Ms Darroch and other members of the family support team visited the family on a regular basis, usually once per fortnight.

2009/2010 Court Proceedings:

128. In April 2009, the defendant issued care proceedings under section 31 of the 1989 Act. The lead up to the application is set out in the judgment of HHJ Cleary of 18 March 2010. He noted the family's chequered history and that the relationship between the parents had been intense and "not without its difficulties" and that between 1992 and 1997 the father had been convicted on four occasions of sexual offences against teenage girls. He recorded the children's registration history. In respect of the period from RFX's disclosure of abuse by AD, he noted that the family had continued to receive both support and monitoring under section 17 and that a family support worker had been assigned to the family in 2004. Judge Cleary noted that throughout her involvement with the family, Ms Darroch had tried to help them by advising the parents of the attention they should pay to changing and improving conditions in the home and their care for the children. Her advice included

basic housekeeping, such as picking up clothing from the floor, general tidying and cleaning of the home. He observed that the prompting, in spite of reinforcement and repetition, appeared to have had only a temporary effect. The children presented infested with head lice; their dental hygiene was very poor and prescribed spectacles were frequently lost or unclean.

129. In October 2008, the family support worker had observed the father showering one of the younger siblings. The mother was at this stage four months' pregnant with twins and the father was questioning the paternity of the twins given the mother's candid admission that she had spent a night away from the family home.

130. In January 2009, a month before delivery, the mother was reported to have been drinking a large amount of alcohol. She (and the father) had apparently presented in the emergency department of the local hospital in an intoxicated state.

131. There then followed a series of disclosures or intimations of a sexual nature. First, one of the younger siblings was reported by the school to be sexually aware; then SFX was said to have been behaving in a sexualised way towards her peers; a classmate of SFX reported that she had said that she touched her father in the genital area. As a result of these disclosures, the father was asked to, and did, leave the family home. Following his departure, the conditions in the home spiralled downhill. The mother found it increasingly difficult to cope with nine children. She did not bond with her twins, born in February. She discharged herself from hospital, but rather than returning home to the children she spent the night with the father away from the family home. Although she initially agreed that the twins should be accommodated by the local authority, she then changed her mind. This was the trigger for the care proceedings to be commenced in April 2009.

132. Further disclosures of a sexual nature followed. RFX disclosed that she had seen the words "sex" and "dad" written in DFX's diary. Apparently, the diary was destroyed by the mother who prevented RFX from reporting the discovery to the SSD. In May 2009 RFX was interviewed by police in connection with DFX's diary. She made allegations against AD but not her father.

133. The application in April 2009 included an application for an Emergency Protection Order. The court found that the threshold was not met and the children were left at home over the weekend. On 16 April 2009 there was a contested interim care order application at the Coventry County Court which resulted in an order being granted in respect of the twins who were discharged into foster care. No order was made in respect of the other children, but directions were given for an assessment to be undertaken by an external agency. When the application was returned to the court in August 2009, the insufficiency of the assessment by that agency was identified and the application for an interim order removing the children from the family home was withdrawn: the Guardian and the local authority no longer sought to remove the children on an interim basis and it was agreed that the family would be assessed "in situ" by another external agency with the children being kept together with the mother under an interim care order.

134. Judge Cleary records that "unhappily matters deteriorated extremely quickly. First within days of the hearing an agency worker was subjected to foul and abusive language by [the eldest son] who demanded she leave the house. The other children took up the cry and it is asserted that she was physically bundled from the property".

135. The children were assessed by Mr Kevin McCarthy an independent social worker and by Ms Norma Howes, a psychologist.

136. The application came before Judge Cleary again in March 2010 for a further interim ruling. The hearing focussed upon whether the children should remain at home with their mother and whether either parent could be ruled out as carers. He received letters from DFX and RFX protesting that they should not be placed in care and that they wished for the family to be re-united. Given that DFX was 15 years old, Judge Cleary arranged for her to be interviewed with a view to assessing whether she had the capacity to instruct solicitors of her own. The firm opinion was that she was not.

137. In his judgment of March 2010, Judge Cleary set out the evidence before him. In paragraphs 36 to 66 of that judgment, he set out the opinion evidence of Ms Howes. In paragraphs 68 to 76 he outlined the opinion evidence of Mr McCarthy who deferred to the analysis advanced by Ms Howes, notwithstanding that his analysis had been first in time. Judge Cleary concluded that the section 31 and section 38 thresholds were met. He observed that there is "*not only a likelihood of significant harm, but there is no doubt in my mind that these children have been exposed to significant harm and the risk of continuing harm is overwhelming*". He concluded that on the basis of the findings of the experts, both parents individually and together were disqualified from further consideration in the care of the children. On 15 June 2010, interim orders were made final: full care orders were made for all of the children and all were placed away from the home save for the eldest boy.

The Factual Evidence:

138. I heard factual evidence from the following witnesses:

i) Nancy Collett

ii) Philip Dax

iii) Sam Sharkey

iv) Paul Tudor

v) Gill Kane

vi) Isabella Bateman

vii) Lesa Arms

I also had a bundle of witness statements, the majority of which had been served as hearsay evidence. I set out below a summary of the relevant factual evidence focussing upon the period between 2002 and 2004.

Nancy Collett:

139. Ms Collett confirmed that she had been the allocated social worker from October 2001 until January 2002 and again from 11 February 2002 until 28 March when she handed over to Mr Dax.

140. She became involved with the family in 2002 because of her discovery that AD had had access to the claimants. She was concerned that the parents had failed to protect the children from a person whom they knew may pose a risk to them. So far as she was aware, this was not the first occasion upon which they had failed to protect the children. In her view the children were vulnerable and presented an easy target for a "risky adult". She considered that the children were at risk of significant harm because of the parents' inability to protect them. She was aware that the parents had had a lot of help from the SSD in the past but had been unwilling or unable to recognise the risks and protect the children. She told me that she accepted the claim that the relationship between the grandmother and AD was over because her impression was that there was little if any emotional content to the relationship.

141. She accepted that Anne Charlton's note of the telephone conversation between them on 28 February 2002 was probably accurate. She thought that she may well have said that the family were "*heading for disaster*". By this she would be referring to the breakdown in the work that had already been done with the family. She said that "*after the work which had been done … what actually happened is following deregistration the family refused to engage with us and the big concern was legally we could not force it"*. She was concerned because there was a need for a *"legal structure around the children*". Although social services had managed to work with the family and had managed to achieve deregistration after a long engagement with the family, it had not then been sustained on a voluntary basis. She accepted that she had been advised by Ms Charlton that there were no grounds to seek an order removing the children but there were grounds for seeking an order sharing parental rights and responsibilities and that the objective of shared parental rights was to enable the SSD to work closely with, and monitor, the family in circumstances in which voluntary arrangements under section 17 of the 1989 Act would be insufficient. She believed that the advantage of shared parental responsibility was that it would have enabled the defendant to take swift action to remove the children if something happened. She said that she would not have contacted the legal services if she had not been considering the possibility of removal of the children, but it was too early in the assessment process to have a clear view of the future.

142. She remembered clearly the legal advice she had received that there were no grounds for removal because she was aware of the very strong encouragement to keep children with their families. Supporting the family was an important objective. She said that the "*no orders principle was massive, human rights was massive and it was trying to work out how it all fits*". In response to questions from Mr Weitzman she accepted that the purpose of an order seeking shared parental responsibility would have been to carry out the provisions of any care plan.

Phil Dax:

143. Mr Dax confirmed that he was the allocated social worker between 20 March and 12 September 2002.

144. He told me that when he had taken over the case he had reviewed the case notes, including the Reaside report, and was aware of the history and the risks to the children. He was aware of Ms Collett's concerns not least because he had accompanied her on her visit to the family. His understanding was that care proceedings were to be commenced as a means of obtaining the parents' co-operation and so far as he was aware this was the first time that the local authority had used care proceedings as a threat. He believed that this had a "*massive impact*" on the parents as it would have done with any parent and that this is why they subsequently appeared to demonstrate greater safety awareness: the parents did not wish to share parental responsibility with the local authority. His view was that the mother was a "*very very independent parent who tried to do things herself*".

145. Mr Dax was challenged on the competence of his core assessments. He told me the core assessment process was a continuing one which had started following the March meeting and undertaken over the course of more than a dozen visits between April and June 2002. Some of those visits were unannounced. He told me that although the documentation had not been completed by the date of the child protection review on 12 June 2002, the visits and the assessment process itself had been concluded. He had planned to write up the core assessments shortly after the review, on 14 June 2002, and had ring fenced some time for that purpose. He was unable to say why that writing up process did not take place as planned. The documents had been completed however by 16 September 2002.

146. Mr Dax accepted that the documentation of the core assessments was inadequate. He accepted that, even when they were completed, some parts of the pro-forma documentation had not been filled in. He accepted criticism for having failed to fill out the assessment documents comprehensively. He explained however that some of the information which was missing was there to be read in the running records and so he did not duplicate it. He accepted, for example, that the suspicion that AD had abused RFX was not recorded in the pro-forma for the core assessment, nor the fact that she had demonstrated sexualised behaviour. He accepted that this information could have been included. However, he told me that "*it was evidence that we had. It was information that we had. It was known to us. I cannot include everything within the constraints of what I was doing*". He explained other missing information by the fact that there were five such pro-formas to complete and he felt that during the interview and assessment process he had to try to keep the family engaged, so he used one core assessment as an aide memoire and intended to then populate the other assessments with the information recorded. He said that he was using the core assessment process to find out information that was not already known and that, whilst, "*technically every section of this report should be filled in, it is not me not investigating a particular aspect of the core assessment. I knew about that behaviour and, of course, that was a cause for concern for all the agencies involved with RF*". He accepted that the core assessment documents should have included an analysis (see "*Working Together 1999*" at paragraph 5.86).

147. He confirmed that at the meeting in June 2002 he believed that the relationship between the grandmother and AD was over. He agreed that the formal targeted work which he did with the family was limited to a single session only with the parents, but during the course of other visits he would have been talking to the parents about protective issues. He told me that the purpose of the work undertaken by Ms Kaur (the "keeping safe" work) was to equip the children with knowledge about general awareness of keeping themselves safe and to enable them to know which parts of their body are private.

148. He told me that he had not intended or wished that SSD involvement and work with the family would stop because the children were no longer on the register. The decision to deregister was made because the conference members were satisfied that the parents' co-operation and commitment to further protection work was genuine and the parents had permitted access to the children so that the protection work could take place. And by their clear statement that AD was no longer visiting the household and that the grandmother was not sole carer for the children. Those were the two issues which had led to the registration in the first place. He confirmed that following deregistration in 1999 there had been no further or new information indicating that the father posed an increased risk compared to when they had been deregistered. The risk which had presented was posed by AD and/or other strangers.

Sam Sharkey:

149. Mr Sharkey chaired the child protection conference in March 2002. He confirmed that the legal advice which had been received during the conference was that there were grounds for an application to the court for an interim care order. This was so that there could be some authority asserted within the child protection plan and to give the plan the greatest prospect of success. The concerns which generated the need for the care order were: marital difficulties (a risk factor for reoffending); the grandmother's caring for the children and access to a risky adult. Shared responsibility would have enabled them to go back to court and amend the care plan if necessary, including seeking removal of the children. It would have ensured that decisions could have been made without delay. He also wanted to raise the level of concern in the minds of the parents. On a day-to-day basis it may not have affected or addressed the risks identified, but if the child protection plan had set out clearly what the expectations were, then if they had not been met it would have enabled them swiftly to go back to court to seek an amendment to the care plan. The purpose of the shared parental responsibility would have been to enforce the care plan which would have contained the recommendations made in the conference and formed part of the court order. The concern was that the parents would not co-operate without a court order.

Paul Tudor:

150. Mr Tudor chaired the child protection conferences in June and September 2002. Mr Levinson asked him about two particular matters. He queried whether the parents fencing in the garden had been a sufficient response to a teenage neighbour having attempted to take SFX out of the garden. He was asked about his response to the report that the father had taken a rifle (type unknown) into the school. He assumed that the school had addressed the issue in some way and did not regard it as a significant child protection issue for the purpose of the conference. Copies of the minutes were in any event to go to the police. He accepted with the wisdom of hindsight that he could have probed the topics more thoroughly. He had been impressed by Mr Dax's report that the parents had cooperated and appeared to be committed and had indicated a willingness to permit the work to be undertaken by Ms Kaur. It appeared to him that the parents, having been told in March that care proceedings were to be initiated, had had a "real wake up call". Although the seven sessions of work had not started, the parents had indicated their willingness to allow it to go ahead.

151. By September 2002, the work had been completed and even though RFX had made no disclosure of abuse, it did not undermine the fact that the work had been successful. Mr Dax had made a number of unannounced visits and no inappropriate male visitors had been present in the house; Mr Dax had undertaken his work with a colleague.

Gill Kane:

152. Ms Kane was a family support worker who undertook some direct work with the family between May 1998 and the end of June 1999. She had virtually no recollection of her involvement with the family. She confirmed that the direct work which she undertook was directed at both the mother and the children. It concerned appropriate boundaries, interaction with strangers and various different ways in which the children might be abused.

Isabella Bateman:

153. Ms Bateman confirmed that she had been involved with the family as a support worker between October 2002 and March 2003 and then again between October 2003 and March 2004.

154. Ms Bateman told me that after RFX had been heard to use sexualised language at school in March 2003 she had visited the home on 7 March to investigate. The father apparently thought that RFX may have picked up the language when she had been left in her grandmother's care with AD. She accepted that if the language had come from AD then it may suggest that there was some ongoing contact between AD and RFX. She told me however that she had never seen AD on any of her visits to the home, some of which were unannounced.

155. Ms Bateman told me that she undertook some direct work with RFX to help RFX explore her feelings and to encourage her to talk. Ms Bateman was asked about an episode in April 2003 when RFX was seen to have bruises on her knees which were said to be carpet burns. Ms Bateman explained that she thought that this might not be the truth or the whole truth and so she tried to get RFX to say more about how the marks had been inflicted. During the course of another session, RFX described having been "strangled" by her father. It was put to her by Mr Levinson that RFX may not have felt able to speak freely about what may be happening to her because, having reported physical abuse earlier in the year, no action was taken owing (as it was put to Ms Bateman) to a "misreading" of the medical report. She did not accept this. She also told me that action had been taken (RFX had been examined and the police had investigated). She told me that she would have told her line manager about the report of strangling. She would not however have asked RFX direct questions about this as the work which she was doing with RFX was intended to help RFX express herself freely.

Lesa Arms:

156. Ms Arms confirmed that she was the family support worker engaged with the family between October 2003 and March 2004. In addition to providing general advice and support, she also took on some direct work with RFX which was intended to assist with anger management and self-protection after RFX was seen to rub a lollypop on her genitals. She said that in November 2004, RFX disclosed that she had been abused by AD

but denied that her father had touched her inappropriately. The police were immediately involved and RFX was interviewed on 21 November 2004, telling the police that AD had touched her private area over her clothing. Her grandmother had been in the room when this had taken place. RFX also told the police on 21 November that she had told her mother about the incident at the time when it had occurred, although the mother consistently denied that this was correct. In her risk assessment Ms Arms recorded that the mother had been reluctant to accept that the grandmother had played any role in the abuse and that there were concerns over her ability to protect RFX. She also recorded that the grandmother's continued presence in the home posed a risk. She continued her direct work with RFX, liaised with the police and with the housing allocations team. In March 2004, the grandmother was finally re-housed.

The Expert Evidence:

157. Ms Ruegger gave expert evidence for the claimants and Ms Schofield for the defendant. Both were social workers but they had very different professional backgrounds. For the first five years of her career, Ms Ruegger had worked for Haringey Social Services as part of the emergency duty team covering weekends and holidays. However, in 1985 she left "front-line" social work to take up the role of Guardian ad Litem, providing the court with an independent social work view. She worked also as a lecturer at de Montfort University training student social workers who were on qualifying courses and undertaking post graduate training. Since around 2004 she has worked as a consultant guardian in the Department of Psychological Medicine at Great Ormond Street Hospital.

158. Ms Schofield's professional background was closer to the experience of social workers engaged with child protection issues on a day to day basis. In addition to working for some years as a social worker, she had managed a team of social workers in Leicestershire who were engaged with children who were on the register and taking decisions as to whether care proceedings were justified. She was the lead officer for the implementation of the framework assessment in conjunction with "Working Together" in the region. Also, between 2001 and 2008, she was the Assistant Director for Social Care in Leicestershire and as such was responsible for the delivery of the children and social services across the county, including all of the child protection work. She then worked for Ofsted, the statutory successor to the Social Services Inspectorate.

159. Although Ms Ruegger did not consider that care proceedings should have been issued before March 2002, she nonetheless had a number of criticisms of the defendant's management from the outset of its involvement with the family. By way of example: there had been a delay in starting the child protection investigation in 1995 and too few reviews, notwithstanding the delay in obtaining the Reaside report. The mother's report of WG having attended the home had not been picked up and sufficiently explored. Mr Copland had failed to record and analyse relevant information concerning the father's further offence of sexual abuse. Although the direct work by Ms Kane had been done "competently – she was thorough and had planned work carefully", nonetheless there had been a failure by the social workers to analyse the full implications of what she was saying. Ms Ruegger was critical of the decision to de-register the claimants in September 1999 even though the parents appeared to be co-operating and work had been done.

160. Ms Ruegger considered that there were a number of points before 2002 when the defendant could have, and should have, taken stock of the situation. It had been reasonable to make

efforts to help the parents develop a protective capacity and to help the father understand his sexual offending and provide services to improve the parenting. But in her view March 2002 was "crunch time". By then it should have been apparent that there was no reasonable prospect of any further work being successful in protecting the claimants. Care proceedings should therefore have been pursued.

161. Mr Dax had, she said, misunderstood the purpose of core assessments. They were not intended to be a means of updating information but to assimilate new information with the relevant history. There should have been a separate core assessment for each child and each should have been concluded within 35 days. In her view Mr Dax's evaluation of risk was flawed. It was far too subjective. It was based upon his personal impression of the parents but failed to take into account the relevant history. He had concluded that the parents were receptive and committed to their children but, said Ms Ruegger, "*this was not good enough*". She said that "*one has to look at the history and not just assume on the basis of his very brief involvement that the history was irrelevant and no longer important*". She considered that the only reasonable judgment in 2002 was that care proceedings be commenced. At that stage however she did not believe that the threshold for immediate removal was made out.

162. If not in 2002, then Ms Ruegger believed that proceedings should have been issued in 2003/4 after RFX had disclosed having been abused by AD. The children had been left in the care of the grandmother. There were allegations of physical abuse by the father which were not properly investigated, and the social workers should have appreciated that RFX was very vulnerable and very unhappy. There was evidence that RFX had told her mother that she had been abused by AD close to the time of the abuse which simply underscored that the mother was unable and unwilling to protect RFX. Again, Ms Ruegger did not criticise the competence of the direct work undertaken by Ms Arms, but she thought that there had been a culpable failure to analyse adequately all of the information available. Had the social workers done this, then care proceedings would have been initiated. By this stage she believed that the threshold for immediate removal was made out.

163. Ms Schofield told me that she did not believe that the threshold for care proceedings was established in either 2002 or in 2003/4. She supported the 2002 decision to register the claimants, whilst the core assessments were undertaken and the SSD had time to take stock. But given the co-operation of the family with the child protection plan, their commitment to working with the SSD in the future and their attempts to co-operate with the SSD in the past, she did not believe that proceedings were justified. Her view was fortified by the fact that the suspected abuser, AD, was no longer visiting the family home. She told me that she considered that the child protection conference in June 2002 was a very good example of child protection in practice: there was a unanimous view that proceedings should not be initiated but having discussed it in a multi-agency setting, the conference did not conclude that deregistration was appropriate at that stage.

164. Ms Schofield did not consider that the threshold for proceedings was met in 2003/4 either. There was no evidence that AD (or any other risky adult) had visited the family home since the case conference 20 months earlier and the grandmother (who had been responsible for inviting the men into the family home in the past) had finally agreed to leave the household, which she did in March 2004.

Issue One: Did the Social Workers Owe the Claimants a Duty of Care?

165. I start by putting the parties' submissions into the relevant legal context. I have already referred to Ms Gumbel's chronological tour of the authorities in the three court bundles of authorities. I do not suggest that those authorities are no longer relevant. However, over recent decades the courts have adopted conflicting and at times inconsistent approaches to the question of whether a public authority owes a common law duty of care against the background of a statutory duty or power. In three recent cases, Lord Toulson in *Michael v Chief Constable of South Wales Police* [2015] UKSC 2, Lord Reed (majority reasoning) in *Robinson v Chief Constable of West Yorkshire Police* [2018] UKSC 4 and Lord Reed in *N v Poole Borough Council* [2020] AC 780, drew attention to this inconsistency and analysed how it had arisen. The judgments set out clearly (and with increasing emphasis) the correct approach to be taken by the courts when considering the establishment of a duty of care generally and by public authorities in particular.

166. The facts of the three cases are straightforward.

    i) In *Michael*, the victim made an emergency call telling the call handler that her former partner had threatened to kill her. The call operator carelessly failed to communicate the threat to the relevant police authority with the result that, the police having failed to arrive in time, the victim was murdered. The call operator had told the victim that the police would want to call her back but had made no explicit communication that the police would arrive within a particular timeframe. The claimants, the victim's estate and her dependents commenced proceedings against the two police forces involved, alleging negligence.

    ii) In *Robinson*, two police officers attempted to arrest a suspected drug dealer in a busy street in the centre of Huddersfield. The suspect resisted and a struggle broke out during which the three men knocked into the frail Mrs Robinson who was passing by, causing her to suffer personal injury. She sued the police in negligence.

    iii) In *Poole*, the local authority placed a mother and her two children (one severely disabled) in accommodation on a housing estate next to a family known to persistently engage in anti-social behaviour. The neighbouring family subjected the claimants to regular harassment and abuse leading the youngest child to attempt suicide. The mother repeatedly reported the abuse to the defendant and the police. The abuse stopped when the defendant rehoused the family in alternative accommodation. The children brought a claim in negligence for the local authority's failure to protect them by removing them from their mother's care.

167. In each case, the central issue for the court was whether the defendant public authority owed the claimants (or victim) a duty of care at common law. In *Robinson* at [31] Lord Reed described a "*period of confusion*" following *Anns v Merton London Borough Council* [1978] AC 728 when the court had laid down a single universal test (foreseeability of harm; and whether there are reasons of public policy to exclude or restrict any such prima facie duty) to apply in all situations in order to determine the existence of a duty of care. The struggle to contain liability in the light of the *Anns* two-stage test, was compounded by a

wide misunderstanding that the judgment of Lord Bridge in *Caparo Industries Plc v Dickman* [1990] 2 AC 605 established a different (but again universal) tripartite test (foreseeability of harm; proximity; and the requirement that the imposition of the duty of care should also be fair, just and reasonable).

168. In what was described by Lord Reed at [21] in *Robinson* as having been a landmark judgment, Lord Toulson in *Michael* repudiated the existence of any single test, whether two stage or three stage, reasserting an approach based "*in the manner characteristic of the common law*" on precedent and on the development of the law incrementally and by analogy with established authority. Building upon that judgment, Lord Reed said in *Robinson* at [29] that in the ordinary run of cases, the courts should consider what has been decided previously and follow the precedents. In cases where the question of whether a duty of care arises has not previously been decided, the courts should consider the closest analogies in the existing law with a view to maintaining the coherence of the law and avoiding inappropriate distinctions. Only in such novel types of case, where established principles do not provide the answer, should the court weigh up the reasons for and against imposing liability in order to decide whether the existence of a duty of care would be just and reasonable.

The Legal Principles

169. In determining the existence or otherwise of a duty of care in the three cases, Lord Toulson and Lord Reed applied the orthodox common law approach and the established principles of law. What follows is a distillation of the key general principles drawn from those cases. It is intended to provide the uncontroversial backdrop to the issues which I must decide in this case.

    i) At common law public authorities are generally subject to the same liabilities in tort as private individuals and bodies. Accordingly, if conduct would be tortious if committed by a private person or body, it is generally equally tortious if committed by a public authority. It follows therefore that public authorities are generally under a duty of care to avoid causing actionable harm in situations where a duty of care would arise under ordinary principles of the law of negligence (*Robinson* at [33]).

    ii) Like private individuals, public authorities are generally under no duty of care to prevent the occurrence of harm. In *Michael*, Lord Toulson said at [97]: "*English law does not as a general rule impose liability on a defendant (D) for injury or damage to the person or property of a claimant (C) caused by the conduct of a third party (T): Smith v Littlewoods Organisation Ltd [1987] AC 270. The fundamental reason as Lord Goff explained is that the common law does not generally impose liability for pure omissions. It is one thing to require a person who embarks on action which may harm others to exercise care. It is another matter to hold a person liable in damages for failing to prevent harm caused by someone else*".

    iii) The distinction between negligent acts and negligent omissions is therefore, as Lord Reed said in *Poole* at [28] of fundamental importance. Lord Reed reflected that the distinction to be drawn could be better expressed as a "*distinction between causing harm (making things worse) and failing to confer a benefit (not making things better) rather than the more traditional distinction*

between acts and omissions, partly because the former language better conveys the rationale for the distinction drawn in the authorities and partly because the distinction between acts and omissions seems to be found difficult to apply".

iv) Public authorities do not therefore owe a duty of care towards individuals to confer a benefit upon them by protecting them from harm, any more than would a private individual or body, see *Robinson* at [35]. Lord Reed continues at [36] "*That is so, notwithstanding that a public authority may have statutory powers or duties enabling or requiring it to prevent the harm in question*". The position is different if, on its true construction, the statutory power or duty is intended to give rise to a duty to individual members of the public which is enforceable by means of a private right of action. If, however, the statute does not create a private right of action, then "*it would be to say the least unusual if the mere existence of the statutory duty (or a fortiori, a statutory power) could generate a common law duty of care*". It follows that public authorities like private individuals and bodies generally owe no duty of care towards individuals to prevent them from being harmed by the conduct of a third party.

v) The general rule against liability for negligently failing to confer a benefit is subject to exceptions. The circumstances in which public authorities like private individuals and bodies may come under a duty of care to prevent the occurrence of harm were summarised by Tofaris and Steel in "*Negligence Liability for Omissions and the Police*" 2016 CLJ 128. They are (i) when A has assumed responsibility to protect B from that danger; (ii) A has done something which prevents another from protecting B from that danger; (iii) A has a special level of control over that source of danger; or (iv) A's status creates an obligation to protect B from that danger.

170. I pause here to note that, in *Poole,* Lord Reed explained that in *Anns* there had been a departure from "*traditional understanding*" that public bodies, like private individuals, did not generally owe a duty of care to confer the benefits. As Lord Toulson said in *Michael* at [105] although the *Anns* two stage formula had been stated in terms of general application, it had particular implications for public authorities because of their wide range of duties and responsibilities likely to be caught by the first stage foreseeability requirement. Lord Reed noted in *Poole* that, even though the decision in *Anns* had been disapproved in 1991, its reasoning had remained influential until *Stovin v Wise* [1996] AC 923 and *Gorringe v Calderdale Metropolitan Borough Council* [2004] 1 WLR 1057, in which Lord Hoffmann gave judgments heralding (as Lord Reed was later to express it) the "*return to orthodoxy*". Both cases are relevant to the defendant's submissions.

171. *Stovin* and *Gorringe* were claims against highway authorities for failing to prevent harm caused by third party motorists. In the case of *Stovin*, a bank of earth on the corner of a junction impeded the view of motorists exiting the road. The council had statutory powers which would have enabled the necessary work to be done and there was evidence that the relevant officers had decided in principle that it should be done. British Rail, which owned the obstructing land had been contacted and its civil engineer had agreed with the council's divisional surveyor that the junction should be realigned. An expert report had been obtained and the cost of removal of the mound had been discussed. However, the defendant had simply done nothing more. When a motorist collided with a motorcycle whom she had been unable to see, she claimed a contribution from the highway authority

for its negligence in failing to remove the bank of earth. In *Gorringe*, a claim was brought against the local authority for its failure to warn motorists by appropriate signage of a dip in the road which had prevented a motorist from seeing an oncoming bus. Following a collision with a bus, the claimant brought proceedings against the local authority.

172. Both actions failed, the court finding that the public law duties in section 41 of the Highways Act 1980 and section 39(2)(3) of the Road Traffic Act 1980 which were not in themselves enforceable by a private individual in an action for breach of statutory duty, did not give rise to a parallel duty of care at common law to take appropriate corrective measures.

173. In *Stovin*, Lord Hoffmann reasserted the importance of the distinction between harming the claimant and failing to confer a benefit typically by protecting the claimant from harm. He observed that the liability of a public authority in tort in the case of positive acts was in principle the same as that for a private individual, but it may be restricted by its statutory powers and duties. In relation to failures to perform statutory duties Lord Hoffmann remarked that if such a duty does not give rise to a private right to sue for breach, it would be unusual if it nevertheless gave rise to a duty of care at common law which made the public authority liable. Even more emphatically, in *Gorringe*, Lord Hoffmann said at [32] "*Speaking for myself, I find it difficult to imagine a case in which a common law duty can be founded simply upon the failure (however irrational) to provide some benefit which a public authority has power (or a public law duty) to provide*".

Assumption of Responsibility and the decision in Poole

174. In *Robinson*, Lord Reed concluded that the claim, properly analysed, did not involve a failure to confer a benefit: Mrs Robinson's injuries were inflicted by the police officers themselves and the risk of harm was not only reasonably foreseeable but was actually foreseen by the police officers. This was sufficient to impose on the police officers a duty of care towards pedestrians in the immediate vicinity of the arrest, including Mrs Robinson.

175. Liability in *Michael* and in *Poole* however was analysed by reference to assumption of responsibility. Lord Toulson concluded that what had been said to the call handler could not give rise to an assumption of responsibility on the *Hedley Byrne* principle as amplified in *Spring v Guardian Assurance Plc*. The handler had given no assurance to the caller other than that she would pass on the call and no promise as to how quickly there would be a response. No advice or instruction had been provided.

176. Having concluded that the facts in *Poole* consisted of a failure to provide a benefit, the question for the court was whether the defendant had assumed responsibility to protect the claimants from danger. The Particulars of Claim asserted that the assumption of responsibility arose on the basis of the sequence or chronology of events set out in the statement of case. That chronology referred to the investigation and monitoring by the council's social services department, the assignment of social workers to the claimants, the various assessments of the claimants' needs and meetings at which the appropriate response to one of the claimant's behaviour was discussed.

177. Lord Reed remarked upon the width of the concept of assumption of responsibility which was readily apparent from the speech of Lord Morris in *Hedley Byrne* "*if someone possessed of a special skill undertakes quite irrespective of contract to apply that skill for*

the assistance of another person who relies upon such skill a duty of care will arise". Since that case, the principle had been applied in a variety of situations in which the defendant provided information or advice to the claimant with an undertaking that reasonable care would be taken as to its reliability (either express or implied usually from the reasonable foreseeability of reliance) or undertook the performance of some other task or service for the claimant with an undertaking that reasonable care would be taken.

178. On the facts in *Poole*, Lord Reed concluded that the defendant had not assumed responsibility for the welfare of the claimants. He considered that the provision of the service by the defendant to the claimants was not one on which they could be expected to rely. Whilst it may have been foreseeable that the mother might be anxious that the council should act so as to protect the claimants from the neighbours, anxiety does not amount to reliance. Nor could it be said that the claimants had entrusted their safety to the council or that the council had accepted that responsibility. Nor had the council taken the claimants into its care and thereby assumed responsibility for their welfare. At [81] Lord Reed said: "*In short the nature of the statutory functions relied on in the particulars of claim did not in itself entail that the council assumed or undertook a responsibility towards the claimants to perform those functions with reasonable care*". At [82] he observed that it is "possible even where no assumption can be inferred from the *nature of the function itself*, that it can nevertheless be inferred from the *manner in which the public authority has behaved* towards the claimant in a particular case" (my emphasis). Such an inference depends on the facts of the individual case.

The issue between the parties

a) The Claimants' Case

179. By the close of the trial, the claimants' case on the establishment of a duty of care was bracingly straightforward. Ms Gumbel formally withdrew three of the four grounds upon which the pleaded case had originally asserted that a duty of care was generated. The remaining basis upon which it is submitted that a duty of care arises is the defendant's assumption of responsibility for the welfare of the claimants. As Ms Gumbel expresses it in her written closing: the evidence suggests that the claimants' case comes "full-square" within limb one of the Tofaris and Steel criteria. The defendant (A) in this case assumed responsibility to protect the claimants (B) from the danger that their father posed to them from sexual abuse.

180. Again, the basis upon which it is submitted the defendant assumed responsibility for the safety of the claimants narrowed as the trial progressed. In response to my questioning at points during the trial, Ms Gumbel appeared to be adhering to the pleaded case (and indeed the way in which she opened the case) namely, that by engaging with the claimants and their parents and by "taking on a task" the defendant assumed responsibility for the plight of the claimants and the defendant is therefore liable for the consequences of completing the task incompetently. Her position initially was therefore very close to the case which she had advanced before the court in *Poole* and which had been struck out as disclosing no cause of action. However, following the conclusion of the evidence there were three alternative routes by which she submitted the defendant had assumed responsibility for the welfare of the claimants which are:

(a) following receipt of the Reaside report in January 1997, the defendant "assumed responsibility to the existing children of father for their protection". Ms Gumbel submits that the defendant undertook the monitoring recommended in the report and purported to provide the help which was recommended and that, by doing so, the defendant assumed responsibility for the claimants' welfare; to keep them safe from the foreseeable risk of harm posed by the claimants' father whilst they remained in contact with him; to take such action as shown to be necessary by monitoring such as receiving the claimants into care or commissioning keeping safe work. An assumption of responsibility is made to each further child as they were born and moved into the household". As she put it in her written closing note, "*the taking on of the work recommended by the Raeside Clinic (sic) is a clear assumption of responsibility and a situation where the Claimants alive at the time and those born later can be said to have relied on the Defendant to do the work of monitoring and providing services to keep them safe*".

(b) by assessing in February 2002 that the children were at risk of significant harm (that is. the section 31 criteria had been met) and the defendant decided that issuing care proceedings was necessary, it assumed responsibility to the claimants for competently pursuing those proceedings

(c) by taking on direct work with the claimants and the family the defendant assumed responsibility for carrying out that work effectively and reviewing its efficacy so that it provided reasonable protection to the claimants.

181. It is fair to observe that, other than asserting the factual basis upon which it is alleged that the assumption of responsibility rests, Ms Gumbel provides me with little additional flesh to add to the bones of her case. Her statement of case does not assist, not least because the commissioning of the Reaside report does not feature within the long list of interventions relied upon in support of her case on assumption of responsibility. However, I note that Ms Gumbel accepts that she must demonstrate reliance by the claimants. She submits that the claimants did rely upon the defendant's interventions in their lives and that the SSD must have intended that the claimants should rely upon it to protect them "otherwise their intervention would be futile".

182. Ms Gumbel makes a series of further submissions derived from the case law. She submits, uncontroversially, that policy considerations do not exclude the imposition upon a local authority of a duty of care towards children with whom contact is made in the performance of its statutory functions under the 1989 Act. To this extent, the decision in *X v Bedfordshire* has been superseded and is no longer good law. In this context she also draws my attention to the decision of the Court of Appeal in *D v East Berkshire Community Health NHS Trust* [2004] QB 558 in three conjoined appeals where the court concluded that no duty of care was owed to the parents of children affected by child welfare decisions made by public authorities. However, the court stated that the public policy objections in *X* no longer precluded the claim by the child (in the second appeal) against the local authority for the manner in which its employees contributed to the child protection investigation. In the House of Lords, Lord Nicholls observed at [82] that the law had moved on since the decision of the House in *X* and so: "*local authorities may owe common law duties to children in the exercise of their child protection duties*". Further, as Lord Reed stated in *Poole* at [75] the decision of the Court of Appeal in *D v East Berkshire* had

not been implicitly overruled by Lord Toulson in *Michael*. Therefore there is, submits Ms Gumbel, strong support for her case that a duty of care can be owed to children by a local authority in the exercise of its statutory child protection and welfare functions.

183. Further, Ms Gumbel submits that there are a number of ways in which a defendant can assume responsibility. She acknowledges that in *Barrett v Enfield London Borough Council* [2001] 2 AC 550, the court found that the local authority had assumed responsibility for the claimant by taking the child into its care and thus becoming potentially liable for failing to confer benefits. She however submits that a local authority can assume responsibility for children even though the children have not been taken into the care of the local authority on the basis that the claimant has entrusted the defendant with his or her safety. Alternatively, an assumption of responsibility can be inferred from the manner in which a local authority has behaved towards the claimant in a particular case. She relies upon Lord Reed in *Poole* at [80] where he said: "… *a public body which offers a service to the public often assumes a responsibility to those using the service. The assumption of responsibility is an undertaking that reasonable care will be taken either express or more commonly implied usually from the reasonable foreseeability of reliance on the exercise of such care*". She submits that an assumption of responsibility can be inferred either from the nature of the function or from the manner in which of the public authority has behaved in a particular case. Such an inference depends on the facts of the individual case.

b) The Defendant's Case

184. Mr Weitzman's starting point is that this is an "omissions case". The allegation against the defendant is not that the defendant itself caused injury or harm to the claimants but that the defendant failed to protect the claimants from harm inflicted by third parties, in this case, AD and the claimants' father. He denies that, on the facts of the present case, the defendant assumed responsibility for the safety of the claimants from any risk, whether that be from the father, the mother or any of the adult men with whom the claimants had contact. However, he advances a number of arguments some of which logically precede the question of whether, as a matter of fact and law, the defendant assumed responsibility in this case. As he accepted, his arguments overlap, approaching the same issue in different ways.

185. Mr Weitzman's arguments flow from his analysis of the claim as one which alleges a failure by the defendant to discharge its statutory functions. The nub of the claim is the defendant's failure to commence care proceedings under section 31 of the 1989 Act, whether in 2002 or 2003/4. Other criticisms levelled at the defendant concern its failure to discharge its statutory function of investigation and assessment under section 47 of the 1989 Act. Properly characterised therefore Mr Weitzman submits that this is not only an omissions case, but also a case in which the omission alleged against the defendant is its failure to carry out a statutory act which would (as alleged) have had the effect of protecting the claimants from third party harm.

186. This analysis of the claim is, he submits, fatal to the establishment of a duty of care: the claimants are, impermissibly, seeking to create a common law duty from a purely statutory obligation. There are three aspects to his analysis.

187. First, he submits that the establishment of a duty of care in such circumstances cuts across the principle stated by Lord Reed in *Poole* at [65]: "*public authorities do not owe a duty of care at common law merely because they have statutory powers or duties, even if, by exercising their statutory functions, they could prevent a person from suffering harm*". The principle has a long pedigree. It dates back to the case of *East Suffolk Catchment Board v Kent* [1941] AC 74 in which a local authority was sued in negligence for its failure to repair a breach in flood defences. In concluding that no duty of care was owed, Lord Romer said that, where a statutory authority had been entrusted with a mere power, it cannot be made liable for any damage sustained by a member of the public by reason of a failure to exercise that power. The point was then re-stated by Lord Hoffmann in *Stovin* and *Gorringe*. Reasoning that if the statute had intended to give rise to an actionable breach then the statute itself would have created a relevant actionable duty, he said, in *Stovin*: "*if a statutory duty does not give rise to a private right to sue for breach, it would be unusual if it nevertheless gave rise to a duty of care at common law which made the public authority liable to pay compensation for foreseeable loss caused by the duty not being performed*". And in *Gorringe* that he: "*found it difficult to imagine a case in which a common law duty can be founded simply upon the failure (however irrational) to provide some benefit which a public authority has a power (or a public law duty) to provide*". Lord Toulson added at [113] of *Michael* that it is "*a feature of our system of government that many areas of life are subject to state regulation. It does not follow from the setting up of a protective system from public resources that if it fails to achieve its purpose the public at large should bear the additional burden of compensating a victim for harm caused by the actions of a third party*".

188. Mr Weitzman's further linked submission is that when I am considering the establishment of a duty of care by a public authority, I must take into account the analogous position in the private law context. However, on the facts of this case there is no analogy. A public authority is permitted to investigate and monitor a family by section 47 of the 1989 Act. But no private individual could lawfully interfere with the family's Article 8 rights in a similar way. Even more obviously, no private individual is able to instigate care proceedings. Only the local authority (or an authorised person which at present is limited to the NSPCC) is able to take care proceedings. There is, therefore, he submits, no private law analogy for the court to take into account when considering whether a duty of care arises.

189. In making both these points, Mr Weitzman draws the distinction between a public authority's failure to exercise a statutory power (which is incapable of giving rise to a duty of care), and an action taken by a public authority pursuant to a statutory power. He accepts that an action taken pursuant to a statutory power which might otherwise give rise to a duty of care applying orthodox principles in a private law context may generate a duty of care. He defines a step taken "pursuant to statute" as a step which could be taken lawfully by a private individual but which (additionally) is empowered by statute, the classic example being the provision of medical treatment. Private medical treatment is available in the common law setting. Medical treatment is also available via the National Health Service subject to statute. It is therefore possible on orthodox private law principles to assume responsibility in respect of NHS provided care. However, applying the same orthodox private law principles, it would be impossible to assume responsibility to take a step which could only, lawfully, be exercised by way of statutory duty or power.

190. Mr Weitzman's third point is that the orthodox common law approach to the question of whether a duty of care arises requires that I look carefully at decided cases to see whether the relationship or circumstances in the present case falls into an established category. If not, then I must proceed by analogy adopting the incremental approach. He cautions me against adopting what he calls a "top down" approach which would run the risk of my reverting back to the forbidden territory of applying some sort of universal test. What I must do is look to the authorities for guidance. Adopting this approach, he submits, the cases are all one way. He submits there is no authority to support the imposition of a duty of care in the circumstances raised in this claim, that is, one which requires a local authority to take a statutory child welfare step. In this context he disputes that any of the cases upon which the claimants rely advance their case. When the facts of those appeals are exposed, he suggests to me that none are similar: none are claims derived from a failure by a public authority to confer a benefit in the form of protection from harm caused by third parties.

Discussion/Conclusion on Issue One

191. I have already set out the general principles. I start with two preliminary findings. Both focus upon the nature of the claimants' case.

192. The first issue I address is whether the claims involve a positive act by the defendant which has caused the claimants' harm, or, whether the claims allege a failure to confer a benefit. It is not clear from Ms Gumbel's closing note what her final position is on this fundamental point. On the one hand, throughout the trial, I had understood her to accept that the claims fell into the latter category of failing to confer a benefit, not least because the focus of her submissions was on assumption of responsibility. In her written closing however, she makes the point that the allegation of performing a service badly (which is the thrust of her allegation) is always "difficult to categorise" and observes that "a doctor who delays in delivering a baby is failing to confer a benefit by failing to deliver a healthy baby safely. But it would be fair to say he is causing harm by delaying in delivering the baby". Likewise, she submits that failing to remove a child from a Schedule 1 offender may similarly be said to be failing to confer a benefit by timely removal or causing harm by leaving a child at the mercy of a known Schedule 1 offender.

193. I find that this claim is, to use the language of Lord Toulson, an "omissions" case or to use the language of Lord Reed a claim arising from a failure to confer a benefit. Ms Gumbel's analysis does not focus upon the cause of the claimants' injury as it should for this purpose. It is not suggested that any direct act by the defendant caused the claimants to suffer harm. The injury alleged was inflicted by AD and/or the father. As such it is wholly different from a failure by a doctor to deliver a baby timeously in circumstances in which the delay (caused by the doctor) is responsible for the baby's brain damage.

194. My second preliminary finding is that the claim concerns the defendant's allegedly negligent failure to commence care proceedings under section 31 of the 1989 Act and, linked to that failure, a failure to undertake a competent investigation and risk assessment under section 47 of the 1989 Act. Although the action additionally raises criticisms concerning the conduct of the direct work which was undertaken by Mr Dax and others, including the family support team, Ms Ruegger revised her opinion concerning the adequacy of that work. She did not consider that work to have been incompetently performed; rather her criticism was that there was no reasonable analysis of the efficacy of that work by the social worker team. Had there been a proper analysis then this would

have fortified the need for an application for a care order. As Mr Weitzman submits, the only allegation with real causative potency is the failure to commence proceedings which would have led to the claimants being removed from the family.

195. I therefore accept Mr Weitzman's submission that the claim is an "omissions" claim and that the omission alleged is a failure by the local authority to exercise a statutory function. I do not however accept that it follows that this characterisation of the claimants' case is, in itself, determinative of the claim.

196. In *Poole* at [70] Lord Reed confronted the point now made by Mr Weitzman. He dealt with the issue by observing that a public authority cannot assume responsibility "*merely by operating a statutory scheme*". However, he also noted that it did not follow from this statement that an assumption of responsibility can never arise out of the performance of statutory functions. At [73] he noted that the operation of a statutory scheme does not automatically generate an assumption of responsibility but "*it can have that effect if the defendant's conduct pursuant to the scheme meets the criteria set out in such cases as Hedley Byrne and Spring v Guardian Assurance plc*". In *Poole*, the claim, as analysed by the court, focussed upon the defendant's failure to exercise its statutory function under the 1989 Act and Lord Reed considered whether the defendant in that case had assumed responsibility for the protection of the claimants. He found not, but in rejecting the claimants' case he questioned whether (a) the nature of the statutory functions relied upon in the particulars of claim entailed that the council assumed or undertook a responsibility towards the claimants to perform those functions with reasonable care; or (b) whether the manner in which the public authority had behaved toward the claimant had engendered an expectation of reliance; or (c) whether the claimants or their mother had entrusted their safety to the council.

197. Nor does Lord Hoffmann's approach support the defendant's analysis. In *Gorringe* at [38] Lord Hoffmann emphasised that the appeal was concerned only with an attempt to impose upon the local authority a common law duty to act based solely upon the existence of a broad public law duty (my emphasis). He continued: "*we are not concerned with cases in which public authorities have actually done acts or entered into relationships or undertaken responsibilities which give rise to a common law duty of care. In such cases the fact that the public authority acted pursuant to a statutory power or public duty does not necessarily negative the existence of a duty*".

198. Mr Weitzman attempts to square this circle by distinguishing between acts which solely involve the exercise of a statutory duty or power (in respect of which a local authority cannot assume responsibility to perform) and acts undertaken by the local authority which are pursuant to statute (in respect of which a local authority can assume responsibility). The argument put in this way is superficially attractive. But it does not bear closer scrutiny. First, this distinction is not one which is made by Lord Reed (or Lord Toulson or Lord Hoffmann). I take Ms Gumbel's point that if a local authority is unable (by whichever of the Tofaris routes) to owe a duty of care which would have the effect of requiring it to take a statutory step (such as issue care proceedings) then the court could have, and surely would have, made this point. It did not do so, instead preferring to analyse the facts of *Poole* by testing whether there was a prima facie case of assumption of responsibility on the pleadings. But there is another reason why I reject the argument. The judgments of Lord Toulson and Lord Reed restore the equality principle: that public authorities should be in no worse but also no better position than private individuals in respect of potentially

tortious conduct. If this principle were confined only to those public functions in which there was a direct analogy in the private law context, then there would be a raft (and probably quite a large one) of statutory functions which were incapable of giving rise to a private law action for this reason. If this were correct, then the equality principle would be robbed of much of its effect.

199. I conclude that whilst the fact that a public authority is operating within a statutory scheme does not of itself generate a common law duty of care, it does not follow that a failure to exercise a statutory function, including taking a step which can only be taken lawfully by statute, can never be compensable at common law. Whether a duty of care is generated by (on the facts of this case) an assumption of responsibility depends upon whether there is, putting it colloquially, "something more": either something intrinsic to the nature of the statutory function itself which gives rise to an obligation on the defendant to act carefully in its exercising that function, or something about the manner in which the defendant has conducted itself towards the claimants which gives rise to a duty of care. As Lord Reed made clear, and as Ms Gumbel submits, this question is one which is "fact sensitive".

200. I turn therefore to consider whether on the facts before me, the defendant did assume responsibility to perform its statutory functions with reasonable skill and care. Given the rather sparse way in which the point is advanced by the claimants, I find that I can deal with the issue relatively shortly.

201. There are a number of difficulties with Ms Gumbel's submission. She accepts that before an assumption of responsibility can be inferred there must be (a) an act by the defendant upon which (b) it is reasonably foreseeable that the claimants will place reliance such that there is an obligation upon the defendant to exercise reasonable skill and care. Neither of these requirements is controversial.

202. Ms Gumbel's argument that the defendant assumed responsibility by obtaining the Reaside report in 1997 is perhaps her strongest point. At least, in this context, the defendant can be said to have taken a step – in the sense that it had done something. However, the Reaside report was obtained, not for the claimants' benefit or for the benefit of the parents, but for the benefit of the local authority's SSD in determining the parents' ability to keep the children safe, the level of risk which the father posed to his children and whether the threshold for registration or care proceedings was met. It was obtained and funded as part of the defendant's assessment of risk under section 47 of the 1989 Act in order to assist the social workers acting on behalf of the local authority to determine how best to fulfil their statutory obligations.

203. I take into account that, for the purposes of considering whether such a duty has arisen, it will be sufficient if viewed objectively it would be reasonably foreseeable that the claimants would rely upon the defendant discharging its functions with reasonable skill and care. But, as Ms Ruegger and Ms Schofield confirmed, the local authority's assessment of risk may not be shared by the parents nor the children. Had proceedings been commenced, the parents would have been separately represented and the children's interests represented by a Guardian ad Litem. It would not necessarily follow that the local authority's viewpoint would be aligned with that of the family, children or parents. In these circumstances, I do not accept that it would be reasonably foreseeable that the claimants would rely upon the defendant such as to give rise to a duty of care.

204. Ms Gumbel's argument is even weaker in respect of the decision in 2002 to commence care proceedings. I take Mr Weitzman's point here that her argument is to an extent factually incorrect in that it fails to recognise that the child protection committee can only recommend that care proceedings be initiated: the decision as to whether they would be taken being one for "middle management" after legal advice had been obtained. But even setting that point to one side, a recommendation that care proceedings be commenced for the purpose of sharing parental responsibility cannot, it seems to me, be described as a positive act which had the effect of generating a duty of care, nor characterised as the provision of advice or service upon which the claimants might reasonably foreseeably rely, so giving rise to a duty of care to act carefully.

205. Like Lord Reed in *Poole,* I see nothing about the nature of the statutory function which the defendant was exercising which gave rise to a duty of care. Ms Gumbel has not pointed me in the direction of anything which was said or done by the defendant in the context of the obtaining of the Reaside report (or the defendant's response to it) or in the context of the decisions made in 2002 which entailed that the defendant assumed or undertook a responsibility towards the claimants to perform its functions thereafter with reasonable skill and care. The position is, I find, similar to that in *Poole* and for similar reasons I reject Ms Gumbel's argument that a duty of care was generated.

206. Nor do I accept that Ms Gumbel's arguments are supported by the authorities which she has drawn to my attention. She relies upon *D v East Berkshire* in support of her position that a local authority can assume responsibility and so owe a duty of care in respect of it discharge of its statutory functions to children who are not in local authority care. Mr Weitzman does not dispute this statement. But I agree with him that when drilled down, the facts of the three appeals in *D* are very different from those which fall to be scrutinised in this case.

207. In the first of the conjoined appeals in *D*, a mother claimed damages for psychiatric injury following a false accusation by doctors that she was suffering from Munchausen syndrome by proxy. In the second, a father and his daughter claimed damages for psychiatric injury resulting from unfounded allegations by doctors and social workers of sexual abuse as a result of which the father and daughter were prevented from seeing each other for a short period of time. In the third appeal, the parents claimed for psychological distress suffered consequential upon unfounded allegations by doctors of having inflicted injuries upon their daughter which led to the parents being separated from their daughter for a year. In each appeal therefore the defendant had, by its acts, caused the injury to the claimants. The facts of none of the appeals in *D* raise a similar allegation to the present case which involves an allegation of failure to protect the claimant children from harm caused by third parties.

208. Likewise, it seems to me that neither *Phelp*s nor *Barrett* assist the claimants. It is true that both appeals can be analysed as involving a failure to confer a benefit. However, in *Phelps,* the injury (described as the failure to ameliorate the effect of the speech problems) was not inflicted by a third party but was a direct consequence of the negligent educational psychology assessment for which the local authority was liable. As such, the claim falls into a different category from the present case. As does *Barrett*, in which the court found that the impugned conduct occurred after the children had been taken into care. Lord Slynn drew on the analogy of a school which accepted a pupil and thereby assumed responsibility for the child's educational needs giving rise to a duty of care. The court found that the

effect of taking the child into care was that the local authority assumed responsibility for the child's care thereafter. This is obviously very different from the facts of the case before me. Ms Gumbel did not advance a similar argument to that advanced on behalf of the claimants in *HXA v Surrey County Council* [2021] EWHC 250 (QB), namely, that because a duty of care was recognised following the making of a care order, so a duty of care could be reverse engineered back to an earlier stage of the local authorities' involvement with the family. However, had she done so, I would have rejected it for the same reasons as those given by Deputy Master Bagot QC in that case.

209. I conclude therefore that, on the facts of this claim, no duty of care was owed by the defendant to the claimants. I have considered whether there was anything in the nature of the statutory functions being exercised by the defendant under section 47 and section 31 of the 1989 Act or the manner in which those functions were exercised which generated a duty of care. Having done so, I find nothing which suggests to me that the defendant assumed responsibility to exercise those functions with reasonable skill and care. Having looked for "something more" as I have put it, I find nothing. The facts do not fall within any category in which the common law has recognised a duty arising. That being the case I come full circle and agree with Mr Weitzman that the claimants are, in this case, impermissibly seeking to create a common law duty of care from the defendant "merely operating a statutory scheme" contrary to the, now well-established, principle set out in *Stovin* and *Gorringe*.

210. I acknowledge that the claimants are critical of some of the direct work undertaken by social workers and by the family support team. This work was undertaken pursuant to section 17 of the 1989 Act, rather than section 47. As Mr Weitzman has accepted, those services are offered and accepted on a wholly voluntary basis and, as such, different considerations may arise when addressing the issue of reliance. However, if a duty of care was generated by this work, the scope of that duty would be limited to the performing of the direct work competently. But Ms Ruegger was not critical of the quality of the direct work which was undertaken by Ms Kane or Ms Arms which she thought was for the most part thorough and competent. Her point was that the social workers failed to analyse the efficacy or likely efficacy of the work when assessing risk under section 47 of the 1989 Act.

211. Finally on this topic, I mention, in passing only, that I received very helpful submissions from the parties on the very recent case of *Begum v Maran UK Limited*. The facts of that case could not be more different to the facts of the case before me. However, the court considered the authorities of *Michael, Robinson* and *Poole,* which are central to my reasoning above, hence my request for submissions. Having considered those submissions, I am quite satisfied that *Begum* adds nothing of relevance to the issues which I must determine, not least because it focusses upon a different Tofaris criteria, namely, where the defendant was said to have taken a positive act which gave rise to a danger to the claimant.

Issue two: Breach of Duty

212. My conclusion on issue one is determinative of the action in negligence, but I nonetheless go on to consider whether if, contrary to my conclusion above, a duty of care was generated, the defendant's management was in breach of that duty. I approach this topic

wholly independently of my conclusions on the first issue. I take into account all of the evidence before me: the documents, the factual evidence and the expert evidence.

213. Ms Gumbel's case on breach of duty focussed upon the events and decisions in 2002 and 2003/4. Ms Ruegger criticised the adequacy of Mr Dax's core assessments; the decision of the child protection committee in June 2002 that court proceedings did not need to be initiated; the failure to issue care proceedings in 2003/4 and the efficacy of the "direct work" undertaken by social workers and family support workers in 2002 and earlier.

214. Before dealing with the allegations, it is helpful to clear the decks of three points which arose during the trial.

215. The first concerns the late disclosure by the defendant of material which included a report of the Social Services Inspectorate of June 1998. The effect of the Inspectorate report was to place the defendant in "special measures" for a period of time. The Inspectorate reviewed 50 case files and interviewed members of the staff and parents. It found that there was a substantial number of children who were subject to child protection processes who had not been allocated a social worker; that enquiries had not been thorough and had been inefficiently conducted and that there had been inconsistency in the social workers' responses to concerns.

216. Ms Ruegger relied upon the Inspectorate report to substantiate some of her criticisms of the care provided to the claimants. However, I am unable to place any significant weight on the report, one way or the other. Only a very limited number of files were examined and there was no evidence to suggest that the Inspectorate reviewed this family's file. The files were drawn from five different duty teams, of which, Coundon, the claimants' team was only one. The Inspectorate found that the Coundon duty team had the fewest unallocated cases. It also found that the experience and competence of the staff across the region varied enormously but that the Coundon social workers had considerable experience in child protection work (which is why the Coundon duty team had managed to devise an effective way of monitoring referrals). Although the Inspectorate identified systemic problems affecting the defendant's child protection service, I find it impossible to extrapolate from the generalised criticisms in the report anything particularly meaningful to apply to the particular circumstances of this case. I therefore put the Inspectorate report to one side for the purpose of this judgment.

217. The second and third points arose during the trial. They concern the attempted removal by a teenage neighbour of the third claimant from the family garden and the incident involving the father taking a rifle to the school. Both of these incidents featured prominently in Mr Levinson's cross examination of the relevant witnesses. I accept Ms Schofield's evidence that the fact that the parents saw the attempted removal of the third claimant from the garden, and prevented it, is more significant than the attempt itself. As she says, if the parents had not observed the incident then it would not have reflected well on their ability to supervise the children. As it was, the removal, was thwarted. Likewise, the incident when the father took some form of firearm to the school. I accept that this raised a community safety issue but again I accept Ms Schofield's evidence that it did not in itself raise a child protection issue. Again, I find that I can derive little help from these two points.

218. I turn now to deal with the allegations concerning the defendant's decision-making in 2002. Although there are three separate allegations, in essence they all amount to the same criticism: the defendant's inadequate and unreasonable assessment of risk. To this extent the allegations stand or fall together.

219. I accept that one of the main functions of a social worker is risk assessment. Mr Copland and, later Mr Dax, provided the family with advice and support of a practical nature, but central to their roles under the 1989 Act was the assessment of risk and determining how best any risks might be managed, whether by way of a child protection conference, placing the child on the child protection register or by court proceedings. The assessment involved an evaluation and balancing of a range of different factors and had to take into account the views of a wide range of agencies. The decision to commence care proceedings or not also had to be judged within the framework of the 1989 Act and associated legislative guidance. The guidance emphasised that the foundation of the 1989 Act rested on the belief that children are generally best looked after within the family without resort to legal proceedings. It also stated that no order should or would be made by the court, even though the threshold for care proceedings may have been reached, unless an order would positively contribute to and improve the welfare of the child. Ms Collett's unchallenged evidence was that the no order principle, was "*massive*" in the early 2000s.

220. Ms Ruegger's opinion was that a decision to commence care proceedings does not involve the exercise of professional judgement to which it would be possible for two competent and reasonable professionals to reach different conclusions. She rejected this proposition when it was put to her by Mr Weitzman saying that whilst you might get "*very small differences in … what kind of intervention and how often, but when it comes to a major decision which involves putting a child on the protection register or issuing court proceedings, I do not think that it would happen that there would be two competent social workers who would reach two different views*". In her view there would only ever be "*one competent decision*" to make.

221. Ms Schofield accepted that there would be some cases in which the decision as to the way forward was clear cut, such as where there has been a trigger event and the safety of the child mandated immediate removal from the home. But, in her opinion, there would be other occasions when the decision as to whether to commence care proceedings was much more finely balanced. Although social workers were assisted by the legislation, the guidance and their training and experience, in her view the "right" answer to the question of whether to commence proceedings may not be immediately obvious. Ms Schofield's evidence was that the decision-making in 2002 (and 2003) fell into this latter category.

222. I accept Ms Schofield's evidence that the decision as to whether to commence proceedings in 2002 was not clear cut. I also accept her evidence that the decision not to commence proceedings fell within the reasonable range of social worker opinion and judgement when assessed by the appropriate standard of the day. I reach this conclusion for the following reasons.

223. Mr Dax did not dispute that the paperwork associated with the core assessments which he undertook between March and June 2002 was inadequate. He accepted that there were important issues which had not been documented and that there were some factual errors. Ms Schofield did not seek to defend the quality of the paperwork. However, Mr Dax's evidence, which I accept, is that those important issues which were not recorded in the

pro-forma documentation were not issues which were not known to him and to others who were considering the next steps to take in June and September 2002.

224. In June 2002, the members of the child protection committee chaired by Mr Tudor had read the minutes from the previous meeting. They were aware of the conclusions of the Reaside assessment in 1997; the fact that RFX was thought to have been sexually abused by AD and that this had been the impetus for the section 47 investigation initiated by Ms Collett. The committee members were aware of the inconsistency of the parents' co-operation with the SSD and that the grandmother had been permitted to babysit the children. Although this information was not included in the pro-forma documentation, as it should have been, it does not follow that, as a result of that failure, the committee considering issues in June 2002 were not fully aware of the essential information.

225. The real gravamen of Ms Ruegger's criticisms of Mr Dax however was not so much the quality of his paperwork but the absence of a reasonably competent analysis of the risks. Such an analysis should have been recorded in the paperwork but more importantly she said that, had Mr Dax analysed the risks reasonably, it would have yielded only one conclusion: that no reliance could be placed upon the co-operation of the parents as it would be inevitable that such co-operation would be transitory at best and that care proceedings were the only safe way forward. She criticised Mr Dax for his naivety and for making a serious error of judgement in having any confidence in the parents' commitment to improving their care of the children.

226. However, I find Ms Ruegger's approach to be, at best, overly academic. This is hardly surprising given her professional experience and background. Her experience of undertaking assessments was limited and, as at the time of trial, rather historical. She told me that she had not worked as a child protection social worker since 1983, when she worked as weekend and bank holiday social worker cover for Haringey Council. This was before the 1989 Act came into force. She had never acted as a key worker and had no managerial responsibility for social workers, having chosen to go into academia and then into guardian work rather than management. Although she trained others in filling in core assessments, she had not completed one herself as part of her practice as a social worker. She accepted that she did not have comparable experience to Mr Dax of working on a day-to-day basis as a social worker. Critically, she had never been involved in the process of deciding whether care proceedings should be issued, only becoming involved later, after issue, when appointed as a guardian. I do not here repeat Ms Schofield's experience, save to note that her "front-line" experience of child welfare social work was far greater than Ms Ruegger's.

227. Mr Weitzman described Ms Ruegger's approach to the issues in the case as being entirely mechanistic. This may be unduly critical but if by this he means that her opinion was detached from the reality of the circumstances as they were faced by Mr Dax and the other members of the child protection committee in 2002, then I agree with him. With hindsight, of course, it would have been preferable if care proceedings had been commenced before 2009 but hindsight can have no part to play in my analysis. In 2002, those involved with the welfare of the children had to balance the various risks (posed by the father, the mother's poorly developed protective instincts and by risky adults) alongside the statutory criteria, the legislative guidance and the ebb and flow of the parental co-operation with the SSD. The decision as to the way forward had to reflect, as Ms Schofield told me, that many parents are suspicious and resentful of SSD involvement in the family and that these

parents were not, in any sense, sophisticated people who may have had difficulties in understanding what was required of them, even when it was spelt out.

228. With these points in mind, I make the following observations.

The Risk Posed by the Father

229. Ms Ruegger emphasised the incomplete nature of the Reaside assessment saying that it was an inadequate basis for any assessment of the risks posed by the father. In her questioning of Ms Schofield, Ms Gumbel raised the extent to which the social worker team were entitled to rely upon the report as a comprehensive and conclusive assessment of the risks posed by the father, the mother having impeded the assessment process and having blocked the father completing some elements of the process.

230. Ms Schofield agreed that the full assessment process had not been completed and that the conclusions had to be considered in that light. However, I agree with her that the inconclusive nature of the report must be kept in perspective. She told me, and I accept, that it was not unusual for the assessment process to be thwarted or incomplete for some reason. Had the authors not been able to reach a satisfactory conclusion then it might be expected that they would say so in terms. As it was, whatever the deficiencies of the process, the authors had felt able to express an opinion. Nor did the authors suggest that the assessment should be repeated or that the parents should be instructed that they must complete the various missing elements of the assessment. Dr Warren attended the child protection conference in June 1997 and, in the knowledge of the detail of the father's subsequent offence, she maintained her view that there was a low risk of him offending against his own children, albeit that this may change as his daughters got older.

231. The social workers were, in my view, reasonably entitled to accept the guidance provided in the Reaside report concerning the risk presented by the father, that is, that he presented only a low risk to his children until they reached puberty. I also accept Ms Schofield's evidence that even though "low risk" of offending against his own children was not "no risk," by the same token it did not amount to a risk of significant harm. As such, it presented the SSD with a very real and practical problem. Monitoring needed to be continued until the children reached puberty and beyond, but the SSD could not keep the case open indefinitely. One of the guiding principles of child welfare social work at the time was that children should not be maintained on the register for too long and there were other agencies which could reasonably be expected to monitor the situation. Ms Schofield told me, and again I accept this evidence, that she had had experience in her own case work of similar instances in which she was aware of the existence of a low risk of sexual abuse and that in those circumstances there was nothing more that the SSD could do other than to make sure that the school, the health visitor and other agencies involved with the family were aware of the risk.

232. The father committed four offences of indecency towards teenage girls between 1992 and 1997. There was however no evidence that the low risk of sexual abuse which he presented to his own young children as described in the Reaside report was or might be inaccurate. Until the cluster of disclosures in 2009, including RF's disclosure, there were no referrals and no concerns that the background risk identified in 1997 had increased, let alone that the risk had eventuated. Until 2002, the only issue of concern was the report that RFX had slept in her father's bed one night in November 1999 when her mother was sleeping on the

sofa in order to make caring for the new-born child easier. This prompted an inquiry, albeit a low key inquiry, by Ms Kane. Although Ms Ruegger makes a rather muted criticism of the SSD response to this concern, she does not suggest that it would have justified care proceedings or influenced any decision-making two years later.

233. The mother and the social worker suspected that RFX had been sexually abused in 2001/2002 because of her behaviour at school and the report from Dr Shenoy. In the absence of any disclosure by RFX the social workers believed that the perpetrator of any abuse that RFX had suffered was AD. I do not accept Ms Ruegger's evidence that this assumption was unreasonable. AD was the subject of a police investigation into suspected abuse of his own grandchildren; the mother said more than once that she believed that RFX had been abused by AD and, as the claimants' case reflects, AD was known to have had the opportunity to have abused RFX.

The Risk Posed by WG, DG and AD

234. Although the claimants' case focussed upon the events of 2002 and 2003, Ms Ruegger's evidence was that those events had to be seen in the context of the inconsistent co-operation and compliance with the SSD during the preceding years. She makes the point that considerable direct work had been undertaken with the parents with the aim of reducing the risk of sexual harm posed by the father and developing the mother's protective capacity. This work had started in 1997 when the father was on probation. It had been continued in 1998 and 1999. There was evidence pointing in the direction that this work had been unsuccessful, including that the father had committed a further sexual offence against a 17 year old in April 1997 whilst he had been on probation and that the parents had allowed the children to come into contact with adult men, WG, DG and AD, who posed a risk in contravention of Mr Copland's instructions.

235. These criticisms however do not reflect the full story. For example, the fact that WG had visited the house was information volunteered to the SSD by the mother in November 1996 when she reported his convictions for sexual offences. At the same time the mother also made a number of disclosures concerning her own sexual history. She told the Pre-School Education Service worker, Ms Friswell, that because of her knowledge of his offending she had prevented WG having any unsupervised access to the children but that she was anxious about the response of the SSD to him coming to the home – hence her disclosure. When in January 1999 the SSD received a report that WG had been attending the home with videos for the children, the parents were advised in strong terms that he should not be allowed to enter the home. This was followed up by direct work undertaken by Mr Copland and Ms Kane in sessions which focussed upon the grooming process. There is no evidence that, having been told in January 1999 that WG should not be allowed into the house, the instruction was not observed.

236. The concern about AD came to light in late 2001 when, during the course of investigation of allegations against him by his own family, AD's relationship with the grandmother became known. AD had been a visitor to the house for some time before his potential offending came to light. The parents had told Mr Copland and Ms Kane that he was a visitor in June 1999. There was a discussion about AD and the parents told Mr Copland that he was an elderly man who was well known to the family. Having told the parents in February 2002 that AD should not be allowed to visit the home, there is no evidence that the children had any contact with him. Although it was suggested to Ms Bateman that AD

may have visited the home shortly before RFX was heard to use sexualised language at school in 2003, there is absolutely no evidence that he had, in fact, attended the house. I accept that the possibility that the parents had known of the allegations against AD towards the end of 2001 and yet continued to let him into the home would be a worrying factor for any reasonably competent social worker. However, this was just one of the many factors which the SSD had to weigh in the balance when making its risk assessment.

237. As for DG, he did not pose a sexual threat to the children. He had been convicted of a physical assault (rather than a sexual assault) against his own child. So far as it is possible to discern from the social worker running record, the parents complied with the instructions from the SSD in respect of DG. In October 1996, the SSD strongly advised the parents that DG should not be permitted to babysit the children and there is no evidence that he did babysit or was left alone with the children again. The father repeated that DG was never left alone with the children in April 1999. In July 1999 the parents were told that DG should not be allowed to visit the home. Again, there is no evidence that this instruction was ignored.

238. I accept Ms Ruegger's point that there was evidence that the parents struggled to benefit from the direct work which was undertaken with them and that the mother's ability or willingness to protect the children was inconsistent. Ms Schofield did not criticise Ms Collett for having been concerned by the possibility that the parents had permitted the children to have access to a man who they knew, or may have known, was being investigated for sexual offences against children. Ms Schofield supported Ms Collett's decision to commence an investigation and place the case before the child protection committee. She also supported the decision in March that core assessments should be undertaken. However, I accept that in the absence of a disclosure by RFX at the time or any other trigger, the way forward thereafter was by no means clear cut. I also find that after his dozen or so visits to the family, Mr Dax's conclusion that the parents' commitment was genuine and realistic was reasonable. Ms Ruegger criticised his naivety. But Mr Dax was aware of the full history. He was, I find, reasonably entitled to form the view that the parents' stated commitment was not spurious, bearing in mind his belief that the threat that the local authority may commence proceedings had been a potent force in galvanising the parents' response to the SSD. As Ms Gumbel submitted, the threat of court proceedings in the event of non-compliance with the SSD had been made previously. However, this had been many years before (in December 1995) and did not in my view undermine the reasonableness of Mr Dax's conclusion concerning the parents' motivation.

239. There are two further difficulties with the claimants' case.

240. First, Ms Ruegger supported the SSD recommendation that care proceedings be commenced for the purpose, not of removing the children, but to gain shared parental responsibility. In spite of Ms Gumbel's questioning of Ms Schofield to the contrary, the order for shared parental responsibility was not intended to be coupled with the children's removal from the home. Ms Collett recorded as much in her transfer summary to Mr Dax. In any event, Ms Ruegger accepted that there would not have been a legal basis for seeking to remove the children from the home on an interim basis in 2002.

241. Given that interim removal of the children was not the purpose of the putative court proceedings in 2002, I am at a loss to understand how, logically, the threshold for proceedings could be said to be met in either June or September 2002. If the purpose of

an interim order was to give the SSD greater heft (as it was put by Ms Gumbel) in directing the parents as to what they could and could not do, or to provide the parents with support within a legal framework (as proposed by Ms Din in March 2002), I see no reasonable justification for pursuing proceedings after the parents had demonstrated their commitment to working with the SSD and after they had co-operated fully with the child protection plan, absent such an order. For example, by June 2002, they had indicated that they would comply with any direct work which was proposed, with them and with the children. By September 2002 the direct work had been undertaken, apparently satisfactorily. As Ms Schofield said, if the defendant were to pursue court proceedings, then it would need to be able to show, not only what steps had been taken to safeguard the children, but why those steps had not worked. Given the parents' co-operation, it does not seem to me that the defendant would have been able to demonstrate that the steps had not successfully achieved their objective.

242. Second, Ms Schofield told me, and I accept, that when a local authority is commencing care proceedings, the authority must have a clear idea of the final order which ultimately it will be seeking. For this reason, Ms Schofield said that, in her experience, it would be very unusual for care proceedings not to be associated with an application for an interim removal order. Ms Ruegger however told me that in her opinion a removal order would have been sought at the final hearing because by then expert evidence would have been obtained which would have demonstrated the parents' incompetence. She was asked by Mr Weitzman about the final order sought by the local authority. She replied: "*It would be removal at the conclusion of the proceedings because, by the time expert evidence had been provided, I think it would be very reasonable to infer that the parents would have been found unable to protect the children from significant harm in the future*". Although Ms Ruegger sought to qualify her evidence on this point, I was left with the clear impression that the decision to seek a final removal order would have been contingent upon what the expert evidence would have revealed. Given that it was common ground that it would be inappropriate to issue proceedings for the purpose of obtaining expert evidence, it renders her evidence that proceedings were mandatory implausible. I reject it.

243. I therefore dismiss the claimants' case that there was a breach of duty in failing to pursue proceedings in 2002. I make no separate observations in connection with the direct work which was undertaken. Ms Ruegger accepted that it had been competently performed. Her point was that Mr Dax and others had been naïve to think that it had been or would prove to be successful. In this way, it feeds into the general allegation of negligent assessment of risk. As such, I need say nothing more about it.

244. I turn finally on this issue to consider the claimants' case that proceedings should have been commenced in 2003/4 after RFX had disclosed the fact of having been abused by AD some years earlier. I can deal with this allegation relatively shortly as I see no basis for concluding that the risk assessment was or should have been any different in 2003/4 to 2002. Although RFX made the disclosure, in reality, this disclosure only confirmed what had been suspected by everyone. The mother, Dr Shenoy and the social workers all believed that RFX had been abused by AD. The disclosure related to an event about two years earlier and the social workers were satisfied (I find, with good reason) that AD had not visited the house since February 2001. Although Ms Gumbel emphasised that when interviewed by the police RFX had said that she had told her mother at some point after the incident, I bear in mind that the mother always denied this. I agree with Ms Schofield

that it would be exceptionally odd for the mother to have lied about this given how frequently she had stated her belief that RFX had been abused by AD in 2001.

245. I turn finally to the further episode in 2003 and the suspicion that RFX had been subjected to physical abuse (rather than sexual abuse) at the hands of her father. The incident was investigated by the police and all of the children were medically examined. I accept that there is an element of ambiguity in the medical report of Dr Roberts, in that it states that the majority of the bruising around the knees was accidental. However, any ambiguity is removed when the report is read in the context of the police running record and the record maintained by the social worker both of which confirm that the medical opinion was that the knee bruising was accidental. I note that the police recommended that the report should be filed. In these circumstances, to the extent that it is submitted, I do not accept that this episode altered or should have altered the risk assessment in any material way.

246. For all of these reasons, I dismiss the claimants' case on breach of duty. I find that throughout its involvement the social workers' risk assessments and decisions were reasonable. With hindsight it goes without saying that it is regrettable that care proceedings were not commenced earlier. The SSD were however faced with what was, at times, a fast-changing situation which they were required to manage within the structure of the 1989 Act and the related guidance. In these circumstances they did a difficult job reasonably.

247. This conclusion is not only determinative of the claimants' case in negligence but also of the claim under the 1998 Act. Although limitation and the extent to which the claimants were at risk of imminent harm were both in issue, I do not need to make findings on those matters. Even if I were with the claimants on both, the operational failures mirror the allegations of negligence. Given my findings above, the claim under the 1998 Act must also fail.

Issue 3: Causation

248. However, although I have found against the claimants on issues one and two (and four), I nonetheless deal with Ms Gumbel's case on causation. Again, I find I can do so fairly shortly.

249. Ms Gumbel's case on causation is a straightforward one. She does not advance an argument that the claimants have suffered a "loss of a chance" of their being removed from the family home. She submits simply and clearly that, had proceedings had been started in either 2002 or 2003/4 then, as she expresses it, it is "inconceivable that the court would have refused to make full care orders removing the claimants from the family". It follows that the standard of proof which I should apply is the balance of probabilities.

250. In her evidence to me, Ms Ruegger underscored the importance to the court's evaluation of risk of the psychological assessments of the parents and the children which would have been directed by the court. It is clear from a reading of Judge Cleary's rulings that the expert evidence, in particular that of Ms Howes was critical to his decision-making. In this context, Ms Gumbel submitted that the conclusions of the expert assessments in 2002 or 2003/4 would have been similar to those obtained in 2009. Although I was not provided with a detailed analysis of the Howes reports by Ms Gumbel, she draws my attention to Ms Howes' conclusion that the parents could not meet the children's needs and that this

deficiency was influenced by their own childhood experiences; that in her view the parents did not appear to be able to co-operate with professionals because they did not understand the basis for the professionals' concerns.

251. I reject the claimants' case on causation. Ms Gumbel's submission overlooks the dramatic difference in the family circumstances in 2009 (compared with 2002/4) and the acute deterioration in the functioning of the family in the months directly preceding the application to the court. I have already set out the series of disclosures of a sexual nature in paragraphs 130 and 131 above, including disclosures suggesting that the father had sexually abused his daughters. Those disclosures led to the father being asked to leave the family home. In April 2009, having found notes suggesting that DFX may have been sexually abused by the father, RFX was prevented from giving this information to the SSD by the mother. The mother was (for the first time) reported to be drinking very large quantities of alcohol leading to concerns for the welfare of her unborn twins. When the twins were born, she did not bond with them and after leaving hospital went to stay with the father rather than returning to the family home. Having returned home, she was unable to cope and, notwithstanding attempts by the defendant to provide a support structure for the family, matters deteriorated very quickly and chaos reigned. The mother became depressed but refused medical help. This deterioration in circumstances was the impetus for care proceedings (see Ms Beckett in her (hearsay) witness statement for the trial and by Mr Iqbal Ghag in his agreed witness statement).

252. I accept Mr Weitzman's submission that, given these changes in the family circumstances, I cannot be satisfied, even on the balance of probability, that had care proceedings been commenced in 2002/2004 the outcome would have been removal of the children.

253. I do not accept on balance that had a psychologist and a social worker been instructed to advise the court on the competence of the parents and the risks to the children, the conclusions would have been similar to those which were available to the court in 2009 and 2010. No doubt some of the points made by the experts would have been similar. For example, part of Ms Howes' assessment was based upon the personal and family histories of the mother and father and to that extent similar information would have been available to her whether she had made the assessment in 2002 or 2009. However, when Ms Howes and Mr McCarthy assessed the parents in 2009, they were doing so in the knowledge that at least two, if not three, of the children had suggested that they had been sexually abused by him and that the mother had actively prevented RFX from reporting her discovery of DFX's diary notes to the SSD. This information would not have formed part of any assessment made in 2002 or 2003/4. Both experts in 2009 were looking at events from a wholly different perspective from that which would have been available in the early 2000s. Although Ms Gumbel invites me to infer that the assessment would have been similar, I find that this is an inference too far. It is one which I cannot make.

254. Given the importance of the expert evidence to the court's determination in care proceedings and given that I am unable to infer what the expert conclusions would have been, I therefore reject the claimants' case on causation also.

Conclusion:

255. The claim is dismissed and I invite the parties to draw up the appropriate order giving effect to this conclusion. I repeat that I am grateful to all involved for their considerable help throughout the trial and in more recent submissions.