

IMPORTANT NOTICE

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the child[ren] and members of their [or his/her] family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Case No:MK14C00106

IN THE FAMILY COURT AT MILTON KEYNES

IN THE MATTER OF THE CHILDREN ACT 1989

AND IN THE MATTER OF WW AND SW (CHILDREN)

Date: 29.4.15

Before :

His Honour Judge Antony Hughes

Between :

**Bedfordshire Borough Council
- and -
LW(1)**

RW(2)

WW and SW(3)

Applicant

Respondents

Re WW and SW [Children] [Fact Finding]

**Mr Burman Counsel for the Local Authority
Mr Wraight Counsel for LW
Miss Fairclough Counsel for SW
Mr Eames Solicitor for the children
Hearing dates: 20-25 April 2015**

JUDGMENT

Judgment re SW and WW

Introduction

1. The children with whom I am concerned and whose welfare is my paramount consideration are WW, dob 19/8/2001, and SW, dob 29/10/2006.

2. This is an application by Bedfordshire Borough Council for care orders in relation to these children following the local authority's involvement with this family from July 2012 when the family moved from Bedford to Northampton. They are represented in these proceedings through their children's guardian, Michele Wills, by Stephen Eames, a solicitor.

3. The children's mother is LW and she was born on 1st August 1983. She had originally applied for what was then a residence order in relation to the two boys but is now is a respondent in care proceedings. She is represented in these proceedings by Mr Wraight of Counsel.

4. SW's father is RW. He is also stepfather to WW and has parental responsibility for both boys. He was born on 17th November 1972. His partner is HR who is not a party in these proceedings but has played an

important role in the events of the last few years. RW is represented by Miss Fairclough of Counsel.

5. The maternal grandmother and maternal step-grandfather are MH and PR respectively. They are not parties but the court is mindful of the fact that they would like as normal a relationship as possible with their grandsons. The paternal grandparents are DH and SH who live in Alicante, Spain. They too seek to either have contact with or care for their grandsons notwithstanding a negative viability assessment of them as prospective carers in February 2015. They too are not parties nor are they represented but the court is alive to the potential benefits of the children having as normal a relationship as possible with both sets of grandparents.

6. The local authority are represented by Mr Burman of Counsel. The court has found the threshold criteria crossed for the purposes of s.38 of the Children Act. This hearing has been directed towards a fact finding hearing by reference to findings sought on an agreed Scott Schedule which in turn will impact on whether the threshold criteria under s.31 of the Children Act are crossed.

7. The background in relation to this case is complicated and the court has approved an instruction to Dr B, a child and adolescent psychiatrist to assist the court with a proper and appropriate disposal of the case by way of determining where and with whom the boys should live. Suffice it to say that it appears to be common ground between all the parties that these children have been damaged as a consequence of disputes between adults, allegation and counter allegation. The case has been in private proceedings for approximately two years and on 13th November I directed interim care orders in relation to both children and subsequently Bedford Borough Council accepted the court's invitation to issue care proceedings. On 1st December 2014 at the first case management hearing I reduced the number of parties to the parents and the children's guardian approving as I did, with a heavy heart, that the children were to be removed from the care of HR and placed in foster care and directed a fact finding hearing. How the children came to be in the care of HR I hope will be made clear by my summarising the background and chronology.

Background and chronology

8. On 9th July 2012 LW reported to police in Northamptonshire that she knew her ex-partner, RW, had indecent images of children on his laptop. Subsequently a strategy meeting was held by Northamptonshire

Children's Services and on 12th July 2012 the police obtained a search warrant and removed computer equipment from the family home. The children were placed with their mother.

9. Immediately thereafter, on 13th July, WW and SW returned to their father's care and a family safety agreement was put in place.

10. On 27th July RW and the boys relocated to Bedford in a planned move due to a change in employment for RW. I should say that at that time SW and WW and their father lived with HR and her daughter.

11. On 11th April 2013 it was noted that confiscated items from RW indicated that two videos contained indecent images and child pornography and on 13th April 2013 a strategy meeting was held by Bedford Borough Council and a decision was taken to complete an assessment of the family and a new family safety agreement. Father was not to have any unsupervised contact with the boys or to see to their personal care needs. Police enquiries were continuing and on 17th April a strategy meeting was held and a decision was taken to complete a core assessment whilst the police continued with their enquiries. A further family agreement was also signed by the adults.

12. The core assessment was completed on 28th June and recommended that the children were to be supported in school; there was a referral to CHUMS for WW; the local authority were to have oversight of both the agreement and the bail conditions; there was to be support for HR in the light of the potential charges and “keep safe” work to be undertaken with all the children.

13. On 24th August the father was interviewed by Northampton police and bailed for six weeks with conditions not to live in a household where there is any young person under the age of 18 and not to have unsupervised contact.

14. At about the same time the mother made her first application to the court for residence orders in relation to the children.

15. On 4th September 2013 SW started at his school and the children were designated children in need on 5th September 2013.

16. There was a hearing at Milton Keynes Family Court and CAFCASS were directed to write assessments and s.37 reports with defined limited contact to both parents. At this time SW and WW were living in the care of HR with her daughter. On 23rd November 2013 RW

was charged with possession of indecent images of children. A further s.37 report was requested by the court as well as viability assessment of the maternal grandmother. On 6th December 2013 and in private proceedings in the Milton Keynes Family Court contact arrangements were agreed on the basis that supervised contact was to take place at Spurgeon's in Bedford for both boys independently with mother and father two times a week. It was plain that the boys had made allegations about their mother and there were outstanding issues in relation to the criminal investigation so far as the father was concerned.

17. Northamptonshire police on 8th January 2014 told the local authority that there would be no further police action in relation to the allegations by WW so far as the historical abuse by his mother is concerned or the fact that he said that she had assaulted him on a contact visit on 19th December 2013.

18. In the meantime RW's case was committed to the Crown Court and fixed for a hearing on 16th May.

19. On 10th February 2014 HR informed the social worker NH that she is aware that RW likes pornography of ladies that like ladies and ladies that urinate. The police subsequently confirmed that the images found on

father's computer included images of adults defecating and urinating on each other. It was also noted that at a children in need meeting of the previous October the mother had raised an issue that SW's conversation had included topics such as individuals urinating and pooing on people. No specific finding is sought by the local authority on this issue save an additional general finding on the effect that RW's obsession with pornography has impacted on his family.

20. On 4th August 2014 there was a child in need meeting and both mother and father agreed to encourage the children to have contact with their maternal grandparents. On 9th September 2014 the social worker noted that the boys were reluctant to have contact with either their mother or maternal grandparents and this was confirmed in another visit to the boys on 30th September 2014.

21. On 27th October 2014 father pleaded guilty to two counts of possession of indecent images at Northampton Crown Court and other matters relating to possession of indecent children's images were not proceeded with.

22. In view of this the nature of the risk posed by RW was difficult to determine in the absence of any factual basis of the allegations

concerning child pornographic images and the mother denied any historical, emotional and physical abuse of the boys. Interim care orders were granted thereafter in the terms in which I have already set out.

23. This fact finding hearing is limited to consideration of items 1-8, 10 and 15 on the composite schedule, and allegation number 10 is admitted by the mother. Allegation numbers 9, 14 and 16 have been withdrawn.

24. I set out below in paragraphs 1- 16 information taken directly from the local authority's opening note which sets out in particular detail the sources of evidence, the role of the parties by reference to their initials and the parties respective explanations for it, as well as the page numbers of the evidence from which it is drawn. It should be read in conjunction with the composite threshold, using the same numerical annotation. I stress it is the local authority's document and where any of the assertions contained therein conflict with my subsequent findings, my findings of course prevail.

25. **The state of the filed evidence**

1. **Between June 2010 and July 2012, RW downloaded and was in possession of indecent images of children**

1.1. On 9.7.12, LW reported to the Police that RW had indecent images on his computer, which were two videos of young females being abused. LW alleged that RW had shown her these images between June 2010 and February 2011 [F4-6].

1.2. LW gave a statement to the Police on 10.7.12 [H29-32]. LW stated that when she was 6 months pregnant with SW, RW encouraged her to try and seek out other women on the Internet to have sexual conversations with, so that RW could get aroused by it. After SW was born, RW introduced sex games into the relationship. RW wanted LW to tell him stories about her having sex with other women whilst they were having sex. This progressed to RW wanting LW to make up stories about her having sex with her son's female friends who would have been 8 or 9 years old. Also after SW was born, the parents started watching pornography together on RW's computer in the study. LW stated that RW had a server in the garage and RW had 4 or 5 hard discs full of pornography. LW stated that there were 2 computers in the study, one was RW's (which was password protected and nobody else used it), the other one was used by LW. The children also had their own laptops. All of the

computers were attached to the server. LW states that they separated for a while in 2009 but they got back together in November 2009. At this point RW showed LW some pornography of women experiencing severe pain. Then in the middle of 2010, LW states that RW showed her some pornographic videos of 2 under age girls being sexually abused. One of the girls appeared to be 4 or 5, the other was around 8 or 9 and both were naked. LW states that she thought the videos were 'homemade' as the quality was poor and dark. The videos appeared to show an adult touching the child's vagina with possible penetration with a finger and also possible use of a sex toy. RW was trying to get LW involved with what was happening on the screen. LW says she went along with it because she was scared of him. LW believes the videos were password protected because it took RW ages to access them. RW told LW that she couldn't tell anyone.

1.3.RW was first interviewed by the Police on 12.7.12 [H337-357].

RW denied possessing child pornography [H341]. RW denied ever seeking out child pornography deliberately but said there might have been times when he came across 'something that you don't think is right, but you wouldn't download it, you wouldn't

look at it' [H343]. RW denied having any sexual feelings about children. He admitted to downloading a lot of pornography of a varied nature. He said he didn't tend to use websites, he would use peer to peer file sharing like BitTorrent and PirateBay [H344]. RW was asked if he had ever downloaded child pornography that had been under a different heading. RW couldn't recall but he did accept that there might have been pornography that he downloaded then deleted, and some that he never even looked at [H346]. RW stated that he has always worked with computers since leaving university in 1996 [H346]. RW was asked about the Dell Amtech computer. RW said this was his old computer from before December 2010 and it was new when he bought it [H355].

1.4.PM, Hi-Tech Investigator with Northants Police, was given the task of analyzing the seized computers, discs and hard drives. In his first statement dated 8.8.13 [H56-62], PM sets out the list of items which he examined. These included what would turn out to be the most relevant items- Exhibits MJI 17 (Black Western Digital external hard drive), MJI 38 (Black Corsair computer tower) and MJI 41 (Black Antech computer tower). Across those three devices, PM found 2 x 'Level 4' images (penetrative

sexual activity involving child or children, or both adults and children); 4 x ‘Level 3’ images (non-penetrative sexual activity between adults and children); 1 x ‘Level 2’ image (non-penetrative sexual activity between children, or solo masturbation by child) and 24 x ‘Level 1’ images (images of erotic posing with no sexual activity). 24 out of the 31 indecent images were found on the Black Corsair computer tower. PM also found 6 images and 8 videos of extreme pornography. In addition to the images and videos, PM found further suspicious activity across a wider range of devices including other hard drives, laptops and computer towers. This activity included keyword hits for searching the hard drives’ content, suspicious browser entries, deleted file names and link files.

1.5. PM produced an Initial Examination Report, which set out in more detail his initial findings [H79-126]. These can be summarized as follows:

<u>Exhibit number</u>	<u>Device</u>	<u>Page Ref.</u>	<u>Analysis</u>
MJI 2	Dell laptop	H88-	Suspicious keywords found in swap files area includi

		90	‘pedo’, ‘lolita’, ‘blackdaddy’, ‘hotlolita’
MJI 3	Dell laptop	H90-94	‘underagehost.com’, ‘young preteen models’
MJI 13	Black Western Digital HD	H94-95	
MJI 17	Black Western Digital HD	H96-98	6 x Level 1 images found 9 x Extreme pornographic material found (8 videos and 1 image). Asian females eating human and animal faeces. One image of a female engaging in oral sex with a dog.
MJI 38	Black Corsair computer tower	H98-106	Contained 4 hard drives. On Drive 1, NO relevant images found but suspicious keywords found in swap files area including ‘young preteen models’, ‘underage4’, ‘chatsunderage’, ‘sex.preteens’, ‘kiddy-daddy’, ‘sex.sugardaddy.wanted’, ‘underage.admirer’, ‘Ali 8yo & Ali 9yo stripping- spreading- peeing- fingering in car’, ‘Pedo auntie gets 5yo niece to ram her fist in her cunt’

			<p>Drives 2-4 believed to be set up as a RAID ‘Redundant Array of Independent Disks’ (i.e. multiple drives combining to make one much larger drive).</p> <p>PM was unable to completely rebuild Drives 2-4.</p> <p>Over 88,000 images found on Drives 2-4</p> <p>2x Level 4 images</p> <p>4x Level 3 images</p> <p>1x Level 2 image</p> <p>17x Level 1 images</p> <p>All images found in the unused disk area of Drives 2-4</p>
MJI 40	Dell Optiflex computer tower	H106- 108	<p>Suspicious keywords found in swap files area including ‘lolita’, ‘young preteen models’, ‘privacyunderage’, ‘basicunderage’, ‘chatsunderage’</p>
MJI 41	Black	H112-	1x Level 1 image found

	Antech tower	113	<p>5x Extreme Pornographic images depicting animal s</p> <p>Over the 5 drives, PM found over 550 videos of mos</p> <p>adult pornography and around 63 adult pornograp</p> <p>images.</p>
MAT 01	Wavemaster computer tower	H113-116	<p>Suspicious web activity found, includi</p> <p>‘porntubehunter.com/L84916_This+Teeny+Loves+T</p> <p>Get+Her+Ass+Rammed+Daddys+Young+Girls’</p>
MAT 4	Seagate HD	H116-117	<p>Suspicious deleted file names found using the te</p> <p>‘incest’</p>
SA 8	Seagate HD	H118-119	<p>Suspicious link files found (created when a user op</p> <p>a file to provide user with a shortcut next time they</p> <p>to access it). Examples included ‘girlpu</p> <p>reelkiddymov pedo’ and ‘lolita’.</p> <p>The link files were stored under the user name [</p> <p>redacted]</p>

1.6.PM reported that the indecent images found were almost all recovered from the unused disk area of unallocated clusters. He stated that unallocated space can contain old or deleted data

that is invisible to the operating system. There is no guarantee that files produced from the unallocated space will be viewable. Files recovered from the unallocated space do not have any associated time/date properties [H121].

1.7.RW was interviewed again on 22.8.13 [H358-415]. RW said that both himself and LW browsed pornography on the computers and that there were numerous pornographic DVDs in the home, which belonged to both of them. RW said they would download pornography and then put it on DVDs [H359-62]. RW made the following comments about the various seized devices:

<u>Exhibit number</u>	<u>Device</u>	<u>Page Ref</u>	<u>RW comments</u>
SA8	Seagate HD	H366-7	Was kept in the garage and was in use at the time it was seized. It was attached to the computer in the garage on which most things were stored. Things were stored centrally on the machine in

		H407-11	<p>the garage. This would have been in use when LW was living there.</p> <p>RW was asked about a link file dated 30.8.06 referring to ‘girl pussy real kiddymov, pedyo qwerty ray gold’. RW suggested that he backed up his work computer onto SA8 before he returned it to BCS Timeless (previous employer). RW suggested that he couldn’t have downloaded these files because there were firewalls at work to prevent this. He suggested that due to the date it might correspond with the nudist file he downloaded.</p>
--	--	----------------	---

MJI40	Dell Optiflex computer tower	H369 H403	<p>Used by LW but then used for 5 or 6 other people. The children mainly used it but also HR, neighbour's kids, Paternal Grandmother, RW's sister, and a previous girlfriend. It was logged on as LW but the password was never changed. HR likely to have been the last user.</p> <p>RW said he never used this computer but at some point would have accessed it to set it up</p>
MJI41	Black Antech tower	H369	RW's old computer then passed onto LW. It was on 24/7 and you didn't need a password to get into it.

<p>MJI 38</p>	<p>Black Corsair computer tower</p>	<p>H370</p> <p>H375-379</p> <p>H393-6</p>	<p>RW's current computer at the time it was taken. It was logged on as him and purchased in December 2010 when he was still with LW.</p> <p>RW said that MJI 38 contained back ups of other people's computers. RW said that the vast storage on MJI 38 was on the RAID drives, and this was where the 'day to day things' would have gone (n.b. PM found the vast number of indecent images on the RAID drives of MJI 38- see H103-105). RW denied any knowledge of the indecent images found on MJI 38.</p>
----------------------	--	--	---

			<p>RW surmised that 'Lolita.com' could have been a pop-up when visiting an adult website. RW said that references to 'Pre teen' and 'Lolita fucking' would have been from when he used News Demon from March 2012. RW denied subscribing to such groups. RW denied downloading 'Alyo eightYO' from eMule. He said he hasn't used eMule since around 2006. RW stated that he was not surprised all the link files came under his user name because the computer was always logged in as him and never anyone else.</p>
--	--	--	--

<p>MJI2</p>	<p>Dell laptop</p>	<p>H385-390</p> <p>H416-417</p>	<p>RW said that this was an old laptop from when he worked at Capita in 2006. RW said this computer was being used by the children when it was seized and would have had family safety software installed. He said that ‘Lolita.A’ and ‘Lolita.B’ were viruses not sites. He denied knowing how suspicious search terms could have been found on the laptop.</p> <p>RW then stated that the suspicious search terms found were likely to be from the anti spyware on the laptops, which forms lists of sites that are blocked due to</p>
--------------------	---------------------------	---	--

			viruses. RW was asked if this referred to the swap file found, and he said No.
MJI3	Dell laptop	H390-392 H416-417	RW said this was used by the children. He denied knowing how suspicious search terms could have been found on the laptop. RW then stated that the suspicious search terms found were likely to be from the anti spyware on the laptops, which forms lists of sites that are blocked due to viruses.
MJI 13	Black Western Digital HD	H392	RW said it is not possible to have a swap file on an external hard drive

MAT01	Wavemaster computer tower	H404	RW said this would have been in the loft. Any references to 'Teeny' were not children. RW accepted using this computer to access adult pornography but denied accessing child pornography. References to 'sex stories post.com forced sex incest gone wrong' were the sites LW had allegedly visited.
MAT4	Seagate HD	H406	RW suggested that the term 'incest' did not necessarily equate to child pornography, and that it linked back to what LW had been searching for. He denied searching for it

1.8.RW said he was unaware of how the indecent images of children got into the devices. He denied ever deliberately seeking out

child pornography [H370]. He recalled once opening a zip file which contained thirty or forty files 'something of that nature' and when he realised what they were he wiped them out. RW suspected this would have been on the Amtech computer MJI 41. RW didn't think it was child pornography but it was not what he had been searching for so he deleted it [H371-2]. RW thought this would have been around 3 or 4 years ago [H384]. RW stated that most of his pornography was downloaded through Bit Torrent or Pirate Bay. He suspected that child pornography could have come from Bit Torrent labeled as something else [H384]. RW denied ever having told LW to fantasize about having sex with children, however he did say there might have been a time when they talked about picking up a teenager and having a threesome. However he denied he fantasized about children [H400-401].

1.9.In November 2013, PM provided a second report addressing the matters raised by RW in Police interview. PM found a further 1x Level 1 image, 3 more extreme pornographic images and 14 more extreme pornographic videos [H66]. PM produced an additional Examination Report [H175-255], the findings of which were as follows:

<u>Exhibit number</u>	<u>Device</u>	<u>Page Ref.</u>	<u>Analysis</u>
MJI 2	Dell laptop	H184 H242- 243	No passwords required to access the user accounts. Child safe web browser identified.
MJI 3	Dell laptop	H185	No passwords required to access the user accounts. NO child safe web browser identified.
MJI 17	Black Western Digital HD	H194- 211	One additional Level 1 image found. 3 further extreme images found and 13 further extreme videos. No permissions were required to access the indecent images or the extreme material. The Level 1 images were all created on 3.1.10 between

		H211-212	<p>20:54:37 and 20:58:38. They were all last accessed at the exact same time of 14:57:01 on 20.1.10. They were all last modified at the exact same time of 14:04:06 on 2.7.11.</p> <p>The SID 'security identifier' used was the same as that used on MJ1, MJ2, MJ3 and MAT01. All of these SIDs referred to RW.</p>
MJI 38	Black Corsair computer tower	H187 H221-235	<p>No account information available.</p> <p>All indecent images found were in the unused disk area. No time and date information was available.</p> <p>Images were found in the Lost Files which were identical to the</p>

		<p>H225-235</p> <p>H250</p> <p>H251</p>	<p>indecent images previously found. All the images found in the Lost Files area were created on 27.5.12 within 1 second of each other at 23:46.</p> <p>BitTorrent files were found with identical names to the extreme videos found on MJI 17. The BitTorrent files were last accessed between 23.4.08 and 4.11.11. A comparison of the creation dates/times for BitTorrent files on MJI 38 with the actual files found on MJI 17 suggests that the files were being downloaded via BitTorrent on MJI 38 and then saved onto MJI 17.</p> <p>In the Lost Files area there were</p>
--	--	--	---

			<p>some large files which could have been produced by backing up other computers however the content of these files could not be verified.</p> <p>There was evidence to suggest that RW had subscribed to a newsgroup and files had been downloaded as RW had suggested in interview [H393-6]</p>
MJI 40	Dell Optiflex computer tower	H187-8	Passwords required for the Administrator and Setup user names. No other users specified.
MJI 41	Black Antech tower	H235	Not possible to date any of the images as they were found in unallocated clusters.
MAT 01	Wavemaster computer tower	H189- 191	Passwords required for some accounts but not others in names of RW and LW.

1.10. PM stated that the times/dates associated with swap files could not be relied upon [H239]. PM did find that the swap files containing words like ‘lolita’ were made by either an anti-virus program or website blocking software [H241], as had been suggested by RW in interview [H416-7].

1.11. RW was interviewed for a third time on 19.11.13 [H419-452]. RW denied knowledge of the further indecent images and extreme pornography that had been found [H426-7]. He stated that LW would have had access to the home even after they separated in January 2011 (see 2.3 below). RW stated that LW exclusively used the silver Coolimaster computer (MAT 01) and Dell Optiplex (MJI 40) [H436].

1.12. On 26.1.14, LW provided another statement to the Police to account for her whereabouts on the dates and times identified by PM (see 2.4 below).

1.13. In his Defence Statement, RW said he was unaware the images had been on his computer; he did not believe he had ever seen the images; he had never searched for indecent images or extreme pornography and has never knowingly downloaded

them; RW also claimed that LW had downloaded the images [H516-517].

1.14. On 14.10.14, Mr Gow of Counsel advised the Crown that the evidence supported prosecution for making and possession of 7 x Level 1 indecent images on MJ17 and possession of extreme pornography [H544]. In relation to the images on MJI 17, it was noted that they were all Level 1 images created on 3.1.10 and the age of the children was estimated to be 'mid-teens'; these 7 images were recovered from an accessible location and were supported by meta data including file names, times and dates [H545]. In relation to the images found on MJI 38, it was noted that they were not accessible to the user as they were recovered from unallocated data; PM had expressly agreed that it was unsafe to prosecute on the basis of unsupported evidence from unallocated clusters; with the exception of 7 x Level 1 images created on 27.5.12, the other images had no meta data; it was not possible to say when or how they were created and this would cause difficulty where the defence is that the images if present were downloaded by somebody else. The 7x Level 1 images were also in unallocated space; PM had obtained matching data but these are cache files and PM could not say if

they were internet cache files or otherwise; they could have been created from pop-ups or another mechanism that caused them to be made simultaneously [H547]. In relation to MJI41, these images were also in unallocated space with no associated data [H548]. PM had conceded that the swap files could have come from anti spyware; PM had accepted that the listing of Alt.binary files does corroborate what RW had said about subscribing to a news group; the link files had 'last written' dates which predated the 'creation dates' making the data unsound [H548].

1.15. The final version of the indictment can be found at H551-552.

The Crown pursued 2 counts of making indecent images of children and 2 counts of possessing extreme pornography.

1.16. On 27.10.14, RW appeared at Northampton Crown Court for

his plea hearing before Her Honour Judge Tayton QC [see Transcript]. It was put on behalf of the Crown that the Crown could prove 7 xLevel 1 images on MJI 17; they were all of mid to late teens; one would have to consider had they been the only evidence whether they would have been subject to a charge and if so whether they would have been dealt with in the Magistrates

Court. The indecent images found on the RAID system MJI 38 were all in unallocated clusters so none of them were available to the user; they contained no data apart from the fact of the image. The Crown indicated that it would be content to proceed on the basis of just Counts 3 and 4 (the extreme pornography charges).

1.17. In RW's most recent statement in response to the Scott Schedule he points out the anomalies on the dates and times of files (e.g. created on 27.5.12 but access on 15.11.09); it is not feasible to download files at identical times and dates; indecent images were most likely copied onto the computer rather than downloaded; the 'search hits' all refer to viruses spotted by the anti virus software which was installed; it is easy to change the time and date of file creation; passwords were not stored on individual computers as all the computers were set up as an Active Directory Domain; he did not agree with PM that the files in the RAID computer were found in unallocated clusters; he suggested that where a file has an access date of '05/01/1970' this meant it had never been accessed or viewed; there was wiping software but it had not been used; it would make no sense to spread so few indecent images over multiple devices;

RW also said that he was in Milton Keynes with HR then on the Isle of Wight at the time that the 7x Level 1 images were created.

2. The indecent images found on the computers seized from RW's home were downloaded by LW when she had access to them, in an attempt to 'frame' RW.

2.1. In his first Police interview, RW said that he suspected LW had made the child pornography allegation to prevent him moving away with the children, which was due to take place in the coming fortnight; the informal contact arrangement between them was due to expire; RW had asked LW to come up with a new arrangement but she hadn't done so [H338] (n.b. RW subsequently produced a text message as evidence that he had been trying to agree with LW contact arrangements- see H474). RW also said that he had spoken to LW's former employer on or around 10.7.12 and he had confirmed that LW had been sacked for stealing money from the business [H339].

2.2. In his second Police interview, RW reiterated that he believed the timing of the allegation was because he was about to move, and that it had been made maliciously. He did not think LW was doing it for financial reasons, but because she feared she was going to lose touch with the children. RW said that he had never stopped LW seeing the children but he had told her that she would have to prove to him that she could look after them [H356-7]. When asked about the suspicious link files on SA8, RW stated that he did not want to blame LW but this had to be done by someone who had long-term access to the computers. He stated that anyone could have logged into the computer and searched for Lolita and it would have shown him as doing it [H410-11]. RW stated that LW still had keys after she left the home; she had returned one set which she said were her only ones, but HR was convinced LW had been in the house in around May / June 2012 [H411].

2.3. In his third Police interview, RW said that he and LW separated in January 2011 but he believed that she came back for a week in March/April 2011 and then June/July 2011. He said that himself and HR were also in the house. In March/April, LW's car broke down so she stayed with RW

while her car was being repaired. LW would have been left unattended when she was there. In June/July they went to DFS to find a sofa for her. RW stated that LW gave him a set of house keys in Feb 2011 [H420-422]. RW said that LW had access to the property up until July 2012 and people had seen her have access to the property; they did not see her in the house but saw her outside the property; they were so worried they put up motion detect webcams but they did not catch LW. The webcams were being used between August/September 2011 and July 2012; HR thought someone was coming into the house as things were moved; they didn't change the locks because they didn't know who was doing it; they never went to the Police about it; RW told HR she was being paranoid [H431-3]. RW said that LW didn't even need to come into the house as she knew the wi-fi codes; a bunch of keys came through the letterbox and no one knew where they had come from [H434]. RW said that LW had used computers for 15 years in her career and was a 'strong competent user' although he wouldn't call her a computer expert [H435]. RW stated that LW exclusively used the silver Coolimaster computer (MAT 01) and Dell Optiplex (MJI 40) [H436]. RW said that neighbours had seen LW parking on the drive when he wasn't there; the child minder

saw her wandering around less than a few hundred yards from the house [H441].

2.4.LW provided another statement to the Police on 26.1.14 [H33].

This was to account for her whereabouts on the dates and times identified by PM in his second report (see 1.9 above). The court is also referred to the exhibits referred to therein [H464-469] and the alibi statements of AL [H72-3]; SR [H74]; MH[H75] and PR [H76].

2.5.In his Defence Statement, RW claimed that LW used his computers to access pornographic stories; she continued to have access to the home after they split up in 2011; LW was responsible for downloading the images because she had lost her job due to theft and he was about to move with the children [H516-517].

2.6.In his Advice to the Crown, Mr Gow of Counsel noted that LW's alibis were only in relation to times where extreme pornography had been downloaded, not indecent images; the only exception was 27.5.12 but LW's only 'alibi' for this time was that she was on Facebook; no alibi was provided for 3.1.10

but LW would have still been living with RW at that point; the images LW described were not found [H549].

2.7. On 19.8.14, LW provided a third statement to the Police [H585].

LW stated that she left her Daventry address on 28.1.14 and RW made her leave her keys with him. She had a few days without access to the property but then RW gave her the keys back. LW had access to the home for a month but RW was always there including when she used the computer. From Feb 2011, LW went back to the house a few times to see the children but RW was always there. In April 2011, RW no longer wanted LW to have access to the home so he brought her things to her new address. LW states she no longer has a key.

2.8. In RW's most recent statement in response to the Scott

Schedule, RW does not accept LW's account. He states that LW collected the items herself. RW was there as well as his mother. RW also states that after the police raid he was told by neighbours that they had bumped into LW in Tesco; she was described as 'very angry' and 'determined to get the boys back' and that she 'did not have a leg to stand on'. RW claims that

LW would have had Remote Access to the computers as well as physical access to the home and the Wifi network.

3. On 24.11.14, RW was convicted of two counts of possessing extreme pornographic images showing acts of bestiality.

3.1. PM found 6 images and 8 videos of extreme pornography on the seized devices [H60]. See paragraph 1.5 above for references to extreme pornography within PM's report.

3.2. In his second Police interview, RW was asked about an image found on one disc which showed a female and a male dog engaging in oral and vaginal sex. RW said that he could not say that he downloaded it, but he couldn't say that he didn't download it. He said it was an awful long time ago [H361]. RW said that he didn't consciously remember downloading bestiality [H362]. RW said he had never found bestiality exciting and had no knowledge of downloading such material [H373]. When asked who had downloaded the bestiality images, RW denied deliberately seeking them out; he didn't think it was him but he couldn't deny it [H382-3]. RW accepted that he

might have taken a more broad minded view if he had downloaded bestiality images so they might not have been deleted [H383].

3.3.In his second report, PM found 3 more extreme pornographic images and 14 more extreme pornographic videos [H66]. On MJI 17, two of the extreme images were last accessed at 19:33:04 on 21.12.09 [H199-201]; the videos were last accessed on 5.1.70 within a few seconds of each other from 19:12:51 [H201-211].

3.4.In his third interview, RW denied knowledge of the additional extreme pornography that had been found. He said he wasn't even sure of the legalities of it [H426-7].

3.5.At the plea hearing on 27.10.14, it was put on behalf of the Crown that the 4 extreme pornographic images and 23 videos were saved to the hard drive and were therefore accessible to the user [see Transcript].

3.6.At the sentencing hearing on 24.11.14, it was made clear that the basis of RW's guilty plea was that he had 'no interest in

bestiality and didn't deliberately search for it. It came with legal pornography' [see Transcript]. RW was given a 3 year Community Order with a requirement of supervision and to undertake the Internet Sex Offenders Treatment Programme.

3.7. In RW's statement in support of his Response to Scott Schedule, RW states that he had no interest in extreme pornography, did not search for it and didn't knowingly download it; he states that all the extreme pornography was downloaded using BitTorrent.

4. The children had unrestricted access to computers in the home which contained images of child pornography, images and videos of extreme pornography (bestiality) as well as legitimate adult pornography.

[Not pursued]

5. LW failed to protect her children by allowing them to stay with RW in Daventry after they separated in January 2011 despite

knowing that RW had an interest in child pornography and sex with underage girls.

5.1.LW states that she separated from RW in January 2011; she took the boys to live with her parents in Milton Keynes; she brought the boys back to live with RW the next day because there was not enough space at her parents' home [C22/3]. LW states that despite her knowledge of RW having indecent images of children, she did not think this necessarily made him a risk to the boys. LW thought that RW was only interested in girls and women so he would not be a risk to WW and SW [C23/7]. LW states that it was only when she knew that HR's daughter would be moving into the home that she reported it to the Police [C24/8]. This appears to tally with LW's statement to the Police dated 10.7.12, where she stated that she had come forward about this because she was concerned for HR's daughter who would be staying at the address every other weekend and during school holidays [H32].

6. Between 2006-2010, LW used to make the children stand on the stairs with their hands on their heads.

6.1. In her s37 report of 27.11.13, social worker JK reported that on 14.10.13 she visited the boys; she spent around 30 minutes alone with each of the boys individually; she asked them why they didn't want to go to contact with their mother; they both said that when mother was living with them, she used to make them stand on the stairs with their hands on their heads; she asked them if mother was making them stand with their hands on their heads during contact; they both replied no; SW said that mother could not make them stand with their hands on their heads because she does not live with them no more; she asked WW if father used to be present; WW said father was there but he was not sure whether this was right or not [G311-12].

6.2. JK further reported that she went to speak with SW at school on 4.11.13 along with her line manager; GH the support worker from the school was also there throughout; SW is reported to have said that his mother made him stand on the stairs with his hands on his head [G314-315/65].

6.3. JK further reported that she met with HR on 19.11.13; HR reportedly stated that when she first joined the family she noticed the children for no apparent reason would stand facing

the wall with their hands on their heads and would be saying 'I'm sorry' even when they had done nothing wrong [G319/81].

6.4. Police visited SW at school on 9.12.13. SW said that it was horrible living with his mother and they were forced to stand on the stairs with their hands on their heads [G538].

7. Between 2006-2010, LW used to physically abuse the children by smacking their bare bottoms hard repeatedly until it hurt them to sit down or get into the bath. LW also used to smack the boys with a wooden spoon and make them say "I'm sorry mummy, I love you mummy".

7.1. In her s37 report dated 27.11.13, social worker JK reported that on 6.11.13, GH support worker at SW's school had done some wishes and feelings work with SW and shared this report with JK; GH reported that SW stated he was worried that he will have to live with mother because she smacked his bare bottom and smacked him with a wooden spoon [G315-6/68].

7.2. JK further reported that on 7.11.13 she visited WW at school along with her line manager; WW stated he did not want

contact with his mother because when she was living with them she used to smack him and his brother on their bottom that it used to hurt so much [G316/69].

7.3. JK further reported that on 11.11.13, a referral was received from Northamptonshire Police to say that SW and WW had told HR that their mother used to physically abuse them; they had informed HR that their mother used to smack them so hard on their bare bottom that it used to hurt so much when they sat in the bath; according to HR the boys had discussed this with their school mentors and did not want to see LW for fear of this happening again; HR reported that SW had said he was made to strip naked, touch his toes and have his bottom smacked repeatedly whilst he had to say 'I'm sorry mummy, I love you mummy'; SW reported to HR that he was under 3 when mother beat him with a wooden spoon in the kitchen [G317/74].

7.4. Police spoke to the boys separately at their schools on 9.12.13. SW told the Police that mother had smacked their bare bums and due to this they had not been able to sit down and that when they went into a bath their bottom would sting; that

mother had hit him with a wooden spoon 3 or 4 times; WW had been hit with a wooden spoon as well and he had suffered longer as he was older; mother would only hit them when they were having fun not when they were naughty; they did not tell their father as they were frightened this would make mother angry and they would get hurt even more; SW could not give dates but said no one was there except mother; father did not know what was going on; their injuries were reddening only; they did not go to the doctors and there were no lasting marks [G538-9].

7.5. WW told Police that he was beaten and he did not like it; mother had smacked their bare bums and due to this they had not been able to sit down and that when they went into a bath their bottom would sting where mother had hit their bottom so hard; he could not provide dates; no one was there except mother; father did not know it was going on; the injuries were reddening only and they did not get taken to the doctor; the red marks on the bottom lasted 30 to 40 minutes; after mother smacked them they had to say sorry and that they loved their mother [G540].

7.6. The Police reports noted that the boys' accounts were 'suspiciously similar' [G554].

7.7. The Police reports also make reference to a subsequent allegation made by HR via email to the Police over the Christmas period 2013; HR alleged that at contact on 19.12.13 WW was assaulted by LW by her grabbing his wrist and forcefully pushing him away; the Police recorded this as a false allegation after reading the supervised contact report which made it clear that WW knocked his wrist during a game of basketball; WW was being abusive towards LW by throwing the ball at her face [G528-9].

7.8. In her wishes and feelings reports, LCN a worker from NYAS stated that, as of 6.2.14, SW was saying he did not want to see mother because she used to hit him on his bare bottom and it used to hurt when he sat down in the bath; he also told her she hit him with a wooden spoon [H501]. WW was also reported to say that mother used to smack them (referring to his brother SW) on his bare bottom [G502].

7.9. On 13.1.14, WW wrote a letter to the Judge (it was received by District Judge Perusko on 21.1.14). WW stated in the letter that *'my mum used to beat my brother and me*

repeatedly bear (sic) bum very hard, so hard that when we sat down or got in the bath it stung like hell. She once hit us with a wooden spatula the same way she does with her hands. She would become annoyed very easily and would take it out on my brother and me, anything small that we did we would get beaten for and you could tell when she was going to beat us because you could see it in her expression. She would only ever do it when we were alone or a different part of the house' [G489].

7.10. In her s37 report dated 18.2.14, social worker NH reported that on 23.1.14 she spoke to the children at Bedford Spurgeons Contact Centre as they had refused to have contact with their mother; NH asked them why they didn't want to have contact; WW stated that 'I just don't want to'; SW said he was not sure and asked WW 'Why do I not want to see mum; WW whispered to SW; SW then stated that mother 'used to smack me and WW on the bottom with a wooden spoon and it was so sore we could not sit down and it stung when we got in the bath'; NH was concerned that SW appeared not to have an independent view [G348/45].

7.11. In her second s37 report dated 28.5.14, NH reported that when she spoke to SW on 12.5.14, he again stated that mother used to hit them with a wooden spoon on the bottom [G416/4.17].

7.12. The account of HR in her statement of February 2015 appears to tally with the referral to Children's Services (see 7.3 above). After social worker JK met with the boys on 14.10.13, SW said that he had told JK that mother used to be horrid and hit him; on 4.11.13 SW was sitting up in bed and screaming, very upset; the children said they did not want to have contact with mother because they were scared of her; SW talked of being stripped naked, touch his toes and having his bottom smacked very hard repeatedly whilst he had to say 'I am sorry mummy, I love you mummy' over and over whilst she hit him; he said he was under 3 and he was beaten with a wooden spoon in the kitchen; both boys talked of having their bare bodies smacked until it hurt to sit down, it left a mark and they said that hours later it stung to get in the bath. WW said he felt guilty because he knew SW used to get hit but he thought he took most of the punishment and used to say things were his fault so that his mother would

hit him and not SW; WW said he thought he was protecting SW and was the only one to be hit with a wooden spoon.

8. In June 2009, LW threw WW against a wall then threw him violently onto the floor. LW then picked WW up and threw him across the room. This resulted in WW hitting his head on some computer equipment, which caused a cut. WW still has a small scar on his forehead below the hairline as a result of this incident.

8.1. The Police records state that on 17.12.13 HR told the Police that WW had told her he had a small scar on his forehead just below the hairline; HR observed the scar (small like her nail tip size); WW reportedly stated he received this injury when LW was angry with him and threw him against a wall; WW was unsure when; mother was violent and pushed him back onto a wall then threw him violently to the floor; WW was crying and asked LW why she was so angry with him; she picked him up and threw him across the room which caused him to hit his head on some computer equipment; this caused a cut which bled a lot; when RW came home WW told him he was carrying a cup of tea and had fallen and the cup smashed and this had caused the cut;

WW stated LW was glaring at him so he couldn't tell the truth [G545].

8.2.The Police records note that this information had not been shared by WW himself at school or since that time [G545].

8.3.In her statement HR says accepts that WW only made this allegation after he had spoken to the Police Officer. She states that WW told her this incident happened when LW was angry with him and threw him against a wall; LW was violent and pushed him back onto a wall then went to throw him violently onto the floor; he was crying and did not understand why LW was angry with him; he asked LW why she was angry; this made her worse and she picked him up and threw him across the room and he hit his head on some computer equipment which caused a cut which bled a lot; WW said blood was running down his face and onto his nose; he tried to stand up saying 'why are you hurting me mummy? What have I done?'; LW screamed and pushed him hard in the chest causing him to fall back onto his bottom; WW showed HR the small scar on his forehead; WW told RW that he had tripped up carrying a cup

of tea and the cup had smashed; he did not tell the truth because he was scared of LW.

9. [Not being pursued]

10. LW permitted the children to watch unsuitable 15 rated films at the ages of 5 and 10. These films included "The Fast and the Furious" and "Ghost rider"

10.1. Admitted by LW.

10.2. RW informed the Police of this in his interview in July 2012 [H340].

10.3. In his own letter to the Judge, WW stated that LW was letting SW watch inappropriate movies when he was 4 [G490/top].

11. [The LA reserves its position in respect of this allegation]

12. [The LA reserves its position in respect of this allegation]

13. [The LA reserves its position in respect of this allegation]

14.[Not being pursued]

15.On 20.3.13, LW posted a link on her Facebook profile to an extreme pornographic story about the rape of a school girl by her teacher.

15.1. In his first Police interview in July 2012, RW said that when LW left him in August 2009 he looked at her computer and found that she had gone to a number of erotic literature sites, the subject material being simulated rape or something similar [H348].

15.2. In his second Police interview in August 2013, RW reiterated that in 2009 he was aware that LW had been looking at erotic literature [H360]. He the Police a print of LW's Facebook profile (see H476), which he said a friend had found in March. RW then admitted the friend was in fact himself using a pseudonym. RW said that he had shown this to Bedfordshire Police at the time. RW said that he had also had a video of himself clicking on the page to show it is the real thing. RW said

that it was never something LW had discussed but he knew she had been looking at material on forced rapes in 2009 [H397-399]. RW was asked about MAT01 and said that this would have been in the loft. References to 'sex stories post.com forced sex incest gone wrong' were the sites LW had allegedly visited [H404-406]. RW was asked about MAT4 and suggested the deleted files referring to incest would be linked to LW [H406].

15.3. In JK's s37 report, she stated that on 19.9.13 after the Child in Need Meeting, RW handed over to the assessment manager what he alleged to be a link on LW's Facebook page which she had 'liked'. RW alleged the link was to child pornography. The information was passed to Milton Keynes Children's Services on 19.9.13. MK passed the information to LW's employer who carried out their own investigations and reported they would take no further action [G309/50]. Subsequently during a Child in Need meeting on 24.10.13 RW stated that he had reported LW to the Police for viewing inappropriate material online. A copy of the alleged Facebook page was given to JK. RW also provided JK with printed materials from the website [G313/61-2].

15.4. In his third Police interview, RW said that he had a video of him clicking the link to show this; he said he reported it to Bedfordshire Police and Social Services pm 13.4.13; he also told Social Services again in May 2013; that on 13.4.13 he demonstrated live in Facebook to an officer of Bedfordshire Police and from Bedfordshire Social Services that the link was still live there and then [H444-6].

15.5. In his statement dated 3.3.14, RW stated that LW had publicly demonstrated an interest in extreme pornography posting links to stories of schoolgirl rape on her Facebook page in March 2013 [G198]. RW exhibited the alleged story to his statement [G208-224].

16. [Not being pursued]

26. I have heard from a number of live witnesses, as well as of course reading the written material which is voluminous and encompasses three ring binders.

27. **PM** from the High Tech Crime Unit at Northamptonshire Police Station gave live evidence further to the written statements and reports that he had filed both in relation to the criminal proceedings and in relation to these proceedings. In fact his original report in these proceedings is dated 5th March 2015 and particularly answers questions raised by the parties in relation to the technical aspects of his investigation.

28. He was constrained to file an additional statement on the first day of the hearing to deal with issues raised by RW when he was permitted to file a statement following his own examination of his computers after they had been returned to him from police control. RW used a number of commercial products to conduct an examination of his own computers in which he sought to demonstrate evidence of LW's sexual predilection and the juxtaposition of indicative activity in the web browsing sessions and her logging into her Hotmail, Facebook and personal accounts he seeks to deploy in support of his case that she has effectively planted indecent images of children on his computers.

29. Of course it is established in this case that the police prosecution in relation to possession and downloading of images involving child pornography was not proceeded with by the prosecution as it would not

be possible to prove how the images were created or whether they were viewed and left RW pleading guilty to charges of possession of extreme pornography to which I have already alluded in this judgment. That unsatisfactory lacuna in the evidence remains the position as I survey the landscape of evidence from the vantage point of the civil burden of proof.

30. PM made it clear that he agreed with the advice of Prosecution Counsel in the criminal proceedings and a number of features arose from his cross examination on the first afternoon of the trial which I summarise as follows:-

1. There was a great deal of pornographic material on the computers seized and examined. He said perhaps ‘hundreds of thousands of images.’
2. His report identifies which of those images comprised illegal child pornography but it is not possible to say whether or not any of these images were viewed. There were a tiny proportion of the whole.
3. He did not have the benefit of seeing the computers set up in situ and this would have helped his investigation in relation to passwords and domain.

4. It is possible for an individual to remote access any computer provided equipped with the necessary password and material can be introduced to a computer in this way.
5. The dates and times of access cannot be relied on too much. The only reliable dates are created dates.
6. It is difficult to identify any particular user
7. The computer MJ138 could not be reconstructed in the same form thereby creating insuperable forensic difficulties.
8. The issue of security software could not be ruled out as a method by which material had innocently been downloaded.
9. He could not see any active search for illegal images of children but it could not be ruled out.
10. In relation to the mother's case that the father invited her to watch two videos involving child pornography, he identified a number of hits with a file path of the users through the medium of eMule indicating that a file with potentially illegal material had been downloaded under RW's user name. He said it was difficult to imagine any scenario other than downloading but it was not possible now to say what the contents were and therefore difficult to know whether it was unlawful material.
11. It would be possible for the computers to have been wiped or various encryption tools used.

31. **LW** is the children's mother. She has reverted to her mother's maiden surname. She is the author of two Children Act statements, a large number of text messages, and two police statements. Her last statement filed on the first day of this hearing in answer to additional evidence filed by RW.

32. Her replies to the allegations in the Scott Schedule are filed in the composite threshold document.

33. The most serious allegations faced by her are that she effectively attempted to frame RW by introducing child pornography into the computer system at home and gave a false story to police. She maintains however that she is not overly skilled in the use of computers. She maintains a working knowledge of computers with no great degree of sophistication, she says.

34. The father has suggested that inappropriate sexual material was viewed by her immediately before or after she had logged onto Facebook, Hotmail or internet banking

35. It is, in my judgment, a depressing feature of this case that there has been extensive use of pornography in the household involving both the mother and father as part of their sexual activity. Very large amounts of pornographic material, as the Court is aware although overwhelmingly not illegal, were recovered from the father's household.

36. The most serious allegation that she makes in relation to the father is that he had an interest in sexual images of children. She would say that that is corroborated by the presence of indecent images of children detected on the systems by police (but not attributable for the reasons I hope I have made plain) and on an occasion that she mentions in her police statement in sometime in the middle of 2010, when they were sat together in the study at their home, RW opened up some child pornographic images by way of videos. She thinks there must have been a password protected area because it took him a long time to access them. These videos showed two underage female children being sexually abused. One of the girls appeared to be about four or five years old and the other was about eight or nine. The viewing took 5 minutes or less.

37. I should say that her written evidence states that following SW's birth, the father wanted to introduce games into their sex life and in

particular for her to tell stories about herself having sex with other women.

38. In 2006 or thereabouts she found intimate conversations between father and another woman on the internet. It was clear that conversations had been going on since 2004 and he indicated, on her account, in these conversations that she was “sexually boring.”

39. Shortly thereafter he wanted her to make up stories about her having sex with her son’s female friends who would have been about eight or nine and she felt so controlled by him that she did this and this led in turn to watching these two very short child abuse videos which were five minutes or less.

40. That, she said in evidence, formed the basis of them sexually stimulating each other, and then having sex.

41. She was told not to tell anybody about the videos. She hasn’t seen any other child abuse videos on his computer but claimed that she had not had access to it. She thinks there was another attempt to download a child abuse video but it did not work.

42. She claimed that the father also had a particular interest in images of women suffering pain, which he vehemently denies.

43. She told no one about what she had seen or indeed what she had been involved in herself until she went to police in July 2012. She did this because at this particular time she was worried that HR's daughter was going to move in on a fulltime basis although of course it was some considerable time since she had left the father and by that time she had given up residence of the boys to him. That position is curious in that, if true, she had willingly it seems returned her boys to an individual with an interest in child pornography to the extent of fantasising about her sons' female friends.

44. She was challenged in cross examination that she had only gone to the police because she had found out the father was planning to move to Bedford and this could affect her contact but she maintained at that time she was only seeing the boys once a month, and frankly Daventry to Bedford does not seem that far. She had not reported the matter to police before because she thought that grooming would take some time in relation to HR's daughter but the move wasn't her motivation for making the complaint it was because she wanted to protect HR's daughter,

although it would seem that she knew this teenager had been staying for weekends at the property from the beginning of the year.

45. She accepted that her having to make up sex fantasy stories regarding female contemporaries of her son who were small children did worry her. She did not think to report it and prays in aide the extent to which she claims to have been under the father's effective control.

46. Her self esteem was so damaged that she was prepared to do anything to please him hence her involvement in pornography and fantasy stories which has not been part of any post separation relationship and was not part of her life prior to her involvement with the father.

47. As to the suggestion that she would have been able to remotely access any of the computers at the home and had knowledge of how to do that, she says that she could not remember using remote access at any particular time. She did have the knowledge to do it but had she done so it would have only been to her own file to download her music. The fact she was able to do it however is a not insignificant feature in this case.

48. A particular part of the evidence in this case has been a copy of a Facebook page reported and supplied by the father, which he says

highlights her own sexual preferences and her ability to access sexual material which in turn she could well have introduced into his computer system and thereby attributed it to him. That copy of what appears to be her Facebook page lists under her “likes” a link to what is could be child pornography i.e. “schoolgirl blackmail” and a site called literotica.com.

49. She has looked at her own Facebook page and this is not posted as a “like” on her own page and there is no evidence of this activity on her activity log.

50. Furthermore her Facebook friends, of which she has 108, would be immediately notified of her likes and that would include her mother and therefore it is inconceivable that she would have consented to this going on to her Facebook page.

51. Also, somewhat strangely she suggests, that the friend request posted at the top of the page is from JDLB. DLB is a family name but J is unknown and therefore this identity is invented as there is no such person and she therefore believes that this is a fake page in her name. She is clear that she did not go to this website. The only time that she has watched a pornographic film or read erotic literature was when she was in a relationship with RW. She was prepared to accept that she looked at

sites like these independently while in the relationship, as her Browser history makes plain but is not able to say why she did this. It was suggested to her in cross examination that the Facebook page that she says is a fake is not a photocopy of a false page but a real entry and as part of the father's evidence he has videoed the page.

52. It was suggested to her in forceful terms that she could well have accessed that information given the degree and range of sometimes quite similar titles in her browsing history which she clearly accessed on a fairly large scale independently and which she accepts in her latest statement. The various entries are set out in exhibits to the father's latest statement. It is clear from looking at those various exhibits that not only did she access various pornographic sites but also Google searched for sex stories involving bestiality, young people and forced sex and this is reflected in her user account. She was constrained to accept that they were all probably hers and sex stories in particular were accessed by her and therefore I find indeed that they were probably all hers, and that she does indeed have a knowledge and I infer, a probable liking for this material.

53. However she maintained that was in the context of her relationship with the father and he may well have been with her at the time she was

accessing these stories. I do not believe her. I believe she has an independent interest in this material.

54. Of course she makes a distinction in relation to the indecent videos of children. She agreed that she did not express disgust at the time and felt she was being put in a position of being drawn into this type of activity.

55. She went on to say that she was drawn into sexual activity with the father, and no doubt being a willing participant, at the time or shortly after these images were viewed instead of perhaps seeking to distance herself from their unpleasant and repugnant nature. That is a very curious feature of her evidence and one which frankly, is difficult to believe.

56. Her evidence seeks to imply that this was in fact further evidence of the extent to which she was enmeshed in a relationship with the father who she loved, and for whom she would do anything to please. Again, this does not sit well with her being able to leave the relationship when she wanted to, and I have seen no evidence of her pleading to come back.

57. She agreed in fact that she had been strong enough to leave him in 2009 and have an affair before returning.

58. As to the suggestion that she was actively looking for relationships and evidence of searches with dating websites, she explained that she joined sites as instructed to meet women with a view to indulging the father's fantasy that he would be able to watch as she had sex with other women. In the event this never transpired.

59. Her case was that the final breakdown of the relationship occurred when she realised she wanted to leave his controlling behaviour although that was not the direct explanation she gave to Social Services when they were assessing her. She did however tell Social Services that father did make her feel "not good enough."

60. As she gave her evidence I was not entirely persuaded that her low self esteem and her wish not to be perceived as boring effectively drew her into increased use of pornography with the father and in effect a demeaning relationship. However I note also from the written evidence, she also presented as a rather damaged young woman. She has had a troubled personal history. She has had depression. There were arguments in the relationship. She had been unfaithful. The father, she claimed, had also met a woman who he had been talking to on the internet for two years and there came a time when his computer was locked and she

would not be able to access it, but there is no cogent evidence of his infidelity. She seems also to have an interest in erotic fiction.

61. She was aware of four or five sets of conversations by the father with women and some of these were sexual conversations.

62. Against the background of her feeling “I wasn’t enough” the pornographic element of their relationship continued and against that background she had, she claimed, to make up stories of her having sex with her son’s eight or nine year old female friends.

63. From perusing the text messages there is little doubt that she refers to herself in a derogatory way and was plainly unhappy. I have concerns over her psychological state from her presentation and the tenor of some of those text messages, and the accounts of her behaviour. She has been involved in stealing at work for which she had to resign.

64. She agreed that the flavour of many of the text messages from RW were at times loving and at other times angry. In my judgment they were not overly controlling and were often placatory and supportive, and sometimes also exasperated.

65. I am more than conscious however by seeking to highlight the father's conduct she has of course thrown her own conduct into sharp relief particularly in relation to returning her children to a household where she knew that pornography was prevalent and where, on her case, the father had a predilection (it would seem, if true) for sex involving children. It seems also likely that she developed a predilection for pornography, particularly sex stories, and there is evidence of her accessing this material in some quantity.

66. Her credibility was challenged in that if she had believed that the father really had these predilections why did she return her children to his care to which she maintained that he had never expressed any interest in sexual activity with boys and other parts of her evidence clearly appreciates the security that he was able to give them. I was not convinced.

67. I should say that the letter she wrote to the boys following the separation is a poignant one drawing attention as it does to what she perceives as her own shortcomings and in which she apologises for hurting them and not putting them first. She apologises for failing her children and I am sure she feels that she has failed them by leaving, having an affair and then returning them. However, in my judgment, it

was she that had their day to day care for many years and did the bulk of the child caring work as the father was necessarily involved in going to work in the early morning. In fact the letters are as good as evidence as I could find of her feeling of worthlessness and her troubled state but responsibility for that does not lie with RW but rather I am sure, in her own difficulties.

68. She was challenged that she would have had access to the father's property after separation and stayed for a few days while her car was being repaired. It was suggested that she could have effected remote access to effectively plant indecent images of children on the computer system and attribute them to the father. None of these accusations cross the evidential threshold and the pornographic material involved could have entered the father's computer system in any of the ways suggested by the expert.

69. Allegations of excessive physical chastisement form part of the findings sought by the local authority. The mother admits that she and the father used a process of punishment whereby the boys were required to stand on the stairs with their hands on their head. This of itself could not be considered particularly excessive. Particular complaint is made by

these boys to a variety of individuals about being excessively smacked on their bare bottoms or hit with a spoon or a spatula.

70. WW maintains that he was thrown against a wall and a computer table, cut his head and the mother in effect forced him to lie about it saying it was an accident. The mother is clear. She does admit “tapping the boys on the bottom” for disciplinary purposes but never smacking them hard. She denies any loss of control with them or making them say “I am sorry mummy I love you mummy.”

71. As to the cut on WW’s head, the timing of this complaint is worrying. It is meant to have happened in June 2009 with WW effectively having kept it secret until he told HR the day after he was spoken to by police in the autumn of 2013. That in itself is worrying particularly in the context of another allegation following contact when he claims that on 19th December 2013 he was assaulted by the mother who grabbed his wrist and forcefully pushed it away. Police reported that this allegation was false and it is clear from the very thorough report from a contact supervisor that this was clearly an accident during a game of basketball. WW’s behaviour during contact was very concerning and he was very aggressive towards his mother. That of course is in the context of an increasingly hostile environment between the parents and of course

WW being aware that it was his mother's report that effectively resulted in his father being charged and removed from his care.

72. That casts in some considerable doubt on WW's assertion in relation to the cut to his head which, in my judgment, he has dredged up and deployed in what he perceives to be the battle against his mother and his preference for his father.

73. An issue however will have to be determined as to whether the mother from time to time did lose control, lose her temper and smack her children with a spoon or spatula or smack them hard on their bare bottoms.

74. It is an abiding tragedy of this case that these boys have such a poor opinion of their mother. But I fully endorse Dr B's assessment that they have been caused considerable damage by the acrimony and warring between their parents and this will be a complex case to untangle so far as a welfare disposal is concerned.

75. Happily it would seem that they have not been directly exposed to any pornography but they would have been exposed to the toxic relationship in the house and what was clearly an unsatisfactory

relationship. The mother recalls, and I accept her evidence, that on one occasion she was effectively required to leave by the father after a dispute over dropping paint on the carpet and there was an argument in front of the children.

76. **RW** is the second respondent father. In fact he is not WW's birth father but WW looks on RW as his father.

77. His guilty plea to possession of extreme pornography is qualified on the basis that he believes that this came into his possession with Torrent files when other pornography of a legitimate nature was downloaded. I observe from the outset, that the same could well apply to the unlawful children images.

78. He is the author of numerous statements in the bundles the last of which was filed at the beginning of this hearing.

79. He is living in very unsatisfactory conditions at the moment in temporary accommodation not able to resume cohabitation with his partner, HR, because of a perception of risk to her daughter, and also not being able to resume care of the two boys who I am bound to say are not faring well in foster care.

80. There is no evidence of which the court is aware that the children have suffered harm because of knowledge of the material on their father's computer or because of his behaviour towards them in respect of the images but he is acutely aware that the children are subject to extensive discord between the household and as Dr B has opined "these children are exposed to a particular extreme of very unpleasant and insidious discord involving an allegation that one parent has planted images on the computer of another parent to incriminate them and dislodge them as a parent. If the parent has falsely claimed that the other parent has planted information in relation to illegal images that he himself has put there has also done a terrible thing. That much is evident and the present situation regarding these children is highly unsatisfactory as they are in limbo. I felt throughout his evidence that he has the best interests of these boys constantly in his mind.

81. The father's responses to the allegations are set out in the composite Scott Schedule.

82. Indecent images of children on a very limited basis have been found amongst computers in circumstances set out in PM's evidence. He did not download them and his case is that someone else must have done

so and that person must have been the mother. That is a serious allegation, given other possibilities suggested by the forensic evidence.

83. He denies strongly any sexual interest in children and having seen and heard him, and the read the vast amount of material in this case, I believe him. Given the sheer the volume of pornography, I have little doubt that a large amount of evidence of unlawful material would have been recovered if there had been an interest by the father in child pornography.

84. However the police seized a significant amount of legal pornography from his house and there is now no pornographic material at the property and none in his present relationship. I accept that fact also.

85. He was able to accept when he gave his evidence the destructive aspect of his relationship with the mother alleging two affairs and two or three other sexual conversations with individuals by her whereas he on the other hand has had no sexual relationships and no sexual conversations. The boys have been exposed to the unhealthy nature of the parents' relationship and he feels that neither of them spent as much time as they should with the children in the past.

86. He doesn't accept what the mother says about his controlling and abusive behaviour.

87. He does not accept that he showed the mother two videos involving indecency with children in 2009.

88. In relation to the material found on his computers, he is increasingly and firmly of the view this could only have come from the mother as no one else had the opportunity and he would say, the motive. It is a damaging accusation to make if not true.

89. He has cooperated in every way with police supplying usernames and passwords and offered to pay for an expedited laboratory investigation if required. In fact, his degree of cooperation has been exemplary.

90. He was clear that the process of "LOGMEIN" involving remote access would if initiated using his password and username which was known to the mother effectively give access to all the computers on the system and a person would merely need to log in as him. This was within his knowledge that the mother has used this facility to download music on her iPad at work. It would be possible once that facility had been used

to transfer files by dragging files into another area in the same way as moving any other document in a computer.

91. He is concerned, having carried out his own investigation in relation to the history of use of LOGMEIN that there are a number of instances that he has detected when access to his system was made remotely and not by him. HR has never had access to this facility and the only person who has had the information to access the facility is the mother.

92. In addition he has researched the browser history on the mother's computer (without her consent and without an order of the court). In it, as emerged from cross examination of the mother, there is evidence of the mother accessing sex stories and other interests involving animal sex, forced sex and teen sex from 2009 onwards which the mother has accepted were probably hers and he says the extent and range of that interest is probative of the mother's interests including an interest in "young girls." At the time he was not aware that the mother was browsing in this way.

93. He demonstrated how he was able to access the mother's Facebook account logging in as JDLB. It is not an attractive account but probably

true. He compiled a fake profile for this non-existent individual, populated it with friends and other authentic elements and the mother accepted this name as 'a friend.' He did this in October or November 2012 when he was trying to contact the mother to arrange contact the mother effectively being out of circulation and letters being returned.

94. He has videoed the Facebook entry to prove that it was not a fake page and it revealed the link to the literotica.com site involving schoolgirl blackmail. His view was that she visited the site and clicked the "like" button which is why a post appeared on her page.

95. It had not been deleted for about a month. He said that that was because "recent activity" does not show on a phone from which Facebook is commonly accessed and the mother may not have noticed it. The material is consistent with other material viewed by the mother which she has accepted.

96. He accepts that it was deliberate and subversive behaviour but he needed to know where she was at that particular time. It is not a fake, he would not have been able to demonstrate it in the way that he did as a video to both police and Social Services. I accept his evidence.

97. He said of course that the proceedings and the issues in this case which had taken so long to resolve have had a massive impact on the children. He said that they were deteriorating. SW was withdrawn and WW's behaviour, including his temper, was so serious that he was not pleasant to be with and things were "indescribably bad" and I agree with him that in this attempt to resolve the grave issues between the parents and the lengthy period of the police investigation arising out of the mother's allegations, their welfare needed urgent attention now. He remains committed to them and that is commendable after all he has been through.

98. He was able to accept in cross examination that it was he that introduced the mother to pornography although she had some awareness and it became a regular feature of their sex lives from 2006.

99. He accepted that he had an interest in lesbian pornography and he thought that was an interest shared by the mother.

100. He accepted that they watched pornography together and normally downloaded it through 'Bit torrent' and then backed up on a CD.

101. It was his belief that he did not accidentally download images of children through Bit torrent although he accepted that it was not impossible. There was an occasion many years ago he describes in his police interview where he downloaded by accident a ZIP file containing thumbnail nude photographs of children which he deleted and which in any event were not amongst those detected by police so the process of downloading by accident was a possibility although for some reason during his cross examination he subsequently found that difficult to accept preferring to lay the blame at the mother's door. It is an example which I accept, how this information can be downloaded accidentally.

102. He was however constrained to agree that in fact indecent images of children had been found on his computer. They were accessible to anyone including him and he did not know why they were there.

103. He believes it was the mother because it was the firm belief of himself and HR that she had had access to the property over a period of months and in fact a bunch of keys mysteriously reappeared in June/July 2012. So strong was their belief that she had been in the house that they organized webcams but nothing was captured on film. She had been seen in the neighbourhood. He did not raise this issue in the first interview and only in the second interview when he was aware of what the police

had found as he had been confident that there was no child abuse material on his computers. It is feature of this case that allegation and counter allegation have contributed to the toxic state of the relationship between these parents.

104. He accepted the other proposition namely that this material could have been introduced onto his computers by remote access and even accepting the mother's lesser level of skill in relation to computer technology it was not difficult for her to remote access and lodge information on his computer either deliberately or if she was accessing it herself. However he had to accept that in relation to the computer MJ17 material was found in a file that had been created by him namely "porn 3" but what seems to be some sort of sub-file was not created by him, he said.

105. He accepts that the evidence, such as it is, in MJI38 the child abuse pictures were found in a 'Zune/art/cache' which was in an unused disk area and was a backup for another computer. The items detected in MJI41 were in an unallocated cluster and he agreed that this was not consistent with anyone having it placed there a month before.

106. I should say that he was also not accepting of the controlling and perhaps abusive nature of his relationship with the mother as alleged by her but did accept that she had low self esteem. He did not refer to the mother as sexually boring. In fact the mother had seen what was in fact a reference to herself and it was he who felt sexually inadequate and not able to keep up with her needs.

107. The record is clear that in 2009 and 2011 following two episodes of the mother's infidelity he was prepared to accept her back. He accepts that she was unhappy and lacked self esteem and the text messages are clear in relation to the attempts at reconciliation and his supportive, although sometimes frustrated, stance.

108. He was aware that the mother had signed up to dating websites not at his instigation but because she said it was "to browse and look at pictures."

109. The mother wasn't totally lacking in confidence enough to leave him and the children and move in with someone else but he agreed that the text messages were evidence of him trying to reassure the mother when she was saying that everything was her fault. The mother had also said to him, and this is significant, that she needed something new every

few months and he says with hindsight he spent too much time trying to get her back.

110. In fact it's him who said in a text message to the mother that he was such a failure because he was trying to take responsibility for the breakdown of the relationship but in fact there were multiple reasons for its failure and not just linked to the mother's infidelity. He accepts that he did put pressure on the mother to try and get her to return to the relationship.

111. He regrets having been involved in pornography which he considers to be dangerous and destructive. He said it was a habit rather than an addiction and accepted that it was not helpful.

112. When the children made their allegations in relation to the mother he said that perhaps it made sense of things that had happened before. For example WW had written "I hate mummy" on his bedroom wall in about 2009 and there was an occasion where the mother had asked his sister to take WW to his grandparents in Spain because of his behaviour.

113. Following the breakdown of the relationship there was evidence of destructive behaviour at school and a need for therapy for WW in particular.

114. He accepted however the children did not come to him with any reports of abuse and their closeness really came more after the mother had left and he was left alone to care for the children.

115. I must confess I was confused by his attitude in relation to what was alleged against the mother. On the one hand he described them as relatively small incidents to justify the boys' current behaviour and used the expression "Balkanised" but on the other when challenged, vehemently suggested that what they said was true and in particular WW's account some considerable years later of being pushed and thrown against a wall by his mother and having cut his head and said "that event occurred as he describes it." At that stage in the evidence he did not seem capable of considering that WW may have embellished what occurred in the same way as he did regarding the wrist incident at contact or indeed him having no knowledge in relation to the cut on the head incident, and WW's account which he now says is true, even after having arrived at home immediately after it had happened.

116. He believed, on the other hand, that there had been isolated incidents when the mother may well have smacked the boys with a spoon.

117. He did however say that if the mother had asked the boys at the same time to say as being smacked “I love you mummy” it was ritualistic and sadistic, and I agree with him. There were other times when he seemed alive to the possibility of exaggeration particularly as the allegations arose in October 2013 two months after the mother’s application for residence and more than a year after the matter had been reported to police and the investigation was continuing.

118. If the children had been asked to stand on the stairs with their hands on their heads for the length of time of a DVD, he believed that that was excessive and indeed so do I if it is true. He had no difficulty with the process of standing with hands on heads as a timeout mechanism for a limited period but he has never smacked the children and saw it essentially as a loss of control.

119. There came a time when the boys had an opportunity of seeing a social worker on 14th October 2013 and WW didn’t mention the smacking or throwing against the wall.

120. It was subsequently on 7th November 2013 that WW told the social worker and her line manager about being smacked on the bottom but no mention of spoons or spatulas. In my judgment these are allegations that have grown somewhat in the telling but I do not discount them entirely and it is a feature of this case that during the time of the relationship not once did the children express concern to him of mistreatment.

121. He accepted so far as pornographic material is concerned that he could have downloaded extreme sex material but in terms of the interest that he'd identified relating to the mother, he had been selective in terms of what he had identified out of nearly 40,000 pages visited. Further and so far as the sex stories were concerned, five or six entries might relate to the same item and there were long periods of time when those stories were sought i.e. September 2009 to October 2010. However it remains an important fact that mother did have an interest in sex stories.

122. He has ascribed a number of motives to the mother making this allegation in the various papers in the bundle to include to prevent the children from moving, after getting sacked for financial reasons, a malicious allegation, for financial gain to have the children living with her and be able to claim financial relief and the fact that the mother had realised that he had finally moved on. There is another reason, in my

judgment perhaps, namely to sabotage his relationship with HR. The mother's complex and perhaps troubled personal history should be thrown into the mix, in my judgment.

123. He accepts that all these are really speculative but did not seem to appreciate, in my judgment, that his allegation that the mother planted pornography on his computer equipment is as serious as downloading such material in the first place, if proved to false.

124. It was suggested to him in cross examination that if the mother was involved in some sort of conspiracy or an attempt to destroy him, it was a very modest accusation concerning the two child abuse videos of five minutes or less – two items out of a collection of thousands.

125. It was also suggested to him that it would be nothing more than a lucky guess to put images on his computer that presented in the way that they did to the investigating officers so that the police would in fact find them. Of course I note RW mentioned that the reconstruction of MI38 had been incomplete and had it been complete there may have been other images discovered there.

126. He agreed that it was unlikely that the images could have been put there by the mother before their separation as a hostage to fortune and said that the most likely scenario from his point of view was post separation planting either by remote log in or having accessed the property. It is speculative, at best.

127. He was challenged that he did not change the locks and said the reason for this was that he did not believe it for a long time.

128. He was challenged that if someone had planted pornography having had keys to the property for them to return the keys in a bunch by putting them through the front door and, in my judgment, that is inherently unlikely.

129. He was challenged in cross examination regarding the evidence he'd given over the mother's Facebook page. He agreed that he had adapted his second Facebook profile that had belonged to him for this purpose. He was challenged that his true purpose was to spy upon the mother rather than find out where she was for the purposes of contact and that there were better ways of contacting her by writing to her parents. He said in fact that's what he did once he had established from Facebook that she was living at home.

130. There is little doubt that from November 2012 until the screen shot in March and another screen shot in April 2013 that he had the opportunity to monitor the mother's activity. In fact he was able to do so for some months after and able to confirm that notwithstanding looking at the Facebook page occasionally over nine or ten months he did not see any activity of the same nature although he said it was not closely monitored.

131. His view that mother must have accidentally ticked some form of like box on the story it was suggested was not borne out by the fact that on the filed copy of the end page of the schoolgirl blackmail story there does not appear to be an appropriate symbol for "like" to tick but he maintained there is only a paper copy on file and not the complete web page.

132. He was challenged that the offending entry must have been on the mother's Facebook page for four weeks and seen by family and friends and it was inherently unlikely that no one had mentioned or that the mother had not seen it.

133. RW repeated what he'd said about the mother probably monitoring her Facebook page from her phone but nevertheless it is a curious feature of this case that no one else appears to have mentioned it to the mother on her evidence.

134. He confirmed that he told Bedfordshire police and Social Services about this on 13th April 2013, and again in August as he thought it needed some attention.

135. There is little doubt that when he described the offending link as "kidnap and rape of children" in his police interview it was a gross exaggeration. He accepted it was an exaggeration but the story implied forced sex of a schoolgirl by her teacher.

136. In short form he was challenged that he fabricated the link and maintained his view that the mother must have introduced it by accident.

His conduct in relation to that particular issue remains unattractive but I do not find that this is evidence that he manufactured. At the conclusion of his evidence he remained clear that the children had suffered through parental discord and had been unable to understand the difference between the family court and the criminal court. He was also able to

accept that things perhaps might have been done differently with the benefit of hindsight.

137. I have little doubt that he has suffered grievously as a consequence of the police investigation and indeed the family court process. He has had to tell his own father and grandfather about his historical interest in pornography and as he explained, his reputation is in tatters. He has effectively been banished from the childrens' lives for more than two years.

138. If the mother has been able to make a false allegation against him to gain the upper hand in the residence dispute then he has provided the means for her to do it through his own obsessive past interest in pornography. It has been an Achilles heel.

139. **HR** is RW's partner and the mother of PR who is not subject to these proceedings and who lives predominantly with her mother having contact to her father.

140. She has filed a statement in these proceedings and I have read her two other statements in the private law proceedings.

141. She and PR moved into live permanently with father from August 2013 and they all lived together for about 46 weeks until father's bail condition required him to move out.

142. She was aware of father's obsession with pornography in the past and confirmed that he does not use it now. I believe that she would not tolerate it and has no interest in it. Having seen her and heard her, I have little doubt.

143. It was she of course that recorded the various disclosures made by the boys in relation to physical abuse by their mother which has been set out in the very helpful opening note by the local authority which I have rehearsed at the start of this judgment.

144. She has clearly seen it as her duty to record and report the various disclosures by the boys while they were in her care and this of course is against the background of a number of features. Firstly, the mother's resumption of contact in circumstances where she was applying for residence. Secondly, it is not without significance that the first disclosure occurred in October 2013 against the background of the continuing and mounting investigation by police against RW to the extent that he was

charged at the end of November 2013 having already had to leave the property in the summer of 2013.

145. There is little doubt, in my judgment, that the boys would have been aware that the family's difficulties were in some way attributable to an allegation made by the mother and there is an increased resistance and hostility to contact recorded first by JK (the then social worker) in October 2013. There can be little doubt that they also will have been aware of the level of hostility from HR and RW whose world has been turned upside down by the mother's accusations, however much they may have sought to disguise it.

146. I have already rehearsed in this judgment the genesis and progression of those allegations and how effectively they have escalated. No complaint having been made before by the boys regarding alleged ill treatment by their mother, crucially.

147. I bear in mind of course that effectively the mother deserted these children but early reports indicate that they were quite happy in relation to contact but wanted to live with their father.

148. Regarding the progression and escalation of complaints particularly from WW, I detect a note of desperation in his accusations culminating in his last account of being thrown against the wall by his mother together with other associated assaults thereby cutting his head which I am afraid I found to be most improbable.

149. It is a measure perhaps of HR's balance that she was prepared to accept that the report that she made of WW saying that his mother had grabbed and hurt his wrist in contact was probably an accident and he was "being bolshy." By that time of course, as is clear from the record of contact behaviour, WW had effectively turned his face against his mother and, in my judgment, was influencing SW to do the same.

150. She confirmed that she and her daughter had moved into live with RW 47 weeks before the police involvement and during that period of time there was apparent normality in relation to the contact arrangements.

151. It is not without significance therefore that the boys seemed to have developed a fear of their mother subsequent to that when none was evident before.

152. It is clear, that for the best possible motives, HR may well have given comfort and security to these escalating beliefs.

153. In the witness box she said that she did not harbor any animosity against the mother but that is difficult to accept given the investigation by police of RW to whom she is committed and the private law proceedings.

154. There are suggestions in various Facebook messages that she had an adverse view of the mother which I must say is understandable in all the circumstances but may have fed into the escalating picture.

155. In relation to the Facebook page, it is not without significance that after this was disclosed to police and Social Services in the earlier part of 2013 and mentioned to police in August 2013 by RW, she chased it up in September 2013 and October 2013.

156. Her assertion made to Social Services and recorded in a statement that the mother was “accessing child pornography” websites was clearly not true and, in my judgment, calculated to inflame an already difficult situation.

157. She was asked by the guardian about the level of WW's articulation both written and oral and she described his English homework as being very good and how he would make up stories for SW. I am afraid I take the view that that is what this profoundly unhappy young man has been doing in relation to the escalation of his complaints which have already been set out chronologically.

158. Part of SW's disclosure was that this mother assaulted him when he was under 3. It is improbable that he would have such a clear recollection and I am afraid he has been inveigled by WW into increased exaggeration.

159. However I do look at some core material in relation to the boys' complaints namely their police interview. Of course by the time the boys were spoken to by police it was 9th December and there is already evidence of progression of severity of accusation. SW said at that particular time that he had been hit with a wooden spoon three or four times. He expressed the fact that he was very scared of his mother which is difficult to accept in circumstances where historically there had been perfectly good contact between them post separation.

160. Significantly he said he wanted to live with his father and HR. WW, by his December interview, mentioned SW and himself being spanked on his bare bottom and it stinging when they got into the bath. At that time he said that he still wanted a relationship with his mother and be able to see her “on his terms.”

161. Of course it is HR’s statement that deals with the detailed disclosure on 14th November when SW was expressed to be very upset and distressed about memories of his mother and being beaten with a wooden spoon. Both boys were upset and I have no doubt that their upset was genuine but whatever may have happened between himself and his mother, it is certainly a fact that he has enjoyed perfectly satisfactory contact subsequent to separation.

162. HR confirmed that whatever the strength of the allegations made by the boys they were not an obstacle to the mother having contact.

163. She too has been a victim in these proceedings stepping into the breach to care for these boys until they were removed into foster care after RW was constrained to leave the property. She has seen her GP about stress. She has felt constant criticism. She has felt attacked and scapegoated and felt that she has been the one that has been getting the

blame for the boys not going to contact. She expressed whether she would be able to cope if WW was returned without therapy given the present level of his behaviour.

164. She said that she had tried to keep the children away from too much information in relation to this case but explanations had been given by the social worker and there was an awareness that the mother had made a complaint of some sort. In my judgment, of course there would be obvious linkage to the family's unsatisfactory predicament.

165. There is a reference in the social work evidence to WW feeling disloyal by going to contact with his mother and she made the same reply as the father namely that he felt disloyal to himself but acknowledged that WW was loyal to his father and to her. She acknowledged also that there had been a deterioration of the relationship with the mother. In fact NH, a social worker, filed a statement on 18th February 2014 and said:

“I find it highly unusual that since the court hearing in September 2013 that both WW and SW's views of their mother have continued to deteriorate where once they were happy to enjoy contact with their mother to the deterioration of them alleging physical harm and now refusing to attend contact and in particular to the extent WW placing himself at risk of absconding.”

166. A need for family therapy was identified incidentally in that statement and HR said in evidence, and I agree with her, that a lot of the difficulties in this case could have been avoided if the children had gone to CHUMS which was identified as being in their interests earlier on in these proceedings.

167. The selfsame social worker was concerned that the children were overhearing inappropriate conversations and that the parental conflict is impacting on their emotional welfare.

168. HR acknowledged that the boys felt considerable anger. Although she would like to rewind the case to sensible arrangements with the mother, she would be worried about the stress on her if WW came home now without therapy. She acknowledged however it would be a mistake to separate these boys.

Relevant Law

Burden and Standard of Proof

169. The burden of proof lies at all times with the Local Authority. It is the Local Authority that brings these proceeding and identifies the

findings they invite the court to make. Therefore, the burden of proving the allegations that they make rests with them.

170. The standard of proof is the balance of probabilities. As Baroness Hale said in ***Re B (Children) (FC)* [2008] UKHL 35 [2008] 2 FLR 141**:

“I would...announce loud and clear that the standard of proof in finding the facts necessary to establish the threshold under section 31(2) or the welfare considerations in section 1 of the 1989 Act is the simple balance of probabilities, neither more nor less.”

171. If the evidence in respect of a particular finding sought by the Local Authority is *equivocal* then the court cannot make a finding on the balance of probabilities as the Local Authority has not discharged either the burden or the standard of proof (***Re B (Threshold Criteria: Fabricated Illness)* [2002] EWHC 20 (Fam), [2004] 2 FLR 200**). In ***Re B (Children)* [2008]** Lord Hoffmann said:

*“If a legal rule requires a fact to be proved (a 'fact in issue'), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a **binary** system in which the only values are 0 and 1. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one*

party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it, a value of 1 is returned and the fact is treated as having happened.”

172. The more serious or improbable the allegation the greater the need for evidential ‘cogency’: ***Re S-B (Children) (Care Proceedings: Standard of Proof)***, [2010] 1 AC 678, [2010] 2 WLR 238, [2010] 1 FLR 1161 at para [13] and as per Mostyn J in ***Lancashire County Council v R, W and N*** [2013] EWHC 3064 (Fam):

“Evidential cogency is obviously needed where the harmful event is itself disputed. However, where there is no dispute that it happened the improbability of the event is irrelevant: Re B (Care Proceedings: Standard of Proof), at paras [72] and [73].”

173. Any findings made must be established on the evidence available to the court, including inferences that may be properly drawn from that evidence, and not on suspicion or speculation (***Re A (A Child) (Fact Finding Hearing: Speculation)*** [2011] EWCA Civ 12 per Munby LJ).

174. The Court is reminded of the approach taken by Charles J in ***Lancashire County Council v D, E* [2008] EWHC 832 (Fam), [2010] 2 FLR 196**. In that case the experts were unanimous in their conclusion that the overwhelmingly most likely cause of the child's injuries was an inflicted non-accidental injury. However, having surveyed the 'wide canvas' and reached a favourable assessment of the parents Charles J. rejected the LA's allegations in favour of an unlikely accidental explanation. He was critical of the approach taken by both the LA and the Guardian in that case:

“in my view at times the approach of both the local authority and the Guardian came perilously close to an approach which, on the basis of the expert medical evidence, proceeded on the basis that: ‘R’ was the victim of a shaking injury because the medical opinion was that this was the most likely cause of his injuries, and the relevant exercise was to consider whether, given their care, and thus the opportunity they had to injure ‘R’, the parents could show that they did not injure him.”

Assessment of the Evidence

175. When considering cases of suspected child abuse the court must take into account all of the evidence and furthermore consider each piece of evidence in the context of all the other evidence. As Dame Elizabeth Butler-Sloss P observed in ***Re T* [2004] 2 FLR 838** at 33:

“Evidence cannot be evaluated and assessed in separate compartments. A judge in these difficult cases must have regard to the relevance of each piece of evidence to other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward by the local authority has been made out to the appropriate standard of proof.”

176. The roles of the court and the expert are separate and distinct. The judge is the decision maker, the expert is not. An expert is not in any special position and there is no presumption of belief in a doctor, however distinguished he or she may be. It is, however, necessary for the judge to give sound and articulated reasons for disagreeing with an expert’s conclusions or recommendations. The expert evidence is part of a wider canvas and it is the court that is in the position to weigh up all the expert evidence against the other evidence (*A County Council v K, D & L* [2005] EWHC 144, [2005] 1 FLR 851 per Charles J and *Re JS (A child)* [2012] EWHC 1370 (Fam) per Baker J, *Lancashire County Council v R, W and N* [2013] EWHC 3064 (Fam) per Mostyn J).

177. The evidence of the parents is of the utmost importance and to this end it is essential that the court forms a clear assessment of their credibility and reliability. They must have the fullest opportunity to take

part in the hearing and the court is likely to place considerable weight on the evidence and the impression it forms of the parents (*Re W (Non-Accidental Injury)* [2003] FCR 346 and *Re JS (a child)* above).

178. There is no pseudo-burden or obligation cast on the respondents to come up with alternative explanations: *Lancashire County Council v D and E* at paras [36] and [37] and *Lancashire County Council v R, W and N* at para 8(vi).

179. It is common for witnesses in these cases to tell lies in the course of the investigation and the hearing. The court must be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear and distress, and the fact that a witness has lied about some matters does not mean that he or she has lied about everything (see *R v Lucas* [1981] QB 720) and *Re JS (A Child)* above).

Findings and conclusion

180. This has been an extremely difficult and complex case where the welfare of these two boys has been damaged because of the discord between their parents who have made the most serious of accusations against each other. Private law proceedings have been subsisting since August 2013 and a police investigation commenced the year before. The

strain and pressure on the parties has sometimes been intolerable and the children are not faring well in foster care and their long term welfare needs require to be urgently addressed. During the course of the proceedings it seems that WW's natural father has emerged and expressed an interest in resuming a relationship with him and this feature will have to be managed.

181. I will deal with my findings in relation to the Scott Schedule now in turn but it is beyond peradventure that the threshold criteria for the purposes of s.31 of the Children Act has been crossed in relation to these children in that they have been significantly and emotionally harmed as a consequence of the behaviour of their parents.

182. Item 1: The allegation that the father has downloaded indecent images of children. This falls into two parts. Indecent images found as a consequence of the police investigation on the father's computers and the mother's evidence regarding the two short videos containing child pornography.

183. Dealing with the computer information first. Having considered all the evidence in the round and in particular that of PM, the local authority has not satisfied me to the requisite standard that the father deliberately

downloaded indecent images of children. There is no evidence that anyone has in fact viewed the images found.

184. One of the main computers, namely MJ138, could not be reconstructed and I am drawn to the evidence of PM regarding the inherent unreliability of his reconstruction and given the father's denial of any deliberate downloading of child pornography I am not persuaded that on the balance of probabilities he was culpable. I observe that police prosecution of RW did not proceed in relation to those counts on very good grounds albeit a higher burden of proof would have been required in the criminal jurisdiction. A vast amount of pornography has been downloaded by the second respondent father over the last ten or fifteen years amounting to tens or hundreds of thousands of images. It is inherently improbable, in my judgment, given that I accept the father's evidence that he did not deliberately download images that images were downloaded accidentally. I am satisfied that the father has no interest in child pornography. He has had an unhealthy obsession with legitimate pornography.

185. Secondly and perhaps more seriously, is the mother's evidence regarding his fantasies over children and playing two short child pornography videos in mid-2010. The father utterly rejects the truth of

this contention. In fact it is this allegation made in July 2012 which has set in train the distressing and disastrous events of the last two years. I have read the mother's account with care and an examination of her credibility is a crucial determination in this case.

186. On the one hand it is a comparatively modest accusation given the scale of pornography found at the property. Secondly, it seems to have been made ostensibly with the best of intentions namely to protect HR's teenage daughter who she thought was about to take up fulltime occupation. Thirdly, it contained an element of detail surrounding the circumstances involved in the showing of those pornographic videos.

187. However on the other hand she waited until 2012 to make a report regarding the matter. She knew that the father's relationship with HR was well advanced and that HR's daughter had already been staying overnight. As part of her allegation involved her concern as stated in the witness box that small female children would be coming round to play with the boys. She would have been aware of a risk to other children from the moment she had left the home. She returned her children to live with a child pornographer because she said he was not interested in pornography involving boys. I do not accept that and it is inconceivable that she would have done that, had this story been true. These features

combined together to make it plain, in my judgment, that this allegation is a just not true.

188. It is perhaps a window on the mother's mindset that it is clear from the evidence that she has an interest in erotic fiction and I am afraid to say that this allegation is fictitious.

189. She prays in aide the fact that she did nothing either at the time or subsequently while still in the relationship because she was "controlled." I do not find that plausible after having read text messages in detail. What is plain is that she lacks self esteem and may well have a number of personal difficulties and issues as her unsettled lifestyle has demonstrated.

190. Her tastes in erotic fiction are evidenced from her browser history and it is a significant feature in this case that she has tried to distance herself from the father's interest in pornography until faced with her own browser history and the posting on her Facebook page.

191. I have had the benefit of seeing both parents in the witness box. I found the father to be credible in relation to this crucial issue. I reject any notion that she was scared of the father or controlled by him.

192. I move on to item 2. There is no cogent evidence to suggest that the indecent images found on the computer seized at the father's home were downloaded by the mother either remotely or by obtaining covert access to the property. The evidence is just not cogent enough to cross the evidential threshold and the suspicion of the father and HR are just not good enough. In fact their suspicions may well have contributed to the increased hostility in this case.

193. So far as item 3 is concerned, this of course is proved and item 4 is not proceeded with.

194. Item 5 is failed to be proved because item 1 has not been proved.

195. I turn to allegations 6, 7, 8 and 10 regarding the mother's chastisement of the children. I have little doubt that the mother did chastise the children and may well have smacked them from time to time but not sufficient as to cause them any serious harm but rather to cause them now, with the benefit of hindsight and in the light of the toxic relationship between the parents, to resent what little chastisement they will have received.

196. The evidence is inherently unreliable because of its similarity, evidence that SW was looking to WW for guidance and the gross exaggeration towards the end of the period in which disclosures were made.

197. It is very significant in this case that the children were quite content to have contact with their mother in the initial stages following the separation of the parties and their hostility has developed in time with the advancing police investigation, the criminal charges and the increased hostility between the parties.

198. In any event, both HR and the father acknowledge, quite fairly in my judgment, that there is no reason why the mother should not have contact to the children and that would not be the case if they believed that the children had suffered serious injuries and crucially, RW was unaware of the children having suffered any abusive behaviour from their mother during the time of their relationship.

199. My findings are therefore limited to a finding that the mother did indeed make the children stand on the stairs with their hands on their heads for short periods of time in a fashion approved by the father and this was not unduly abusive but the children have since come to resent it.

I am also persuaded that she did use corporal punishment to a modest degree but the evidence is so unsatisfactory I cannot go further than that.

200. Item 10 is admitted and takes matters no further.

201. I turn now to item 15. I do not find that the mother posted a link on her Facebook profile to an extreme pornographic story. I find it probable that the account given by the father is right namely that she has looked at such a site and by accident pressed either a “like” button or some other such affirmation and the post arrived accidentally. It is however a window on her interest.

202. The court acknowledges that the means of gathering this evidence was unattractive but in fact it has been important evidence to understand the mother’s liking for erotic fiction which, added to her browser history, also obtained in fairly unpalatable circumstances, considerably assists the court in its finding that allegation 1 in relation to the pornographic videos was a work of fiction by the mother.

203. Finally, the local authority have sought an additional finding in terms of the impact from time to time on the parties’ use of pornography

on the children in the relationship and I have no difficulty in making that finding as well.

204. It follows from the findings that I have made that the court takes the view that the mother has lied and the consequences of her having done so have been enormous. It is easy perhaps for the court to suggest that this was nothing more than a wicked and malicious lie but I am conscious that the mother's psychological make up and personal history may be complex and may need investigation which could lead to a less harsh judgment of her actions.

205. An additional finding has been sought by the Local Authority, which will be item 17:

‘A vast collection of legitimate adult pornography was kept within the family home on computers and hard drives used by both Mother and Father. The Father started building up the collection at least 10 years before the relationship commenced. Both parents were responsible for downloading legitimate adult pornography during the relationship and accept that this created a toxic and unhealthy environment within the home that meant that they both failed to consistently prioritise the emotional needs of the children.’

206. I find item 17 proved.

207. These findings I hope pave the way for the welfare disposal in relation to this case when I am determined that the welfare interests of these children should predominate.