

# Dealing with Child Sex Abuse in the Family Justice System

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Professor Jo Delahunty QC

Tweet: @JoDQC @GreshamCollege #FamilyJustice

## Warning

I have removed as much sensitive content as possible but the issues, of themselves, are challenging



Barnados.org.au

1510



[Galacticconnection.com](http://Galacticconnection.com)

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**Barry Bennell**, convicted of 36 counts of sexual offences, relating to 10 victims.

Former football coach Barry Bennell has been found guilty of three more charges of sexual abuse against young players.

Before the trial, he pleaded guilty to seven counts of indecent assault involving three boys, two of whom were part of the trial.



## Matthew Falder

*One of Britain's most prolific paedophiles, has been jailed for **32 years**.*

*Cambridge graduate Dr Matthew Falder has admitted **137 offences**, including blackmail, voyeurism and encouraging the rape of a child, relating to 46 complainants after being caught by an international inquiry led by the National Crime Agency.*







## Poppi Worthington

On 15.1.18 ,David Roberts, senior coroner for Cumbria, ruled at her inquest that Poppi ‘suffered injuries caused by anal penetration’.

In the Family Division, Mr. Justice Jackson (as he then was) found that Mr. Worthington sexually assaulted his daughter by anal penetration shortly before her death.

- It can be by friend to family
- It can be intergenerational: grandfather to son, father to child, mother to child,
- It can be for financial gain
- It can be for perverted pleasure
- It can comprise of one act
- It can comprise of many: physical assault, emotional coercion, threats
- It can be opportunistic, planned, predatory, groomed,
- It can be progressive and persistent over the span of a child's life and into adulthood
- It can be a covert act
- It can be made public through the internet
- It can be an act replayed on the web or social media: through the distribution of photographs, filming
- The act can outlive the life of the abuser and the victim, circuiting in a continual loop on the dark web

Child Sex  
Abuse is an  
abuse of  
power



nowreptme

- what we mean when we talk of sexual abuse
- how it can come to light
- practice and procedure
- the damage that can be done by a flawed investigation
- the impact of getting it wrong

*‘ sexual abuse is defined as the involvement of dependent, developmentally immature children and adolescents in sexual activities that they do not fully comprehend and to which they are unable to give informed consent or that violate the sexual taboos of family roles’*

## **Section 31(9) of the Children Act 1989** (as amended by the Adoption and Children Act 2002):

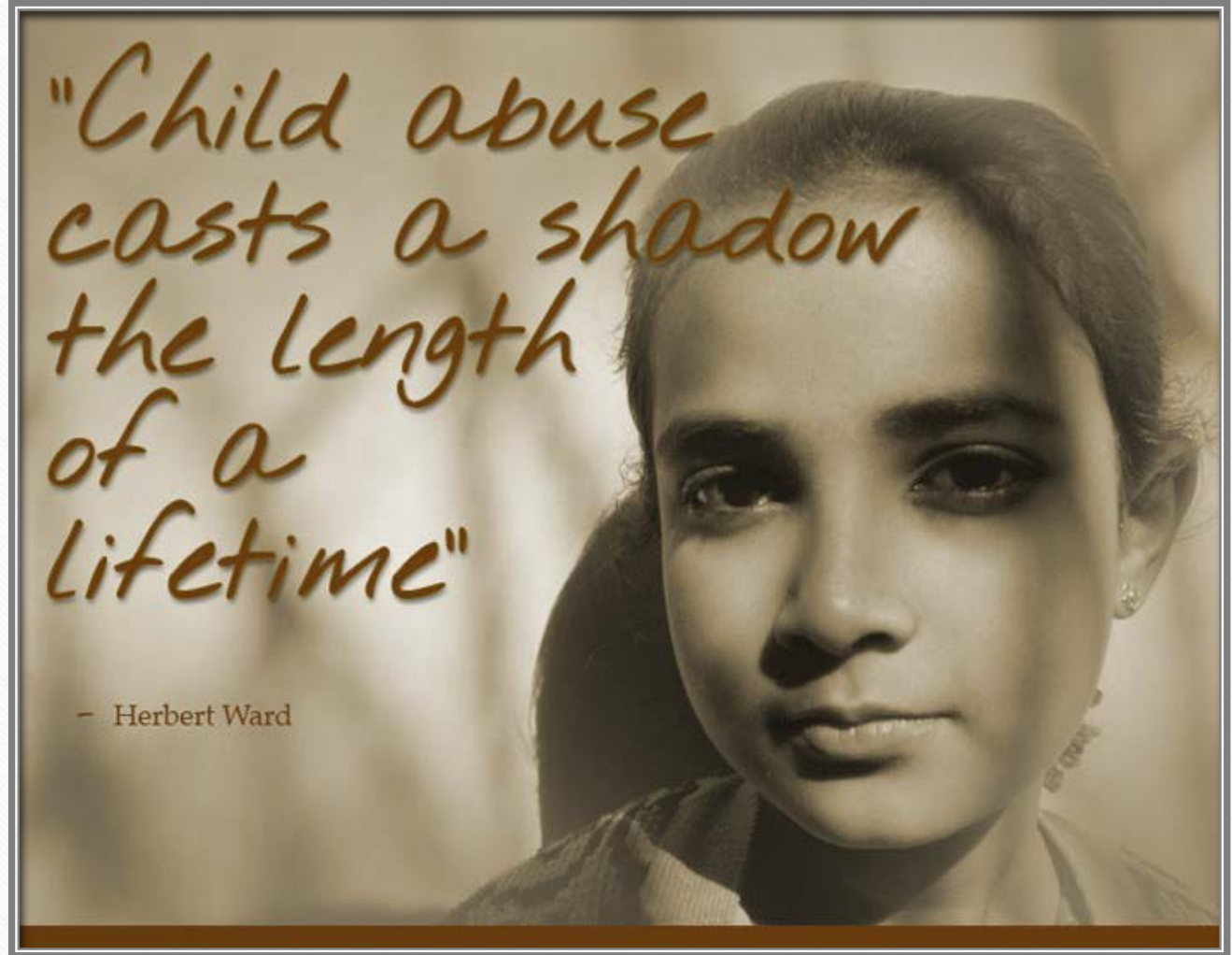
- **Harm** means **ill-treatment or impairment of health** or development including, for example, impairment suffered from seeing or hearing the ill-treatment of another;
- **Development** means **physical, intellectual, emotional, social or behavioural** development;
- **Health** means **physical or mental** health;
- **Ill-treatment** includes **sexual abuse and forms of ill-treatment which are not physical.**

The criminal jurisdiction looks at alleged past acts to determine guilt or innocence of the accused.

The family court only examines the past to inform future decisions for a child

*"Child abuse  
casts a shadow  
the length  
of a  
lifetime"*

— Herbert Ward



## How sexual abuse and exploitation can come to light

A finding that a child has been abused may come about from examination of many sources and, most usually, a combination of them:

- what a child has **said**,
- how a child has **behaved**
- **reports of what the child has said or done** by other children or adults
- evidence from a **school or nursery**
- evidence from **health professionals**
- evidence from **police**
- evidence from **video, photographic or internet imagery**
- **medical examination**
- **expert evidence** (medical, psychiatric, psychological)

In the family court we refer to looking at a '**broad canvass**' of evidence to determine whether a child has suffered harm or not.

What is said to have  
happened to the child may  
come through the filter of  
those who have seen or  
heard it  
or *think* they have  
how they then deal with the  
child concerned: and therein  
lies a danger.



# The Inquiry into Child Abuse in Cleveland 1987

Cm 412 London: pub 1988 Her Majesty's  
Stationery Office



This report, prepared by Judge Elizabeth Butler-Sloss after media publicity about a sudden increase in diagnoses of child sexual abuse at Middlesbrough General Hospital in early 1987 following the arrival of a Dr Higgs, paediatrician.

Her investigation revealed both the tensions and the misunderstandings that can arise when child sexual abuse is diagnosed rather than alleged.

There were significant procedural failings in the handling of many of the cases as well as some dubious professional decisions.

- *'disclosure work'*.
- Therapy should never be offered on the assumption that abuse has taken place
- Do not assume that abuse has taken place and that lack of disclosure is a sign of denial.
- Interviews done in Cleveland mostly failed agreed standards relevant to the area of child sexual abuse.

A health warning for all that underpins all that follows in this lecture:

Professionals must not assess evidence on the basis that a child must be believed.

Of course, what every child says must be listened to and taken seriously,

**Do not prejudice: Keep an open mind.**

<https://ecoworldreactor.blogspot.co.uk/2016/10/#>



- Is there evidence of sex abuse

If so,

- Is there evidence of the identity of the abuser

RE H ( A minor): RE K ( Minors Child Abuse Evidence) 1989 2FLR 313

## Your library

- The Report of the Inquiry into Child Abuse in Cleveland 1987
- Achieving Best Evidence in Criminal Proceedings (ABE Guidelines ) March 2011
- The physical signs of child sexual abuse, an evidence based review and guidance for best practice,' produced by the Royal College of Paediatrics and Child Health. **May 2015**
- HM Government Guidance: keeping Children Safe in Education March 2015 **updated 6 Sep 2016**
- The Advocates Gateway guidance on interviewing children part Tool kits 6 and 7
- 'What to do if you're worried a child is being abused '(HM Government, March 2015) (replacing previous guidance published in 2006)

## The Judicial framework for decision making

*“There is no room for finding that it might have happened.  
The law operates a binary system in which the only values are 0 and 1,”*

Per Lord Hoffman in Re B

Re B ( Children) [2008]UKHL Civ 282

Butler-Sloss P in Re T [2004] EWCA (Civ) 558 para 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."*

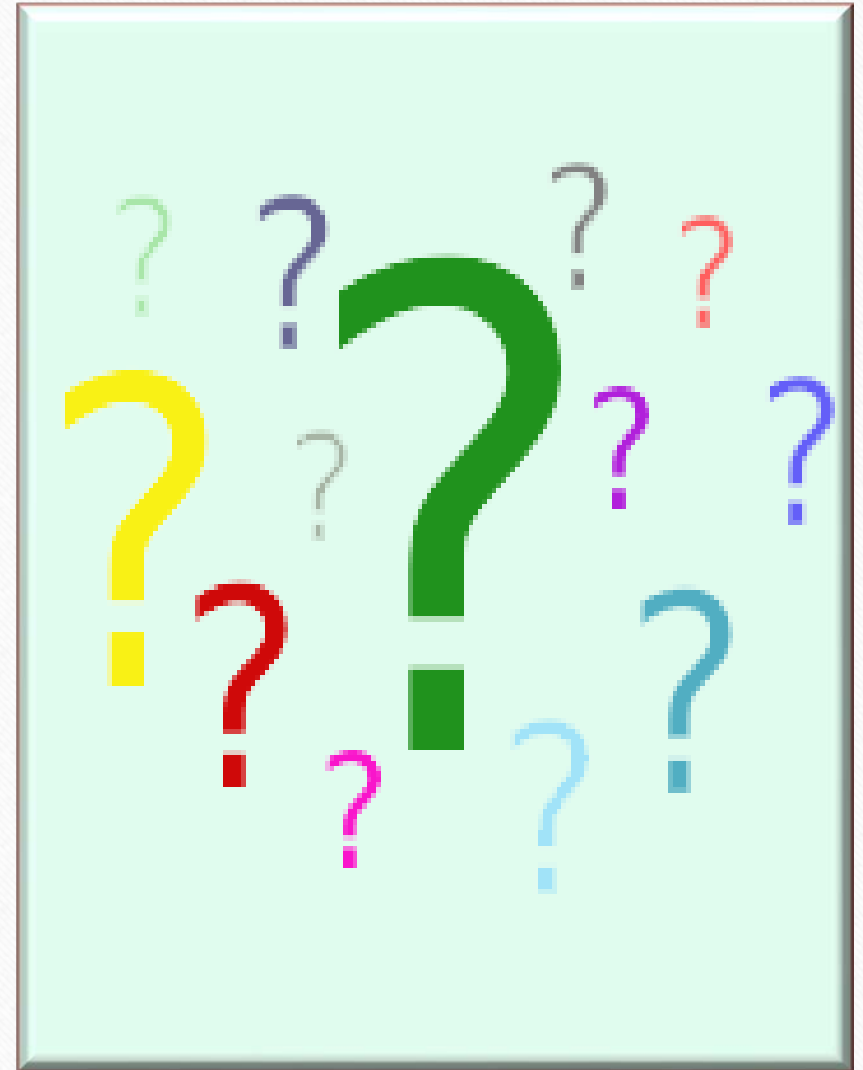


## The evidence ? Take it in stages

- What exactly does the child say has occurred?
- What amount of detail has s/he provided unprompted?

## The initial allegation: context

- To whom did the child first make the allegation?
- How and in what context was the allegations made?
- How has that allegations evolved?
- Is it consistent or not?
- Is there any evidence of rehearsal or coaching?
- What degree of sexual knowledge does the child have?
- What was going on in the child's life when it was said?
- How was their emotional state at the time?
- What repose did the child receive?
- What corroborating evidence is there?



## **The professional evidence : The investigation:**

What happened after the allegation?

- *When was the matter reported to the authorities (education, Social services/ police)?*
- *By whom?*
- *Has there been a police investigation: if so, what stage has it reached?*
- *Has the child been spoken to by a professional? Where are the records?*

**The court will be looking to see if the child account was influenced by what was said to it before, during or after the allegation:**

**RE J (A Child) [2014] EWCH Civ 875** is clear about the need to demonstrate good quality evidence of the allegations

## Sexualised behaviour?

*‘It is a false belief that inappropriate sexual behaviour suggests prior direct sexual abuse. A much more common antecedent is neglect and poor general boundaries at home around privacy, sexual activities and talk.....’*

**Re B EWCH 2010 2435 (FAM)**, Mr Justice McFarlane (as he then was)

## Medical evidence?

It is very rare to find forensic evidence which will prove that a child has been sexually abused.

*‘The medical assessment of physical signs of sexual abuse has a considerably subjective element, and unless there is clearly diagnostic evidence of abuse (e.g. the presence of semen or a foreign body internally) purely medical assessments and opinions should not be allowed to predominate. Even 20 years after the Cleveland Inquiry, I wonder whether its lessons have fully been learned’*

**Leeds City Council v YX & ZX (Assessment of Sexual Abuse) 2008 EWHC 802 (FAM) Holman J**

## Assessing the veracity of a child's allegations

- Language-** The child's description is consistent with his developmental level - events are described from a child's perspective in a child's language, with its limitations and misunderstandings. Does the account come from their world and words: not an adults?
- Spontaneity -** suggestive or direct questions ? "*free recall*".?
- Corroboration -** where other children are involved, do they repeat the same story?
- Detail?** is there details specific to the alleged offence for which the child is unlikely to have any other source of information.
- In/consistency:**
- The child's emotional state**
- Consistency in the face of challenge**
- Details characteristic of the offence** gradual sexualisation of normal intimacy

## Things to consider :

1. The age and degree of maturity of the child
2. Internal consistency of account, and/or inconsistencies of account;
3. Detail, or lack of detail in the account;
4. Opportunity for the acts to have occurred as alleged;
5. The possibility that a child may lie about some things, and not about others
6. Is the general behaviour of the child congruent with the allegations
7. Whether the specific abuse described by the child is likely to be in the direct knowledge or experience of the child of the age in question,
8. Fluency and coherence of account/narrative, or confusion in the account/narrative;
9. Is there embellishment or exaggeration in the child's account;
10. Can the child's account be explained by innocent conduct (i.e. hugs / kisses);
11. Are there independently verifiable facts supporting the account
12. Whether there is medical evidence
13. Have the allegations been retracted : if so the circumstances, timing, context of the retraction.

## The Police investigation

**Pre ABE Interview ?** *a brief account of what is alleged to have taken place; a more detailed account should not be pursued at this stage but should be left where and when the alleged incident took place and who was involved or otherwise present.'*

## **Achieving Best Evidence (ABE) interview**

Four distinct phases are identified:

- establishing rapport,
- asking for a free narrative,
- asking questions,
- closing the interview

## TW v A City Council [2011] EWCA Civ 17

*52...the Guidance makes it clear that the interviewer has to keep an **open mind and that the object of the exercise is not simply to get the child to repeat on camera what she has said earlier to somebody else.***

*“79..... Again, I have some sympathy for officers and social workers entrusted with the difficult task of speaking to children about allegations of this sort. **The ABE Guidance is detailed and complex. But those details and complexities are there for a reason.***

.....

*It would be **unrealistic to expect perfect in any investigation. But unless the courts require a high standard, miscarriages of justices will occur and courts will reach unfair and wrong decisions with profound consequences for children and families***

## Evidence from the child directly ?

There is and should be no presumption that a child should not be able to give direct evidence to the court.

The court must balance

- The advantages the oral evidence will bring to the determination of the issue and
- The damage it may do to the welfare of this or any relevant child

The court must balance the Article 6 Right to a Fair Trial and the Article 8 Right to respect for a private family life.

*‘The courts principal objective should be achieving a fair trial’*

**Re W (Family Proceedings: Evidence) [2010] UKSC 12**

The Court of Appeal notes that, **in criminal proceedings, about 40,000 children give evidence** each year (typically with special measures such as a video link)

conversely, the Supreme Court's decision in *Re W (Children) (Family Proceedings: Evidence)* [2010] UKSC 12 "*would seem to have gone unheeded in the five or more years since it was given*" such that the previous culture and practice of the family courts has remained largely unchanged with the previous presumption against children giving evidence intact

E (A Child) [2016] EWCA Civ 473 per McFarlane J

## Retractions

*It didn't happen ?*

*I made a mistake*

*It wasn't daddy*

*Mummy didn't know*

The fact that an allegation is subsequently retracted does not prevent a judge from finding the allegation is true.

Children may retract because they are scared, because they want to turn the clock back and go home if they are in care , because they don't want the abuser to get into trouble.....

.....or because the initial allegations wasn't true.

**We come back to the 'broad canvas' again.**

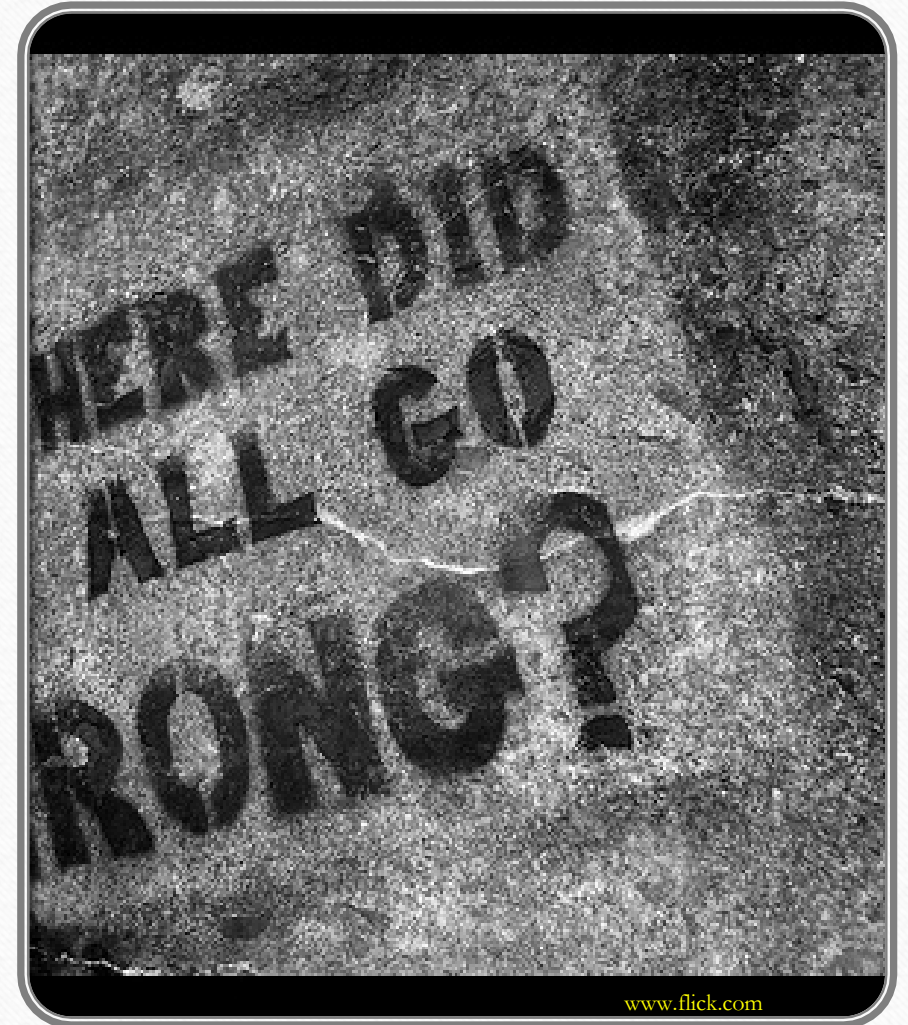
## When it goes wrong

It appears to me that re-occurring reasons are

Investigators proceed on the basis that ‘ the child must be believed’

They fail to absorb the reasons why the ABE guidelines have been drawn up and ‘professionals’ flout them in their dealings with the child

Mistakes: what they believe , what they say, what they record



**Do not** use the term ‘disclosure’: it implies that someone has something to say.

‘Disclosure’ has been a decried term since 1987 yet it is still uttered by child protection professionals time and time again in the cases I am in and hear

Even on today’s twitter world ‘disclosure’ is being used by the NSPCC in its survey.

And now a prompt for this note is that last Friday (2 February 2018) Resolution (which represents a group of family lawyers, and assert expertise in children law) and NSPCC both put out publicity asking for replies for a survey on ‘receiving disclosures’:

*We would like invite you to complete our survey on professionals’ experiences of listening to children and receiving disclosures of abuse and neglect.* Our ambition is to develop a practical resource that will support professionals working with children to confidently deal with disclosures of abuse and to improve children’s experiences of the disclosure process.

The [@NSPCC](https://twitter.com/NSPCC) is looking for input from professionals working with children and family courts to inform a new resource to help professionals deal with disclosures. The survey should take 15 minutes and all submissions are anonymous via <https://buff.ly/2EsWt7d>

## Common mistakes are

- the use of untrained and inexperienced interviewers
- failure to approach the interview with an open mind
- use of leading questions
- too many interviews for each child
- interviews conducted at the pace of the adults not the child
- inadequate video or audio recording
- lack of background information and preparation by the interviewer
- introduction of evidence into the interview by the interviewer
- telling the child what another child has said
- reminding the child what they have said
- Inappropriate encouragement to tell more when allegations are made 'good girl' 'you're doing really well' etc.

## Examples of leading question:

- *"Did anything happen then yesterday that made you sad?"*
- *Don't be shy. It's very important isn't it that you tell somebody what happened. Yeah? What happened?*
- *What did daddy do to you?*
- *You can tell us what you told mummy*
- *X says you said this*
- *You're doing really well, can you tell us a little more?*

**AS v TH (False Allegations of abuse) [2016]**  
**EWHC 532 (2016) 3 FCR 327**

MacDonald J described wholesale failure of professional to follow the advice in case law and statutory guidance when investigating allegations of abuse



The questioning of the children by 19 professionals on no fewer than 66 occasions.

Therapeutic intervention with the children, including 35 group sessions, on the basis they had been abused, as alleged by the mother, before any findings or criminal convictions.

*"I pause to note that despite the fact that the use of the term **"disclosure"** to describe a statement or allegation of abuse made by a child has been **deprecated** since the Cleveland Report due to it **precluding the notion that the abuse might not have occurred** (see para 12.34(1)), every professional who gave evidence in this case (except the Children's Guardian) used the term "disclosure" to describe what the children had said to them)."*

## Proper Recording

41. The requirement that all professionals responsible for child protection make a clear and comprehensive record of what the child says as soon as possible after it has been said and in the terms used by the child has been well established good practice for many years.

The Cleveland Report makes clear at paragraph 13.11 that: *'We would emphasise the importance of listening carefully to the initial presentation of information and taking careful notes'*.

‘It will also be important that, when recording an allegation, the child's own words are used and that those speaking with the child should avoid summarising the account in the interests of neatness or comprehensibility or recording their interpretation of the account.’

The tension :

‘Throughout the phase of the initial assessment and preliminary decision making, social workers should be conscious of the fact that the *presumption that abuse has taken place can have damaging repercussions for the child and the family.*

Equally, *an abnormally low level of alertness to the possibility of child sexual abuse may deter children from subsequently trusting adults sufficiently to reveal the fact of abuse to them.*

**Wolverhampton City Council v JA & Ors [2017]**  
**EWFC 62,**

Keehan J dealt with a care case which involved allegations of sexual abuse of two young girls. They were aged 13 (X) and 12 (Y) at the time of his judgment.

There were a variety of allegations against the children's father and two male friends of the mother dating back nearly ten years.

There were serious allegations of abuse made by the child against the father and the mother's two other partners.



203. In conclusion I find that in relation to interview undertaken with X on 30 August 2016:

- a) She was *inappropriately questioned* by Ms Noel;
- b) The interview lasted for a wholly *excessive length of time*;
- c) The conduct of the interview took no account that X suffered from *learning difficulties*;
- d) She was repeatedly asked *leading questions*;
- e) Frequently *leading questions* were repeated even after X had answered in the negative to the proposition implicit in the question;
- f) There was absolutely *no justification* for embarking on this sustained questioning of X;
- g) The exercise was wholly *detrimental to X's welfare* and seriously *imperilled a police investigation*;
- h) The conduct of the interview led to a *real possibility that X would be led into making false allegations*;
- I) the conduct of the interview was wholly contrary to the intended purpose of the visit, namely to establish *X's wishes and feelings about giving evidence* in this fact finding hearing; and
- j) The *record keeping* of AB and Ms Noel was very poor. Not all questions and answers were recorded or accurately recorded. No reference is made to X's demeanour during the interview or to any perceived change in her demeanour.

190. I was moved to comment during the course of Ms Noel's evidence that by her actions during the interview with X *she had run a coach and horses through 20 years plus of child abuse inquiries* and of the approach to interviewing children in cases of alleged sexual abuse. I see no reason, on reflection, to withdraw those comments.

191. At the conclusion of Ms Noel's evidence, in very marked contrast to that of the former children's guardian, *I had no sense that Ms Noel had any real appreciation of what she had done or of the extremely serious professional errors she had committed. She appeared to be almost a naïve innocent who had little or no idea of what she had done.*



Cute calander.com

*“France does not have a legal age under which a minor cannot agree to a sexual relationship – .....*

*“**She was 11 years and 10 months old, so nearly 12 years old,**” the defence lawyer Marc Goudarzian said Tuesday. **“It changes the story. So she is not a child.”***

*His colleague Sandrine Parise-Heideiger went further, saying: **“We are not dealing with a sexual predator on a poor little faultless goose.**” She said as soon as children have “sexual expressiveness and you have an attitude of putting yourself in danger” then “it doesn’t necessarily mean the person on the other side is a sexual predator”.*

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## French girl, 11, 'not a child' say lawyers for man, 29, accused of sexual abuse

Case rekindles debate about age of consent in France as family argue suspect should be charged with rape



Associated Press  
Tue 13 Feb 2018 20:06 EST



ARE  
WE  
NEARLY  
THERE  
YET?

*My parting words*

*Approach these cases with an open mind.*

*Do not prejudge*

**YOU KNOW MY NAME, NOT MY  
STORY. YOU'VE HEARD WHAT I'VE  
DONE, NOT WHAT I'VE BEEN  
THROUGH.**

## Final words

These mistakes have consequences because they can contaminate the evidence the court has before it to make decisions about the risk posed to a child.

It is simply not acceptable for practice to be so deficient that it puts children at risk or puts parents in jeopardy of unreliable allegations being held against them

The potential consequences of getting it wrong are serious: **the abused may be left unprotected the innocent maybe falsely tarred**

*Thank you for your time and attention:*

*I know this lecture will have been hard to  
listen to for many people*

**Next lecture: Thursday, 26 April 2018, 6:00PM - 7:00PM Barnard's Hall  
Inn**

**‘The Child in the Family Court Room: Whose Child is it anyway?’**

What role do children play in the family trial?

The case concerns their future: how is their voice heard?

What happens if they hold the key to the issues before the court?

Should they give evidence, hear evidence?

Should they meet the judge deciding their futures?

How does the court reduce the risk that the trial experience itself harms the child it is seeking to protect?

In this lecture I will explore whether the family court system is fit for purpose when it comes to dealing with the children at the heart of its deliberations.