

## WHAT TO DO WHEN A CHILD MAKES AN ALLEGATION AND

### 1. THERE IS NO SUPPORTING EVIDENCE

### 2. THE ALLEGATION IS NOT REPEATED

- In *Re E (A Minor)(Child Abuse: Evidence)* [1991] 1 FLR 420 at 447H Scott- Baker J observed:

"It is disappointing that, despite the passage of time since the Cleveland report, several witnesses had either not read the report at all or, if they had, they ignored its conclusions in many respects. Permeating the whole case is the underlying theme of 'the child must be believed'. Of course what any child says must be listened to and taken seriously, but the professionals must be very careful not to prejudge the issue".

- Seventeen years later Holman J felt compelled to make similar observations in the case of *Leeds City Council v YX & ZX (Assessment of Sexual Abuse)* [2008] 2 FLR 869 at [143] as follows:

"I wish only to stress...the very great importance of including in any assessment every aspect of a case. Very important indeed is the account of the child, considered, of course, in an age appropriate way. An express denial is no less an account than is a positive account of abuse. It is also, in my opinion, very important to take fully into account the account and demeanour of the parents, and an assessment of the family circumstances and general quality of the parenting...Even 20 years after the Cleveland Inquiry, I wonder whether its lessons have fully been learned."

- *Re E (A child)* [2016] EWCA Civ 473 Lord Justice McFarlane before being P reviewed the manner in which courts approached their *Re W* assessment at paragraph 58 he held that:

- Any practitioner working in a case where there is a possibility that a child may be asked to either give evidence or indeed be interviewed to see if they might give evidence (ie in chief) needs to be aware of the law and guidance as set out in the leading cases of

**Re W 2010 UKSC 12** and

**Re E (A Child) [2016] 1 All ER 1675**

It is important to have in mind the following passages from Re E

passages in the judgment of **McFarlane LJ in Re E (A Child) [2016] 1 FLR 1675:**

**[53]** Mr Tyler readily accepted a suggestion made by Macur LJ to the effect that a child's welfare may in fact require a determination in favour of them giving evidence, notwithstanding any immediate adverse impact on the child from the process of coming to court, where the future placement of the child could depend upon findings of fact to which his or her oral evidence might relate. [...]

**[62]** Each case will be different, but even where the child may suffer some emotional harm from the process, if such harm is likely to be temporary and where the quality and potential reliability of the other evidence in the case is weak, it may (in addition to any fair trial issues) nevertheless be in the child's best interests to give oral evidence

- **McDonald J in AS v TH (False allegations) [2016] EWHC 532**

In which he summarised the difficulties in cases concerning allegations made (often only to one parent) by a child.

He reminded that:

24. The decision on whether the facts in issue have been proved to the requisite standard must be based on *all* of the available evidence and should have regard to the wide context of social, emotional, ethical and moral factors (*A County Council v A Mother, A Father and X, Y and Z* [\[2005\] EWHC 31 \(Fam\)](#)). Where the evidence of a

child stands only as hearsay, the court weighing up that evidence has to take into account the fact that it was not subject to cross-examination (*Re W (Children)(Abuse: Oral Evidence)* [\[2010\] 1 FLR 1485](#)).

25. If a court concludes that a witness has lied about one matter, it does not follow that he or she has lied about everything. A witness may lie for many reasons, for example, out of shame, humiliation, misplaced loyalty, panic, fear, distress, confusion and emotional pressure (*R v Lucas* [1981] QB 720).

26. The court must not evaluate and assess the available evidence in separate compartments. Rather, regard must be had 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 has been made out on the balance of probabilities (*Re T* [\[2004\] 2 FLR 838](#) at [33]).

- The Best Practice Guidance of June 1997 *Handbook of Best Practice in Children Act Cases* Section 4, Annex para (k) cautions that:

"Any investigation which focuses attention on the statements of the child runs the risk of producing a false result if what the child says is unreliable or if the child's primary care taker is unreliable, particularly where the allegation emerges in bitterly contested section 8 proceedings."