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This decision was delivered in private to the parties and their lawyers. They may not show or otherwise communicate this decision or its contents to any other person. Any party or their lawyers wishing to show or inform any other person about the decision or any other person wishing to see the decision must first come back to court and obtain the permission of His Honour Judge Richard Clarke.

The judge has given leave for this version of the decision to be published on condition that (irrespective of what is contained in the decision) in any published version of the decision the anonymity of the child(ren) and members of their 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: WD20C01533

Neutral citation number: [2022] EWFC 99

IN THE FAMILY COURT SITTING AT WATFORD

Date: 28/07/2022

Before:

HIS HONOUR JUDGE RICHARD CLARKE

Between:

HERTFORDSHIRE COUNTY COUNCIL

Applicant

- and -

(1) M

Respondent

(2) F

(3) PGM

(4) MGM

(5) MGP

(6) PA

(7) PAB

**(8) LAURA HOLDEN (CHILDREN'S
GUARDIAN)**

DECISION

Contents

INTRODUCTION	2
REPRESENTATION AND PARTIES	2
ESSENTIAL BACKGROUND	2
ISSUES THAT MUST BE DECIDED	6
PARTIES' POSITIONS.....	7
THE LAW AND LEGAL PRINCIPLES	7
THE FACT-FINDING HEARING.....	13

KEY FEATURES OF THE EVIDENCE	14
CLOSING SUBMISSIONS.....	30
DISCUSSION.....	34
FINDINGS OF FACT ON SIGNIFICANT DISPUTED MATTERS.....	39

His Honour Judge Richard Clarke :

INTRODUCTION

1. This is the decision of the Court, following a fact-finding hearing, on an application by Hertfordshire County Council (referred to as the Local Authority) for Care/Supervision Orders issued on 10 December 2021 in respect of [the Child] born on 1 October 2021
2. This case is about injuries sustained by a child in the first 26 days of her life. However, it has also been about lies and collusion and the impact these have on the decision.
3. The trial of this matter has taken place over 8 days commencing on 20 June 2022, with judgment having to be reserved due to the impact on the timetable of changing explanations for events.

REPRESENTATION AND PARTIES

4. The Local Authority was represented by Julian Date, counsel.
5. The first respondent is Mother, who was represented by Naomi Carpenter of counsel.
6. The second respondent is Father, who was represented by Michael Liebrecht of counsel.
7. The children’s guardian is Laura Holden (referred to as Guardian), who was represented by Samantha Reddington of counsel.
8. The First Intervener is the Paternal Grandmother, who is representing herself.
9. The Second and Third Interveners are the Maternal Grandparents or Maternal Grandfather and Maternal Grandmother, who are representing themselves.
10. The Fourth and Fifth Interveners are the Paternal Aunt and Paternal Aunt’s Boyfriend, who are representing themselves.
11. Given the potential for wider distribution of this judgment, I have anonymised the names of the children and family members. I have already provided a schedule of anonymised names so that anyone working with this family can readily identify the people referred to it in the decision.

ESSENTIAL BACKGROUND

12. Of most relevant note are the following:
 - 12.1. The parents are not married. Both parents have an element of mental health issues due to their past. [redacted]

- 12.2. Father was born [redacted] and Mother was born [redacted]. The parents met on Tinder. The gap between Mother ending her previous relationship and focussing her attentions on Father was spoken of as a couple of days. The relationship would appear to have become physical almost immediately, with Mother seeking an early termination because it was unclear whether she was pregnant from Father or her previous boyfriend.
- 12.3. Mother left her employment and moved in with the Father at the flat he was renting. They described the pregnancy as planned, but not expected to happen so soon. Mother fell pregnant again within around 3 months of the relationship starting.
- 12.4. Father purchased a new-build property next to the house of his sister, the Paternal Aunt, and the parents moved into that house around the end of May 2021. The parents purchased a German Shepherd puppy the day after they moved in.
- 12.5. [redacted]
- 12.6. The Child was born in the early hours of 1 October 2021, having been induced. Father had 4 weeks paternity leave which commenced as soon as she went into hospital. Mother self-discharged from hospital early.
- 12.7. On 3 October 2021 the Child was returned to hospital and spent 2 further days as an in-patient due to neo-natal jaundice.
- 12.8. The first Health Visitor appointment took place on 12 October 2021. The Child was checked and weighed. Mother was reported to be complaining that Father's family were visiting more often than Mother would have liked. The Health Visitor was concerned for Mother's mental health, having asked her to complete standard questionnaires which indicated Mother had moderately severe depression and severe anxiety. While Mother's behaviour was not a concern to the Health Visitor, Mother was referred to the Universal Plus service for support.
- 12.9. The Community Midwife visited the family home on 14 October 2021. The note of the appointment included comments about "Father being asleep"
- 12.10. A telephone triage assessment of Mother's mental health took place on 14 October 2021. She was reported as having low mood, anxiety, feeling fearful and with feelings of failing. A face to face assessment was planned, but was then overtaken by events.
- 12.11. The Child was cared for by the Paternal Grandmother overnight on 15/16 October 2021, the Maternal Grandparents from 21 to 23 October 2021 and by the Paternal Aunt and her Boyfriend overnight on 14/15 October, comment – the court's recollection was this date changed and it is unclear if this also happened on 19/20 October 2021, as well as spending 12 hours with them on 24 October 2021. The Paternal Aunt and her boyfriend had telephoned the Paternal Grandmother at 4am for support.
- 12.12. On 27 October 2021 the Child's Health Visitor attended on short notice, because she was in the area, to follow-up on Mother's mental health. Mother was reported as complaining she felt unsupported by Father, who was staying up late in the evening and then spending the day in bed. Father was referred to as "heavy handed" with the Child, not bonding with her and calling the Child unpleasant names. Mother said Father was staying up late in the evening and then spending the day in bed. While there, the Health Visitor observed a red mark to the Child's lower leg as Mother was picking her up from her crib. She later recorded Mother's explanation that a bottle of milk had fallen on the Child, and that when she asked to see the Child's

other leg Mother declined saying she did not want to disturb the Child. As the Child was being put back in the crib the Health Visitor observed another red mark to the left thigh. She made a referral and a child protection medical took place the same day, at which multiple bruises were identified as follows:

- 12.12.1. Bruise 1. A slightly square-shaped bruise measuring 1cm x 2cm x 1cm x 0.5cm on the left anterior (front) thigh approximately 1cm above the knee. This was red/purple in colour. Explained as occurring following a spray bottle falling on the Child's leg.
- 12.12.2. Bruise 2. Two small red/purple coloured bruises in close proximity to each other on the right lateral calf. The first bruise measures 1cm x 0.5cm and the second one measures 1cm. Parents say this may have occurred as a result of a bottle falling on the baby's leg as explained for Bruise 1.
- 12.12.3. Bruise 3. A linear purple bruise on her right lower back just above the buttocks. This measures 1.5cm in length. There was also some discolouration of the skin surrounding this mark. No explanation was given.
- 12.12.4. Bruise 4. A red coloured bruise on her right lower abdomen in the mid axillary line. This measured 1.5cm x 1cm. No explanation was given.
- 12.13. Father stayed overnight with the Child at hospital on 28/29 October 2021. A student nurse reported hearing Father shout and swear at the child and seeing him try to push her feed bottle into her mouth. She reported it to the Ward Sister, but they did not see or hear anything of concern. Mother was asked to return to the hospital to care for the Child.
- 12.14. The Child was placed under police protection on 29 October 2021 and the parents were arrested on suspicion of assault occasioning grievous bodily harm.
- 12.15. At all material times Father was a serving police officer and Mother was not working. The parents were interviewed by the police on 30 October 2021. Due to Father's occupation the investigation was conducted by a neighbouring force.
 - 12.15.1. In Mother's interview she spoke about knowing the Child had suffered the 2 injuries to her legs and not seeking medical assistance. She said Father had woken her at 4 in the morning, stating a bottle had fallen across the Child's legs and might have been caused by the dog's tail. Mother said that she had said to Father she would look at it in the morning, but then forgot until the health visitor's visit. Because the bottle was quite big she questioned whether it could have caused the bruise around the hip area. Mother spoke about not enjoying the pregnancy, but enjoying being a mum and it having brought her out of a really dark place. She also spoke about having postnatal depression, but with no formal diagnosis. She stated the pregnancy was planned, and Father had proposed marriage when she was 20 weeks pregnant. She accepted she had discharged herself against advice because she does not like hospitals. She spoke about Father being a fantastic support with no concerns, other than gripes about leaving the wet towel on the floor or not putting dirty plates in the dishwasher. She said they had never raised a voice at one another, apart from the wet towel. She also spoke about him being a bit heavy-handed at times, but clarified this as the speed he would go to pick the Child up, and stated she would like to sell his Xbox. Mother spoke about the Child being difficult to feed and

aggressive with the feeding bottle. Father would apparently become frustrated with the Child and refer to her as "a little bugger", but Mother said he would never swear at or to either the Child or her. She spoke her family being complete and being happy. The Child was described as sleeping between around about midnight until about half 6, and she stated Father had come off nights and initially doing the nightshifts with the Child, then alternating. She said the Child slept in their room in a Moses basket. She said she did not know why Father had taken the Child downstairs, but thought the dog had got a bit excited with daddy coming downstairs. Mother was shown photos of the bruising and accepting the marks were visible. She raised the possibility of the mark to the back being a birthmark. She was asked about the Paternal Aunt saying Father had better not have done anything to the baby, and said the Paternal Aunt was a very outspoken person and it was probably coming from Father having been the one watching the Child.

- 12.15.2. In Father's police interview he talked about a water spray bottle being knocked onto the child, landing on her legs, when the puppy got up on the sofa and his tail hit the bottle. He had apparently been gaming online and changing her when it occurred. He talked about the dog maybe brushing the Child's arm when he jumped up with the bottle, but said he did not know whether the dog actually touched her because it happened very fast. He said that when it happened she instantly did what he described as a silent cry. He said he noticed a mark or marks on her legs and that he told Mother straightaway when she woke up in the morning (and later confirming this). Father was clear that he had checked the Child over that night and did not know where the other bruises were from. He stated he was sure Mother went downstairs and had a look. He then talked about waking up in the morning when the Health Visitor was there and coming downstairs to hear her say she would be speaking to her manager. Father talked about having a temper, but said he did not lose his temper easily. He confirmed it was a planned pregnancy, after 3 months of being together, and also talked about referring to the Child as "little bugger", in an endearing way. He also spoke of Mother's dislike of hospitals and accepting she had discharged against medical advice. He accepted sometimes getting frustrated with the Child, but said Mother and he agreed if either was getting frustrated the other would take over and given them a break. He had no concerns about Mother's parenting at all. When asked about the comment made by the Paternal Aunt he said "she knows I have a temper but she knows that at the end of the day I can control it and it would never be taken out on a three week old baby that's my flesh and blood and that I love dearly".
- 12.16. The Child was discharged from hospital into foster care, pursuant to s20 of the Children Act 1989, on 1 November 2021. The Child has remained in foster care ever since, initially pursuant to s20 then pursuant to an interim care order made by the court.
- 12.17. Following conclusion of the police investigation the police have decided to take no further action.
- 12.18. Bruising is hard to date and a range of dates when the injuries could have been sustained was identified. Given the number of relatives who had cared for the child within that timeframe the pool of potential perpetrators identified by the Local Authority was quite wide. All parties identified within

the pool were joined to the proceedings as part of engagement with their right to a fair trial under Article 6 of the European Convention on Human Rights, as incorporated into British law by the Human Rights Act 1998. None of the relatives were eligible for public funded representation and they have represented themselves.

- 12.19. The parents remained in a relationship up to and including during the fact-finding hearing and attended together.

ISSUES THAT MUST BE DECIDED

13. The court must consider and answer the following questions;
- 13.1. Did Mother discharge herself and the child from hospital on the day of birth against medical advice, placing the child at risk of suffering physical and/or emotional harm?
- 13.2. In respect of injuries:
- 13.2.1. What injuries were sustained?
- 13.2.2. How were any injuries caused? Were they accidental, or caused in a way that involved an element of wrongdoing?
- 13.2.3. If there was an element of wrongdoing, who had the opportunity to cause the injury?
- 13.2.4. Of those people, is the court able to identify a perpetrator? If not, which of those people is there a likelihood or real possibility caused the injury.
- 13.3. What did the other parties know and did any of the parties fail to protect the child?
- 13.4. Was Father verbally abusive to the child and/or did he call her names?
- 13.5. Was Father heavy-handed or rough with the child?
- 13.6. Did Mother have mental health issues which placed the child at risk of suffering physical and/or emotional harm?
- 13.7. Was the child placed at risk of suffering harm as a result of the multiple carers who looked after her?
- 13.8. Have the parents and intervenors been open and honest with professionals or the court?
14. The above is a summary of the Local Authority Schedule of Threshold Findings. The response of the parties can be summarised as follows:
- 14.1. Mother discharged herself on the basis she would return for further checks within 48 hours.
- 14.2. The bruising to the left thigh and right calf were caused by the bottle falling on the child as reported by Father.
- 14.3. The bruise to the lower back was not seen by the Intervenors and the parents say it is a birthmark.
- 14.4. The bruise to the lower abdomen was either not seen or caused from the umbilical cord coming away, or caused by a tight seatbelt.
- 14.5. Any injuries were accidental and there was no failure to protect.
- 14.6. Father has never been abusive or called the Child unpleasant names in their presence.
- 14.7. While Father may be awkward with the Child, he had never been heavy-handed.
- 14.8. While Mother may have felt low, there was no diagnosis of anxiety or depression.
- 14.9. The Child was looked after by multiple family members, but was not distressed by this.

In addition, and having heard all the evidence, the guardian sought additional findings as follows:

The parents and intervenors have each failed to work openly and honestly with professionals and the court, and that their motive in withholding relevant information in respect of the parental relationship and the father calling the child 'an attention seeking whore' was to protect the parents, thereby prioritising the parents over and above the child's need for protection and in order to prevent the full detail of the child's lived experiences and the risks posed to her being shared with professionals and the court.

The child was exposed to a domestically abusive and volatile relationship which included controlling behaviour exhibited by the father.

PARTIES' POSITIONS

15. The Local Authority argued that the bruises were inflicted and caused by the parents and/or the relatives. By the conclusion of the hearing the Local Authority was not asking the court to find that any of the intervenors/relatives were responsible for the injuries, but still sought extended findings.
16. Mother disputed some of the injuries, denied inflicting any injury on the child or failing to protect her, and disputed the Local Authority allegations. She referred to an explanation provided by Father as to how some of the injuries may have been caused.
17. Father denied inflicting any injury on the child, and stated he did not believe either Mother or the relatives had inflicted any injury either. He disputed the allegations of the Local Authority.
18. The Guardian approached the matter on the basis of applying strong, intellectually rigorous representation of the child. By the time of closing submissions the Guardian was stating she did not believe the court had been told the truth about how the injuries were caused, and whilst the weight of evidence pointed to Father the Guardian had never been involved in a case before where evidence had changed on so many occasions. The Guardian accepted the evidence did not support a finding that the injuries were likely to have been caused by the relatives. As outlined above, the guardian sought additional findings.

THE LAW AND LEGAL PRINCIPLES

19. The law is well known in this field, uncontroversial and need not be recited at length but the Court needs to remind itself of it both personally and so the parties are aware of the context of the decision it makes. It can be summarised as follows:
 - 19.1. There is only one standard of proof in these proceedings, namely the simple balance of probabilities.¹ Neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts.
 - 19.2. The burden of proof is on the party who makes the allegation(s). It is not reversible, and it is not for the other party to establish that the allegation(s)

¹ Re B [2008] UKHL 35

are not made out. The burden of proof falls always on the local authority. It is the local authority that brings these proceedings and identifies the findings they invite the Court to make. There is no pseudo-burden or obligation cast on the respondents to come up with alternative explanations²

- 19.3. Therefore, the burden of proving the allegations that they make rests with them.³
- 19.4. The questions for every fact-finder are: What, When, Where, Who, How and Why?
- 19.5. The court is not bound by the cases put forward by the parties, but may adopt an alternative solution of its own⁴. However, the judge should be cautious when considering doing so and if the judge is, as it were, to go "off-piste", and to make findings of fact which are not sought by the local authority or not contained in its Schedule, then he or she must be astute to ensure:
 - 19.5.1. That any additional or different findings made are securely founded in the evidence: and
 - 19.5.2. That the fairness of the fact-finding process is not compromised.⁵
- 19.6. If a fact is to be proved the law operates a binary system in which the only values are 0 and 1 therefore it is open to the Court to make the following findings on the balance of probabilities:
 - 19.6.1. that the allegation is true
 - 19.6.2. that the allegation is falseand once an allegation has been proven on the balance of probabilities it will be treated as a fact and all future decisions will be based on that finding. Equally if a party fails to prove an allegation the Court will disregard the allegation completely.
- 19.7. There is a presumption that a criminal conviction stands as proof of the offences for the purpose of these proceedings.
- 19.8. The inherent probability or improbability of an event remains a matter to be considered when weighing the probabilities and deciding whether, on balance, the event occurred. "Common sense, not law, requires that in deciding whether the fact in issue is more probable than not regard should be had to whatever extent appropriate to inherent probabilities⁶" The fact an event is common or frequent does not lower the standard of probability to which it must be proved, nor does the fact it is very uncommon or infrequent raise the standard of proof.
- 19.9. Where the evidence 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.⁷
- 19.10. There has been a significant passage of time since the events in question. As Jackson J (as he then was) stated⁸: To these matters I would only add that in cases where repeated accounts are given of events surrounding injury and death, the court must think carefully about the

² Lancashire County Council v D and E [2010] 2 FLR 196 at (paras 36 and 37) and Lancashire County Council v R, W and N [2013] EWHC 3064 (Fam) (para 8(vi)).

³ Re A (Care Proceedings: Learning Disabled Parent) [2014] 2 FLR 591

⁴ Re S (A Child) [2015] UKSC 20

⁵ Re G and B (Fact-finding Hearing) [2009] EWCA Civ 10

⁶ Lord Hoffmann in Re B at para 15

⁷ Re W [2010] UKSC 12

⁸ Lancashire County Council v C, M and F [2014] EWHC 3 (Fam)

significance or otherwise of any reported discrepancies. They may arise for a number of reasons. One possibility is of course that they are lies designed to hide culpability. Another is that they are lies told for other reasons. Further possibilities include faulty recollection or confusion at times of stress or when the importance of accuracy is not fully appreciated, or there may be inaccuracy or mistake in the record keeping or recollection of the person hearing or relaying the account. The possible effects of delay and repeated questioning upon memory should also be considered, as should the effect on one person of hearing accounts given by others. As memory fades, a desire to iron out wrinkles may not be unnatural – a process that might inelegantly be described as "story-creep" may occur without any necessary inference of bad faith."

19.11. It is common for witnesses in these cases to tell lies in the course of the investigation and the hearing. If the Court finds that any witness who has given evidence has lied on collateral matters, then in the assessment of their core credibility the Court must:

19.11.1. decide whether a witness did in fact deliberately tell lies. If the Court is not sure that he or she did, then it should ignore the matter.

19.11.2. ask, if sure a witness has lied, why have they done so? A person may lie for many reasons and they may possibly be "innocent" ones, for example, to bolster a true case; to protect somebody else, out of shame, panic, distress or confusion; or out of a wish to conceal disgraceful behaviour from their family.

A lie told by a person can only strengthen or support evidence against that person if the Court is satisfied that (a) the lie was deliberate; (b) it relates to a material issue; and (c) there is no innocent explanation for it.⁹ Lies, however deplorable, are significant only to the extent that they affect the welfare of the child, and in particular to the extent that they undermine systems of protection designed to keep the child safe.¹⁰ A witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear or distress, and the fact that a witness has lied about some matters does not mean he or she has lied about everything.¹¹ Where witnesses have made mistakes or told lies in their evidence there must be an evaluation by the Court in the light of the entirety of their evidence and the court must remember that the fact that a witness has lied about some matters does not mean that he or she has lied about everything¹².

19.12. Findings of fact must be based on evidence (including inferences that can properly be drawn from the evidence) and not on suspicion or speculation.¹³

If the local authority case is challenged on some factual point they must adduce proper evidence to establish what it seeks to prove. There is also the need to link the fact relied upon by the local authority with its case on threshold, the need to demonstrate why, as the local authority asserts, facts A + B + C justify the conclusion that the child or children has/have suffered, or is/are at risk of suffering, significant harm of types X, Y or Z.¹⁴ The Court's findings must identify what significant harm the Court found the child(ren) to

⁹ R v Lucas [1981] 1 QB 720

¹⁰ Re: F (A Child) (Placement Order: Proportionality) [2018] EWCA Civ 2761 para. 25.

¹¹ A County Council v K, D and L [2005] 1 FLR 851 (para 28)

¹² Charles J, A County Council v K, D and L [2005] 1 FLR 851 (para 28)

¹³ Re A (A Child) (No 2) [2011] EWCA Civ 12 para 26

¹⁴ Re A (A Child) [2015] EWFC 11 paras 9 and 12

have suffered and/or the type of significant harm the child(ren) was/were likely to suffer.

- 19.13. When carrying out the assessment of evidence, the Court must pay attention to the fact "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"¹⁵ First, the Court must take into account all the evidence and, furthermore, consider each piece of evidence in the context of all the other evidence. The Court must survey a wide canvas. Secondly, the evidence of the parents and other carers is of the utmost importance. It is essential that the Court forms a clear assessment of their credibility and reliability.
- 19.14. The Court must weigh up all the evidence, whether given by expert or lay witnesses.
- 19.15. Any judge appraising witnesses in the emotionally charged atmosphere of a contested family dispute should warn themselves to guard against an assessment solely by virtue of their behaviour in the witness box and to expressly indicate that they have done so.¹⁶
- 19.16. The evidence of the parents and any other carers is of the utmost importance. 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 them.¹⁷
- 19.17. The assessment of credibility generally involves wider problems than mere 'demeanour' which is mostly concerned with whether the witness appears to be telling the truth as he now believes it to be. With every day that passes the memory becomes fainter and the imagination becomes more active. The human capacity for honestly believing something which bears no relation to what actually happened is unlimited. Therefore, contemporary documents are always of the utmost importance.¹⁸
- 19.18. The repetition of what one witness says another witness has told them cannot amount to corroborative or supporting evidence and at best goes to the consistency of a witness rather than the truth of what they are saying.
- 19.19. In assessing the evidence of a witness the court must also proceed with caution and care being mindful of the possibility of collusion and contamination and that a witness who has heard something may, over time, adopt what has been heard as if they were actually present at an event. Equally a person who has made the allegation, in order, for example, to excuse or explain their own behaviour or to seek attention or sympathy may start to believe the truth of the allegation and thereafter to exaggerate it. In such cases it is vital for the court to search for contemporaneous evidence from an independent source.

¹⁵ Re T [2004] 2 FLR 838 at para 33, affirmed in Devon County Council v EB & Ors (Minors) [2013] EWHC 968 (Fam), paras 56, 59

¹⁶ Re M (Children) [2013] EWCA Civ 1147 (paras 11 and 12)

¹⁷ Re W and another (Non accidental injury) [2003] FCR 346

¹⁸ Onassis and Calogeropoulos v Vergottis [1968] 2 Lloyd's Rep 403, per Lord Pearce; A County Council v M and F [2011] EWHC 1804 (Fam) [2012] 2 FLR 939 (paras 29 and 30): see Mostyn J in Lancashire CC v R [2013] EWHC 3064 (Fam) (paras 8 and 51).

- 19.20. Whilst of course appropriate attention must be paid to expert evidence, it is important to remember
- i) that the roles of the Court and expert are distinct; and
 - ii) that it is the Court that is in the position to weigh the expert evidence against the findings of the other evidence¹⁹
- “What may be unexplained today may be perfectly well understood tomorrow. Until then, any tendency to dogmatise [sic] should be met with an answering challenge.”²⁰ The judge must always remember that he or she is the person who makes the final decision.²¹ The evidence of an expert is not held in any special position and there is no presumption of belief in an expert no matter how distinguished they may be. However, a judge cannot substitute their own view for the views of the experts without some evidence to support what they conclude and must give reasons for disagreeing with an expert’s conclusions or recommendations.
- 19.21. The medical and expert evidence is but one part of the evidence available to the court at the fact-finding stage and must not take undue prominence. As Ryder J observed²²: ‘A factual decision must be based on all available materials, i.e. be judged in context and not just upon medical or scientific materials, no matter how cogent they may in isolation seem to be. Just as best interests are not defined only by medical or scientific best interests...likewise investigations of fact should have regard to the wide context of social, emotional, ethical and moral factors... I venture to suggest that if a court considers the broader context of expert evidence, that is the social, educational and healthcare history, with the rigour described above, there must surely be less likelihood of inappropriate reliance on what may transpire to be insufficiently cogent and sometimes frankly incorrect expert evidence even where it is uncontradicted”
- 19.22. Section 31 of the Children Act 1989 provides that a court can only make a care order or supervision order if it is satisfied that the child concerned is suffering or is likely to suffer significant harm and the harm, or the likelihood of harm, is attributable to the care given to the child, or likely to be given to (them), if the order were not made, not being what it would be reasonable to expect a parent to give him or the child being beyond parental control (referred to as the threshold test).
- 19.23. “Harm” is defined in Section 31(9) as meaning “ill-treatment or the impairment of health or development”. Health covers both physical and mental health. Development means physical, intellectual, emotional, social or behavioural development.
- 19.24. The relevant date for the threshold test is normally the date of issue of the proceedings, but where interim arrangements for the protection of the child have been put in place prior to proceedings being issued the relevant date can be as far back as the date at which the local authority initiated the protective arrangements.²³

20. This case involves an allegation of physical injury to a child. The Court must therefore also consider the following approach to that issue:

¹⁹ A County Council v K, D and L [2005] 1 FLR 851

²⁰ R v Cannings [2004] EWCA 1 Crim

²¹ Charles J in A County Council v KD and L [2005] 1 FLR 851 para 39 to 44

²² A County Council v A Mother, A Father and X, Y and Z (by their Guardian) [2005] 2 FLR 129

²³ Re M (A Minor) (Care Order) [1994] 2FLR at page 583

- 20.1. If it is satisfied that the child sustained injuries it must first consider whether they were caused non-accidentally. In this context the Court reminds itself of the comments of Ryder LJ about the expression "non-accidental injury"²⁴:-
"I make no criticism of its use but it is a 'catch-all' for everything that is not an accident. It is also a tautology: the true distinction is between an accident which is unexpected and unintentional and an injury which involves an element of wrong. That element of wrong may involve a lack of care and/or an intent of a greater or lesser degree that may amount to negligence, recklessness or deliberate infliction. While an analysis of that kind may be helpful to distinguish deliberate infliction from say negligence, it is unnecessary in any consideration of whether the threshold criteria are satisfied because what the statute requires is something different namely, findings of fact that at least satisfy the significant harm, attributability and objective standard of care elements of section 31(2)."
- 20.2. Secondly, the Court must next 'consider whether there is a 'list' of people who had the opportunity to cause the injury. It should then consider whether it can identify the actual perpetrator on the balance of probability and should seek, but not strain, to do so²⁵. Only if it cannot identify the perpetrator to the civil standard of proof should it go on to ask in respect of those on the list: "Is there a likelihood or real possibility that A or B or C was the perpetrator or a perpetrator of the inflicted injuries?" Only if there is should A or B or C be placed into the 'pool'.²⁶
- 20.3. In considering whether a particular individual should be within the pool of possible perpetrators the test is not whether that individual can be excluded as a perpetrator, but whether there is a real possibility that he or she was involved. An individual should not be expected to prove his or her innocence beyond reasonable doubt.
- 20.4. While a Court should not strain to identify the perpetrator, to do so should promote clarity in identifying future risks to the child and the strategies necessary to protect the child from them and there should be long-term benefits for the child in knowing the truth if it can be ascertained. Plainly, the threshold criteria can be established by findings that a child has suffered harm whilst in the care of his parents, or other carers, without the need to establish precisely who caused the injuries. Nevertheless, where possible, and for the consideration of a child's welfare, it is desirable to identify who has and who has not caused the injuries.
- 20.5. If the Court identifies a pool of possible perpetrators which, ex hypothesi, will include more than one person, it should be cautious about expressing a view as to the percentage likelihood of each or any of those persons being the actual perpetrator. In the words of Thorpe LJ: "Better to leave it thus".

21. **All parties have been given the opportunity to be represented** within these proceedings. They have been able to put their case. Article 6 of the European Convention of Human Rights has been fully engaged.

²⁴ S (A Child) [2014] EWCA Civ 25

²⁵ Re D (Children) [2009] EWCA Civ 472 at [12]

²⁶ B (Children: Uncertain Perpetrator) [2019] EWCA Civ 575

22. Any person who might be adversely affected by my judgment, for example by being in a pool of possible perpetrators, has had the opportunity to be represented within the proceedings and been able to put their case.

THE FACT-FINDING HEARING

23. The fact-finding hearing commenced on 20 June 2022. The hearing took place over a recent train workers' strike, meaning the court, parties and witnesses had to be flexible as to how attendance was to be achieved to ensure the case could progress in a fair manner. The mode of hearing was fluid, with parties and witnesses attending court some days and attending remotely on others. The Intervenors also gave evidence out of turn to maximise the use of available time, but were later recalled on new issues being raised in the evidence of the parents.
24. Mother had raised the possibility that the mark observed on the Child's back was a birthmark. Dr S examined the Child again before attending to give evidence. Mother was present when the Child was examined. Dr S confirmed she did not find any mark on the Child's back in relation to the bruise identified in the child protection medical body map.
25. Mother's evidence concluded on Friday 24 June 2022, however she was recalled the following court day, Monday 27 June 2022, at the request of the Guardian having informed the parties through her counsel that she had failed to inform the court, when asked, that Father had also referred to the Child as an "attention seeking whore". When asked if there was anything else she had failed to mention she spoke about Father launching objects and making a small dent in the wall, as well as having slammed doors after the Child had been taken away from them. Under further cross examination on behalf of the Guardian, she also accepted that the family had been informed that Father had called the Child an attention seeking whore in January 2022, that they had all been told at the same time and it had been agreed it was best that this not come out.
26. When Father entered the witness box he accepted everything Mother had said that day, despite it not having formed any part of the evidence up to that point and despite both parents responding disputing the Local Authority's schedule of allegations which included an allegation that Father was verbally abusive to the Child and/or called her unpleasant names.
27. The court was informed that the Intervenors had been made aware of what Mother was going to say at the weekend. They were recalled on Wednesday 29 June 2022, save the Paternal Aunt's Boyfriend who was recalled the following day.
28. There were issues at contact on 28 June 2022. The court was asked to admit the note of a discussion between Mother and the contact supervisor on 29 June 2022. There was discussion about the parents having separated.
29. The parents attended together on 29 June 2022, despite the court being informed they had separated the previous day. Then, during closing submissions, Father sent a further communication to the social worker which read:

"Since I can't tell anyone else and I'm not allowed to tell anyone else.

I will tell you.

I protected [Mother] on that stand, because I whole heartedly love her and would take the fall for her, I'm not saying that she caused those marks, but I felt obliged to agree with all of her evidence of the "domestic abuse" even though it wasn't accurate at all, she's called me c***, w*****, as*****, t***, p**** amongst other names and she did give it back and didn't "sit there and take it".

I also covered for [Mother] the reason why [the Child] went to [Paternal Aunt] and [Paternal Aunt's Boyfriend]'s

I'd always protect my family [social worker] and I know how this can effect my life going forward.

I was by no means the best father and I whole heartedly agree that [the Child] should not be returned here until things are sorted out.

I just wanted someone to know the truth..

I'm sorry if this is inappropriate, wrong, illegal, but if I didn't say anything to anyone it would eat me alive for the rest of my life

Sent from my iPhone"

30. Father was asked if he was seeking to re-open evidence and made clear he was not. He accepted, through counsel, that he had not been open and honest with the court. Mother also accepted, through counsel, that she had called Father those names both in an argument when pregnant and also in an argument once the Child had been removed. No other party sought to re-open the evidence.

31. Throughout the trial the court has sought to ensure the parties' Article 6 rights to a fair hearing have been met.

KEY FEATURES OF THE EVIDENCE

32. The Court has read and heard a considerable amount of evidence. The fact that it does not mention something in this decision does not mean that it has not fully considered it. It is impossible to set out in this decision everything that has been heard and read. The decision must be based on proper evidence addressing all the realistic options for the child and containing an analysis of the arguments for and against each option. There must be an adequately reasoned decision which grapples with those factors and which gives a proper and focussed attention to those factors.²⁷ The basic principle is that the parties need to understand why the Court makes the findings and orders it does.

33. Within its analysis the Court has had the benefit of hearing evidence from the following witnesses:

- 33.1. Dr S;
- 33.2. Miss C, Student Nurse;
- 33.3. Miss Glancy, Ward Sister

²⁷ Re B-S (Children) [2013] EWCA Civ 1146

- 33.4. Miss D, Hospital Safeguarding Lead;
 - 33.5. Dr R;
 - 33.6. Miss P, Health Visitor;
 - 33.7. The Child's foster carer;
 - 33.8. Miss W, Social Worker;
 - 33.9. Mother;
 - 33.10. Father;
 - 33.11. The Paternal Grandmother;
 - 33.12. The Maternal Grandparents;
 - 33.13. The Paternal Aunt and her Boyfriend
34. The hearing bundle ran to nearly 1,500 pages. It is sufficient to say the bundle has been considered in its entirety.
35. There is a large pool of potential perpetrators, due to the number of occasions that the Child was cared for by other relatives in the short period up to her removal.
36. It is important that the evidence is considered in context. The parents have had to deal with the grief of the Child being removed at an interim stage as well as the pressures that a case like this inevitably brings. The behaviours expected from people grieving include:
- 36.1. Shock, meaning they are unable to listen to their legal advisor and unable to make decisions
 - 36.2. Fear and anxiety, meaning they are unable to deal with the legal process
 - 36.3. Searching, with an inability to accept the reality of the situation
 - 36.4. Anger
 - 36.5. Sadness and depression, where they may not answer their legal representative's calls or engage with the proceedings
 - 36.6. Acceptance, where they are capable of listening to advice and giving constructive instructions
 - 36.7. Reinvestment and growth
37. Miss W, Social Worker, spoke to Mother following the referral to the Local Authority and asked her to take the Child to hospital. At the time only the marks to the legs had been noted. She recorded Mother's explanation that Father dropped a bottle on the Child's leg and this is what caused the marks. Mother was stating she had been upstairs at the time and Father came upstairs to tell her what had happened. The parents were asked to take the Child to hospital for a medical. The Child remained at hospital overnight, with Father remaining with her. The following day concerns were raised about Father's behaviour on the ward and Miss W contacted Mother, asking her to return to the hospital. Mother was reported to state things had gone too far (which appeared to be a comment about the ongoing investigation) and that Father does get frustrated at times.
38. Miss W spoke to the parents on 28 October 2021, at which time Father confirmed he was aware Mother had raised a concern that he was a bit heavy-handed. Father was also recorded as stating he had spoken to a doctor about the Child staying with relatives due to Mother needing a break due to her mental health. Father identified they would ask friends to help out when overwhelmed. Mother explained she thought Father's heavy-handedness was because he is a new dad.

She also spoke about Father worrying about bonding with the Child and that his family was frequently visiting, which she felt was disrupting for the Child.

39. Dr S conducted the child protection medical. She reported Mother as stating that Father had taken the Child down for a nappy change at 4am on 27 October 2021. When he brought the baby back up to her he told her a bottle had dropped on the baby's leg, knocked over by the dog's tail. As the baby was fine and not in discomfort she said she would look at it in the morning. When she looked at the Child in the morning she noted a mark on her leg, but did not feel anything further was needed. Dr S recorded Mother having a history of depression and anxiety, and currently having post-natal depression.
40. Father was reported to have told Dr S that the bruise occurred to the left leg whilst changing her nappy on the sofa, when the dog jumped up and whipped his tail, causing the spray bottle to land across the baby's legs. He stated she cried immediately, but with a silent cry. When Father was informed of the other bruises he speculated whether the dog could have trodden on her as this had occurred previously. Father informed Dr S that many of the overnight stays with family members had been due to maternal mental health concerns and Father having to help Mother with "breakdowns".
41. The parents were reported to explain the bruises to the thigh had occurred following the spray bottle falling, the bruise to the calf could have been caused from the same incident and they were unable to explain the other bruises. Dr S reported there was a possibility the bruise to the thigh may have been caused as explained, but required greater clarity such as how the Child was placed and where and how the bottle fell on her leg, but the same event would not have caused the bruise to the calf which was on the opposite leg on the outer side and there was no explanation for the other bruises. She stated the bruises in a 3 week old child with no explanation were highly suspicious of non-accidental injury and cited the RCPCH Safeguarding companion which says that:
 - 41.1. The pattern of unintentional bruising is strongly influenced by the child's level of independent mobility, with non-mobile infants least likely to sustain bruises. Unintentional bruises in pre-mobile infants are rare, with a prevalence of <1%.
 - 41.2. Infants who have yet to acquire independent mobility (rolling/crawling) should not have bruises without a clear explanation.
42. Dr S's addendum report confirmed, "Bruises represent blunt force trauma such as impact of hands, fingers, implement. It is not possible to determine the exact force required to cause a bruise in a particular child or individual as the appearance is dependent on many factors such as the laxity of tissues in the individual... Normal handling of the baby should not cause bruises... Bruising is also a widely reported "sentinel" injury in babies and younger and its recognition is vital in prevention of more severe abuse in the future".
43. In oral evidence she confirmed Mother had been present when she examined the Child on 27 October 2021. She had been examining children for over 15 years and was confident what she had seen was bruising. She said that Mother had not raised a possible birth mark at the time of examination and discounted the abdominal mark as caused by the umbilical cord or a nappy. She did not rule out

the bruise being caused by a car seat. She said that Father had not mentioned the dog jumping on the Child when she spoke to him. She also confirmed there were no scratches around the bruises consistent with a dog's paws/claws. She accepted wrongly writing down that the injury was to the right of the stomach when it was to the left. She was asked about the bottle causing bruising in more than one place and said it was unlikely.

44. Miss C had provided a statement to the police about the night of 27 October 2021. Father and the Child were together in a cubicle, described as like an individual room. As she was going to another patient's room she said she had heard a cry, peeked in the window to see if everything was OK and saw Father pushing the feed bottle into the Child's mouth as the Child was screaming, then shouting "F***". She told the nurse in charge, Miss Glancy, who was walking past. The nurse went to speak to Father, who reported the Child as being aggressive on the bottle. She took the Child from Father, at which point the Child stopped crying, settled to take the bottle then fell asleep before she could take the bottle. Miss Glancy's statement to the police confirmed she did not witness Father do or say anything untoward to the child.
45. In oral evidence, Miss C accepted she had been looking through a door and could not see properly. She spoke of the Child's cry being particularly loud and screechy. She could not really make out what Father had been saying save for the F***, which was quite loud. She agreed it would be described as in frustration.
46. Father's first statement maintained the bruise to the thigh was caused by the spray bottle falling on the Child, having been knocked off the worktop by the puppy who jumped up whilst he was changing the Child. While Father had apparently acknowledged the bruises in hospital, he stated Mother had informed him the mark to the lower back could be a birthmark. He also attributed the mark to the abdomen as from the umbilical cord. He categorically denied being verbally abusive towards the Child, stating he had said "what the f*** am I doing wrong" as a question for the Child out of frustration. He also completely denied being heavy-handed with the Child, as well as stating Mother was not suffering from mental health problems previously.
47. Mother's first statement stated she accepted Father's explanation of how the injuries had occurred and she believed it to be an accident. She referred to the Health Visitor (wrongly stated as the midwife) deciding she may have post-natal depression and disputed any mental health history. She accepted the Child was cared for by the Paternal Aunt and her boyfriend on 24 October 2021 because Mother felt overwhelmed. On the morning of the incident she said Father woke her around 4am and had told her the dog had jumped up, his tail knocking the spray bottle (misinterpreted as a milk bottle) across the Child's legs, and it may have been possible the dog had trampled on the Child. She questioned whether the mark to the abdomen was caused by the nappy being too tight or the dog trampling on the Child during the accident.
48. When the Health Visitor arrived Mother said Father was still in bed asleep, that the Child was in a vest and she had nothing to hide. She stated the reference to Father being heavy-handed related to one incident which was due to a lack of knowledge and he did not harm the Child. She also felt the social worker had

misconstrued her comments about Father who "has not verbally abused his daughter with malicious intent but in a loving way..." and had called the Child a "little bugger" but it wasn't abusive in any way. She referred to her comments to her friends as having a moan because it was mainly her doing the night feeds and she felt fed up and exhausted. She also stated she did feel at the time that Father was not as supportive as he should have been.

49. Father's second statement stated he had asked the doctors if there was any need (for Mother and Child) to stay at the hospital and the reply was in the negative, as long as they returned for additional checks. He had asked his sister to look after the Child on 24 October because Mother was upset that she may have post-natal depression. On the night of 26/27 October 2021 he stated the Child had been sleeping in her travel cot, Mother having gone to bed at approximately 11pm. The Child woke around 3:30am and was crying, so he put her on the sofa to change her nappy. He said the dog had jumped up in excitement right over the Child and he realised the spray bottle had fallen onto the Child's legs. He reported pushing the dog off the sofa, picking up the bottle and placing it back on the side. He said it was possible the dog had trampled the Child. The Child was reported to have been crying and he settled her. At around 4am he said he went up to the bedroom and woke Mother up, vaguely explained to Mother what had happened and asked her to check the Child over. Later that day he said he had awoken to a commotion downstairs and he saw the Health (Visitor) storming out of the house and Mother crying. Mother advised him the Health (Visitor) had told her the Child should be taken to hospital and Mother had said she did not feel there was any need. Later that afternoon he stated a police detective had rung Mother and informed her either she could take the Child to hospital or she would be made subject to a Police Protection Order. He repeated that he had given Mother limited information at 4am, when she was half asleep. He also characterised the family members caring for the Child as because they were excited to spend time with and care for her.
50. No messages were found on Father's phone, but there was evidence WhatsApp was, or had been previously, installed on the handset. The report on the Mother's phone is dated 9 March 2022 and included messages as follows:
- 50.1. 6 October 2021 –
- 50.1.1. Mother: Please don't spend all night on bloody Xbox would actually like to spend some sort of time with you while your at home!
 - 50.1.2. Father: I know I wont
 - 50.1.3. Mother: Well it's almost midnight!
 - 50.1.4. Father: It is... if she cries I will get her
 - 50.1.5. Mother: not asking for that I'm asking for you to spend time with me!
 - 50.1.6. Father: But she just doesn't want to settle for me, don't know what I'm doing wrong to be honest?... Maybe too heavy handed?... I don't know
 - 50.1.7. Mother: Yu have no patience that's why!
 - 50.1.8. Father: True... 0 patience... Get angry in 0.4 seconds
- 50.2. 8 October 2021 –
- 50.2.1. Friend: Oh no! Was she up most of the night?XXX
 - 50.2.2. Mother: Yeh it was really bad and (Father) had a breakdown he feels like she don't like him and that he can't bond with her and he gets to frustrated when he can't calm her down, I woke up to him crying at the end of the bed xx

- 50.3. 12 October 2021 –
- 50.3.1. Mother (to friend): Feeling okay today thank you and she's fine we had a little incident last night her bottle of lotion fell on her ear and it's a bit bruised but she's okay (Father) was really beating himself up about not catching it in time, and I also have the health visitor coming over again today x
- 50.3.2. Father: That's been paid for hasn't it?
- 50.3.3. Mother: No
- 50.3.4. Father: WHY
- 50.3.5. Mother: Because it wasn't in stock
- 50.3.6. Father: I sent you over a grand to pay for it... So Where's the money?... And you did lie to me... Because you said you wouldn't spend it and you did
- 50.3.7. Mother: Are you f***ing serious... F***ing stay away from us if your smashing s*** up
- 50.3.8. Father: You can cancel that order... It's not happening... 337 f***ing pound disappeared and that's exactly why I asked for it back but noooo you wanted to keep it and I KNEW you would spend it... You can explain to my Dad why you need that money again
- 50.3.9. Mother: I've cancelled it I told you the money got spent
- 50.3.10. Father: No you didn't... You lied to me
- 50.3.11. Mother: Yes I did
- 50.3.12. Father: Me... No you didn't...
- 50.3.13. Mother: Yes I did
- 50.3.14. Father: I'm so pissed off with you it's not even funny...
- 50.3.15. (About an hour later) Father: Baby, just be honest with me and tell me. Did you spend £1000 do we not have anything paid for? The TV unit? The stand antler thing?
- 50.3.16. Mother: Come home then we will talk. I'm not doing this f***ing bull s*** over text you have left us alone I get that you needed to clam down but you just walked out and told me to do one!
- 50.3.17. Father: I will when I'm ready, I'm not in the wrong, you are
- 50.3.18. Mother: Great so now I have to wait all night for you to come home when you feel like it. I'm so f***ing done I have said sorry I've cancelled the order I did tell you the money was spent you clearly don't remember me telling you I'm sick of being spoken to like I'm nothing what do you want me to do when I get money again I'll replace it it's not like you ever ask for money then spend it on takeaways or anything! I'm done
- 50.3.19. Father: No (Mother), don't try and turn this around. You've said sorry, I didn't say I'm done, I just didn't want to argue with you in front of (the Child). I'll be home soon
- 50.4. 14 October 2021:
- 50.4.1. Mother (to friend): Hey hun nappy rash has gone it's not the sleep that's bothering me just things are a bit rough latelyxxx
- 50.4.2. Friend: Whats up girl xx speak to me xx
- 50.4.3. Mother: Postpartum depression and anxiety when I take her out or just with how (Father) is with her xxx
- 50.4.4. Friend: I can relate to that x
- 50.4.5. Mother: He's not bonding with her at all and really don't want to do anything with her xxx
- 50.4.6. (Later) Mother: ... it's really bad he even name calls her xxx

- 50.4.7. Mother: Yep he's being an arse always on Xbox never want to do anything even ignoring the dog xxx
- 50.4.8. (Later) Mother: He's not bonding with her at all he hates her xxx
- 50.5. 15 October 2021 – Mother at 6:33 am: Are you f***ing serious u have been up all night yet again on f***ing Xbox
- 50.6. 20 October 2021 –
- 50.6.1. Maternal Grandmother to Mother: Morning, I'll send the phone money as well so £82.00 and I will keep the bottles of baby milk here for emergencies. You actually still owe us £60 which we will let go this time but please don't borrow of you can't pay back xx
- 50.6.2. (Later) Father: She needs a change...
- 50.6.3. Mother: 😊
- 50.6.4. Father: I changed her literally 15 mins ago ... stop taking your frustrations out on me. I get your ill but that doesn't give you a free pass to treat me like s*** x
- 50.6.5. Mother: Well that sounds familiar... Guess you're staying up all night
- 50.6.6. Father: No
- 50.6.7. Mother: Sure
- 50.6.8. Father: Can assure you no, I'm tired
- 50.6.9. Mother: Hmmm
- 50.6.10. Father: I will if you keep on lol
- 50.6.11. Mother: I'm just saying you always say you won't but u end up doing it anyway
- 50.6.12. Father: I've cleaned, walked (the dog), got his food, looked after (the Child) the majority of the day, I think I deserve some Xbox
- 50.6.13. Mother (to friend): He's still being an absolute arse to (the Child) and he thinks just because he's helped me out a little bit for one day he can demand sex and Xbox xxx
- 50.7. 21 October 2021 – Mother (to friend): She's staying at my mus for a couple of days while I catch up on things and sleep unfortunately after 2 years of not being I'll I now have a really bad cold xxx
- 50.8. 24 October 2021 –
- 50.8.1. Mother (to friend): She's just woken up with me trying to do dinner and (Father) is being a f***ing a*** getting frustrated with (the Child) crying and moaning cause he's got s*** to do on Xbox I'm absolutely livid (19:08:00)
- 50.8.2. Mother (to friend): I told (Father) he needs to be f***ing careful and apparently that's was enough for him to get of the Xbox and sort (the Child) out he needs to learn quick (19:11:21)
- 50.8.3. Mother (to friend): And he's just handed her back to me cause he's going to lose his s*** f*** sake!!!! (19:21:41)
- 50.9. 27 October 2021 –
- 50.9.1. Mother (to friend): If I ever get there health visitor just turned up again and now (Father) is getting investigated because (the Child) has 2 bruises on her legs xxx (14:16:48)
- 50.9.2. Mother: ... she's in the phone to her manager so she can demand we take (the Child) to A&E xxx (14:17:57)
- 50.9.3. Mother: ... this woman is f***ing crazy really blowing things out of proportion and I havnt given consent to anything xxx (14:20:23)
- 50.9.4. Mother: She's fine but social services have demanded we take her to a and e because (Father) dropped a bottle on her legs by accident and

she had bruises and if we don't take her there will be consequences xxx
(16:33:40)

50.10. 29 October 2021 –

50.10.1. Mother (to friend): And his family want to have a meeting with us too because there all fed up

50.10.2. Friend: With what?xxx

50.10.3. Mother: With the drama cause apparently they get dragged into everything when they don't xxx

51. The messages identified an injury sustained to the ear of the Child whilst in Father's care at around 10 days old. It was not something which had been reported before. Dr R regarded it as unusual for an accidental injury, because the ear was tucked away and not usually injured. He said he would expect a carer to seek advice if there was a bruise to a 10 day old baby.

52. Dr R, consultant paediatrician, provided a report to the Court dated 12 May 2022. He confirmed accidental bruising was seen in less than 1% of non-mobile babies. He explained, from his research and experience, some features of accidental bruising would be:

52.1. Small, 1cm or less

52.2. Front of the body

52.3. Single

52.4. Over a bony prominence

52.5. Credible history of a memorable event

52.6. Credible history of aftermath

52.7. Compatible with the child's developmental stage

Whereas, some features of inflicted bruising were:

50.8 Large (more than 1cm)

50.9 Multiple, may occur in clusters

50.10 Occur on the soft parts of the body

50.11 Occur away from bony prominences

50.12 Commonest site is face, head and neck, followed by buttocks, trunk and arms

50.13 Often found with other injury types eg fractures

50.14 May carry the imprint of the implement used

50.15 No credible history of a memorable event or aftermath

50.16 Not compatible with the child's developmental stage

53. Dr R regarded the:

53.1. Injury above the knee as large, with a shape that most likely carries the imprint of an implement and could have been caused by a bottle falling onto the infant as a single injury. Father's description of the aftermath was regarded as consistent with an injury having occurred. As an isolated injury it could have been caused accidentally, but when considered with the other injuries it could have been inflicted;

53.2. Injury to the calf as unlikely to have been caused by a bottle falling onto the infant. On balance of probabilities it was inflicted by a gripping/squeezing action of direct application of force;

53.3. Injury to the lower back as large which, as an isolated injury, could have been caused by a large plastic bottle falling on the child. On balance of probabilities it was inflicted by a gripping/squeezing action of direct application of force;

- 53.4. Lower abdomen injury as large, with the image suggesting 2 parallel linear bruises. As an isolated injury, could have been caused by a large plastic bottle falling on the child. On balance of probabilities it was inflicted by a gripping/squeezing action of direct application of force.
54. He summarised that considerable force would have been required to cause the injuries described. A perpetrator would have been aware that excessive force was being applied and a non-perpetrator, if close, would have seen a distressed infant and noted bruising when caring for the Child.
55. In oral evidence he confirmed he was the author of a textbook on injuries to children and that bruises are the most common injuries. He accepted Dr S's diagnosis of bruising. He explained a bruise is the escape of blood from ruptured blood vessels. To rupture the blood vessels would need an impact, twisting or gripping force. He did not think a nappy or car seat would cause a bruise unless it was extremely tight, in which case the child would cry out from distress and it would be a memorable event. "Memorable event" was a consistent theme when asked about possible alternative causes, being clear he would expect a credible account of the event and aftermath. He spoke about the lack of detail in explanations being put forward by the parents and that without detail he could not apply forensic analysis. He also said Father's statement the dog may have trampled on the Child was an inadequate account of a memorable event. While he accepted the calf bruising could have been consistent with being caused by the dog, he pointed to the lack of history and said it was unlikely. He was clear he would have expected the parents to take medical advice, even at 4am, if the dog had trampled on the baby and bruising had been caused. Forensically he explained where injuries are inflicted the carer tends to wait to seek advice in the hope there would be improvement, whereas with accidents advice is normally sought immediately.
56. He did not regard the speed with which the bruises resolved as reflecting the severity or mechanism. He also stated a clumsy, inexperienced parent's handling of a child would not be sufficient to cause bruising. Where a bruise was caused, he stated the carer would have known excessive force had been applied.
57. Dr R explained that the categorisation of a bruise over 1cm as large refers to children, with no figure for a pre-mobile baby. He described the bruise to the torso as 2 parallel lines. He regarded any bruise as significant and highlighted the very large bruises the Child had. He also stated that to not obtain care constituted medical neglect.
58. Miss P, the Health Visitor, gave oral evidence confirming she had not kept written notes at the time of the visit and had written up her notes later. She had no other concerns except the marks to the Child. The Child was in a vest. Once the first bruise had been seen she asked to inspect the Child, but said Mother had declined. She was clear Mother had told her a bottle of milk had fallen on the Child. While Mother had said Father called the Child names, Miss P did not think Mother had detailed the names used. She said the dog was not mentioned by Mother, despite asking about the first mark. The second mark to the legs was only seen when the Child was put back down in her crib. Miss P had informed Mother she was going to call Children's Services, and said she was surprised when Mother gave no response.

59. She regarded Mother's comments about feeling unsupported by Father as quite uncommon at such an early stage. It was put to Miss P, on Mother's behalf, that Mother's comments about Father were because she felt pressured at the time, but she explained that the purpose of the visit was to support Mother and when she arrived Mother had launched into a long complaint about Father. She confirmed she had not met Father and had been told, on both visits, that he was upstairs sleeping. At her first visit, on 12 October, she had no recollection of Mother mentioning any injury to the Child's ear. On the second visit, she said Mother had told her that Father had been up till 4am playing on the Xbox.
60. The foster carer gave evidence that she saw bruises to the Child's legs on 29 October 2021. She did not fully undress the Child until 31 October 2021, at which time she reported there was no other bruising to the Child's body. She had not observed any birth mark on the Child.
61. Miss W was from the Joint Child Protection Investigation Team. She had spoken to Mother on 27 October 2021. She accepted it may have been assumed that the reference to a bottle was a baby bottle instead of a spray bottle. She did not recall any mention of the dog being involved.
62. Statements made by the Intervenor to the police were all consistent in stating the Child had stayed with them to give the parents a break, there were no concerns with the Child in the parents' care and that no injuries had been seen. The Maternal Grandmother talked about things being escalated to a point it doesn't need to be at. The Maternal Grandfather spoke of the allegation that either parent may have caused harm to the child had been blown out of proportion. The Paternal Aunt's Boyfriend was criticising the professionalism of the midwife. The Paternal Grandmother said she "can't believe that this investigation is ongoing. I think it's a terrible misunderstanding or mistake." The Paternal Aunt sought to criticise social care and medical professionals
63. The Maternal Grandparents were assessed as potential carers for the Child. No mention was made in the viability assessment of any concerns. They were recorded as describing their relationship with the parents as having no conflict and stating they did not envisage any issues or problems managing contact. They disagreed with the concerns for parents care of the Child and did not see them as a risk. The Maternal Grandfather was recorded as believing the concerns had been blown out of proportion, and that if any injuries had been caused by the parents this was not intended. He described Father as gentle.
64. The Maternal Grandfather gave evidence Mother had not made any complaints about Father to him and he had not really been aware of any tensions in their relationship. He had not read the messages in the bundle and said he did not like using social media. He definitely felt it had become a witch hunt, with all of it being blown out of proportion. He was specifically asked about Father calling the Child unpleasant names and said he could only take what M had said in her statement.
65. The Maternal Grandmother said she had no worries about the parents' relationship. She confirmed she had looked at the parents' messages and there was nothing that concerned her. Any complaining by Mother was put down to

daily relationship complaining. She had not been aware of the accident to the ear and put the Child staying with family members down to the parents not getting sleep and the family being happy to help. She accepted Mother had spoken to her about Father calling the Child names, but said Mother did not elaborate and she did not ask. While she believed Mother, she also emphasised it was not something she had personally seen.

66. The Paternal Grandmother was also assessed. She was recorded as stating Father was a very good and protective father. She was of the view Father would not intentionally harm his daughter and there had not been any concerns in the past about his behaviour of handling of the Child in the short time they had her.
67. When the Paternal Grandmother first gave evidence she said she had read some of the messages passing between the parents, but had not seen anything which would cause her concern. She described Father as a generally patient, easy-going young man, although, like everybody, he could get frustrated sometimes. She said she had not been aware the parents were experiencing difficulties in their relationship. She described being keen to look after the Child and offering to do so to give the parents a chance to go out. She also stated she would normally communicate with Father by Whatsapp messaging.
68. She was asked about Father calling Mother names and said Mother could give as good as Father, but later accepted she had not heard Mother calling Father names and he had not reported Mother had done so to her. She also said Father will only have a temper when provoked, but she had not known he had previously seen a couple of professionals about anger management. She described Father's behaviour smashing and throwing things as probably exaggerated. She felt the whole process was geared towards Father and at no point had anybody questioned Mother's behaviour and whether she gets upset with Father. She described Mother as very demanding, wanting everything done immediately and not doing much around the home. However, she also accepted they had not given anything for people to look at about her.
69. She also said Mother had lied in the witness box when Mother had said all the family knew Father had called her a c***. She had known Mother was going to change her evidence, because they had been told at the weekend. She spoke about the family being shocked Mother was going to say it.
70. The Paternal Aunt talked about how excited they were to have a new baby in the family and taking the opportunity to spend time with her. She spoke about the parents' relationship being really good and Father having a great temperament. She also accepted he could lose his temper, like everyone does. She did not regard the parents' messages as particularly concerning. She said there had been no repercussions to her comment about what she would do to Father if he had caused the injuries, denying recollection of any clearing the air as Father had told the police. She could not understand why the Child had been removed from the family for a couple of small marks they had told them about. She accepted she was relying on what Mother and Father had told her, stating she knew they were not lying.
71. She was asked about Father calling the Child unpleasant names and said if it were the case it would surprise anyone as it was not the nicest thing to do. She

regarded the Local Authority as using every little thing to build up Father's bad character, and said if you took away the Child's age you would not find any parent who does not occasionally call their child an unkind name such as t*** or p****.

72. The Paternal Aunt's Boyfriend gave evidence the parents were struggling with sleep, despite having a routine of Father doing nights and Mother doing the day. He had dropped round quite a lot to the parents and said he never had any concerns.
73. There is a letter from Mother's GP dated 9 February 2022. It confirms a consultation in July 2019 when symptoms of depression, poor sleep and isolation were discussed. Mother was reported to be expressing thoughts of self-harm at the time.
74. Mother and Father were supposed to be the last witnesses. Mother gave evidence that it was common for her to swear. She spoke about her breakdowns as feeling very tearful and needing a good cry. She accepted she had discharged herself from hospital against the advice of the nurses. She said she had felt pressured to talk to the Health Visitor about things she was not comfortable with, although this was not in her witness statement. She confirmed bathing the Child on the evening of 26 October 2021 and not seeing any injuries. She said Father had woken her at 4am, and the Child had been downstairs with Father before that. He had apparently informed her a bottle had fallen across the Child's legs and she had a quick scan for injury. She said she was still half asleep and did not fully recall the conversation. The following morning she said she had checked the Child and there were 2 red marks, to the calf and thigh, despite telling the police she had forgotten about the incident. She did not ask Father for more information because he had been asleep until the Health Visitor left. She apparently thought about asking the Health Visitor to check the marks, but said the Child was settled and not in any discomfort. When the Health visitor saw the first bruise Mother stated she told the Health Visitor there was a second.
75. Mother described Father as a patient man, although he had a temper. She was asked what names he called the Child and she said there was only one, little bugger, and emphasised it was never at or to her. She said she had not been present when the Child's ear had been injured, but Father told her he had dropped a tube of Bepanthen cream on the Child's ear. She was asked about a message saying it was a bottle. She was clear in stating she had informed the Health Visitor of the injury.
76. Mother was asked about the texts about Father being about to lose his s***. She had been cooking dinner and said Father had struggled to settle the Child.
77. Mother stated Dr S was the one who had suggested the mark to the Child's back could be a birthmark, something which had not appeared in her witness statement. It was suggested she was making it up and she emphasised she was in Court and does not lie.
78. Mother spoke of how well the dog's training had been going and how brilliant he had been with the Child. It was suggested it was surprising it was being said the

dog had trampled the Child and she referred to it taking one swift paw movement to catch a tiny baby.

79. The parents had rowed because Mother had been given money to buy furniture for the new house and had spent some of it. She spoke of Father having a temper tantrum and her hearing things banging around and onto the floor. However, she had told the police they never argued and described this as not a full-blown argument, but a disagreement.
80. It was put to Mother that she had given up her job, moved away from her friends, was living in Father's house, was reliant on him for transport and was financially dependent on him. She denied he was controlling of her. She accepted the Child was the most important person in the legal process and was sure she was telling the Court everything she knew.
81. It was put to Mother, on Father's behalf, that he had taken on a lot of the nights because he would stay up all night, as well as helping during the day. Her texts to her friends had included a degree of exaggeration. She was clear he had used no more offensive words about the Child than little bugger or pain.
82. The Guardian asked Mother about the fact she had not woken Father while the Health Visitor was there, and she said he was waking up as soon as the Health Visitor was leaving. She denied being scared of waking him. It had been 10 hours after Father had apparently woken her to say the Child was injured and she said she had not woken him so he would have a clear mind. She also denied minimising the issues in the house. She accepted Father had a temper to an extent, but said it was mainly vocal. She also said he may knock a bottle off the side, but only rarely. She had not mentioned it because she did not think it was relevant. She was also asked about the texts about Father smashing things up, but said she had heard things fall to the floor and not smash. She said he could not have swiped the bottle off the side onto the Child because he would never harm her. She had failed to mention any of this to the police in interview because they had "never asked". She agreed there were occasions when Father had lost control. She also accepted the texts showed an occasion when Father had looked after the Child for 13 minutes and handed her back because he was not coping, referred to in the texts as "losing his s***". Father had then left.
83. Mother's text about the ear injury clearly stated a bottle had been dropped on the Child. She said it could have been a mistake or a typo, but it was a tube. Neither of the incidents when the Child was injured in Father's care caused her any concern.
84. Mother accepted she had spoken with Father about his temper and Father was worried things could be escalated and taken out of proportion. She denied making a conscious decision to hide the information and said she had been honest from Day 1.
85. The texts identified the family had wanted a meeting around the end of October 2021. Mother could not remember the meeting. Near the end of her evidence, on being asked whether she had gone into the relationship too soon, Mother said she had wanted to take risks and enjoy what was left of this miserable earth.

86. The parents spoke over the weekend. They attended together on the Monday and Mother went back into the witness box. She told the Court Father had referred to the Child as an attention seeking whore twice in a conversation with Mother. The Child was in the room at the time. She said she had not mentioned it on the Friday because she was worried about his and the rest of the family's reaction. She did not categorise it as a lie, just withholding information when she had not told the Court on the Friday. She said she was sometimes frightened of Father's reactions and that he had made a small dent in the wall from launching objects.
87. Father's advocate asked no further questions. In answer to questions from the Guardian, Mother accepted the family had known about him describing the Child as an attention seeking whore because it had been discussed as a family meeting in January 2022. She described her parents' reaction as disgusted and them saying it was not acceptable. Everyone had apparently had something to say about it. She said that in a way a decision had been made to withhold the information by everyone.
88. She spoke about Father having a very loud voice and her not finding it comfortable when he kicked off. Her strategy was to sit there and wait for him to finish. There had been an incident before the Child was born and she had discussed it with her parents. She said he had called her a c*** quite a few times, that he had also called her irritating and annoying and that he never apologised for anything. Apparently, she was always wrong in any disagreement. Her parents had said a few times to come home, but she needed to see this through and could not leave. She told the Court Father had seen 2 professionals on 2 occasions since the Child was removed about his anger issues, but did not know if he had followed it up. She agreed that not telling the professionals risked the Child going back and not prioritising her safety.
89. Mother had said she was scared on the occasion Father left. When clarification was sought, she confirmed she had been scared he would not come back. When he was banging around he was in an agitated state and she was not able to predict what he would do.
90. Mother concluded her oral evidence before Father gave evidence. Father accepted he had referred to the Child as an attention seeking whore and Mother's description was correct. He believed he had caused the bruise to the abdomen and back. He accepted losing his temper with the Child, but denied hitting, gripping or squeezing the Child. He accepted Mother's description of his temperament and his behaviour towards her.
91. Father was asked about being unable to care for the Child for 13 minutes without losing it. The messages talked about him wanting to do things on the Xbox. He denied letting this take precedence over the Child. However, he also said he did the night shift and referred to the day as his time. He was spoken to about the family caring for the Child and said he was not coping, yet he had messaged the Paternal Aunt asking her to care for the Child because Mother was not coping.
92. Father talked about sitting on the sofa, which was an L-shaped sofa, with the Child on the short end. His Xbox remote was in front of him. He said the dog had jumped up on the sofa and he had pushed him away, at which point the dog's

tail caught the bottle. He quickly grabbed the Child to get her out of harm's way. He knew she was hurt by how she had reacted. He said he had tried to get her away from a dangerous situation and may have been heavy-handed.

93. He had been worried and concerned the information about him would paint him in a bad light. He had not wanted the Court to know of his behaviour because he was worried about the implications. He agreed he had been gaming, but twice said he had paused the game using a button on the Xbox so he could change the Child's nappy. He also said he had a headset on, which had been connected to his controller by a cable. When the Court sought clarification on this, he accepted he had been playing an online multi-player co-operative game and there was no pause button. He had put down the controller and relied on the other member of his team to protect him. He talked about the possibility that the dog had stood on the Child and could not provide any details. Having earlier accepted he had been awake and alert while gaming, he then explained he had not checked the Child for injuries after the incident because he was so tired by that time. Having taken the Child up to Mother and telling her what happened, he said he was so tired he went to sleep and did not know if Mother had checked the Child.
94. Father stated he had come downstairs while the Health Visitor was still there. It was put to him that Mother had not mentioned this. It was also put that Mother had told Miss W, who she spoke to after the Health Visitor left, that he was still in bed asleep.
95. He accepted it was entirely plausible he had said f*** in the hospital. He agreed he was pretty cross with the student nurse reporting it and had wanted to talk to her about it. He likened it to when he went round to clear the air with his sister, which the sister had not recalled. He said he had full control when he was angry. He claimed the dent in the wall had been caused when he was looking for something and flung his Xbox controller into the air. Later he referred to flinging it when angry. He said he was in control of his anger to the point of knowing if he was knocking things off the side or throwing things and would be doing it for effect, rather than having lost control. He said he had called Mother a c*** because she had said something that "pierced my very soul" and he was angry with her. He knew that word would hurt her the most.
96. Father was asked why he had not mentioned the dog trampling on the Child in his police interview. He complained he had spent 16 to 17 hours in a police cell and it was hard to recall events. He had not told the police he had woken Mother up. He also told the police he had checked the Child over after the incident.
97. The messages from Mother to Father on WhatsApp were not on Father's phone. He denied deleting WhatsApp.
98. Father agreed there was a pact not to tell anyone he had called the Child an attention seeking whore. However, he said he could not recall the conversation. He also said it was his decision not to tell professionals about his temper and he had persuaded Mother to go along with it. He said that Mother always being in the wrong reflected the nature of his relationship with her. He accepted it was not a healthy relationship. He accepted if he had been on duty and a person had described their relationship in the way he accepted he would have categorised it as abusive and controlling. However, he denied always taking things personally

and said Mother does, as well as her not liking to be criticised. He also said the Paternal Grandmother and the Paternal Aunt had spoken to Mother that weekend and were aware what Mother was going to say.

99. Father was asked about lying. He said withholding information was not lying per se.
100. Following the conclusion of Father's evidence, Father then asked to go back into the witness box 7 minutes later. When he did he spoke about being flabbergasted that nobody had mentioned that Mother had her own bank account.
101. The second time the Paternal Grandmother gave evidence she accepted there had been a family meeting on 3 January 2022, which lasted for around a couple of hours. The Paternal Aunt had reportedly expressed upset that the parents had got pregnant so quickly, had a dog and got together so quickly. When asked about hearing Father had called the Child an attention seeking whore she sought to answer an earlier question. When asked again she said she had been extremely shocked and ashamed it had come out of her son's mouth. However, she also said she had not heard Father say it. She accepted it had stuck in her memory for a while and she knew Father calling the Child names was a concern, but said she had not remembered he called the Child that when asked about names the previous week. She later said she had not said about it because she had not heard him say it, she had just been told he said it. She did not regard the family meeting as unusual and had not felt a need to mention it before. She accepted calling the Child an attention seeking whore had probably not been mentioned in witness statements or oral evidence because they thought it would be quite damning for Father. She accepted withholding the information, but denied an agreement within the family to do so. She agreed withholding that particular name was coincidental. She categorised it as a flippant remark, then said it was not directed at the Child.
102. The Maternal Grandfather went back into the witness box and confirmed he recalled a discussion about Father calling the Child an attention seeking whore, around 3 January 2022, at a family meeting. He then claimed trouble hearing and he had been told by the Maternal Grandmother about 5 minutes later. He also said he had trouble with his memory and could not recall everything that was discussed, including whether they had discussed Father's temper. He also said he had forgotten the attention seeking whore comment until Mother had said it in evidence on the Monday. He said he recalled the word c*** being bandied about. He denied any agreement not to tell the Court about name calling.
103. When the Paternal Aunt was recalled she denied recalling Father having referred to the Child as an attention seeking whore. She said it had slipped her mind, but accepted there had been a family meeting on 3 January 2022. She could not recall her reaction when Father admitted calling the Child an attention seeking whore. She continued to refer to parts of the proceedings as a bit pathetic. She spoke about there being an agenda from the beginning and a vendetta. When it was pointed out that the proceedings had discovered how Father spoke of the Child, that Father had regularly been abusive to Mother, that Father has a temper and throws things at the wall and the parents' relationship was unhealthy, she called the Guardian's advocate patronising and rude. She

described Father's admissions to the family making a decision to withhold information as trying to protect Mother. However, by the end of her evidence she accepted there was a risk for the Child to go back into the home environment.

104. The Paternal Aunt's boyfriend accepted being at the 3 January meeting. He said he did not remember the attention seeking whore comment being said. He accepted the parents had been struggling, but at no point did he think they had intentionally harmed the Child. He accepted hearing how Father was in the relationship with Mother, but said there must have been some back and forth. While he was slightly shocked by the revelations about Father's language, he spoke about maybe needing to be an investigation into Mother's language.

105. Each of the Intervenors provided a witness statement to the police in January 2022, after the date of the family meeting. The Maternal grandparents and the Paternal Aunt's Boyfriend gave statements on 10 January 2022, The Paternal Grandmother on 21 January and the Paternal Aunt on 26 January.

CLOSING SUBMISSIONS

106. Local Authority –

106.1. did not invite the court to find there was a real possibility any of the intervenors responsible for the bruises. They accepted the Maternal Grandparents' evidence there were no bruises to the Child on the night of 23/24 October, and none observed by the Paternal Aunt or her Boyfriend on 24 October.

106.2. If the Court accepts Mother's evidence there were no bruises when she bathed her on 26 October it narrows timescales further. Accepting an incident in the early hours of 27 October is dependent on accepting the parents' evidence something happened that evening.

106.3. The court can conclude cannot rely on either parent's mechanism, which comes back to the Lucas direction and the unenviable task, if satisfied both lied, of which bits of their evidence the court can accept.

106.4. Father not remembering what happened is not plausible. He was awake and alert and you would expect clear account. It was implausible he would not remember immediately afterwards.

106.5. You would expect to see scratch marks if the dog had leapt up.

106.6. The most troubling bruise was the injury to the back, which cannot be explained by anything said. The Local Authority say Father has not revealed the true mechanism, but knows he is to blame.

106.7. There is a major discrepancy between whether Father woke Mother and told her what happened or woke her up in morning. There is the discrepancy on whether Father checked her over and whether Mother checked her over then or in morning. There is the issue over what Mother told the Health Visitor. There is also the discrepancy about Father's movements, and when he woke up. It suggests neither parent is telling the full story of what happened.

106.8. Why did the Mother not question Father further? It suggests she was so frightened she dare not wake him up even though there were unexplained marks on baby.

106.9. Mother had a propensity to lie to get out of inconvenient facts. Both parents acknowledged the 4 marks to Dr S. Bruising is a medical diagnosis due to rupture of the blood vessels;

- 106.10. Father's WhatsApp message about wanting to see the student nurse face to face was menacing and bullying, in the same way as clearing the air with his sister.
- 106.11. The general landscape we now see of what was going on is completely different to the picture painted by the parents and intervenors. The WhatsApp messages are revealing. You see aggression and anger, particularly from Father. Mother was not open and honest with the court about how bad things were. This was a dysfunctional, enmeshed relationship with an imbalance in power dynamics, showing all the elements of a controlling relationship.
- 106.12. Calling a child an attention seeking whore is unusually nasty and vicious. Mother said that, at times, Father hated the Child. What reason would Mother have to invent her evidence on the names and the family meeting? It is inconceivable any of them forgot attention seeking whore when giving evidence. Overall, none of them chose to tell the court about this. There was constant criticisms of professionals and a determination to accept Father's account.
107. Mother –
- 107.1. On Monday Mother recalled another phrase Father used, attention seeking whore. She also described the relationship post removal, including the dent in the wall and the family meeting in January 2022. Mother is now truthful in her description of the relationship. She sought to tell the truth and prioritise the Child despite the potential personal cost of her relationship with Father and her current life. Whether her description of the relationship and the factual matrix have elements of a controlling relationship is a matter for the court. If the court finds this this was a controlling relationship it should consider this again as another reason for change in Mother's evidence, albeit at the end of the day
- 107.2. There is no expert report relating to Mother's mental health. The questionnaires completed with the Health Visitor were shredded. Mother informing the police she had post-natal depression was a reflection of what she had been told by the Health Visitor, who accepted Mother presented well apart from her venting about Father. When Mother had a breakdown she was feeling low and crying. It is not at all suggestive of anger or losing temper.
- 107.3. There is no evidence the decision to discharge herself placed the Child at risk of physical or emotional harm. The form was not signed by a doctor. Tests were conducted on the baby and no risk factors seen. Mother was told to return and did just that.
- 107.4. The wealth of evidence points to Father causing the bruises. Mother can only listen to what Father said. The burden is on the Local Authority at all times and there is no real possibility Mother caused the injuries. She should be removed from the pool.
- 107.5. Mother is clear the Health visitor told her what she said was confidential.
- 107.6. There can be no suggestion Mother was trying to hide bruises on the legs when they were not covered up, and could easily have been.
- 107.7. On the question of conspiracy to suppress evidence, it was emphasised that it was Mother who came out rather bravely in the face of the extended family and spoke about the meeting in January and what she understood had been agreed at the time

- 107.8. Mother concedes her evidence changed and invites the court to look at the Lucas direction about why not she was not open and honest at the time. She accepts she started not to be open and honest as far back as 27 October 2021.
- 107.9. Texts include language which is not attractive on either parents' part, but swearing is not indicative of strength of emotion.
- 107.10. To find failure to protect the Local authority need to prove Mother knew of the risk. The enquiry narrowed down to 2 days. Mother concedes Father has a temper. It is accepted that failure to protect does not require an injury to be sustained to be proven.
108. Father –
- 108.1. His overarching position is he does not suggest any other member of the family inflicted, caused or are responsible for the injuries. The only person to blame is him.
- 108.2. He accepted there were 4 bruises, thigh, calf, back and abdomen, notwithstanding the shadow on the right lower back. He accepts they would require several applications of force. He overarchingly accepts responsibility lies with him and that there were no marks on the Child by the evening of 26 October 2021. He says they were caused as he describes.
- 108.3. Father accepted he was found in tears some time after the Child's removal. It was he who made the observation he was heavy-handed. He accepted his conduct towards Mother, calling her vile names with the parameter that it was on a couple of occasions. Mother did not say Father was physically violent with her. The dent with the controller was after the Child had been taken away. Mother was not saying she was financially controlled.
- 108.4. There seems to be a consensus Father was doing nights.
- 108.5. The reason Father was not honest about the denigratory comment was because he knew it was wrong and was ashamed and knew the family would be disgusted. When they were informed on 3 January 2022 he does not recall any overt agreement to withhold the information.
- 108.6. Father was fearful others would assume if he lost his temper before then he did it with the Child.
- 108.7. Father gave an account within 24 hours of the dog jumping up and the spray bottle falling onto the Child. His case has always been that the dog treading on the Child was a possibility not a definite, and that things happened fast
- 108.8. He accepts the verbal abuse allegation, and the effect of the Child being cared for by family members.
- 108.9. Father's counsel accepted that Father was likely to lose his job as a result of his evidence in this case, and that this went to credibility.
109. Maternal Grandparents –
- 109.1. it is possible the Court does not have all the background needed. In the absence of a plausible explanation the Court is reliant on Father's account of events and the medical evidence. We may never completely know what happened.
- 109.2. There has not been collusion or agreement to withhold information with any family members.
110. Paternal Grandmother/Paternal Aunt/Paternal Aunt's Boyfriend –

- 110.1. Believe the injuries were purely accidental
 - 110.2. Neither parent would have done anything intentionally.
 - 110.3. We do not believe the parents lied in black and white to the court, but do not condone them potentially misleading. We think wires got crossed.
111. Guardian –
- 111.1. The medical evidence was clear it unlikely a bottle falling would cause 2 bruises in 2 separate places.
 - 111.2. It was clear Father did not mention the dog landed on the Child. He was also clear at no point did he say the dog was on top of the Child on the sofa. There were no scratches around marks. The bruises were in unusual locations for injuries. Several locations implies several applications of force, where a perpetrator would know excessive force had been applied.
 - 111.3. We do not know if there was one incident or multiple.
 - 111.4. The Guardian says the court has not been told the truth about how the injuries were caused. The bruise to the ear is relevant to the wider canvas because it is an occasion in Father's sole care. The bottle changes to a tube in oral evidence, and the injury was not shown to the Health Visitor when she visited the following day. It was the Health visitor who subsequently notices the bruise to the leg. The Health Visitor was clear Father was not present. The first suggestion of this was in Father's oral evidence, after his counsel had put to the Health Visitor that she did not see Father because he was asleep.
 - 111.5. The Guardian agrees the weight of evidence points to Father, however the Guardian has never been involved in such a case where the evidence changed on so many occasions.
 - 111.6. Father would be under no illusion his message to the Social Worker would be shared with the Court.
 - 111.7. It is a matter for the Court to decide who is telling the truth. It was abundantly clear names were an issue. In police interviews on 30 October 2021 the parents say the same thing, little bugger, and play down that phrase. It cannot be the case that the parents did not discuss between themselves what to say to the police. How else would both come up with little bugger and not attention seeking whore? The lies started, it appears, from the minute the Health Visitor arrived at the home. You have to sift lies from the truth as far as the parents are concerned
 - 111.8. Both parents are from loving families. Not much more had been learnt until 4 days ago when we learnt the Child had not always been the priority, the parents were in an abusive and volatile relationship, Father called the Child an attention seeking whore, Father called Mother a c***, even when pregnant, irritating and annoying and she could never win in an argument.
 - 111.9. We learnt from WhatsApp this was a volatile relationship and the parents were struggling, despite the parents seeking to paint a picture of a happy household to the police on 30 October 2021. Why did they seek to police if they were not concerned about the bruising noted to the Child? Why was there a need to withhold the real evidence? We learnt Father throws and smashes things, has a temper and frightens Mother. Mother told the foster carer the Guardian's representative ripped into her and made her tell the truth. Why did it take that for her to start telling the truth?
 - 111.10. The extended family were well aware issues within the relationship. The entire family knew at the meeting on 3 January 2022. Each responded to the schedule denying anything. What the parents said is right, that at the family

meeting a decision was taken not to reveal this information by the family collective.

111.11. The family members would bring questions about Father back to Mother. None of them were able to contemplate the possibility of domestic abuse and what that means. Father came across as a perpetrator justifying his actions. The Intervenors now say they recognise the risk but say they did not recognise it at the time, and collectively say the Child cannot go home. This was all in respect of things they already knew.

111.12. Father struggled to care for the Child for 13 minutes without handing her back. The messages and evidence reveal a window into the Child's lived experiences in her 26 days. An awful lot was hidden by the parents and by the wider extended family. The guardian supports findings sought by the Local Authority that the family between them decided not to tell the full truth to the court and professionals. There is clear, cogent evidence they failed to work openly and honestly with the social worker and court and their motive in withholding information on the parental relationship and Father name calling was to protect the parents and prioritise the parents over the Child's need for protection and to prevent full details of her lived experience and risk being shared with the court. The guardian also sought a finding that the child was exposed to a domestically abusive and volatile relationship which included controlling behaviour exhibited by the father.

111.13. Protective measures only work when those charged with keeping a child safe are open and honest. This case is about how the Child sustained bruising, her lived experiences in her first 26 days, and adults who failed to protect her and have lied to protect themselves or others.

DISCUSSION

112. The Court is dealing with injuries sustained by a pre-mobile child. A 1cm bruise may not sound significant, but it has to be considered in light of the size of the child. This was a 26-day old newborn.

113. The fact the police did not pursue a prosecution may well be reflective of the fact a higher standard of proof applies in criminal cases. However, the Child was pre-mobile. Any injuries could not have been caused by the Child.

114. The court was informed the parents were shown the injuries at hospital and accepted the marks were there. The medical evidence of the injuries was clear. These were not the only medical issues raised in respect of the Child, but the other concerns were addressed and ruled out. There was much discussion about whether the explanation of the bottle was consistent. There is insufficient clarity to be clear it was. There is nothing to say the injuries were caused in the same incident, or indeed that they were not. Either would be concerning.

115. Father had not been aware the Health Visitor would be visiting on 27 October 2021. It may put in context the failure to cover the Child's legs.

116. The parents were interviewed by the police on 30 October 2021. The court also has the benefit of downloads of data from the parents' phones, the phones having been seized by the police and analysed. Search words and parameters were applied in respect of the allegations within these proceedings in order to deal with the voluminous evidence proportionately. It is argued on behalf of the parents that the telephone evidence does not provide a full account of all the

communication at the time, not just between the parents but with other third parties. An agreed list of communication was sent to all the experts, again in order to deal with the matter proportionately.

117. Conversations are inevitably context based, and it is a relevant issue to be raised on behalf of the parents. However, if the context was key the parents were entitled to produce, and should have produced, the surrounding communications and/or witness statements addressing this. They did not do so.
118. There was a remarkable similarity between the police interviews of the parents. This included both of them speaking of Father referring to the Child as "little bugger" and both denying anything else. The similarities of inclusions and exclusions are consistent with the parents having discussed what to say in advance of the interviews, and what not to say.
119. The parents were inconsistent about where the Child was sleeping on the night of 26/27 October 2021 and why Father was downstairs. If Father was downstairs gaming, the dog would not have been excited at his presence and he would have been fully awake. Father's suggestion of a pause button on his Xbox did not stand up to scrutiny.
120. The water bottle falling off the side may account for one of the bruises. It would not account for the others. There is a shaped bruise to the Child's thigh consistent with being struck by an object. However, the constellation of injuries without clear explanation makes it unlikely they were all sustained in a single incident.
121. The Child's birth was due to be registered on 27 October 2021, yet Father was still in bed when the Health Visitor was present. There were significant inconsistencies in whether Father awoke during the visit. Miss W spoke to Mother after the Health visitor had left and was told Father was still in bed.
122. The injuries were sustained at a time when it was clear the parents were overwhelmed. The parents accept they lied about the names the Father used to refer to the Child. There is also the lack of disclosure about Father's temper. If the parties do not tell anyone about a problem it cannot be investigated. If the parties wanted a full investigation they needed to be open and honest. They were not. If you shape the nature of the investigation you cannot later complain that it was not wide enough.
123. It is disappointing to note that a serving police officer would choose to lie or minimise during a police interview. While Father accepts he did this, somewhat ironically, Father sought to explain this as due to having been held in custody for about 16 hours. The lies were continued through the written evidence filed by Father. It is also concerning to note that WhatsApp had been deleted off Father's phone by the time it was taken by the police.
124. In Mother's first evidence she came across as very defensive and aggressive. She was not prepared to listen, felt she knew what had happened and was right. She demonstrated confirmation bias. She was not prepared to contemplate Father or any of the family could have inflicted the injuries. This was consistent

with most of the family members. They were selective on the information they put forward as a result.

125. The family, both nuclear and extended, sought to portray the parents as loving, happy parents. Their group amnesia about Father calling the Child an attention seeking whore lacks credibility, particularly given some of them gave statements to the police within 1 week of the meeting.
126. Each of the Intervenors gave evidence before the parents. None of them chose to mention Father referring to the Child as an attention seeking whore, or to raise any other concerns. None of them mentioned the meeting in January 2022. The Court was informed that in addition to other attendees a member of the extended family who works for Social Services was also in attendance. The Court would not regard the simple fact of the family having a meeting as unusual. Meetings are often called with the family by Social Services to discuss what options there are and what support may be available for the parents. What is concerning is that the meeting included discussions about concerns with the parents and none of the parties attending that meeting disclosed those concerns to the police, the Local Authority or the Court until Mother went back into the witness box.
127. When considering whether a party has lied it is important to consider contemporaneous documentation and the extent to which it is consistent with the party's case. It is well known that people may publicly present a false image. Here the Court also had the benefit of the communications between the parents.
128. As part of considering whether a party has lied, and any possible motive, there is also the question of why someone would admit to a lie, or not. Once a lie is told it is hard to un-tell or own up to. Lies may be told on the spur of the moment in a flush of panic without much forethought, but owning up to a lie requires a cold, calculated decision. Owning up to the lie may be against a person's own interests. However, it can be psychologically beneficial. Once you have told a lie about someone else it can be harder to admit you have lied, and are therefore a liar, than to maintain that you have been honest.
129. The Intervenors sat and listened to lies being told to the Court and did nothing. The family then knew Mother was going to change her evidence, having been informed in the intervening weekend.
130. The Court considered, at an early stage, that it would require collusion between the Intervenors for the injuries to have been caused by an Intervenor. The Child moved between the maternal and paternal family. Normally neither side of the family would be expected to have loyalty to the other above the Child and be prepared to lie. However, that is exactly the scenario the Court was faced with.
131. The Maternal Grandmother sought to dance on the head of a pin while giving evidence. When she re-entered the witness box she said she had not mentioned the attention seeking whore comment because she had not been asked about it. How are the Local Authority supposed to ask about something they know nothing about?

132. The Paternal Grandmother was quite happy to accept and regurgitate everything Father told her that was negative about Mother and to minimise or ignore anything she had been told which was negative about Father.
133. The parents were placed under the spotlight and asked to explain the injuries. It would be natural for them to consider possible explanations and put those forward. To do so, in itself, does not amount to something they should be criticised for. What explanations put forward need to be considered against the evidence. The echo chamber of the Intervenors adds nothing to the analysis of the evidence. However, the vehemence with which they sought to defend the parents and criticise the authorities displayed a confirmation bias – they had made up their minds and then sought to promote a case which fitted this – which completely ignored what they knew about the situation in the family home.
134. Mother spoke about being worried about how the family would react to her disclosing the attention seeking whore comment. Given the whole family knew, this could only be concern about Mother telling the truth.
135. The parents talked about the seat belt on the Child's car seat being very tight. However, Dr R was also clear about the distress that would be caused to the Child if the Child had been injured. No party claimed the Child had been distressed whilst in the car seat.
136. The parents also questioned whether the abdominal injury would have been caused by the nappy being put on too tight. Again, there was a lack of distress, although this could have been demonstrated and confused for the Child crying generally. However, there is no great body of research about injuries being caused to babies for the simple reason they would be re-designed if there were.
137. The explanation of the dog came across as a modern take on the dog eating your homework. Dr R was clear any incident where the child was injured would have been significant. Father postulated it could have been the dog and all the other parties took up the cry. Mother gave evidence about the training the dog had received. The parents produced photos of the dog showing it sitting on the long end of the sofa on a blanket. He knew his place.
138. The Court was asked to consider the risk and protective factors, identified with reference to the NSPCC guidance in the Common Assessment Framework and the Patient UK Guidance for Health Professionals;

Risk factors

- a) Physical or mental disability in children that may increase caregiver burden
- b) Social isolation of families
- c) Parents' lack of understanding of children's needs and child development
- d) Parents' history of domestic abuse
- e) History of physical or sexual abuse (as a child)
- f) Past physical or sexual abuse of a child
- g) Poverty and other socioeconomic disadvantage
- h) Family disorganization, dissolution, and violence, including intimate partner violence
- i) Lack of family cohesion

- j) Substance abuse in family
- k) Parental immaturity
- l) Single or non-biological parents
- m) Poor parent-child relationships and negative interactions
- n) Parental thoughts and emotions supporting maltreatment behaviours
- o) Parental stress and distress, including depression or other mental health conditions
- p) Community violence

Protective factors

- q) Supportive family environment
- r) Nurturing parenting skills
- s) Stable family relationships
- t) Household rules and monitoring of the child
- u) Adequate parental finances
- v) Adequate housing
- w) Access to health care and social services
- x) Caring adults who can serve as role models or mentors
- y) Community support

139. To properly analyse the above requires proper information. However, on a simple analysis the following factors are relevant:

139.1. Risk –

- 139.1.1. Social isolation of Mother
- 139.1.2. Father's lack of understanding of the Child's needs
- 139.1.3. Parental history of domestic abuse
- 139.1.4. Father's history of sexual abuse as a child
- 139.1.5. Parental immaturity
- 139.1.6. Parental stress and distress

139.2. Protective –

- 139.2.1. Supportive family environment
- 139.2.2. Adequate housing
- 139.2.3. Access to health care and social services
- 139.2.4. Caring adults who can serve as role models or mentors

140. Dr R deferred to Dr S on bruising, having no reason to disagree having seen the various photos. The clarity sought by Dr S (paragraph 41) has never been provided.

141. The Court was reminded to take into account the weight and expertise and speciality of the expert witnesses. It is part of the wide canvas that the Court must survey. However, to make a finding against medical evidence requires reasons and the Court could find none here.

142. The family sought to portray the Child staying over with the Intervenors as a combination of them spending time with a beloved member of the family and allowing the parents some time off/to catch up on sleep.

143. The parties sought to minimise the reason the Child was cared for by relatives. It is highly unusual for the Court to be presented with a new-born child that has been passed around relatives, sometimes for consecutive nights. Father was complaining about struggling to bond with the Child, yet the Child was staying

with relatives. He was also complaining of lack of sleep, but staying up overnight to play on his Xbox.

144. The Paternal Aunt was particularly critical of the case being pursued. She did not regard the bruises as concerning. She had clearly made up her mind and sought to give evidence to the Court which was consistent with the result she felt appropriate.
145. Every individual has psychological boundaries. There is a significant step between losing your temper and causing injury to a child and abusing a child with a tool.

FINDINGS OF FACT ON SIGNIFICANT DISPUTED MATTERS

146. The Court finds that the parents and Intervenors all lied at various stages. The Court accepts the evidence there was a family meeting in January 2022, that Father calling the Child an "attention seeking whore" was discussed at the meeting and each of the parties agreed to lie about it, either explicitly or implicitly. They also failed to disclose Father's temper and treatment of Mother.
147. The Court provides the following answers to the issues to be decided:
- 147.1. Did Mother discharge herself and the child from hospital on the day of birth against medical advice, placing the child at risk of suffering physical and/or emotional harm? Mother accepted this, however there is no evidence this amounted to exposing the Child to a risk of significant harm. There is no obligation to remain in hospital following birth, Mother provided an explanation for the desire to come out of hospital promptly and returned the Child to hospital as soon as it was medically indicated.
- 147.2. In respect of injuries:
- 147.2.1. What injuries were sustained? The Court accepts the medical evidence of the 4 injuries sustained to the Child. The injuries were significant.
- 147.2.2. How were any injuries caused? Were they accidental, or caused in a way that involved an element of wrongdoing? The injuries required application of force. It is possible one was caused by the spray bottle as stated by Father. The Court is satisfied at least 3 of the 4 injuries were inflicted and there is no innocent explanation.
- 147.2.3. If there was an element of wrongdoing, who had the opportunity to cause the injury? Father or Mother. As galling as it is, in light of their dishonesty, there is insufficient evidence against any of the other parties to include them in a pool of perpetrators.
- 147.2.4. Of those people, is the court able to identify a perpetrator? If not, which of those people is there a likelihood or real possibility caused the injury? Father only – there is no evidence Mother was aware before the morning of 28 October 2021 and the Child was dressed in a vest, so there was no evidence of cover up.
- 147.3. What did the other parties know and did any of the parties fail to protect the child? The Maternal grandmother had been told about Father's name calling of Mother. The Paternal family knew of Father's temper. They supported the placement of the Child with the parents because they knew there were problems. Mother was aware of the issues with Father and put her relationship with Father above the safety of the Child. The child was

exposed to a domestically abusive and volatile relationship, which included controlling behaviour exhibited by the father, as a consequence.

147.4. Was Father verbally abusive to the child and/or did he call her names?

Yes. Father admits it.

147.5. Was Father heavy-handed or rough with the child? Possibly, but not sufficiently to cause the injuries sustained and the Court's findings in relation to their causation is as above.

147.6. Did Mother have mental health issues which placed the child at risk of suffering physical and/or emotional harm? There has been no formal diagnosis. There is a lack of evidence on which the Court could make this finding.

147.7. Was the child placed at risk of suffering harm as a result of the multiple carers who looked after her? The Court accepts the Intervenors were seeking to support the parents and protect the Child. The risk was when they were not caring for the Child.

147.8. Have the parents and intervenors been open and honest with professionals or the court? No. They all lied and the excuses would be risible if the matter were not so serious. They each failed to work openly and honestly with professionals and the court, and their motive in withholding relevant information in respect of the parental relationship and the father calling the child 'an attention seeking whore' was to protect the parents, thereby prioritising the parents over and above the child's need for protection and in order to prevent the full detail of the child's lived experiences and the risks posed to her being shared with professionals and the court.