England and Wales Family Court Decisions (other Judges)

Case No: MK16C00207

IN THE FAMILY COURT AT MILTON KEYNES
IN THE MATTER OF THE CHILDREN ACT 1989
AND IN THE MATTER OF ES (A CHILD)

3rd November 2017

B e f o r e :

His Honour Judge Antony Hughes
(sitting as a s.9 Judge)

Between:

A Local Authority	**Applicant**
M (1)	
F (2)	
A (3)	**Respondents**
B (1)	
C (2)	
D (3)	
E (4)	**Interveners**

Oliver Wraight of Counsel of Counsel for the Applicant Local Authority
Darren Howe QC Leading Counsel and Hannah Mettam of Counsel for the Mother
Kathryn Skellorn QC Leading Counsel and Greg Pryce of Counsel for the Father
Matthew Stott of Counsel for the Child
Hearing dates
25th, 26th, 27th, 28th & 29th September 2017 and
12th, 13th, 16th, 17th, 18th, 19th & 20th October 2017.
Judgment Handed down on 3rd November 2017

HTML VERSION OF JUDGMENT HANDED DOWN ON 3RD NOVEMBER 2017
HTML VERSION OF JUDGMENT

Introduction:

1. These proceedings concern A born on 2nd October 2016, and therefore now 1 year old. She is the only child of M and F. It is her welfare that is the court's paramount consideration.

2. This judgement arises out of a multi-day finding of fact hearing which commenced on 25th September 2017, to consider the nature, extent and causation of injuries to A.

3. The parties are represented as follows:

Local authority: Oliver Wraight of Counsel

Mother: Darren Howe QC Leading Counsel and Hannah Mettam of Counsel

Father: Kathryn Skellorn QC Leading Counsel and Greg Pryce of Counsel

Child/guardian: Matthew Stott of Counsel

4. The following family members have been joined to the proceedings as interveners:

    - B, maternal grandmother;
    - C, paternal grandmother;
    - D, paternal grandfather; and
    - E, paternal aunt.

5. None of the interveners have been legally represented.

Summary of Background:

6. I draw on the local authority's helpful opening document for this section of the judgement. Where any of facts rehearsed herein conflict with my findings, the findings of course prevail.

7. The mother, **M**, was born in 1998 and is therefore now aged 19. The father, **F**, was born in 1989 and is now aged 28. The parents commenced their relationship around August/September 2015. They remained in a relationship at the start of proceedings but they separated fairly soon afterwards.

8. A was born in October 2016 at Stoke Mandeville Hospital, weighing 3.24kg with estimated gestation of 40 weeks and 1 day. She had a normal vaginal delivery with no reported complications and no concerns with her presentation. A and the mother were discharged home around 2.30pm on the afternoon of the same day. At that time, both parents were living at the home of the paternal grandparents, **C and D** in XXX, as was the paternal aunt, **E**. The parents continued to reside there with A.

9. The family were visited on 3rd October 2016 by **FNP** of the Family Nurse Partnership; she made a very positive report. On 5th October 2016, the father returned to his work as a car mechanic. Further visits by FNP on 12th, 21st and 27th October all noted that A was thriving. There was mention on 12th October that mother had been tearful on a couple of occasions but the mother's care of A was described in very positive terms.

10. On 1st November 2016, the mother noted a rash on A's chest and neck. She telephoned FNP for advice and then took A to see her GP. A was seen by **GP** who noted a petechial rash and arranged for A to be seen at Stoke Mandeville Hospital. She was examined there by **Dr F**, who reported that A appeared well, that blood tests were normal and that the rash on A's abdomen was in a grid pattern, possibly from swaddling with a cellular blanket; she was discharged home the same day.

11. Over the weekend of the 4th-6th November 2016, the parents and A visited the maternal great-grandparents in Z. Upon their return on 6th November 2016, the mother and A moved in with the maternal grandmother, **B**, reportedly for extra support due to low mood. The father remained at his parents' home but saw A daily.

12. On 7th November 2016, the mother saw FNP and indicated she had been feeling low; it was discussed that the mother may be suffering from post-natal depression. The mother was observed to be caring for A in a warm and sensitive manner. The mother saw her GP later that day and indicated that she was struggling, couldn't cope, was losing her temper and was upset, especially when A was crying. She was prescribed the antidepressant Sertraline. On a further visit to her GP on 9th November 2016, the mother was reported to seem a bit brighter overall. She and A moved back in with the father the paternal family on 10th November 2016.

13. On 14th November 2016, A had her 6-week check with GP. All examinations were normal and no concerns were noted. FNP visited the mother on 16th November 2016 and the mother indicated she was feeling a little emotionally stronger; A was thriving and had good interaction with the mother. On 18th November 2016, the mother saw her GP and indicated that she was struggling with the father and that they were going to be moving into a flat together but she was dreading it.

14. On 25th November 2016, the parents and A moved into their own flat in XXX. On 28th or 29th November 2016, the mother noticed a bruise on A's upper thigh. Both parents agree that they had a heated argument on the evening of 28th November 2016 during which the father made a hole in an internal door: the mother states that he punched or head-butted it; the father states he head-butted it. The mother reported this incident to her GP on 29th November 2016; the report notes within the history taken: "…yesterday for first time lost his temper and [put] a hole through the door, she is struggling more and more to get up in morning and does not see the point, although she is taking care of her daughter…".

15. On 1st December 2016, FNP visited the mother at the parents' new home. The home conditions were good, A was thriving and the mother's care of A was regarded as being loving and responsive. The mother reported concerns about the father's anger and indicated that he had punched a hole in the door. She stated that he sometimes got frustrated with A but would never harm her on purpose. The mother pointed to two bruises/marks on

A's upper left thigh, which the mother felt might have been caused by the father holding her too tightly, but not intentionally.

16. FNP made a referral to the police and social care and a joint visit took place that afternoon, during which the mother provided a history of events and of A's care. The social worker, SW1, took photographs of A. The mother indicated that she had no concerns about the father or his interaction with A. A child protection medical appointment was booked for the following morning and it was arranged that A and the mother would stay overnight at the home of, and under the supervision of, B.

17. On the morning of 2nd December 2016, A underwent a child protection medical by **Dr G and Dr H**. The marks to A were noted and concern as to possible non-accidental injury was raised, therefore further investigations were directed.

18. The local authority applied for an emergency protection order and an order was made on 2nd December 2016 until 5th December, based on A being placed with B, and the parents not having contact with her pending the next hearing. On 5th December 2016, the local authority's application to extend the EPO was refused and a child arrangements order was made for A to live with B.

19. On 7th December 2016, A had a skeletal survey x-ray **[Dr I & Dr J]** which indicated a widening of the posterior right tenth rib and a fracture line, with a further area of widening of the posterior right eleventh rib which possibly represented a fracture, though no definite line was seen. Blood and ophthalmology tests were carried out and were normal. A CT head scan also carried out on 7th December 2016 [**Dr K & Dr I**] indicated no fracture, abnormality or haemorrhage.

20. In the light of the skeletal survey, the local authority made a further application for an emergency protection order and this was granted on 8th December 2016. A was placed with her current foster carer, **FC**, and has remained there to date. An interim care order was first made on 13th December 2016 and remains in force.

21. By way of completeness in respect of radiological evidence, a further chest x-ray on 22nd December 2016 indicated remodelling of the fractures previously identified. A skeletal survey took place on 14th March 2017. The report by Dr L and Dr I concluded that there was: (a) remodelling deformity and expansion of the right tenth and eleventh ribs respectively, consistent with the previously identified fractures; (b) callus surrounding the left ninth posterior rib consistent with a healing fracture; and (c) possible further callus surrounding the left eight and tenth posterior ribs.

Further bruising to A:

22. There have been a number of incidents of bruising to A since being placed in foster care as set out in the statement of FC, the foster carer.

    (i) On 29th December 2016, the foster carer noted a small red mark on A's stomach. She was seen by the GP who was unsure what the mark was but was not concerned by it.

    (ii) On 23rd January 2017, the foster carer noted bruising to A's right leg and right side of her abdomen. She was taken to Watford General Hospital that evening. The report of the consultant paediatrician, who examined her the following day, notes a bruise on the back of each thigh and a bruise on the right side of the abdomen. In the absence of any apparent explanation for the bruise, medical or otherwise, it was suggested that the bruises "would be in keeping with very rough handling." She was discharged back to the care of the foster carer on the following day.

    (iii) On 17th February 2017, the foster carer observed two small red marks: one just above the left knee and one above the left hip. No clinical examination took place.

    (iv) On 2nd March 2017, the foster carer noticed a bruise to A's right thigh. She was taken to the **GP, Dr M**, on the following day and then examined at Wycombe General Hospital by **Dr N**, consultant paediatrician. Dr M recorded a bruise in the right upper inner thigh area just below the nappy line, which he considered was "likely to have been caused by rough handling rather than any bleeding condition."

23. The above incidents of bruising were the subject of medical, police and social care investigation. They essentially remain unexplained. The local authority confirmed its position in relation to those bruises as set out in the order dated 17th July 2017, namely that the cause of the bruises was unascertained, that there was no assertion that they related to rough or inappropriate handling by the parents or the foster carer, and that no findings were sought as to their causation.

Expert evidence:

24. The court has directed the instruction of five experts in this case:

    Dr Joanna Fairhurst, consultant paediatric radiologist.

    Dr John Somers, consultant paediatric radiologist

    Dr Thomas Lee, consultant paediatrician

    Dr Patrick Cartlidge, consultant paediatrician.

    Dr Anand Saggar, consultant in clinical genetics.

25. All of the experts, save Dr Lee, participated in a telephone experts' meeting on 6th September 2017. There is a transcript of that meeting which the court has read together with all the expert reports.

26. The evidence of the various experts has been revisited by way of oral evidence which I summarise in some detail below.

Expert radiological evidence

27. **Dr Joanna Fairhurst** is a consultant paediatric radiologist at Southampton University Hospital NHS Trust and has held this position since 1990. Her extensive qualifications are set out in her report. She has a special interest in skeletal radiology and has been involved as an expert witness in over a thousand cases of suspected non-accidental injury.

28. **Dr John Michael Somers** is the second jointly appointed radiological expert. He too specialises in paediatric radiology and has been employed in that capacity since 1991 and engaged as an expert witness in child protection and criminal proceedings in more than three hundred separate cases.

29. The two jointly appointed experts disagree and by way of broad summary I rehearse the relevant passage in the local authority's opening document below, showing not only the extent of agreement and disagreement between the radiologists but the position of the other jointly appointed experts, all of which evidence is rehearsed in greater detail later on in this judgment:

- Dr Fairhurst and Dr Somers agree there are fractures of the posterior right 10th and 11th ribs. These two fractures are likely to have occurred between late October and mid-November 2016 and are likely to be inflicted injuries.

- Dr Fairhurst considers there are fractures of the anterior ends of the right 5th, 6th, 7th, 8th, 9th and 10th ribs and the left 6th, 7th, 9th and 10th ribs, although these are likely to have been caused in the same incident as the posterior rib fractures.

- Dr Fairhurst considers there are probable metaphyseal fractures of the distal left radius and proximal left tibia. She considers these to be strongly indicative of inflicted injury.

- Dr Fairhurst and Dr Somers agree that the areas of callus observed on the left 8th-10th ribs in the skeletal survey on 14th March 2017 represent ossification centres of the sternum and not healing fractures.

- Dr Somers does not consider that there are any further fractures beyond the right 10th and 11th ribs.

- The incident on 15th or 17th November when the family dog is reported to have jumped onto a sofa and landed on A, would not account for any fractures.

- Dr Fairhurst and Dr Somers agree that there is no radiological evidence for metabolic bone disease or osteogenesis imperfecta ("OI").

- Dr Saggar indicates that gene testing has excluded OI and that there is no evidence of any genetic condition that might explain or cause the fractures.

- All the experts (save Dr Saggar, as not within his remit) agree that the fractures are not birth-related.

- Dr Saggar considers there is no clinical evidence that A has a significant degree of any connective tissue disorder, however there is such evidence in respect of the mother; there is very clear evidence that she has hypermobility [E135].

- Dr Saggar considers that it is quite possible that A has inherited a susceptibility to Ehlers-Danlos syndrome type 3, however even if this was passed down to A in its full form, it would not be expected to cause fractures.

- Dr Saggar considers that given the mother's history of hypermobility, it is quite conceivable that A may bruise more easily and under normal handling.

- In the light of Dr Saggar's report, Dr Cartlidge considers it most likely that A has hypermobility EDS and that this was a significant factor in the repeated mild bruising.

30. Both expert radiological witnesses have provided comprehensive reports, Dr Fairhurst has provided an addendum, both have replied to additional questions, and both have contributed to an experts' meeting, the minutes of which have been filed with the court.

31. As a consequence of the conflict in the radiological evidence, it was agreed by all that there would be great evidential value in having both experts give their evidence, not only on the same day, but by process of "hot tubbing" whereby both were in court and able to respond in cross-examination to observations made by the other.

32. Setting the scene in a little more detail, Dr Fairhurst set out her findings in her report of 5th March 2017 and, indicated that the images that she looked at were of sufficient quality for diagnostic purposes including dating of the injuries identified although both she and Dr Somers in evidence indicated that further imaging and possibly a CT scan would have considerably assisted them both. But their joint expertise lay in the interpretation of the radiological images provided.

33. Dr Fairhurst identified fractures of the necks of the right tenth and eleventh ribs and from the images dated 7th December she found that there was an established focal callus formation in relation to both fractures but the fracture line of the tenth rib remained visible. On the images dated 22nd December 2016, the fractures were remodeling, which was to say that new bone was forming around the fracture as part of a healing appearance.

These fractures were posterior rib fractures and it was explained, and in fact agreed by both doctors, that fractures of the posterior aspect of the rib do not occur from a direct blow but required a compressive force to be applied to the ribs which needed to be sufficiently significant to cause the injury, well in excess of that used either in day to day normal handling or even in rough play, and are highly indicative of non-accidental injury. Dr Somers agreed in relation to not only the presence of these fractures but also the degree of force and mechanism required.

34. However, Dr Fairhurst identified from the radiology fractures of the anterior ends of the right fifth, sixth, seventh, eighth, ninth and tenth ribs and fractures of the anterior ends of the sixth, seventh, ninth and tenth ribs from the images dated 7th December, and in both sets of fractures, from the images dated 22nd December 2016, indicated that there was evidence of some thickening but the fractures have largely remodeled.

35. She went on to report that, in her judgment, there was an equivocal appearance to the metaphyses of the distal left radius (forearm bone towards the wrist) and proximal left tibia (lower leg bone towards the knee) and she described the metaphyseal margins as "irregular and slightly sclerotic." She advanced two possible explanations for this appearance - either by way of "normal developmental appearance" or due to the presence of a healing metaphyseal fracture - and described both in oral and written evidence factors which tended her to posit that there had been a fracture of the forearm bone and lower leg bone.

36. In relation to findings so far as the anterior ribs were concerned and the leg and forearm bone and by reference to the display of the radiological images and her explanations of them, she explained her reasons for her conclusion.

37. In my judgment, her conclusions in relation to the distal left radius and the proximal left tibia became more tentative under the course of cross-examination and she was balanced enough to indicate that both presentations could well be in the normal range explaining why it was, on balance, that she thought that this was not the case. She was also fair and balanced enough to accept in cross-examination that the fact that she had been very clear about the posterior fractures of the right tenth and eleventh ribs, could well have influenced her judgment in relation to the other features and certainly in terms of timeframes, and Dr Somers and she broadly agreed, all the injuries could have occurred from anytime from the middle of October until the middle of November from a radiological point of view.

38. Both she and Dr Somers accepted much of what was put in cross-examination regarding the notorious difficulty in the accurate dating of fractures and only broad timeframes could be advanced with any confidence. The main conflict between herself and Dr Somers arose and was highlighted in particular by a process of cross-examination by Mr. Howe QC, whereby each of the injuries to the anterior ribs were taken in turn. In short form, Dr Somers just did not see any special significance in the features highlighted by Dr Fairhurst as being suggestive of fractures, with Dr Somers indicating that Dr Fairhurst's observations were too subtle in fact for him to be able to agree that there had been fractures and was not confident at all in relation to her observation of, for example, widening of the spaces between the ribs and a kinking in the presentation of the ribs. Dr Somers also highlighted the difficulties in interpretation of an oblique image when the pictures taken were of an oblique view of the ribs.

39. During the course of cross-examination of both experts a number of features were ventilated involving mechanism and possible causation, with Dr Somers adhering to his view throughout his evidence that he was not able to agree the presence of the other fractures as identified by Dr Fairhurst and expressing himself unable to make the sort of judgment that Dr Fairhurst made from the single image of 7th December.

40. As a matter of practice, it is his policy when he is unsure about a fracture, to have further images or more probably a CT scan and he highlighted the danger of over diagnosing when there was insufficient evidence and what Dr Fairhurst described as subtle irregularities, he described as "normal variations."

41. In the course of cross-examination various aspects of scientific research were put to the experts from which I drew the following propositions against the established mantra that nothing is impossible in science: (1) birth related injury was inherently unlikely in this case notwithstanding that it may be quite possible that A has inherited a susceptibility to Ehlers-Danlos syndrome type 3, both experts considering that it would be unlikely to cause fractures; and (2) there was nothing in the radiological presentation of the fractures that would indicate metabolic bone disease or osteogenesis imperfecta.

42. The issue of dating the fractures formed the basis of extensive cross-examination. In the absence of an agreed objective international standard, largely due to the undesirability of subjecting infants to numerous radiological interventions, and it was clear, in my judgment, that both experts drew on their substantial experience and their knowledge of the genesis and progression of callus formation and hence the time windows that they broadly agreed.

43. As to mechanism, a number of potential issues were explored apart from a birth related injury to include A being swaddled too tightly or the family dog jumping on her to cause compression injuries particularly in relation to those fractures that had been agreed between the experts.

44. Dr Fairhurst said, and Dr Somers agreed, that the dog explanation was inherently unlikely as there was no relative forward movement of the spine necessary to fracture the ribs and it was difficult to conceive of a mechanism involving swaddling that would cause the injuries.

45. Although in terms of aging the rib fractures, birth injury could not be excluded, both experts clearly had in mind a number of features, namely that the birth itself was quick and without incident and A was not a very large baby. Similarly, although a particular research document had identified the existence of posterior rib fractures occasioned by birth trauma, it was clear from the research paper that the incident involved a large baby that required obstetric intervention and forceps which was perhaps an indicator of the degree of force that was required to birth that particular child, as set out in the "KAHN" paper.

46. There was a challenge to both doctors that they had assumed that there was no increased bone fragility to which Dr Somers said that there was no radiological evidence of bone fragility and the appearance of the bone looked normal, with Dr Fairhurst agreeing and saying that there would have to be a significant loss of bone density to be detectable.

47. It is of course significant that there had been no difficulties with this child's bones or the fragility of the bones reported although of course there is a lack of international agreed criteria to assess low bone density in children.

48. Both experts agreed that further x-rays or CT scans may have meant some of the uncertainties could be resolved but the court has to deal with the matters on the available evidence and the evidence was not sufficiently strong to justify any findings in relation to the additional fractures identified by Dr Fairhurst, which fell short of what could reasonably be required by way of evidential standard.

49. **Dr Anand Kumar Saggar** is a specialist in clinical genetics and has thirty-four years' experience as a medical doctor and twenty years' experience specifically in relation to clinical genetics. He is an experienced expert witness jointly instructed by the parties and one of his areas of expertise involves inherited conditions in children and he is regularly asked to explain patterns of inheritance and the reoccurrence risks for a wide range of known or also undiagnosed conditions.

50. He is the author of a report dated 15th August 2017. He has exhibited a range of research material, he also produces gene testing results, has replied to additional questions posed to him and participated in the experts' meeting.

51. He had an opportunity to examine A when she was 9 months old on 4th July 2017 and also carried out a brief examination of the respondent mother.

52. So far as A was concerned, he found no evidence of any hypermobility in excess of that which he would expect from a baby of her age. He confirmed that there is no specific test for Type 3 EDS and clinical examination is therefore pivotal together with any known history.

53. On examination of the respondent mother, he found that there appears to be good evidence of a connective tissue disorder in the mother and possibly also in the maternal grandmother given the medical history. In relation to A and from his clinical examination, he was not able to identify any evidence of any significant tissue disorder, Ehlers-Danlos syndrome or genetic condition that might predispose A to fracture, making it plain that it can always be difficult in small children and particularly babies to be certain about a diagnosis of hypermobile EDS (also called EDS type 3) as such small children are naturally hypermobile.

54. He raised the strong possibility that A has inherited some aspect of hypermobile EDS and said, "easy bruising is of course a common feature for hypermobile EDS" but crucially wrote this in his report, "however given the possible diagnosis of EDS type 3 in the mother even if passed down to the child in its full form, I would not expect it to cause fractures."

55. He has correctly identified in his analysis, having dealt with the propensity to bruise easily, that the central issue is the finding of bone fractures in this case and said this: "spontaneous fractures or fractures without any memorable event are not considered part of the spectrum of problems associated with hypermobility type EDS. This is supported by my own clinical experience." When he gave oral evidence, and he was an impressive witness, he was clear that there is a lack of any real research information regarding ease of fracture in a child who may have hypermobile EDS, in other words, whether or not a fracture can occur in hypermobile EDS after a lesser force. Incidentally, he discounts the dog jumping onto A would cause the rib fractures.

56. He acknowledged that there had been reports of decreased bone density in very young children although nothing reported in children as young as A. He has acknowledged that the skeletal survey showing normal bone density was a crude estimate of bone density and further acknowledged that the relationship between EDS bone density and propensity to fracture was a controversial issue with opinions on both sides of the debate but his opinion, which he believed to be mainstream, is that spontaneous fractures are not a feature of truly hypermobile EDS.

57. He acknowledged the bone mineral density in EDS type 3 is described as being reduced in adults although the research evidence is sparse.

58. It is even less "robust" in relation to children and there seems to be no information by way of research at all in relation to this area and he accepted, in cross-examination, that this variant of EDS is recognised as the one where the knowledge is the "murkiest." There is, for example, a range of unknowns in particular in relation to the genes involved and how many are involved.

59. With the radiological evidence in mind, he acknowledged that it was just not possible to say that there was no bone density loss just from visibility on the x-ray because there may be a degree of loss that would not be visible to the radiologists. He draws his opinion from his clinical experience but that is also constrained by the number of presenting cases with a known history.

60. The opinion in his report is that "given the distribution of the fractures and the age of the child, it is unlikely that any potential reduction in bone mineral density would have had an impact on the causation of fractures. However, I cannot exclude some effect." It seems that there is a recent paper published by Holick et al (2007) which studied 72 infants. It seems that the author chose to highlight one case study of a child with EDS and vitamin D sufficiency but it is clear from the description that this child had a significant connective tissue disorder and OI was excluded. His view was that the opinion in the research paper was flawed as it was more about the association between the fractures and vitamin D levels.

61. The gene test analysis that he undertook had not identified any mutation in the genes associated with OI. There is no clinical evidence that A in fact did have hypermobile EDS type 3, accepting as he did that this diagnosis can be difficult in relation to such a young child. He was confident that a susceptibility to spontaneous fractures through OI has been excluded and it was for the court to identify a memorable event of force to have led to the fractures. It remained his opinion that it was unlikely that the rib fractures would be caused by hypermobile EDS even if there was obvious and clear evidence of hypermobility, accepting as he did that chest x-rays are not routinely taken in children with hypermobile EDS, in other words there is no database of regular fracturing in such children.

62. In answer to the questions posed to him in his instructions, he also opined that he would not expect the pain threshold to be any different in relation to A, accepting of course his observations in relation to bruising that may occur with no recognised trauma or injury and even after normal handling.

But he would expect fractures to be painful, as they would in a child without EDS type 3 and would be prepared to defer to a paediatrician in relation to A's likely pain response.

63. This case has concerned a dispute in relation to the number of fractures that A has sustained and he agreed with the proposition that more fractures may suggest a susceptibility. In fact, in this case, the more cogent evidence suggests only two fractures.

64. I found Dr Saggar to be a balanced and compelling witness. He was clear that he could not say whether a little less force would not cause injury but was equally clear that he did not see children with hypermobility with unexplained fractures in what, for him, had been a very extended period of practice.

Expert paediatric evidence

65. Dr Thomas Lee was the first jointly instructed paediatric witness in this case but due to illness on his part, he did not give oral evidence and no party sought to rely on his evidence. **Dr PHT Cartildge** is a consultant paediatrician and an experienced expert witness. He is the jointly appointed paediatric witness in this case. He is the author of an initial report when his remit was a paediatric overview of alleged non-accidental fractures and bruises to A and that report is dated 10th August 2017. Subsequently he prepared a short addendum report on 17th August after Dr Saggar had filed his report, he responded to additional questions on 28th August and participated in the experts' meeting.

66. He does of course defer to the radiologists in relation to the extent and number of fractures. His initial view was that the fractures were most probably caused non-accidentally and that many, and possibly all of the bruises, were also caused non-accidentally. However, and quite properly, he indicated that he needed to reflect on those opinions in the light of the findings of Dr Saggar.

67. Accordingly, he did so and his addendum report of 17th August reflected his revised opinion; that he thought that it was most likely that A has hypermobility Ehlers-Danloss syndrome and that this was a significant feature in the repeated mild bruising, and of course the local authority are not pursuing any findings in relation to the bruising. He did not think it likely that A had a medical condition causing significant increased propensity to fracturing but could not exclude hypermobility Ehlers-Danlos syndrome causing a mild increased propensity to fracture. He did not think that normal handling during late October to mid-November would have caused the rib fractures and, in his original report, set out the forces and mechanism required to produce fractures and the likely pain response of A.

68. By the time of his addendum report he still had a residual question as to whether hypermobility Ehlers-Danlos syndrome could cause a delay in fracture healing such that radiological dating could extend back to birth and indicated that he deferred to Dr Saggar and Dr Somers in this respect and identified that as the key remaining issue.

69. By the time of the experts' meeting which took place on Wednesday, 6th September 2017 and, with particular regard to what other experts had said regarding the location of the posterior fractures, he identified that those fractures were more typical of a squeezing mechanism and he was able to put to one side his lingering concern as to whether A had slow healing of the bone as a consequence of her condition. After reviewing research with the other experts and having talked with Dr Somers, he was now clear that those fractures could not, on balance, be birth related because they are in a different position than the birth related fractures mentioned in the research.

70. He was asked about the petechial marks on the child's skin that were the basis of the referral from the GP to the hospital paediatrician and indicated that this would require excessive force of the blanket on the skin and a baby merely lying on this type of blanket may leave marks but these would disappear and that a greater degree of force would therefore be necessary to cause the marks, although this may be affected by any potential effect of EDS.

71. He readily acknowledged the absence of relevant research in relation to newborn babies suffering from EDS who had been x-rayed with fractures, but was clear that birth related fractures were related to difficult births, where the baby had been large and, relying on his clinical experience, he postulated that there would be many clinicians who would have to look at x-rays of newborns for other reasons and where no posterior rib fractures had been indicated in the same position as those in this case. He was concerned that the unknowns should not be exaggerated as his position was that if clinicians had seen posterior rib fractures in newborn babies who had been x-rayed for other reasons, it would have been reported, as current thinking was that posterior rib fractures were highly indicative of abuse.

72. He readily accepted, in cross-examination, that as a consequence of her condition there could well be a link to reduced bone density, although the research indicated that this was evident in older children and adults. Lower bone density, he agreed, may not be visible on x-rays. He agreed that the exact forces required to produce a fracture in A's case could not be identified save that he adhered to his view that the degree of force, even if A had EDS, would be seen to be excessive by a dispassionate observer.

73. He therefore remained of the view that a birth related explanation for the existence of rib fractures in A was unlikely but of course nothing was impossible and he could not be dogmatic and although open to the possibility of some fragility in A's bones, he remained of the view that this would not be sufficient to fracture her ribs in the positions indicated.

Other Local Authority evidence

74. **GP** is the first respondent mother's general practitioner and has been for many years.

75. He is the author of a statement within the proceedings, which recorded the mother attending his surgery with A who presented with a rash about which he was unsure. This resulted in a paediatric referral in relation to this baby that otherwise appeared well. As the rash on the abdomen was in a grid pattern, the paediatrician who saw A took the view that it was probably caused by swaddling with a cellular blanket. GP did indicate, in answer

to questions, that he had no concern at that appointment with the mother's interaction with A and nothing suspicious presented itself.

76. Subsequently however, and this is apparent from a note in the medical records, which was necessarily brief made as it was after the doctor saw the mother and before his next appointment, when the mother presented, having attended the surgery with her mother, as struggling and the entry reads: "can't cope, losing her temper, upset about it all especially when daughter crying, move back with mum, which is upsetting as away from partner." He recorded on examination, "no suicidal thoughts, no self-harm thoughts currently but concern might happen, no harming daughter thoughts, but resisting getting help." It was apparent that at that time the mother was receiving support from the family nurse partnership but of course it is a feature of this case that he had no access to information that the mother was giving to that practice notwithstanding, in my judgment, the imperative for shared multi-agency information particularly in cases involving children. His impression of the mother was that she was struggling a bit like all new mothers and wanted medication. She was open and honest about her feelings and of course he has a long association with this mother as her doctor and there is an entry in the medical notes of 8th November 2012, that mother as a young teenager, was presenting with psychological difficulties, was self-harming by cutting herself and admitted to thoughts of self-harm and suicide on a daily basis. It seems that a referral letter was written by a colleague to the Amersham CAMHS Community Team which, incidentally, produced no real support other than some type of telephone interview.

77. It is of course evident from this that mother has had a history and it was also evident that at about the same time, the mother was working with a counsellor or counsellors at her school and he agreed that there was a previous history to be matched up to mother's presentation.

78. He could not say what he recorded about the mother's loss of temper relates to any incident directed at the father and I note that he had recorded that the mother found it upsetting to be away from her partner. There is of course also a subsequent note on 18th November when the mother came in for a review, still apparently in low mood, although he commented that overall she appeared stable but was struggling with her partner; "he's not getting it" and "… they are looking at moving out from his parents into flat together but dreading it" from which he thought that it was possible that that meant she was dreading the lack of support from the father.

79. There was another consultation it would seem on 29th November, when the mother came in for advice regarding a contraceptive procedure when he recorded: "chat re mood, says is bad, living with partner, … but for first time lost his temper and put a hole through the door, she is struggling more and more to get up in the morning and does not see the point although she is taking care of her daughter, still reluctant to involve mum." He also recorded: "support has dwindled in as much as that nurse only sees fortnightly and other promised support never contacted after initial chat in which they label it as "social anxiety." " He recorded that he was worried about this and would speak to the nurse and queried whether there should be Social Services' involvement. Once again, in my judgment, his having access to the family nurse partnership notes would have been helpful particularly in relation to the unfolding situation as it transpired so far as A was concerned.

80. He agreed that from subsequent notes in December 2016, the mother was able to make plain to him her sense of devastation and unhappiness in relation to A having been taken into care and her sense of injustice, and how the family were racking their brains as they know that they had not done anything and also felt that even accidental injury was very unlikely.

81. Apart from the mother's observation in relation to the father putting a hole through the door, he has never received a complaint of domestic violence by the mother against the father.

82. He recalls the mother complaining subsequently after A's removal into foster care, that Social Services were not taking her concerns about this seriously and the mother was expressing frustration at trying to understand why Social Services were not dealing with the matter.

83. In terms of the family looking for possible explanations, he recorded that the explanation of the family dog jumping off the sofa was one that was canvassed in the family.

84. The sources of all his information were in the main from the mother. The father was not his patient but he gained the impression from her that she was taking the lion's share of the care as the father was working full-time. But the mother had always been positive about her wish to be a mother and never said that her low mood impacted on her care for A and felt that she was able to take care of her daughter.

85. **FNP** is a family nurse at Buckinghamshire Health Care NHS Trust and is a nurse with the Family Nurse Partnership programme which is an evidence based preventive programme offered to young mothers having their first baby. This is a nurse led intensive home visiting programme that uses psycho-educational approaches and begins in pregnancy and continues until the child is two years old, and is primarily directed at first time mothers under the age of 19 and there are various referral routes. In this case, the mother was referred by the Midwifery Service and in FNP's police statement of 16th November 2016, she comprehensively catalogues various visits to the mother whilst she was pregnant, after the birth of A, and subsequently at the time of her removal in December 2016.

86. Significantly the mother re-engaged with her service in March 2017 and she has been able to give guidance to the mother during supervised contact sessions and has also been involved, to a lesser extent, with the father on a few occasions at the start of his supervised contact session.

87. There is a high level of engagement initially with her visiting every week for four weeks and then approximately two weekly visits thereafter and she kept a full record of all her visits in her practice notes.

88. Very broadly, she agreed with the proposition that, prior to A's birth, the mother was very keen and receptive to advice. She was demonstrably open particularly in relation to difficulties in her past. This was a planned baby and she was very excited at being a mother.

89. There were times when she did not feel supported by the father and there were times when she reported frustration and anxiety in relation to housing.

90. Post birth she reported low feelings but was able to acknowledge how she was feeling and welcomed assistance. Again, she sometimes felt not supported by the father. Notwithstanding her low feelings, she recorded very positive interaction by the mother with A.

91. Even at the visit of 1st December when she made the decision to inform Social Care and police regarding the bruise on A's upper thigh, she was able to observe, when she stayed with the mother and through an observation of a feed, nappy change, play and settle to sleep, that the mother was "consistently calm, kind and respectful reading A's cues well and responding in a timely manner." She agreed that she had had a low level of involvement with the father. He worked long hours but on the few occasions that she saw him he seemed to be keen to learn.

92. She explored on 1st December, and this appears in her notes, any possible explanation for the bruise on A's upper left thigh and the mother volunteered to her that she had seen another possible bruise two weeks ago on A's buttock on the nappy edge and thought that the nappy may have been too tight. Mother expressed concern that the father may have held A too tightly but not intentionally. She said he sometimes gets frustrated with A but would never harm her on purpose and gave no indication that she may have harmed A herself. She demonstrated how it was that the father had held A with his thumb on the same side of A's thigh as the bruise. She explained that sometimes father gets frustrated with A but did not explain how father's frustration with A manifested itself and there is no indication, from anything that she recorded, that the mother said that there had been a deliberate or abusive act.

93. She recalled of course, when she first met the mother on 28th April 2016, she was happy and excited about having a baby and very enthusiastic about the programme. She described the mother as having "perfect engagement" and eager to learn and on the two occasions that she saw the father pre-birth, he engaged well and also engaged in a feeding session and there was nothing unusual about the father not being able to undergo a higher level of engagement. Her client was in fact the mother and she was encouraged to share information with the father.

94. It is of course right that very early on in the process (possibly the second visit in early May) and on completion of a check list, the mother was able to explain: her history of previously self-harming by cutting and the use of substances; the effect on her of the death of her maternal uncle who was an alcoholic and who she helped care for with her mother through his illness until he died; and the abusive relationship she had with another boy which became physically violent and controlling. However, she said that since being with the father she remained in good emotional health with no thoughts of self-harming, no substance abuse and that she felt stable and supported. There was then, notwithstanding the mother's early history, an optimistic start but, from time to time, and this is recorded in the notes, she felt that the father was being less supportive of her. There was pressure in relation to her non-entitlement to benefits because the father was working and she felt that she wasn't contributing; and in between more optimistic periods that were recorded, she did indicate, on 11th August in a session, how she often felt lonely in her relationship with the father and felt that she was at the bottom of his list of priorities and expressed the thought that if it were not for the baby, the father would have ended the relationship. She also indicated that she felt that the father was very traditional about roles but felt supported by her own mother and the father's mother. Significantly, she did not share abusive behaviours from the father, just a feeling of being less loved and certainly there are reports of a lack of intimacy, which she indicated was not unusual in some couples where there was a pregnancy.

95. There was something of a progression in terms of the mother's anxious state. On 7th November she was feeling low but once again she was very open, with the mother recognising her symptoms as she previously has suffered with anxiety. She also shared that sometimes she feels that she is afraid of getting postnatal depression and at that stage had moved back with her mother although she did not indicate any thoughts of self-harm or suicide. The father was visiting her every day when she was with her mother but she felt less supported by the father's family. It is of great significance that during that visit she was mainly displaying "low intensity negative affect," looking sad with some silent tears but when engaged in care-giving activity, the mother was able to change her affect to low intensity, positive affect and was able to smile and chat to her baby with warmth. There was nothing that she observed from her considerable experience, that raised alarm bells in relation to the mother's care of A.

96. At a further visit on 16th November, mother reported high anxiety and low mood. The mother was however managing to look after herself and A but found this difficult due to tiredness and lack of motivation. She was feeling that the father doesn't help as much as she would like and she was using strategies as told to her by this nurse in relation to the "use of "I" messages" when talking to the father. Although the mother was experienced in high anxiety and low mood and had some thoughts of self-harm, she had no plan to act on these, with A being a protective factor. At that time of course she had begun to access help through her GP by way of medication and a referral being made to "Healthy Minds."

97. Of course the mother had previously, on or about 1st November, been concerned about a rash on A and that formed the basis of a GP referral and the mother, it would seem, had that appropriately checked at hospital.

98. She received a call from the GP on 29th November who told her that mother had reported that the father had recently hit a door, which was uncharacteristic and she saw the hole in the door herself, which had been repaired by the mother. She also saw a rip in a bean bag, which was said to have been caused by the father throwing a remote control. But there were no child protection concerns until she saw a bruise on 1st December.

99. She described the mother as consistently open who recognised her challenges and sought help and she never saw her being frustrated in relation to A.

100. She agreed that both mother and father had pressing household pressures and concerns as they wanted a place of their own and contrary to her previous abusive relationship, the relationship with the father, the mother described, was positive She agreed that there were no domestic violence indicators other than the incident where the father hit the door.

101. From time to time, and there are references to this in the notes, the mother acknowledged that she could get moody and this witness agreed that pregnancy could make a young woman less tolerant and that she felt, from time to time, that she was not understood.

102. It is clear that the mother's moods fluctuated somewhat and by way of example on 28th July mother described herself as being less moody.

103. She agreed that 7th November was the first potential marker of a serious change in the mother's state of anxiety in contrast to what had been recorded throughout October when she had, from time to time, described herself as being well supported, including well supported by the father. She agreed with the proposition that this was something of a "sea change" and she talked of various strategies to the mother as to how she could cope with this, but there were no alarm bells as far as she was concerned and she didn't record any particularly difficulty that the mother had with her temper or inability to cope with A.

104. She had no knowledge, and there is no reason why she should, of the text messages passing between the parties on 7th November when they indicate, "I am struggling so much to cope with her today" but she was able to agree, when she read the father's response, that he had been very supportive, to which the mother had added, "I don't think I can deal with her anymore."

105. She also could not recall what was said by the mother in relation to the bruise on A's thigh or if the bruise was pointed out to her for the first time when she called, but significantly perhaps, she had been weighing A naked on 27th October and again on 7th November and there were no concerns from her in relation to A's presentation.

106. At no time did the mother indicate that the father could or would carry out any deliberate act of harm in relation to A.

107. **FC** is A's foster carer and the author of a Children Act statement in these proceedings dated 30th March 2017 and a police statement of 2nd February 2017.

108. It has been during her care of A that a number of bruises and marks have been found on A and these occurred variously between 29th December and 2nd March 2017, at a time when she was receiving exemplary care from her. We know now of course that this is due to A's propensity to bruise easily, and indeed she has subsequently noticed bruises on the lower part of A's knees while she has been crawling and clambering over toys. She has been thriving in her care and the Mother has reposed a great deal of confidence in her to the extent that even when bruising was discovered while she was in the care of this foster carer, the mother in particular wanted A to remain with her.

109. It is clear that there have been no incidents while A has been in her care where A has been subject to any injury.

110. It is clear that she has enjoyed a good relationship with the mother in particular and it was she who was present on 4th July together with both parents and a social worker at Dr. Saggar's clinic, when a blood sample had to be obtained from A, which caused her considerable distress.

111. In short form, tourniquets had to be applied to A's arms for the nurses to choose which arm from which to extract the necessary blood sample. This caused A great distress and her parents were also distressed. It has emerged from her evidence that both parents, two nurses, and a social worker, together with FC were all in a small room.

112. Mother's response to A's distress seemed to be appropriate to her although she was very emotional. Father was upset and clearly frustrated at the prospect of his daughter being hurt albeit for a proper purpose and although he stormed out, she didn't recall any particular aggressive behaviour or bad language from the father and was fair enough to say that the father was indeed very frustrated and parents react in different ways to the distress of their children.

113. It was the social worker, **SW2**, who was present with the parents and her at the visit to the clinic and she was able to write notes throughout the visit about the interactions and behaviours observed between A and her parents. She listed warm interactions with A outside the clinic and throughout the appointment from both parents, but particularly from the mother. Inside the clinic, the mother was able to stimulate and engage A and make her laugh and babble and father also had the ability to do this but did so to a lesser extent. When A became distressed, through no fault of the parents as she had a secure attachment to FC, the foster carer, the mother was able to pass A back to the foster carer in an appropriate way and recognise her position as the best person to offer comfort and reassurance. Both parents were able to talk positively about A and the progress in her development; mother in particular was able to pick up on A's cues and did so competently. There seemed to be a suggestion that the mother was often keen to seek professional advice for all matters where she required reassurance for A. The father's threshold for seeking professional advice and support was higher, and that was put in the context of him having a serious facial injury at the time and indicating, in discussion, that he would only seek medical assistance as a last resort. That was not however intended as any criticism of him. It is clear that she had considerable sympathy for the father's frustration as he clearly found it distressing to watch the procedures in play in relation to obtaining the blood sample. Apparently the nurses applied tourniquets to one arm but there was not much room for them to move round to the other arm and the father became frustrated and was obstructing them attempting the other arm. He was concerned that they were hurting A and he stormed off, but she was able to agree that it was an intense situation for the parents, who reacted in different ways; with the mother as one who left the room and then came back to deal with the situation and tended to A's needs whereas the father dealt with the matter differently and took himself away in what she clearly thought were understandable circumstances.

114. She also recalled that the mother did not wish A to be swaddled for the test to be taken (which is the normal procedure) because of the earlier experience with marks or a rash being left on A as a consequence of swaddling with a cellular blanket.

115. I drew from her evidence that she had no real criticism of the parents but when she observed the parents together, they appeared to have a very amicable relationship although when the mother became visibly upset, the father appeared to offer no physical comfort at all but she wished to note that both parents engaged well with her throughout the process.

Interveners

116. **C** is A's paternal grandmother. She is the author of two statements within these proceedings and within the police bundle, a police statement and a timeline.

117. One of the issues in the case has been the extent to which any of the interveners could or would have inflicted any type of deliberate or accidental injury on A whilst she was in their joint or individual care. From the documentation, including a contribution from C and the other interveners, the local authority have provided a schedule or timeline of A's care from the date of A's birth on 2nd October 2016 until she was removed into care in early December 2016.

118. Before I deal with the paternal grandmother's evidence, it is apparent from that timeline, which appears to be an agreed document between the parties, that although A was cared for during certain short-ish periods by either the paternal grandparents, aunt or the maternal grandmother, A was in the primary care of her mother throughout the period. Father was involved to a lesser extent in A's care on a daily basis. During the periods of A staying at the home of the paternal grandparents, she would come into daily contact with both paternal grandparents and E and there were periods where A was in the care of others without being in the care of her mother.

119. Having said all that, neither parent nor indeed the local authority puts a positive case against any of the interveners.

120. Drawing together the threads of the paternal grandmother's written and oral evidence, it would seem that her son, F, was about 7 or 8 years old when he had ADHD and he was on medication for it until he was about 14 or 15. It seems that he had learning difficulties at school and was deaf in one ear. He was statemented and had behavioural issues although he was never suspended.

121. His behavioural issues were manifested in him losing his temper, about which she said in her police statement; "he would not be aggressive, he would shout but then back away as he knows it's better to walk away. As far as I know, F has never been in a fight, he isn't that sort of person." It seems that her son met the mother through a friend in September 2015 and she described "a really tight and very close relationship." It is her case that the maternal grandmother disapproved of this relationship given the fact that her daughter was only 17 and the mother moved into her house.

122. It emerged that mother and father were trying for a baby but the maternal grandmother called her and she spoke to both the mother at home and F on the phone telling them it was silly because at that time they didn't have a home of their own but they both wanted a baby and they equally wanted a baby and were over the moon when they found out they were expecting.

123. At various places in her evidence she describes the fact that A was a colicky baby, nothing out of the ordinary. She did show distress when she had constipation, screaming a lot. She describes A as a "happy smiling and gorgeous baby." And a theme throughout her evidence was that she had no concerns about the way that either the mother or father handled A as they held her confidently and in the correct way. After the birth, she noticed that the mother was a bit down and she thought that it was baby blues and not postnatal depression and acknowledged that the mother signed up to seeing FNP to get support. There came a time, apparently, when they returned from Z after staying with the mother's grandparents, when mother said she was moving back to her own mother's home for a bit. Although she had had an up and down relationship with her own mother, they were close again and she wanted to be with her mum and as far as she was concerned, there were no problems between the parents at that particular time. By the Thursday of that week, the mother had moved back because she and her mother had had an argument and she reported that her mother had slapped her around the face. The parents then stayed at her house, which as we know is occupied by her daughter, E, and her husband until they got their own flat.

124. It seems that moving into the flat involved a communal effort and the paternal grandparents provided support. She knows that when the mother moved into the flat, the mother went to the doctor's and asked for help by way of extra support as she had moved to a new house and new area and she records in her police statement that the mother felt that by seeking support it had somehow backfired on her.

125. As far as she was concerned, there were no incidents in or at their home that could have caused injury to A except of course the mother's report about the dog who jumped over A when she was at her mother's house to see M but the account that she gave in her police statement was, "the dog didn't touch A as far as I know but it startled her."

126. Her view in her police statement also is that whatever happened must be accidental as no one would deliberately hurt A. She prepared a timeline for the police and also, more particularly, in these proceedings a document entitled, "An account of M's time with us – September 2015 – November 2016" and she was criticised that the document was, in effect, a critique of the mother and did not acknowledge difficulties with her own son, the father, although I am bound to say that I am sure that that was not the intention of the document.

127. As a consequence, in cross-examination, she was taken through the father's medical notes where a number of quite serious historical issues were put to her, namely the suggestion that the father was in fact aggressive and that family therapy had been recommended together with parent counselling. It seems that as far as the observations of a Dr O was concerned, namely that F has conduct disorder describing as he did "his unruly chaotic and destructive behaviour which damages his own life, alienates him from his friends and which will inevitably make him an unhappy and maladjusted person.", that was written in June 1997 with the exhortation to C and D to make major changes in their own approach towards parenting their son, expressing doubts that they would be able to do this. The paternal grandmother made it clear that she did not accept a lot of what Dr O was saying and C maintained her view that although F had temper tantrums and could be nasty to his sister, he was not aggressive.

128. To add to the mix, it seems that there is uncertainty as to when F finished using steroids for weight lifting. The potential dangers in relation to steroids were highlighted by numerous references in the medical notes. C says that she was aware of steroid use in 2013 but seemed to be unaware of the very firm medical advice for him to stop using steroids in 2010. She was not particularly aware of when he was using steroids save and except she noticed that at times he would be less tolerant and suspected that he was using steroids because he was doing a lot of training and there came a time when he agreed with the mother that he would throw away all the pills and they had a visit, apparently to the local authority disposal bins, at the start of their relationship when various pills were disposed of and this would have been in about September 2015 and so far as she was concerned, she thought he had stopped using them then.

129. She accepts that her son went to the gym regularly during the time that they were living with her but thought this was about two or three times a

week.

130. She was challenged particularly about her maintaining, as indeed she did, throughout her evidence that her son was not aggressive in the light of the evidence of him punching a hole in the door and throwing an object to damage the bean bag and, in particular, how his anger and frustration would show itself. She accepted that the father squeezes things [it seems that a squeezing exercise is part of the training he does] when he is angry and lobs things on the floor but really maintained her view that the behaviour that she was familiar with was that the father would shout and storm out and did not hit people, and that when he was using steroids, he was quicker to get to that situation.

131. So far as the mother was concerned, lest it be thought that her document was critical of her, she said she did not intend to say in any way that the mother was not doing a good job so far as A was concerned and said that A was a loved and wanted child and it is clear that she and her husband and daughter had opened their house to her son and the mother and, in my judgment, were genuine in their desire to do what they could. She did acknowledge that there were, from time to time, arguments between the young couple particularly in relation to renting or buying as it seems that F had been offered £30,000 from his own grandmother to help him buy a house and she was slightly concerned when they made the decision to move out to a flat so quickly after A's birth because of M's postnatal depression.

132. She remembers nothing of concern in relation to what may have happened to A while she was living in her house.

133. What was clear from her evidence was the extent to which there has been division between the parties. Of course, the parents have separated and inevitably, and very sadly in my judgment, each party is looking over its shoulder at the other party wondering if they were in some way responsible for causing injury to A. Having said that, I did detect a great measure of affection from her towards the mother and a genuine sense of goodwill in working together in the future.

134. **D** is A's grandfather, a co-author of the letter entitled "Family Concerns" which voiced family concerns regarding the discrepancy in the radiological evidence and concern about Dr Fairhurst's reliability; a Children Act statement in these proceedings of 10th April where the paternal grandfather raises concerns once again regarding the medical radiological evidence and which sets out briefly his very limited involvement in the physical handling of A, indicating as it did that it was a full week after her return from home that he actually held his granddaughter for the first time and, of course, his police witness statement of 23rd December 2016, which was a statement that is nearest in time to A's removal.

135. In that police statement, he sets out the surprise that he and his wife experienced when he heard that the mother and his son were expecting a baby but after A was born he was also surprised at how well his son was with her, undertaking a lot of the caring responsibilities. It transpired, on clarification, that he only saw his son feeding A a couple of times in the kitchen and didn't see any bathing or changing but on what he had seen, he was clearly pleased and surprised and indicated in his statement that both parents seemed quite proud of the pregnancy and understood that it had been planned. He had very little hands-on care, maybe five minutes or so holding the baby from time to time during the period that the parents and A lived at his house. His understanding was that his wife and daughter helped out when asked.

136. He was questioned extensively about his son's temper and whether or not he was aggressive and he described his loss of temper as not frequent and "no different to the rest of us." He was challenged that in his Children Act statement he had mentioned, in the context of F damaging the door, that when he went over to the flat on 4th and 11th February 2017 to cut the bottoms off the doors and rehang them, he did not see any damage and therefore disbelieved his son had in fact caused this damage although later, of course, it transpired that this had been admitted by the father and the door had been repaired prior to him seeing it. He hadn't spoken to his son about this although accepts that he probably should have done and this was certainly consistent with his view that his son was to live his own life and he let him get on with it.

137. He hadn't mentioned in any of his evidence about his son's volatile background because he didn't think it was particularly necessary. He did not witness any physical aggression between his children but said that his son could be nasty to his sister when growing up but there was no physical violence and he said this not out of any motivation of wanting to protect his son.

138. When his son lost his temper he would slam doors, shout and then clear off to cool down but once his son started fulltime work when he had left school, although they lived in the same house, he didn't see a great deal of him.

139. Similarly, as he said in his police statement, he never saw the mother or father "lose their rag" with A.

140. He mentioned the time when the mother moved out to go and live with her own mother for a while after they came back from the Z weekend trip. He had understood that the mother was suffering from postnatal depression and needed some support from her own mother.

141. He did hear one or two arguments between the parents but considered it was none of his business and kept out of it and when the couple were living with them, when the father came in, they went to their bedroom and he saw little of them but the little bit of care that he saw that his son give to A was good, equally he had no criticism of the mother and her care.

142. He was at home the following Thursday when the mother decided to return from her mother's and was clearly aware that the mother had said that there had been an argument and that her mother had slapped her around the face.

143. He was clearly aware from his wife that his son was using steroids and thought that he knew about this before A was born but did not discuss that with his son and, as he said, although his wife has spoken to him about it he "tends to switch off."

144. A picture emerged of him seeing quite a lot less of his son since they were both working full-time and sometimes his son came in late from work in contradistinction to when his son was growing up when he took him with him to his own work as much as he could and he managed to get a job in a garage on the same industrial estate where he works and the father had in fact started helping out there when he was as young as 14.

145. It was also plain that he had no real concerns about the mother's care of A and when she moved back temporarily to her own mother he was told at that time that she wanted more support and nothing else. He accepted that he hadn't believed that his son had damaged the door by head-butting or punching it although he now knows differently and certainly there was an emerging picture of him not being particularly willing to challenge his son or make enquiry of him.

146. Whatever concern may have been expressed in relation to his son's days at school and the diagnosis of ADHD, significantly and in terms of his behaviour, there had been no permanent exclusion from school and no criminal involvement. He and his wife had challenged the fact that there had been no diagnosis and that's why they sought a second opinion and, after six or seven years when F had been on Ritalin, it was they that weaned him off little by little and help launch him into adulthood with a proper job where he has been for the last ten years or so.

147. So far as his own involvement with A was concerned, this could be best described as extremely limited. He wouldn't, for example, go into the bathroom to see A in the bath as he regarded that as part of the parents' and A's privacy. He would sometimes mind the baby while they were getting the bath ready.

148. The picture also emerged of the parents, who he saw were clearly excited by having a baby, although he had no emotional heart to heart with his son about the meaning of fatherhood. He was certainly not a "hands on grandfather," it was a household where the roles were strictly traditional.

149. Notwithstanding his stance in the documentation, he seemed to now accept the weight of the evidence that there were probably two unexplained fractures in relation to A but was clear, notwithstanding his son's past history of volatile behaviour while growing up, his loss of temper as a young adult and how this would manifest itself, and damaging the door did not make him believe for one moment that his son was capable of harming A. Equally, it would seem that he held the same view in relation to the mother, despite having heard evidence of her troubled adolescence and self-harming.

150. **E** is A's paternal aunt and lives in the same household as her mother and father.

151. She too has provided a statement in these proceedings and a police statement.

152. She spends most of her time working from home and that was the position in October and November 2016 and she was cross-examined thoroughly in relation to whether she saw anything untoward in relation to the behaviour of either parent so far as A was concerned against the background of she and her mother seeing A every day.

153. She was asked questions about her brother and his aggressive behaviour, as recorded in the medical notes, and she was clear that she had no recollection of being hit by him although he would wind her up, but this was normal in a brother and sister relationship, he would also shout at her. They were not particularly close.

154. His temper would manifest itself by him shouting and then going off upstairs where he'd have a bath, use his weights and calm down.

155. She became aware that he was using steroids. She must have researched it because she was aware of seeing acne on his shoulders, which she knew was a sign but she did not discuss it with him.

156. She was equally aware of the mother's ups and downs in pregnancy and said in her police statement, "M was up and down through the pregnancy and some of it was probably because she was pregnant and some of that was because just how she was normally before she was pregnant."

157. Subsequently, she set out M having the baby blues after A's birth.

158. Her belief is that she didn't believe anybody hurt A deliberately and expressed the wish that A could be returned to her mother and father, something that she would not do if she thought either had harmed A.

159. She was challenged that she paid tribute to her brother's childcare skills but in fact accepted that this was something of an exaggeration because she never saw any nappy changing or bathing by him, she just assumed that that's what he was doing and there was a time before he returned to work, in the first two days of A's life, where he was spending as much time as possible with A in the knowledge that shortly he would be returning to work and in that period of time he certainly did a lot of her care by way of feeding and cuddling her.

160. In terms of the parents' relationship, she would hear the normal bickering and the only shouting she heard was an argument about the flat and whether they should buy or rent.

161. There were a series of days after the parents acquired a flat, which they then had to decorate, where she and her mum looked after A when the parents were out, but there was nothing really of concern in the whole of that period.

162. She expressed a concern, in her written evidence, about what she had read regarding Social Services removing babies from innocent parents and how some social workers would acquire bonuses for this. She still thought that this may happen but not in this case and agreed that it was important to find out what had happened.

163. She did not know who had caused these fractures to A.

164. It is clear that, from time to time, the mother did confide in her about her childhood and one or two personal issues in the relationship but mother did not really confide much in her as to how she was feeling after A was born and more was said by the mother to her while she was pregnant about her past and previous depression.

165. Her position and that of her mother so far as childcare arrangements were concerned, is that they would help when asked but were conscious that F had asked them to back off so that M could get on with it.

166. The mother had never confided in the same way as she had to her GP that she was struggling to cope and also struggling with her temper when A was crying. She certainly wasn't aware of this on the ground and it is not what she saw.

167. She had no concern, by way of summary, in relation to any prospect of abuse from either mother or father and nothing that sticks in her mind regarding any behaviour that would have caused concern.

168. I was left with the closing sentence in her Children Act statement which said, "we all miss A and we all want her back where she belongs, back with her mum and dad where she should be." That remains her position.

169. **B** is A's maternal grandmother. She has prepared a number of notes setting out her involvement with the mother and A after A's birth which were prepared in March and April of this year, she is the subject of case notes taken when spoken to by the police officer who attended on 1st December 2016 and clearly minuted by a social worker, the subject of a viability assessment and the author of a statement to police on 28th February 2017.

170. As with the other interveners, neither parent nor indeed the local authority mount a positive case against her in relation to perpetration but nevertheless her evidence, in common with other family members, is important in understanding some of the pressures on the young and inexperienced parents in this case as well as shedding a little more light on the incidents. There was nothing in her evidence to suggest that she has not been a devoted mother and grandmother but she has clearly struggled, as indeed have other paternal family members, to understand what has happened in relation to this case. Her police statement was dated 28th February 2017 and it would have been clear to her at that time that the police were investigating serious allegations involving multiple fractures to a small baby. She was criticised for not including in the statement a little more detail in relation to the difficulties that the mother faced as a child and adolescent including self-harming and a referral to CAMHS and it may well be that she wrote the statement in response to questions put by the police officer as she was not asked to go into any particular detail, but just give a brief description of her daughter's childhood.

171. In that police statement she readily accepted that she wasn't impressed that, after about four months of being with the father, her daughter told her that she was pregnant and it involved them not speaking for nine or ten weeks but it seems that they made up and she said, "our relationship became stronger than ever." She was fulsome in her praise about the way that the mother looked after herself during the pregnancy and, after A was born, she saw the mother practically every day. She rehearses the dog jumping on A on the sofa as a possible explanation for injuries although it is clear that she did not believe, even at the time, that it was, but examined A who had no marks on her and wasn't distressed after the initial upset and didn't think it necessary to call an ambulance or seek medical attention.

172. She could not fault her daughter as a mother to A indicating that she was always keen to ask if she was unsure.

173. She said of father, "F is also a great dad. He is very devoted to A and M and is very hands-on feeding and changing A when he can. He is always polite, kind and considerate. A always comes first in his eyes."

174. A number of individuals live in her house including her partner, her son, and her daughter. None of them were ever left alone with A as either herself or M was always with them. It transpired that her house is a fairly crowded one which partially explains why the mother did not come and stay with her post birth and also explains why it was, that after the Z trip, her daughter only stayed with her for three days with A as it seems that her partner was finding the presence of others in the house difficult and the conditions were crowded.

175. The paternal grandmother reports in her evidence that this witness had apparently told her daughter that Social Services would take her baby away from her as she gets so stressed and won't be able to cope and this was an occasion before having A but she had no recollection of this at all.

176. She did recall an incident when the mother had sought her reassurance after finding a trace of blood in A's saliva in her mouth and she thought that that could have been due to A catching her mouth on her dummy and that was the day before she went down to Z with A and her children, with the father joining them later. At one stage she described the mother and father being "very happy" at Z but in fact a different picture emerged with the mother being tearful and feeling low but, although the mother had low moments, this did not impact on her care of A and she suggested that she go and see a doctor.

177. It was agreed that she would stay at her mother's house on the return from Z and we know from other evidence that 7th November is an important date as it is clear from an exchange of text messages between the parents, that the mother was struggling to cope but she didn't get that impression and was not aware of the serious nature of the text exchange between the parents. After a very supportive text message from the father, of course we know that the mother replies, "… I don't think I can deal with her anymore I'm struggling so much to keep positive and trying to keep calm it's just hard." It is also apparent from GP's note that the mother was frightened about losing her temper.

178. It came to be that the mother returned to the paternal grandparents' home and she accepted that she'd slapped her daughter as she was hyperventilating and getting panicky just before she left. The mother was frightened about not being able to cope and it seems that F was present and he agrees that the mother was slapped to calm her down. There is a reference in her handwritten note to her daughter returning to the paternal grandparents as she felt "strong" but she accepted, in cross-examination, that this really was not the case and the impression that she gave in evidence was that her daughter was struggling.

179. It is accepted in the evidence that the parents eventually moved into their own flat and there was an incident on 28th November when the father put a hole in the door. She wrote a long note about a telephone call to her daughter at that occasion which is illuminating because in it she describes

learning from her daughter that her daughter had been having a bath and F was looking after A and the daughter got out of her bath because A was crying and this witness heard A crying in an unusual high-pitched way and it was a cry that she hadn't heard before.

180. Cross-examined by father's Counsel, she reiterated more than once that this was a different cry from a high-pitched cry that she had heard on a previous occasion and which was recorded in the evidence and it was suggested to her, by the time she did her handwritten notes in April or May, she knew full well that matters were more serious and progressing.

181. It seems, certainly by the time SW3 made her statement in these proceedings, it became clearer that she and her partner did have some concerns about the father and these emerged in a meeting on 21st March, as part of the Kinship assessment. Concerns involved the father having a foul temper and that he is aggressive while driving; he finds it hard to show affection towards others and emotion; he is immature and wants to get everything done too quickly making it plain that this is probably due to his lack of experience with babies and making it plain that the father had always been kind and polite towards them.

182. On the next occasion that this social worker, SW3, visited it seems that her criticisms of the father had escalated describing as she did the father as being "unpredictable" and she recalled three occasions when she had been concerned over his handling of A. The first occasion when he had been bending A's arms and legs in the wrong way to get her into a snow-suit although she accepted, in cross-examination, that he was only heavy-handed in a "masculine way." Another occasion when her daughter had told her that the father had been heavy-handed and that she was too frightened to talk to him "in case he went off on one" and she apparently had said that there was nothing to be frightened of. The third occasion was at the end of November, which I have already mentioned in evidence, when the mother was in the bath and when she got out of the bath A was red in the face and would not stop crying and screaming and she had heard a different cry than usual.

183. Interestingly enough, her own diary note makes it plain that A was unsettled when she saw her on 1st December.

184. When challenged by the social worker that she had not mentioned her concerns about F to anyone previously (and it should be recalled that this did not emerge in the police statement), she said that she was frightened and didn't have the concerns that she now had when thinking about all the incidents together and she was challenged again in April as to why her version of events had changed so much after her positive endorsement of F as a father.

185. She also indicated that she struggled to remember things and sometimes remembered something new when she was standing at the kitchen sink. As to why she might have been frightened, she said in evidence that she didn't want to be accused of breaking up the relationship and F was fiery and she didn't want to cause trouble.

186. Notwithstanding her daughter's early history of depression and emotional problems, she said that CAMHS had done her a lot of good because she followed it through and she saw improvements and was clearly pleased that her daughter had worked in a nursery and had been involved in the care of two young nephews.

187. She accepted that when her daughter had left her house to go back, she was clearly not particularly happy at the situation. She accepted, in cross-examination, that she knew the mother better than anyone knowing as she did her history of self-harming, the CAMHS involvement, the depression but did not seem to be aware that her daughter had expressed suicidal thoughts.

188. She was not aware that her daughter's relationship with X was of a violent nature until it was over and she was challenged that, because of her daughter's history, when her daughter told her again that she was depressed this could not be ignored and she accepted that as a proposition but not able to accept that she should have been more forthcoming with these details in her police statement.

189. In her police statement she says in terms, "there was nothing to lead me to have any concerns over her welfare or that M was not coping.", although clearly, she was present when her daughter saw FNP and knew full well that she was struggling as indeed the mother had reported to FNP, and she herself shared concerns about the mother's previous self-harm and suicidal thoughts. Also, and significantly, she went with her daughter to see GP who recorded, "came down with mum, struggling, can't cope, losing her temper, upset about it all, especially when daughter crying, move back with mum, which is upsetting as away from partner."

190. In cross-examination therefore, it was clearly established that by 7th November she was very much aware that her daughter was struggling and the suggestion in her police statement that there was nothing to say that she was not coping, was not a true or accurate impression, any more than the impression that her daughter was feeling stronger when she returned to live with the paternal grandparents was an accurate picture and I gained the impression that she was putting a favourable interpretation on matters in her police statement as distinct from what was being said, not only by her, but by her daughter to professionals.

191. A different picture, it would seem, was painted in some of the earlier documents and, in particular, the initial viability assessment of 6th December 2016 when she advised, "that F is a lovely man and you can see it in his eyes that he loves A and has given A the nickname "squidge." B stated that both F and M are doting parents and "they love A millions" and B knows F well enough to know that he can provide for A." In evidence, she said that that was still her view of the father although that would not seem to be the same position as recorded by SW3 when the grandmother rehearses various serious concerns.

192. Perhaps a more accurate picture was painted when she was first spoken to by a police officer on 1st December, the day of A's removal, and a note taken by a social worker, because she raises the issue of the father being heavy-handed, explaining that he is also a mechanic and whenever "he plays with A he ruffles, tumbles and tickles her tummy but not in an aggressive and malicious manner and she hopes that it was an accident." She suggests that bruises might have been caused by A's bath basin. She kept on reiterating that the father gets frustrated easily but normally the aggression is directed to himself and stuff and not at anybody. When the father struggles to settle down A, the mother intervenes and takes over.

She sets out that the parents have a bickering type of relationship with the mother being headstrong and structured in her ways and feeling unsupported by the father, but goes on in the self-same interview to make it clear that she does not have any concerns regarding the father but does say that him moving into his own flat and taking some responsibility was a huge step for him, "considering that at 27 years old he was still living with his parents and had no responsibilities whatsoever." She thought he was immature and it has taken him longer to adjust to having a baby, and that was her view in the witness box.

193. She had recalled seeing the father feeding and bathing A when they were staying at her house and she had no concerns and said, "F adores his daughter." It seems, at that stage at least, she had no concerns regarding the father and nothing stands out in relation to any information that she has to assist the court as to who may have harmed A but she was adamant, that notwithstanding her daughter's documented problems, it could not have been her.

194. **M** is A's mother. She is now 19 years old and was 18 years old when A was born. She has filed various responses to the findings sought, accepting as she does that A has suffered two posterior rib fractures, and is in the court's hands in relation to the extent of other fractures but denies that she has taken any action that would have caused A to suffer fractures, if she has no propensity to fracture at forces less than normal handling. It is clear from her latest response and indeed her last statement in the case that she believes that the father is the most likely perpetrator.

195. She also was interviewed by police on 1st December, was the author of a statement early in the proceedings approved in January 2017, which paints a different picture of her relationship with the father and what she now says is his verbally abusive behaviour and volatility as more particularly set out in her latest statement of 20th September, filed shortly before the start of the hearing.

196. In fact, she says that it is her latest statement that sets out the true nature of her relationship with the father. She felt that she had to paint "a nice picture" as she was still in a relationship with the father and it was never easy to accept that she too was a victim.

197. In that latest statement, she traces the start of her relationship with the father and how it began well. It implies that the father was less than enthusiastic about the pregnancy, although we know from other records, that he was widely excited at the prospect of being a father but the mother says, "I believe that the reality and the novelty of having a child wore off quickly. He realised that it was not all about him anymore and he could not do what he wanted when he wanted."

198. After she lost her job, while working in retail due to an altercation with another member of staff, the father indicated that there was no point in finding another job because she would not be eligible for maternity pay or other state benefits and she was put in the position of having to ask the father for money which she hated doing, claiming as she did that her circle of friends dwindled because she was a young pregnant woman and did not have the funds to go out. She became lonely.

199. The personal care of A was divided between them to start with but more and more she found herself undertaking more of the care and her clear expectation was that he would be able to offer her some respite when he finished his working day. The relationship, according to her latest evidence, seemed to have significant difficulties at the time that A was born. There was a lack of intimacy and affection. Father told her during pregnancy that her being pregnant repulsed him and the thought of having sex with her made him feel sick.

200. After A was born she claims the father did not like getting up in the night to help. A cried a lot, seemed to be suffering from colic and despite the difficulties of being a new parent, she never acted out or became frustrated with A. Whereas she painted a picture of the father becoming frustrated when he found A difficult to handle and said that he was unable to read her cues.

201. She remembers one occasion, that she mentioned in oral evidence as well as written evidence, when they were at the paternal grandparents' home when it became evident that the father had become frustrated with A, who was crying, and the father shouted, "why don't you shut the fuck up crying." She took A from him and explained that crying was A's means of communication. She claimed in evidence, for the first time, that there was a dramatic change in A's crying when she was in the care of the father when he was clearly frustrated and was out of her eyeshot. This incident happened before the Z trip but she wasn't able to date it with any precision and of course, it is not mentioned in her first statement and the nature of the cry is not mentioned in her second statement. But the incident has crossed her mind. However, she went on to say that the baby was not so distressed as to be unable to feed a comparatively short time later.

202. We know that on 28th November this was the first time that she'd seen the father lose his temper in a physical way, damaging the door and the beanbag, but before that he would shout and swear.

203. She acknowledges GP's GP record when on 18th November she is recorded to have said that she is struggling with her partner and said that he didn't grasp the concept of them moving out and the difficulties that this would cause because he'd had a very protected life living at home and as she clearly did not think that the father was an effective money manager, she was concerned that the responsibility would fall on her and she had no money of her own. She was against buying a property with the father because of the mortgage commitment and didn't think that the father was ready for it and also that the father's family was making a very high contribution, which could not be matched by her family.

204. She acknowledges that on 7th November, the notes accurately record her struggle with postnatal depression and she identified, when she saw GP, that she was struggling, couldn't cope and was losing her temper and was upset about it all especially when her daughter was crying and of course, that was the time that she had moved back with her mother after the Z trip.

205. She clarified by losing her temper, she meant really being angry with herself but at no time did she take this out on A. In terms of the record "… especially when A was crying" she said that A was not an easy baby and was clingy and it was sometimes difficult to read her cues and sometimes she wouldn't let her mother put her down and had to hold her virtually all day.

206. She acknowledged that the text messages were an indicator of her stress that she had sent in the morning before she saw FNP in the afternoon and GP in the late afternoon.

207. The text messages are of course illuminating and I have already rehearsed them earlier in evidence.

208. Significantly, when the mother spoke to a police officer at her property on 1st December when A was removed, not only did she describe F as "a brilliant dad" stating that he wasn't violent or aggressive, when asked herself how she coped with A she said, "I don't cope" explaining as she did that she didn't go out, didn't socialise and didn't feel confident in herself anymore, finding it hard to cope and that she suffered from postnatal depression.

209. Notwithstanding what she said on that occasion, she maintained that she always coped with all aspects of A's physical care but she was not coping with her own life.

210. The texts also indicate that two weeks before A was born on 20th September, she was stressed out, she and the father had been arguing the night before about the time he was spending at work and the small amount of time that he was spending with her and she accepted that she was needy but didn't think it was too much for her to expect him to spend some time with her at home in the last stages of her pregnancy. We know from medical records that the father had seen the GP on 19th September complaining of loss of sex drive having stopped anabolic steroids. This entry clearly came as something of a shock to the mother because her impression was that he had stopped using steroids before A was born.

211. When she was aware that he was using steroids, he would have severe acne on his back and his attitude would change and he "loved himself." He would lose body confidence if not using steroids and wouldn't communicate with her and while pregnant, she was not allowed near him sexually which eroded her own confidence.

212. When he was taking steroids she would get the backlash if he didn't get his own way and I took this to mean in a verbal way.

213. Her latest statement makes it plain that she found a bottle of pills in the door pocket of the car and researched that they were anabolic steroids and this occurred when A was 2-3 weeks old, but father said that they belonged to someone else, something she now clearly disbelieves.

214. In her latest statement, she was critical of the father's behaviour at A's appointment with Dr Saggar when there had been a sudden outburst when the medics were applying tourniquets to A's arm to find the best way of taking a blood sample in what was a normal and straightforward procedure. Both parents did not want A swaddled but the father became frustrated with the medics and, from his body language, it was clear that he was very angry, becoming rigid, complaining that the medics were hurting "his fucking baby." The father was clearly angry and confused and had to absent himself.

215. Her case is not only has she been very open with the professionals about her own history and difficulties and about her depression, seeking help in an appropriate way, but also in terms of A, it was she that was proactive in her care, bringing A's rash to the attention of medical staff and pointing out bruising. It is her case that she has been open and honest with professionals, particularly FNP, confiding in her concerns in relation to the father handling A too tightly and taking advice from her as to engaging the father in A's care as it was clear he found her patronising or critical.

216. The head-butting the door incident on 28th November, they had an argument that had happened after A had gone to sleep and was the most extreme example of father's loss of control and of course earlier that particular evening, she had been in the bath when the father had the temporary care of A, and when she said it was that A cried in an unnatural way that was heard by her mother.

217. She said that one way that the father would control himself was by squeezing things. In fact, on the evening of the head-butting incident he squeezed the remote control very tightly indeed before ramming it into the beanbag and breaking its surface.

218. Having said that, she has never seen anyone squeeze A.

219. It was in fact 28th November which was her major concern, particularly in relation to the father's loss of control and, earlier, A's cry that had been heard by her mother.

220. She acknowledged that she was not painting a different picture of the father particularly so in view of the s.47 home visit on 1st December, when she indicated that F was a very good dad and supported them financially in everything they needed, but went onto say, "F finds it hard sometimes when A doesn't know what she wants" but making it clear, "F would never do anything intentionally to harm A and he is not violent or aggressive." She clarified this by saying, "F is not rough but he is not as delicate as I am with A; he probably holds with a well held grip, I mean firm just to make sure he has hold of her properly, not loosely in case he drops her." She did explain that he had a lot going on at the moment and was finding it hard to cope with everything, them having moved into their new home, D, having moved away from his parents.

221. When cross-examined by the local authority, a picture emerged of A as a baby particularly after the mother was resuming the majority of her care on the father's return to work and, as time passed, and as the father became increasingly tired at work, she took over the majority of care. A would sleep through most of the night, that is to say from 10.30 to about 3 or 3.30am in the morning. She had given the impression to police that A would sleep all the way through the entire night. A picture of A emerged as a baby who was "restless" with colic, sometimes difficult to feed (the parents were experimenting with different feed types) and who would sleep during the day for periods of an hour or an hour and a half. She was also a clingy baby and, as the mother said, not the easiest baby, and that would be evident by looking at the contact notes.

222. She categorised father as "struggling" with A's care and how to handle and change her. For example, he would try and change a nappy very quickly rather than slowly while talking to A. She would intervene and this would cause arguments. She was always frightened that an issue would cause an

argument but the father would verbally lash out and certainly not physically.

223. So far as her low mood was concerned, she noticed it at the Z weekend and she agreed that at the end of October she had started feeling low and after Z, it led to her staying with her mother.

224. It was apparent from the text messages that she sent that she was struggling to cope, particularly the one of 7th November, but I am bound to say that the father's reply was supportive. It was clear that the mother was sharing her concerns with FNP in an open way as FNP's notes of the visit of 7th November, reveal. But the mother was clear that she never struggled to look after A and didn't offload in any real detail to her own mother. Notwithstanding confiding in FNP that sometimes she felt that she did not want A, she was clear that none of this impacted on her care. She agreed that when she saw GP it was a cry for help and she was "in a really low place." We know at the end of that week the mother returned home and she accepted that she was in a state about going home hence the exchange with her mother.

225. A picture emerges of a rather troubled time in the new flat with F doing extra hours at work as his boss was away, she was not seeing her mother and feeling unsupported and it was a pretty unhappy time. F was frustrated when they were trying to settle A saying that he didn't know why she was still crying and displayed angry body language and was rigid and snappy and it was impossible to reason with him about strategies. She was critical of his rough handling of A in terms of nappy changing instead of it being a slow and gentle process and thought it better that she should do it. Sometimes there was an argument if he wanted to continue.

226. It is her first statement that sets out the fact that the only time that F was alone with A was on 26th November when she and her brother went out to get items for the flat and when she came home she said that A was crying and it was clear from her statement that A was asleep in the cot at the time that she left. It was father's account, which I have read, that indicated that A slept until the mother and her brother returned.

227. It seems that matters erupted on 28th November when they had been in the flat for only three days. She was clearly concerned that when she was in the bath and the father was caring for A and she heard A cry in an unusual way, that something may have happened. A was very upset and she said to her mother on the telephone "red in the face." Looking back this rung alarm bells that A was so distressed but after she had been given her dummy she was settled down and went to sleep and that is when, later that evening, the parents had the argument which involved a broken door and bean bag. The father's assault on the door was particularly violent, head-butting the door on three or four occasions and she had not seen this degree of aggression before.

228. She accepts that she gave limited information to the police and only told the police about the door and even then, it appears to be a sanitised version of what happened. She did not explain the range of concerns. She accepts that her first statement was positive. She accepts that she did not give a full picture and agreed that she gave a rose-tinted view and was covering things up at the start. Financially, she depended on the father and was also blinded by love for him but over the last few months has been trying to come to terms with how her child could have had fractured ribs.

229. She had grave concerns about any prospect of A going to the father. Emotionally he would not be able to give A what she wants. He was not child centred (for example, drinking hot coffee over A at Dr Saggar's clinic). He had a temper and for A it would be like walking on eggshells.

230. It was suggested to her that if anything had indeed occurred on 26th and 28th November, it would be outside the radiological window but she was clear that she was not responsible for A's injuries.

231. She accepted, in cross-examination, that she had given inaccurate information in relation to her early statements and indeed on what she said to the police and understood that this may go to whether she had been inconsistent in what she had said, but maintained that she'd given FNP accurate information, although not to Social Services or the police. She accepted that she was moody with her depression and felt neglected. She accepted that she had portrayed a different situation with life at home and her life with the father in her later statement and accepted that she had told police that the father never lost his temper.

232. She was further challenged in relation to the accuracy of her evidence in terms of the midwife booking questionnaire and she was challenged that she had not disclosed her drug use or history of mental health but her case is that she was not asked specifically in relation to those issues and she noticed that the person completing the form was ticking the boxes on issues that had not been asked.

233. She accepted that she had not taken steps to put matters right in relation to her earlier statement until her most recent statement of September and, in particular, her assertion in her first statement that "the father has never been physically or verbally abusive towards me. We have been in a relationship for one year and three months. We have a stable and very loving relationship" was wrong and there was something of a mismatch between that and what she said in her latest statement.

234. Asked to explain why she had effectively rewritten what life with F was like, she said, "I had grown a backbone" and it was not a question of portraying the father in a bad light. She made the very valid point that neither has she tried to portray herself as perfect.

235. She accepted that A was a difficult baby and took a long time to feed and seemed clingy but indicated to the police that A was a good baby and it appears that a more positive blush was put on all issues including her relationship with the father at the start of this process.

236. It was suggested to her that when she texted the father, indicating that she was finding it difficult to cope, she received positive messages from him and she agreed that he was good at providing written support but didn't want to get involved in the "nitty gritty" of childcare.

237. She clearly felt a grievance that as a consequence of the breakdown of her relationship with the father in March 2017, in the following weeks as she was waiting for her benefit, the arrears of rent built up and she has kept the property going despite it clearly being the father's responsibility to continue to pay the rent.

238. She accepted fully that she was "in a bad place" on 7th November but her case is that she took advice and in relation to observations that she made to her GP about losing her temper with herself, she agreed that she felt like a failure and found day to day tasks to be a burden and explained how her anxiety kicked in but the anger that she felt was when wanting to self-harm resurfaced and she thought that she had buried these thoughts. The reference to losing her temper was not in any way related to A, it was more in relation to being angry and back to square one so far as her depression was concerned. She was clear that she never felt angry with A when she was crying but on one occasion when she was upset she felt she had to walk away and sit in the bathroom for five minutes or so as she was frustrated with her but she rejected any suggestion that she had been pushed to her limits.

239. She was challenged that there is a reference to her saying to FNP that she was worried about not wanting A on 7th November, and she said she only felt it that day and felt that she was struggling to bond with A but she recognised that she needed help and wouldn't hurt A however she felt. She explained the battles that she had with her anxiety and depression.

240. So far as her trip to the shops with her brother on 26th November is concerned, although it is her case that when she returned, A was crying, she agreed that she'd had no concerns about the care that she'd received.

241. In relation to the strange crying that she reported in her latest evidence in the witness box on 28th November and how alarm bells had sounded, she accepts that this was not mentioned in any statement.

242. It was suggested that what she had said about the father shouting at A to "shut the fuck up" was just not right but said the father admitted it to her when they were in a car together.

243. She accepted, with the benefit of hindsight, that she should have spotted the signs of relationship breakdown quicker and a lot had been going on in the lives of herself and the father over a limited period of time and the commencement of the relationship, early conception at 17, the onset of postnatal depression, moving to a flat and the arguments against the background of them struggling to cope with their baby, who was not easy, and the father's commitment to work.

244. Although we know that a mark was caused by A being swaddled and, on one occasion, the night before A's admission to hospital, the father was responsible for the swaddling although he did not swaddle A in the way that she approved, there was nothing out of the ordinary.

245. There was a difference of opinion in relation to nappy changes between herself and the father, she preferring a more gentle and child focused process but there was no time when they were struggling over the nappies or effectively fighting over A.

246. She could think of no occasion when she had effectively lost control of herself and injured A. She clearly didn't wish to implicate any of the interveners and the thrust of her evidence was that it only left the father and she was clearly concerned about what she had seen regarding his loss of control at some time when he would have had the care of A when she was doing other things like preparing feed bottles. Her evidence was remarkable to the extent that she was unable to pinpoint any particular occasion where an incident had happened other than perhaps when she had heard father shout at A about her crying but even then, A appeared to act normally and was no more difficult to settle when she took over her care from the father.

247. **F** is A's father and the author of three statements in the proceedings. He was also interviewed by police when, at that time, he did not mention the events of 28th November and him having lost his temper because he said that the police did not ask him about this incident.

248. He seemed very well aware that the mother had said to him that she was feeling low and struggling and he was trying to be supportive but readily confessed that he really didn't understand how postnatal depression impacted on her and he thinks that the mother's problems began just before they went to Z at the end of October. He was happy for the mother to go to her mother's house on their return from Z because that's what she wanted and felt that she would be supported.

249. After a few days, B seemed to be under some pressure, as he said, "in a hard position to keep her partner happy" and he remembers the occasion when he went to collect the mother to bring her back to his parents' house and she was getting worked up and hysterical and B did hit her to calm her down and they made up. He said that the mother was very stressed out and had got herself into an hysterical condition and things were getting on top of her.

250. He accepted that the mother had tried to tell him that she was struggling but he didn't really understand what it was like for her.

251. He explained how distraught he had been at hearing his daughter had fractures and how shocked the family had been after they received Dr Fairhurst's report and they were trying to get to the bottom of things.

252. He seemed to accept, after hearing the medical evidence, the existence of two fractures, accepted that they did not appear to be birth related and accepted that A could not have caused these injuries herself.

253. He was challenged that he'd painted a different picture in his early statements and the interview with the police as to what was really going on at home. In his early statement, he described having a good relationship with the mother and them being 'a strong team.' To police, he said that there had been various ups and downs but no rows and no temper loss and he readily accepted that the text messages revealed a different story and that he hadn't given a full picture. But was at pains to say that often he and the mother did have a good relationship.

254. It is to his great credit that, notwithstanding that he appears to be on the receiving end of the mother's suspicion that he caused injury to A through some momentary loss of temper or control, he characterised her as 'a fantastic mother' and making it clear that he did not think that she was any risk

to A and he would have no concerns in relation to A's safety if she was cared for by her mother.

255. It was increasingly clear as he was taken through what he'd said to the police and the various text messages, that the mother's struggles were not really mentioned in his statement and either he forgot to include them or clearly did not understand how it may be relevant to trying to find out what had happened.

256. He readily accepted that he'd had no experience of looking after a baby and that advice to M often came from her mother and that he told his parents to take a step back and they would see B most days when he went to pick up M and take M and A back to his parents' house.

257. He said that M had the majority of A's care and she was particular in that she liked things done in a certain way and he did feel that he was not doing things right, but resisted the notion that he saw it as annoying but did indicate that she came across as patronising.

258. He accepted that he was fully occupied with work and when his boss was away, would often work a twelve to fourteen hour days and this was the case in the last two weeks or so before A was removed. He accepted that the mother was annoyed at the amount of time that he was away.

259. He also accepted that he would lose his temper but that showed itself by him ranting and raving when he got home and he would shout and "eff and blind" at times. He also, as he told the police, would squeeze objects with his hands to channel his temper, and lob things around at work and if he was really worked up, he would get very tense.

260. His steroid use has been the source of considerable dissention between the parents. He accepted that he started using at 21-22 years old and that involved injecting steroids, notwithstanding clear medical advice as to side effects, but he did not notice whether he became any more short tempered and clearly did not accept the mother's view that when he was taking steroids, it was like walking on eggshells for other people.

261. It is apparent from the medical notes that he restarted injecting and this was recorded in September of 2015. Of course, the mother suspects that he was using steroids during their relationship but as far as he was concerned, and notwithstanding the mother finding pills in his car which he said belonged to somebody else, he had stopped using steroids before the birth of A although accepted that he has used both steroids and cocaine during the course of last summer after A's removal.

262. He knows that the mother and maternal grandmother say that he handled A roughly, but he thought that he was doing things as gently as he could but accepts that he was spoken to about this by the maternal grandmother who thought that he was being heavy-handed.

263. In relation to the undated incident when it is alleged that when A was difficult to settle, at a time they were living at his parents' house, possibly before the trip to Z, he shouted at A who was crying to "shut the fuck up." He accepts that an incident of this sort happened and records it in his statement but said that he did not swear. He accepts that the mother was downstairs for a period of ten or fifteen minutes when she was preparing bottles and he tried to settle her down by rocking her when the mother came up to take over. He accepts that he was frustrated and could have raised his voice and the mother was right about the way that he was holding her which, in any event, I had understood was not a criticism by the mother, but at no time did he lose control and lose his temper and injure A. He was challenged that in a text message of 14th November the mother had said, "feel like you're pissed off at me and you're annoyed at A because you seem angry with her?" and it was suggested that there had clearly been an incident that had prompted this text message from the mother but he was unable to remember an incident when he was angry or "pissed off." He was clear that on 26th November there was a time when he had the sole care of his daughter and he maintains that she was asleep when the mother went out and slept for two hours or so and was in fact asleep all the time, something which the mother considered to be unusual and was in excess of A's normal pattern of sleep but contrary to the mother's evidence, he said that A was asleep when the mother returned and not crying.

264. 28th November was a difficult day it would seem. His version is that A was crying when he returned from work but accepted that she had been fed and settled down by the time that the mother went to have her bath and it was while the mother was in the bath that she became distressed and he tried to settle her. Although she cried he did not think it was a particularly unusual cry and when the mother spoke to the maternal grandmother, they both thought that A had colic and that is why the maternal grandmother suggested Infacol and after about twenty minutes or so, A went to sleep. As to the crying, he accepted that it got louder but did not consider it to be an unusual cry.

265. Subsequently of course, when A was asleep there was the argument which involved him using considerable force with the remote control to puncture the bean bag and head-butt the door. He explained it had been a stressful evening and the mother was dragging things up and matters did get heated and the mother was "right in my face." She called him a "cunt" and he was angry and frustrated and that's why he head-butted the door after having squeezed the remote control and jabbed it into the beanbag.

266. Nevertheless, and perversely in my judgment, he did not feel out of control and, in my judgment, he clearly was and of course we know that none of this was mentioned to the police. The father apologised for the incident to the mother but he denied any suggestion that he had not mentioned it to the police in case it reflected badly on him. There is no doubt that he gave the police a misleading picture in relation to his temper and how he controlled it.

267. He maintained his stance that he was absolutely sure that the mother did not cause A any harm saying that she did not have it in her to do this and at no time did he lose control with A.

268. He was able to agree with many propositions suggested to him by the mother's Counsel. He agreed that the mother was a fantastic mother and would look out for him, as he told the police. He agreed that at the start of the relationship he was a bit possessive and a bit jealous. He agreed that they both wanted a child. He agreed that the mother didn't like his use of steroids and there was an agreement for him to give it up.

269. He did not agree however that the steroids that were found in his car were in fact his or indeed that he'd put a friend of his up to saying that they were his.

270. He agreed that he had not told the court about his use of steroids in his recent statement and he agreed that he had been warned in relation to mood swings as a possible side effect. He did not agree that this impacted on his behaviour and if it had been a big concern to his mother, who also did not want him to use steroids, she would have said but he was able to agree that it could have made him a little less tolerant and he also agreed that he could shout and raise his voice but did not believe that steroids made him aggressive.

271. He did not agree that the pills found in his car, when he gave the mother a lift in July of this year, were necessarily to stop breast tissue growing as a consequence of taking steroids but rather for acne and it emerged, of course, that he was taking steroids at some stage during the summer of 2017.

272. Although there are arguments with the mother about money and a range of other matters, he did not agree with the fact that she had no money was undermining her confidence and agreed that he did not want her to claim for Working Tax Credit because he believed that he was earning sufficient for the family. He agreed that him going to the gym did cause arguments and conflict and that is why, before A's birth, a compromise was arrived at whereby he would go early in the morning but he went very little after A was born.

The Law

273. The court has clearly in mind the case of **Re JS [2012] EWHC 1370 (Fam)** (paragraphs 36 to 45) wherein Baker J gives a helpful summary of the law relating to cases involving allegations of non-accidental injury to children. The relevant legal principles can be distilled as follows:

a) First, the burden of proof lies with the local authority. It is the local authority that brings these proceedings and identifies the findings they invite the court to make. Therefore, the burden of proving the allegations rests with them;

b) Secondly, the standard of proof is the balance of probabilities (**Re B [2008] UKHL 35**). If the local authority proves on the balance of probabilities that the child has sustained non-accidental injuries inflicted by one of his parents, the court will treat that fact as established and all future decisions concerning the child's future will be based on that finding. Equally, if the local authority fails to prove that the child was injured by one of his parents, the court will disregard the allegation completely;

c) Thirdly, findings of fact in these cases must be based on evidence. As Munby LJ, as he then was, observed in **Re A (A Child) (Fact-finding hearing: Speculation) [2011] EWCA Civ 12**, "*It is an elementary proposition that findings of fact must be based on evidence, including inferences that can properly be drawn from the evidence and not on suspicion or speculation*";

d) Fourthly, when considering cases of suspected child abuse the court must take into account all the evidence and furthermore consider each piece of evidence in the context of all the other evidence. As Dame Elizabeth Butler-Sloss P observed in **Re T [2004] EWCA Civ 558, [2004] 2 FLR 838 at 33**, "*Evidence cannot be evaluated and assessed in separate compartments. A judge in these difficult cases must have regard to the relevance of each piece of evidence to other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward by the local authority has been made out to the appropriate standard of proof*";

e) Fifthly, whilst appropriate attention must be paid to the opinion of medical experts, those opinions need to be considered in the context of all the other evidence. The roles of the court and the expert are distinct. It is the court that is in the position to weigh up expert evidence against the other evidence (see **A County Council & K, D, & L [2005] EWHC 144 (Fam); [2005] 1 FLR 851** per Charles J). Thus, there may be cases, if the medical opinion evidence is that there is nothing diagnostic of non-accidental injury, where a judge, having considered all the evidence, reaches the conclusion that is at variance from that reached by the medical experts;

f) Sixth, in assessing the expert evidence I bear in mind that cases involving an allegation of shaking involve a multi-disciplinary analysis of the medical information conducted by a group of specialists, each bringing their own expertise to bear on the problem. The court must be careful to ensure that each expert keeps within the bounds of their own expertise and defers, where appropriate, to the expertise of others (see observations of King J in **Re S [2009] EWHC 2115 Fam**). ?

g) Seventh, 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 (see **Re W and another (Non-accidental injury) [2003] FCR 346**).?

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

i) Ninth, as observed by Hedley J in **Re R (Care Proceedings: Causation) [2011] EWHC 1715 Fam**, "*There has to be factored into every case which concerns a disputed aetiology giving rise to significant harm a consideration as to whether the cause is unknown. That affects neither the burden nor the standard of proof. It is simply a factor to be taken into account in deciding whether the causation advanced by the one shouldering the burden of proof is established on the balance of probabilities.*" The court must resist the temptation identified by the Court of Appeal in **R v Henderson and Others [2010] EWCA Crim 1219** to believe that it is always possible to identify the cause of injury to the child;

j) Finally, when seeking to identify the perpetrators of non-accidental injuries the test of whether a particular person is in the pool of possible perpetrators is whether there is a likelihood or a real possibility that he or she was the perpetrator (see **North Yorkshire County Council v SA [2003] 2 FLR 849**). In order to make a finding that a particular person was the perpetrator of non-accidental

injury the court must be satisfied on a balance of probabilities. It is always desirable, where possible, for the perpetrator of non-accidental injury to be identified both in the public interest and in the interest of the child, although where it is impossible for a Judge to find on the balance of probabilities, for example that Parent A rather than Parent B caused the injury, then neither can be excluded from the pool and the Judge should not strain to do so (see **Re D (Children) [2009] 2 FLR 668, Re SB (Children) [2010] 1 FLR 1161**).

274. I also have in mind the case of **Re B (Care: Expert Witnesses) [1996] 1 FLR 670** where it was held:

> *"The expert advises but the Court decides. The judge decides on the evidence. If there is nothing before the court, no facts or no circumstances shown to the Court which throw doubt on the expert evidence, then all of that is all with which the court is left, the court must accept it."*

275. In determining whether the local authority has satisfied the burden upon it, Bracewell J observed in **Re B (Threshold Criteria: Fabricated Illness) [2002] EWHC 20 (Fam), [2004] 2 FLR 200** that:

> "[24]…*Although the medical evidence is of very great importance, it is not the only evidence in the case. Explanations given by carers and the credibility of those involved with the child concerned are of great significance. All the evidence, both medical and non-medical, has to be considered in assessing whether the pieces of the jigsaw form into a clear convincing picture of what happened…*
>
> [30] *In the current case, it is correct that the evidence upon which the local authority relies is circumstantial evidence. No one saw the mother do anything suspicious and numerous nurses and other witnesses have testified that nothing the mother did put them on enquiry. The mother has made no admissions of any kind and has always denied harming her child. The cogency of circumstantial evidence depends on its quality. It can range from the peripheral and unhelpful to compelling and cogent, and therefore it is necessary to test the various elements.*"

276. Also of relevance and which I have considered:

> In Lancashire County Council v C, M and F (Children; Fact Finding Hearing) [2014] EWFC 3, Jackson J, after citing Baker J above, added this,
>
> "*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 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 and 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."*

Perpetrator or joint perpetrators

277. If the court cannot identify a perpetrator or perpetrators, it is still important to identify the pool of possible perpetrators (see ***Re S-B***, at para [40]); and, for that purpose, the Supreme Court approved the test set down in ***North Yorkshire CC v SA*** [2003] EWCA Civ 839, [2003] 2 FLR 849. Per Lady Hale at paras [41]-[43]:

> **"[41]** In *North Yorkshire CC v SA* [2003] EWCA Civ 839, [2003] 3 FCR 118, [2003] 2 FLR 849, the child had suffered non-accidental injury on two occasions. Four people had looked after the child during the relevant time for the more recent injury and a large number of people might have been responsible for the older injury. The Court of Appeal held that the judge had been wrong to apply a 'no possibility' test when identifying the pool of possible perpetrators. This was far too wide. Dame Elizabeth Butler-Sloss P, at [26], preferred a test of a 'likelihood or real possibility'.
>
> **[42]** Miss Susan Grocott QC, for the local authority, has suggested that this is where confusion has crept in, because in *Re H and R* [1996] 1 FCR 509, [1996] 1 All ER 1 this test was adopted in relation to the prediction of the likelihood of future harm for the purpose of the threshold criteria. It was not intended as a test for identification of possible perpetrators.
>
> **[43]** That may be so, but there are real advantages in adopting this approach. The cases are littered with references to a 'finding of exculpation' or to 'ruling out' a particular person as responsible for the harm suffered. This is, as the President indicated, to set the bar far too high. It suggests that parents and other carers are expected to prove their innocence beyond reasonable doubt. If the evidence is not such as to establish responsibility on the balance of probabilities it should nevertheless be such as to establish whether there is a real possibility that a particular person was involved. When looking at how best to protect the child and provide for his future, the judge will have to consider the strength of that possibility as part of the overall circumstances of the case."

Preliminary conclusions

278. This is a clear case where the forensic process, representation of the parties by experienced members of the Family Bar, and attendance of four family interveners have all assisted to substantially reduce the ambit of the case and, as a consequence, findings that are now realistically sought by the local authority. Whatever may be the thoughts of the paternal family at the start of the process, there is no agenda by Social Services to remove children from their families without cause and the family courts act as a check and a balance to the process.

279. At the conclusion of the fact-finding hearing the local authority sought findings that A had two posterior rib fractures; the injuries were inflicted, that is to say, non-accidental in origin, and were not caused by any underlying medical cause, and that both parents should be included in the pool of possible perpetrators, and further that no findings are sought that any of the interveners have injured A.

Findings in relation to the nature and extent of the injuries

280. It would seem that neither parent, after having listened to the medical evidence, challenges the fact that A suffered two posterior rib fractures. Much time has been spent on this case in relation to a dispute between two extremely experienced consultant radiologists and their different views as to interpretation. Weighing up, as I must do, the competing radiological evidence, and although the burden and standard of proof is based on the balance of probabilities, that does not absolve the court from considering the requirement for cogent evidence. I prefer Dr Somers' evidence in relation to interpretation of the radiological evidence and, looking at matters in the round, I take into consideration Dr Fairhurst's view that, even if there had been additional anterior rib fractures, they could have resulted from the same incident and would not have required any greater force than required to cause two posterior rib fractures and, as the local authority submits, and I accept this submission; "as such the possible existence of additional rib fractures (while plainly serious in themselves) would not elevate the level of concerns or suggest a more significant incident or multiple incidents." Therefore, I see no reason to depart from the preliminary view that I announced, at the invitation of the parties, at the conclusion of the medical evidence.

Causation

281. I now turn to causation and draw together the evidence of the relevant experts who conclude, albeit using slightly different language that these fractures are indicative or characteristic of inflicted injury. There is similar consistency in relation to the mechanism, which would involve a compressive force such as squeezing the chest. I accept the evidence of those experts, whose views did not change in cross-examination whatever the range of possibilities presented to them by way of alternative scenarios.

282. The degree of force required is perhaps a little more complex but I am satisfied that the force involved would have been significant and over and above inept handling or rough play and excessive. I have had an eye to the evidence in relation to any potential impact of EDS and I am open to the possibility that if A has EDS-3 that might lead to a greater propensity to suffer fractures of lesser degree of force, but equally spontaneous fractures are not a feature of EDS-3 nor within the general EDS spectrum. Dr Saggar's evidence was helpful to the extent that, of course, "a possibility" could not be excluded but it was clear that, in the absence of research, the mainstream view was that this was unlikely and just because such a possibility could not be excluded, I agree with the local authority submission that the unknowns should not be elevated. To put into the evidential balance, the absence of radiological evidence of bone fragility, even if A had EDS, any handling that caused the injuries would be obvious to a person present to have been excessive and, perhaps most crucially of all, a complete absence of continuing fractures while A has been in local authority care. This, of course, in contradistinction to the issue of bruising, which has not been pursued by the local authority, as it would seem that A does have a tendency to bruise easily as is evident by the fact that she incurred bruising while in exemplary foster care.

283. This brings me in turn to **Perpetration**.

284. It would seem that there is a broad consensus in relation to the dating of the posterior rib fractures and the most likely time of injury is from late October to mid-November accepting as I do the proposition that dating of fractures has become less precise and reliable as the fracture ages and the fracture could be older, with Dr Fairhurst willing to stretch the window to mid-October, but not any further. We know that was prior to the period that the parents moved into their flat, it was prior to the period where the father had sole care of A on 26th November or indeed the incidents of 28th November, which have caused so much concern in this case.

285. The parents are clearly both in the pool of potential perpetrators and the issue for the court is, if it is able from the evidence, to identify a sole perpetrator, accepting of course that the court can only act on the evidence and should not strain to do so.

286. Both parents present with a range of concerns. It is apparent to the court that both rushed, once their relationship had commenced, into having a child in circumstances where they were perhaps not best equipped to do so. Both have had troubled times as adolescents and as young people, all of which have been rehearsed in the evidence. Both however were well motivated to provide for their child and were clearly overjoyed when she was born. The mother has presented with a range of difficulties, arising not only from her own background about which she has been very frank, but also the postnatal depression that she undoubtedly suffered after A was born. It is significant however, and to her great credit, that she engaged so enthusiastically with FNP wanting to "learn to be the best mummy that she possibly can be."

287. She was certainly low in mood and emotional during the fracture window and there is ample evidence that she was struggling to cope and struggling to keep positive. She told GP that she was losing her temper but qualified that in evidence by saying it was more a question of losing her temper with herself and the possible recurrence of the depression that she had experienced as an adolescent, but was very clear that that loss of temper did not extend to losing her temper with A.

288. She was clearly upset by what she saw as the father's lack of support and had experienced thoughts of self-harm but thinking of A stopped her from acting on those thoughts and the observations of mother and A, from FNP in particular, are pertinent with FNP observing A to be content in her mother's care. I accept the positive endorsement of much of mother's care by FNP who is a very experienced nurse, and her level of engagement. I give the mother credit for seeking help when she needed it.

289. Additionally, there is little doubt that the mother was the main care giver and provided the vast majority of care for A but it would have only required a short amount of time, caused by a momentary loss of control, in which these injuries could have been inflicted.

290. I accept all that I've heard about A being a colicky baby and one that cried frequently and who also seems to have been a fussy feeder with different milk brands being tried by the parents. All of this would have had added to the pressure.

291. There is little doubt that the mother has amplified her allegations in relation to the father in her latest statement but the father was broadly accepting of much of what the mother was saying.

292. A range of concerns have been rehearsed in relation to the father. His inexperience and his unavailability (due to his working commitments) to receive proper advice from FNP in relation to handling of A. His previous use of steroids and cocaine. There is no cogent evidence however that the father was using either cocaine or steroids in the time after A was born until she was removed. His use of violence on 28th November is of course deeply unattractive and, of potential significance, was his admission of releasing frustration by physical means, particularly squeezing. There is clear evidence, to a great extent admitted by the father, that he was heavy-handed with A and when frustrated and unable to calm A, he would shout when frustrated. He accepted that he sometimes found mother's advice would come across as annoying and patronising. He accepted, and again to his great credit, he could have handled his response to mother's advice in a better way. Even if it is right that he did not like being told what to do from time to time and his evident difficulties over control and temper, the court has been unable to identify a causative incident within the fracture window attributable to either parent that led directly to A's injuries.

293. The guardian, in her submissions, has asked the court to look carefully at the swaddling incident which led to A's admission to hospital for the hospital to check on the petechial rash the very next day. The incident is within the fracture window and it is unsurprising the guardian asks the court to focus on this incident. It is accepted that the father swaddled A in an unusual way and does not seem to be able to remember how he did it but I am unable to attribute any particular significance to this other than to observe that, of course, this incident took place in the middle of the fracture window and this was the first time that the father had swaddled A, and probably did it tight enough to cause a mark. However, both parents seem to have been present and the mother does not give evidence of any particular distress by A and it is difficult to conceive of circumstances whereby serious injury was caused. The circumstances of the swaddling incident, and what is known of it, can amount to no more than speculation.

Unknown aetiology

294. I have of course considered the written submissions from the father's team in relation to the potential for an unknown cause of A's fractures and taken into consideration what seems to be accepted about the degree of easy bruising in considering, in the light of A's probable medical condition, whether there is a propensity to fracture within normal handling and whether indeed, this is a case within "the margins of medical knowledge." Dr Saggar cannot exclude the possibility of fracture at lesser forces, but it remains only a possibility. Suffice it to say that I have considered all these submissions with care, together with submissions in relation to the absence of research in relation to children that fall into this particular cohort and, in medical science, that nothing is impossible. However, I am obliged to consider the broad canvass of evidence from the range of expertise that form the basis of evidence heard by the court. Of course, the matters raised by father's team are factors that I should take into consideration, but looking at the broad canvass of the evidence that I have already summarised, I do not consider unknown aetiology to be probable in this case, and it is of remark that there is substantial consensus from the experts as to probable cause, and that is the evidence I accept.

Conclusion

295. Sadly, this is a case where the local authority has discharged its burden of proof and established that both parents must remain in the pool of possible perpetrators. Although both parents are not without their individual difficulties, there is no single incident that is sufficiently compelling that drives me to any conclusion that it was one rather than the other. This of course is an unhappy circumstance because it is much better for A that a perpetrator is identified as it makes the process of planning for her future infinitely more simple. Alas, the evidence does not permit me to identify a perpetrator hence I make a finding that both parents should remain in the pool of joint perpetrators. The interveners are of course, discharged.

296. It is self-evident from what I have said in this judgment, that the threshold criteria under s.31 of the Children Act is crossed. The next stage is welfare and there needs to be a careful appraisal as to what evidence is required to assist the court in relation to any potential for rehabilitation to the mother's fulltime care, with the father enjoying contact which would meet the aspirations of the parents, and whether the risks in such arrangement would be capable of management in any way, taking into consideration the evident vulnerabilities of these parents.