Neutral Citation Number: [2023] EWFC 117

Case No: BH22C50136

IN THE FAMILY COURT

Bournemouth & Poole Combined Court
Deansleigh Road, Bournemouth, BH7 7DS

Date: 07/07/2023

Before :

MRS JUSTICE JUDD

- -

Between :

BOURNEMOUTH, CHRISTCHURCH & POOLE COUNCIL	**Applicant**
- and -	
O	**1st Respondent**
-and-	
M	**2nd Respondent**
-and-	
R (by her Children's Guardian)	**3rd Respondent**

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- -

Anthony Hand (instructed by **Bournemouth, Christchurch & Poole Council Legal Services**) for the **Applicant**
Leslie Samuels KC and **Omar Malik** (instructed by **Aldridge Brownlee Solicitors**) for the **1st Respondent**
Kate Branigan KC and **Steven Howard** (instructed by **Preston Redman Solicitors**) for the **2nd Respondent**
Gemma Chapman (instructed by **Battens Solicitors**) for the **3rd Respondent**

Hearing dates: 26th – 30th June 2023, 3rd -7th July 2023

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Approved Judgment

This judgment was handed down on 7th July 2023 and circulated to the parties or their representatives by e-mail.

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MRS JUSTICE JUDD
This judgment was delivered in private.

Mrs Justice Judd :

Introduction

1. This is a fact finding hearing within care proceedings concerning a young girl (R) who is now about three years old. The fact finding centres around alleged injuries to her younger brother (T) who died when he was just seven weeks old. The post mortem did not establish any cause of death, but a skeletal survey conducted shortly after his death revealed two rib fractures and the post mortem several more.

Background

2. The parents met in 2018 and moved in together shortly after that. The father has two older children from a previous relationship. He has a reasonable relationship with their mother, and before the events in question had contact with them albeit disrupted by the pandemic. The father has worked as a bus driver for several years and neither party is known to the police. Shortly after the parents' relationship commenced the mother became pregnant with R and then just a year later with T.

3. In August 2020 the parents took R to hospital after she had fallen to the floor from her pram. She had not suffered any injury and was discharged. T was born in 2021. The father had two weeks' paternity leave and then returned to work. For the most part he worked from Mondays to Fridays on a shift basis although he sometimes did overtime at the weekend. The mother remained at home caring for the children. Although the children were very close in age the mother said she managed this without difficulty, especially as she and the father shared the care (including overnights with the new baby) when he was there.

4. 16th May 2021 was a Sunday and both parents were at home. The father was responsible for feeding and changing T for most of that day, and overnight too. The arrangement was that one parent would sleep in the main bedroom with R in her cot, and the other in the sitting room with T. That night the father stayed with T. Both parents say that R was teething and did not go to bed until quite late. The mother herself went to bed late, probably at about 1 or 2am leaving the father and T in the sitting room. The father said he fed and changed T at about 4.30am and then at about 8. He had taken 17th May as holiday in order to clean up the flat and to take items to the dump in advance of an inspection by the landlord.

5. Once he had fed and changed T, he said he put him in the spare room where there were bunk beds, on the bottom bunk. This was about 9am. T settled relatively quickly, albeit the father had to give him a dummy before he did so. The father said he left T lying on his back with his head on a pillow and pillows to either side of him. He said he did not check on him again until shortly before the 999 call at 1.08pm when he was discovered to be lifeless.

6. According the parents the mother and R did not wake up until about 10.30am. The mother then went into the sitting room with R, and also went into the kitchen to make breakfast and hot drinks. She said she did not look in on T in the spare room, and does not recall whether the door to that room was open or closed.

7. At some point around 1 the father went into the spare room to check on T and found him face down on the bed between two pillows, apparently lifeless and not breathing. He took T into the sitting room and sought help from the mother. She called 999. The paramedics arrived quickly and after a number of attempts of resuscitation T was airlifted to hospital from a field nearby. He never regained consciousness.

8. An initial skeletal survey revealed he had two healing rib fractures. As a result a forensic post mortem was arranged. The results of that took almost a year. No cause of death could be found, but he was discovered to have numerous healing rib fractures of at least two different ages. Care proceedings were commenced in relation to R and she was placed in foster care. Unfortunately she has endured several changes of placement.

The local authority case

9. The local authority case as pleaded in the final threshold document is that T had a total of 16 fractures caused on at least two occasions. Between about 7 and 14 days before his death it is alleged he sustained fractures to the right 6th and 7th anterior and 6th, 7th and 12 posterior ribs, and the left 5th, 6th, 7th, 8th anterior, 7th, 8th, 9th, 11th posterior ribs. Between about 2 and 5 days before he died it is alleged he sustained fractures to the right 4th posterior rib and the left 6th (a possible re-fracture) and 7th posterior and 11th anterior, ribs. These fractures, say the local authority, would have been caused by forceful chest compression, causing pain at the time they were inflicted which would have been apparent to the perpetrator. The perpetrator must have been acting negligently, recklessly or intentionally. It is alleged that neither parent sought medical treatment for T, and that they must each know more about the circumstances of the injury than they are willing to admit. If the person who did not cause the injuries to T saw or heard what had happened then they failed to protect him from further injury.

10. The local authority also seeks findings that the father's explanation as to how he placed T to sleep is not truthful, and that, in the event T was found to be face down on the bed, he must have been placed in that way by either the father or the mother. It is alleged that the placing of T in that position was unsafe and would have posed a risk of significant harm for him. The local authority state that as a consequence R is at risk of significant harm in the future as she is close in age to T.

The response of the parents

11. The parents both deny acting in a way that would have caused injury to T, or being aware that the other had done so. They each stand by the history that was given to the police and this court, namely that the father put T in the spare room on the bed with his head on a pillow and pillows around him and found him face down and lifeless some hours later. The mother states that she woke late that morning, and was unaware that there was anything wrong until the father brought T into the sitting room after finding him lifeless. She is adamant that she did not check on him that morning and expresses regret that she did not do so.

12. The parents state that the threshold criteria with respect to R are not met, given the standard of care she has received and the fact that she has not suffered any harm at all, either before or after T died.

The hearing

13. I have read all the material in the main bundle and additional bundle as provided to me and listened to the recordings of the interviews. I heard oral evidence from Dr. Olsen, Consultant Paediatric Radiologist, Dr. Leadbeatter, Consultant pathologist and Dr. Rylance Consultant Paediatrician. I also heard evidence from the Health Visitor, the social worker who conducted a parenting assessment after the death of T, and the mother the father.

The medical evidence

14. Professor Mangham, Consultant Histopathologist was instructed by the police to conduct an examination of T's bones and prepared a report for them which appears in my bundle. His evidence is not challenged by the parents. He found a number of rib fractures as set out in a table in his report. It is on his conclusions that the local authority has based the findings under this heading sought in the threshold. Professor Mangham found no pathological evidence of generalised bone disease or any other abnormality. He found there to be injuries of at least two different ages, both older than the date of death. He said it was not possible to say there were not traumatic rib injuries closer to the time of death than 2 to 5 days, but if so these were masked on microscopic examination by the presence of earlier fractures.

15. Professor Leadbeatter Consultant Pathologist was instructed in these proceedings to address the issue of bone injuries, general pathology and the cause of death. He concurred with the conclusion of Professor Jeffery (the Consultant Pathologist who reported on the forensic post mortem) that the cause of death was unascertainable. He opined that even in a situation where an infant is placed in an unsafe sleeping environment, it remains the case that the role of such in the cause of death cannot be determined with precision. In a supplementary report he explained this in more detail and also concluded that it was not possible to narrow the timing as to when T had died or how long he had been lying face down.

16. He concurred with the conclusion of Professor Mangham that there was no evidence of metabolic bone disease, and indeed that there was no evidence of any other disease at all. There were some differences between him and Professor Mangham as to one or two rib fractures (for example he only identified 2 fractures for the later time window) but essentially he agreed that there were multiple rib fractures likely to be of two different ages but no evidence that they occurred at the time of death. His timing window was less precise than Professor Mangham but nonetheless he made clear he was not comfortable with the suggestion put to him in cross examination that all the fractures might have been caused at the same time.

17. Dr. Olsen's oral evidence closely followed that in his written report. As a radiologist he gave evidence only about the two rib fractures that he was able to see on the skeletal survey. From his perspective the fractures he saw could have occurred at either the same or different dates. He said that in order for the ribs he saw to fracture there must be a mechanism and a level of force, part of the likely mechanism being some pressure from the back, forcing the backbone into the chest cavity. The child could be on his front with someone pushing hard on the back or held around the torso with fingers on the spine or backbone squeezing onto the breastbone. He did not think this would be part of ordinary handling. The reason he felt able to be prescriptive

about the fractures that he saw was that the fractures he saw were to the 11th and 12th ribs which are 'floating', namely not connected to the breastbone. Dr. Olsen gave reasons for the dating he gave to the fractures which was somewhat wide, given he only had one set of images to go on, but he was confident that the most recent date was in advance of T's death. He accepted that not all conditions that give rise to bony fragility are visible radiologically, but said that as a clinician he would be extremely worried if there was a fracture shown on an x -ray but there was no explanation for it.

18. In both his written and oral evidence, Dr. Rylance stated that the likely mechanism for the rib fractures was compression of the chest, with the posterior fractures seen on the x-rays being caused by some sort of movement of that part of the rib over the protruding parts of the back of the spine, which could be caused by encircling the chest and shaking or by pushing the back of the spine with the tips of the fingers. He said that the fractures would almost certainly cause pain which the child would express by crying, albeit after this the child might not show any symptoms of pain, particularly from those fractures which were partial.

19. Whilst Dr. Rylance accepted that, because of T's tragic death, it had not been possible to conduct the range of tests that might otherwise be conducted to look for conditions that might lead to bony fragility, he said that it is known that most conditions of this nature would be demonstrable on imaging and/or under the microscope. Nonetheless, he agreed with the proposition put to him by Mr. Samuels on behalf of the mother that the absence of evidence is not evidence of absence and that this is something that must be factored in to any consideration as to causation.

20. Dr. Rylance was clear that a baby of T's age would not be able to roll, and in particular he would not have been able to roll from the position the father described when he left him, namely on his back with a pillow underneath his head, to a face down position. Dr. Rylance raised the possibility of T having died as a result of asphyxia but in the absence of any further evidence was not able to say more about it.

The evidence of the parents

21. As well as reading the written material I heard evidence from both of the parents over the course of one and a half days. Neither of them gave any impression that there was any difficulty or stress in the household at all although the two children were very close in age and it must have been hard work. The mother told me that the father was broken as a result of what had happened to T, and that it had been a huge shock to her. Her account in her oral evidence of what happened on the night of 16th May and the morning of 17th was vague. She was not able to give an account of what she did on 17th save that she had got up at about 10.30 with R, that she had made some hot drinks and had played with R in the sitting room. She said she could not remember if the father was getting things ready to go to the tip that morning, saying that she did not really have involvement with it. She did not remember why she had not checked on T that morning or whether the door to the spare room was open or shut. She said that it was possible that she had not gone in to see him because she did not want to disturb him. She said she did not remember what she had asked the father about the morning, because she was so busy with R. She said she had no reason to think anything was wrong, but now wished she had checked. She said she did not recall having a discussion with the father about what could have happened to have caused the rib fractures, nor did she recall him giving any explanation as to why he had put T's head

on a pillow on the fateful day. She said they did not like to talk about it because it was traumatic although she also said that she and the father had spoken 'a lot' about putting T in the spare room, albeit she was not able to recall details of the conversations save to say that he did not know why he had done it. She agreed that if she had seen that T's head had been put on a pillow she would have questioned it. She said she had never pushed him or 'pointed fingers' and said that she had never seen anything about the father's behaviour which she considered to be 'iffy' as she put it. She also said that she and the father were a very open and honest couple, focussed on the children.

22. There was a sense of detail from the mother about 17th was when she spoke about being in the lounge when the father came in. She said that he said nothing but made a peculiar noise and she knew something was wrong, as he was in a state. She said that she knew immediately something was wrong with T because his colour was not right, and so she called an ambulance.

23. I also noted that she was vague in answering such questions as whether T cried at night, how often she was woken up in general by him. She resisted suggestions that T cried loudly or that anyone in the household was stressed or tired.

24. The father's oral evidence about the events of 16th and 17th May had the same quality of vagueness that I found in the mother's, although it is also true to say he has given consistent details on matters such as when he fed and changed T and what time he put him down for a nap. He has also given details of how he put T to sleep and how he found him. Outside those matters, however, he gave very little information. He was not really able to explain what he was doing that morning. Four hours is a long time to be spent in tidying things and putting them out to take to the tip, yet there was not much evidence from the photographs taken that evening that he had done much of this. He said he might have been painting (there is some supportive evidence of this from the police who noticed a smell of paint later that day). He did not know why he had put T's head on a pillow save that it might have been for comfort and was unable to explain how T could have ended up face down from the position that he left him in. He did not know if he left the door open or closed. So far as the rib fractures were concerned he said he had never squeezed T's chest or done anything to hurt him. He said he did not remember if he and the mother had had a conversation as to how the rib fractures had been caused, although he said he liked to think he would have asked her. He said he trusted her and had not thought that she might be responsible.

I also heard from a paediatric nurse who visited the mother and children on 11th May 2021 and from the social worker who carried out the initial assessment of the parents. The evidence from each of these witnesses was entirely positive about the parents and their care of both of the children.

The law

25. The law in this areas is not controversial and some of it can be summarised briefly. The local authority brings the case and the burden of proof is upon them and nobody else. The standard of proof is the balance of probabilities both as to findings of fact and the identification of any perpetrator. Findings of fact must be based on evidence and not speculation or suspicion, and the court must take into account all of the

evidence in a case, and furthermore consider each piece of evidence in the context of all the other evidence. It must not be assessed in separate compartments.

26. I have heard and read evidence from a variety of medical experts. The roles of the court and the expert are distinct, and it is the role of the judge to weigh up the medical evidence together with the other evidence in coming to a conclusion, remembering that sometimes the cause of an injury or injuries is simply not known. The court must be careful to ensure that each expert keeps within the bounds of their own expertise. Medical knowledge in this difficult area is still developing and it is possible, as Lady Justice Butler-Sloss said in 2004 in *Re U; Re B (Serious Injury: Standard of Proof)* [2004] EWCA Civ 567 that today's medical certainty may be discarded by the next generation and light will be shined on matters that are at present dark.

27. The evidence of the parents is of vital importance, and will weigh heavily in the balance. I bear in mind that people do not always tell the truth about things in court, especially in cases where they are frightened or distressed, or ashamed of conduct which does not form part of the allegations against them or at least falls short of them being guilty. Sometimes people lie out of misplaced loyalty, to bolster a true case or for no reason that anyone can discern. The fact that someone has lied about some matters does not mean for one moment that they have lied about others. A lie should never be considered as direct proof of guilt.

28. These principles are all derived from case law, summed up by Baker J as he then was in *Re JS* [2012] EWHC 1370 (Fam) and thereafter in *Re A (A Child)* [2020] EWCA Civ 1230, *Re H-C (Children)* [2016] EWCA Civ 136 and *Re A, B and C (Children)* [2021] EWCA Civ 451.

29. Peter Jackson J, as he then was, made another very important point about witness credibility in the case of *Lancashire County Council v C, M and F (Children; Fact Finding Hearing)* [2014] EWFC 3, namely:

> "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".

30. There have been a number of recent cases in which the issue of identifying perpetrators or a pool of perpetrators has been considered, including *Re A (Children)*

(Pool of Perpetrators) [2022] EWCA Civ 1348, and *Re A, B and C (Fact finding: Gonorrhoea)* [2023] EWCA Civ 437. In the former case King LJ re-emphasised that judges should apply the simple balance of probability standard when determining whether it is possible to identify a perpetrator from a list of those who could be responsible. In coming to a conclusion each person should be considered individually by reference to all of the evidence. Glosses such as 'straining' to identify a perpetrator should be avoided. In the event that it is not possible to identify a perpetrator then the court should consider whether there is a real likelihood or possibility that particular individuals could be responsible. Those individuals (quite obviously they must amount to two or more people) form part of what has been described in various cases as a pool of possible perpetrators.

31. In *Re L-W (Children)* [2019] EWCA Civ 159 the Court of Appeal reminded judges that a finding of failure to protect is of the utmost importance when it comes to future assessments and welfare considerations. It should not become a 'bolt on' to the central issue of perpetration, nor should the court fall into the trap of assuming too easily that if a person was living in the same household as the perpetrator, such a finding is almost inevitable. Most parents are imperfect in some way or another, many households operate under considerable stress, and many people (particularly men) are received home by long suffering partners after incarceration for offences of serious violence.

32. Similar points were made in *G-L-T (Children)* [2019] EWCA Civ 717. Any findings made against parents must be grounded in a careful assessment of the evidence, with judges astute to distinguish between common human behaviour and failings and those which have, or are likely to, place a child at risk of significant harm.

Discussion

33. When considering the allegations against the parents I bear in mind the whole of the wide canvass about the family and the history. The father has been a good parent to his older daughters and has a good relationship with their mother. The reports of the mother (and father's) care of the two children are very good indeed. There was a visit to the family shortly after T was born, and then to the mother and both children on 11th May, just days before T died. All observations were very positive with warmth and love being shown to both children. The assessment that took place of the family after T died was likewise very positive. R was being well cared for at home by both parents and she remained there for over a year after T died.

34. The evidence of the experts was clear and consistent, albeit with some minor differences between Professor Mangham and Dr. Leadbeatter about the number of fractures seen. It is not surprising that there are some differences of opinion with respect to the more subtle or difficult to interpret fractures. Nonetheless the evidence that there were multiple fractures of two different ages was overwhelming. The experts were all agreed about the mechanism and (subject to the question of bone density) that they required excessive force. T would have been expected to cry as a result of the pain involved albeit that would not be long lasting or obvious to a non-perpetrator later. There were no signs of any disease or condition associated with the weakening of the bones but the full range of testing could not be done.

35. The evidence that at the age of 7 weeks T could not have rolled from the position the father said that he had put him onto his front was also clear and cogent. The father did not say he had put him at an angle of 45 degrees, nor did his diagram or the pillows visible on the photograph suggest that this was a possibility.

36. The evidence of the parents in this case is not easy to assess. They were not interviewed by the police until over a month after T had died. As T was certified as dead on arrival at hospital there is not a huge amount in the hospital notes or early documentation as to the history given by the parents. There are statements from the ambulance crew who attended although the details that are given there as to what the parents said had happened is sketchy. One of the paramedics said that the parents said T had been put down to sleep 'about three hours ago', another noted that this was in 'another room', and another that the father had found T.

37. A history was taken from the parents at 16.25 on the same day, at the hospital. It was said that the day before had been normal, and that all the feeds had been done by the father. The mother was said to have gone to bed between 1 and 2am and the father had slept in the sitting room with T. T had woken at about 4.30 and then at 8.30. He was fed and changed each time. He had dirty nappies on each occasion. The father had then put T onto the bottom bunk, laid 'propped on a pillow' with his body on a mattress and pillows around. T was given a dummy and the door left ajar. The mother and R woke at about 10.40 but the mother did not check on T at all between getting up and his being found lifeless at about 1pm. The note also says that family and friends had not been told about T's birth save for the maternal grandmother who had seen him once and the mother's brother who was currently caring for R.

38. The history as given by each of the parents to the police in their interviews was consistent with the first accounts (including to the paramedics), and also consistent with each other. The same applies to their statements within these proceedings and the oral evidence they gave too.

39. This consistency is important, particularly because it relates to the earlier accounts as well as the later. I have also borne in mind at all times that it is really difficult to remember events that took place so long ago, and there will be details that are lost or mistaken as a result of the effluxion of time and the trauma. Assessing evidence in this context is not at all easy.

40. Even taking all these matters into account (and bearing in mind the risk of "hindsight bias") there are features of the history the parents have given which are a cause for concern. It is surprising that the mother had so little contact with T in the hours before he died. She says she went to bed very late (about 1 or 2am) because R was teething. She did not look after T overnight or feed him in the morning. Getting up at 10.30 or so when you have sole care of a one year old is unusual, so too is it unusual that she did not even look in at T for over two hours that morning. Of course the fact that it is unusual does not mean it did not happen. As I have explained earlier in this judgment I found her evidence about the hours before T's death in the witness box was vague. I think some at least of what happened that morning before T was found the mother would have thought about many times, yet her evidence was punctuated by answers to the effect that she did not know, that she did not remember, whether that was if the door to the bedroom was open, what subsequent conversations she had had with the father about why he put T's head on a pillow, or what she was doing that morning

beyond making a cup of coffee or tea and playing with R or why she did not look at him when she got up.

41. She was also very vague about why she had had such a late night and morning. She said that the father 'beat himself up' about putting T in the spare room and that she had therefore not liked to question him and point the finger (an expression they both used in their evidence). Even making allowances for the time that has passed, and for shock and grief I found the mother's answers to counsel about the events in question superficial. Many answers seemed to me to be designed to avoid giving too much information and to show support for the father.

42. The same point arises with the father's evidence. Once again, I take into account the length of time since T died and also the shock and grief that he suffered. The reports of him at the hospital describe this vividly. Nonetheless, he said little about what the mother was doing that morning, or why it was that she would have woken up so late and not looked at T at all. On any view, having cared for T all night and with chores to do in the morning he might have expected the mother to be up and assisting with both children. His suggestion that he put T in the spare room because he had work to do in the house, moving things and painting was somewhat undermined when it was put to him that he seemed to have done very little of any of those chores that morning. There was no work done on the television sets, very few things moved to the tip, and not much cleaning up in the house. There may have been some painting but, that day at least, not much. He really could not explain how T could have moved from the position he put him in over onto his front.

43. The other notable feature of the father's evidence was his description of holding T around his chest and briefly letting go of him in play. Given that T died when he was only 7 weeks old and at a stage where he was not yet smiling (this is in the medical notes) and would have had limited head control, this was an odd way to treat such a small infant. The father's evidence about this was once again, vague. At one point he said he had done it a few times, but then said it was once or twice. The issue of head control did not seem to have occurred to him. If he had really done it as he said, I would have thought this would have been obvious.

T's position on the bed on 17th May

44. Taking into account all the evidence that I have heard and read, I have come to the conclusion that the father has not told the court the whole story about what happened that morning. T could not have rolled from the position the father describes when he put him on the bottom bunk to the position that he found him at 1 o'clock. The consistency of the father's accounts over time suggests that the framework of what happened is correct, but some things must have been left out, mistaken or are simple untrue. Either the father did not put T down on the bed with his face up in the way he suggests or T was moved afterwards. There is no evidence that this played a role in his death at all, but nonetheless the way in which T was put on the bed was unsafe and risky. There were two dummies on the bunk when the police looked around the house and took photographs later that day which is important supportive evidence that T was placed there that day.

The rib fractures

45. Moving onto the rib fractures, I have come to the conclusion that they were caused on at least two different occasions. The mechanism was forceful compression to the chest, probably by squeezing. For the fractures close to the vertebrae there would have been an element of force applied to T's back. I find that the force used was excessive and that T did not suffer from any condition that led him to have fragile bones. I accept that there is a gap in the medical evidence which cannot be filled in a child so young and without a full range of testing but make the findings despite this. For fractures to occur there needs to be a causative event, even in the presence of some condition which causes bones to be weak or susceptible. Neither of the parents give an account of anything which could have led to this. Squeezing with compression onto the back of the spine is not an event which occurs easily with everyday handling. The father's description of holding T by the ribs, letting him go slightly and catching him does not come with any account of T appearing to be hurt as a consequence. I do not think the father would have forgotten if it had caused him to cry out. I have already found the parents to have been somewhat vague and avoidant in their evidence to this court, albeit about events surrounding T's death. The parents each displayed very little curiosity about the rib fractures. The mother said they had had a discussion about how they were caused but she could not recall any explanation for them. The father, when asked whether he had asked the mother about rib fractures said first that he supposed that he had asked her, then that he would have liked to have thought he had asked her but that he did not remember if he had. He said that he trusted her and responded to questions in cross examination as to whether she might be responsible by saying words to the effect of 'if you want to point the finger'.

Perpetration

46. Although the mother's brother looked after T on one or two occasions it is not realistically suggested that he could be the perpetrator. The only possible perpetrators of the rib injuries are the mother and the father. I have considered whether it is possible to identify one or other of them as the perpetrator but have come to the conclusion, unfortunately, that it is not. Whilst the father's evidence about his handling of T by holding him around the ribs and letting go was troubling, and I have rejected his explanation of how he placed T on the bed on 17th May I have come to the conclusion that these factors are not sufficient for me to identify him as the one who was responsible on the balance of probabilities. I have concerns about the mother's evidence overall which I have set out above. Each of the parents had the opportunity to cause the injuries and I can take things no further than to say that there is a real possibility that either of them was responsible.

Findings

47. Turning to the threshold document, I make the findings sought in paragraphs 1 to 8 for the reasons I have set out above, save that I find only that there were two fractures that were sustained around 2 to 5 days before T died (the right 4th posterior and left 6th posterior). As to paragraph 9 I make these comments. The fact that the fractures were painful at the time they were inflicted would have been clear to the perpetrator but the medical evidence is that a non-perpetrator would very likely have been unaware that T was injured. So the non-perpetrator could not have been expected to seek medical attention, and the perpetrator may not have realised that fractures were

present. It is correct that if the non-perpetrator saw or heard what happened the first time and did nothing about it they did fail to protect T, but there is no evidence for me to make such a finding. What I do find is that both parents have been protective of each other in this investigation rather than giving priority to finding out or explaining how T could have been injured.

48. The matters set out in paragraphs 10 to 13 are not actually findings sought. Paragraph 14 does not really add anything to the threshold especially as Dr. Leadbeatter was clear about the lack of evidence that this played any part in T's tragic death. As to paragraph 15 I make all the findings sought for the reasons I have set out, save that at (b) and (c) this should relate to the father only. Whilst I have expressed concerns about the mother's evidence there is nothing to suggest that she was involved in placing T on the bed or moving him.

Threshold

49. These findings all relate to T. This case concerns R who is now three years old. There have never been any concerns about her care, and I note I have the evidence of the parenting assessment carried out shortly after T died as well as evidence relating to the period of time before and after that. R lived with the parents for over a year after T died without coming to any harm.

50. Whilst I acknowledge the care that R has received from the parents, I do not accept the submission on behalf of the parents that the threshold criteria with respect to her are not met. Although only two of the fractures T sustained were visible on x-ray, they are all serious injuries which occurred on more than one occasion. Whether they were caused deliberately, recklessly or negligently they represent a serious failure in his care, and would have been painful for him at the time. R was part of that household. The injuries happened in circumstances where there were no other concerns for the care of either child and the parents have said there were no domestic stresses. When T died there were no signs he had been neglected or any other signs of ill-treatment other than the fractures. This means that the injuries took place in circumstances which are totally unknown. Neither parent appears to have challenged the other about them or shown willingness to accept or believe that their partner could be a danger. In those circumstances I find that there is a real likelihood or possibility that R will suffer significant harm in the future. This existed at the date that T died, at the date the proceedings were started and now. I therefore make the findings sought at paragraphs 16, 17 and 18.

51. Further consideration of that risk, and what that means for R's future care will be considered at the welfare stage of the case.