Neutral Citation: [2023] EWFC 305
Case No: NN23C50032

IN THE FAMILY COURT AT NORTHAMPTON

85-87 Lady's Lane
Northampton NN1 3HQ

Friday, 8 December 2023

BEFORE:

SIR ANDREW MCFARLANE
PRESIDENT OF THE FAMILY DIVISION

BETWEEN:

A LOCAL AUTHORITY

Applicant

- and -

(1) S
(2) B
(3) C
(4)&(5) D & R
(Through their Children's Guardian)

Respondents

MS A JOHNSON (instructed by **Pathfinder Legal Services Limited**) appeared on behalf of the **Applicant**
MR S YEUNG (instructed by **AGR Law**) appeared on behalf of the **First Respondent**
MRS J PAGE (instructed by **PS Law Solicitors**) appeared on behalf of the **Second Respondent**
MS R WATKINS (instructed by **Wilson Browne Sole**) appeared on behalf of the **Third Respondent**
MR A DUNCAN (instructed by **HLA Family Law**) appeared on behalf of the **Fourth and Fifth Respondent Children, through their Children's Guardian**

APPROVED JUDGMENT

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(Official Shorthand Writers to the Court)

SIR ANDREW McFARLANE P:

1. These care proceedings concern two children, a boy aged 3 (who I will refer to as "D") and a girl only aged 1 (who I will refer to as "R"). This judgment is given at the conclusion of a four-day hearing. It is, I am afraid, not a short judgment. I have taken the view that it is necessary to record the various twists and turns in the evidence given by both of the two key adult witnesses in order that that is a record of what they have said so that if, in any further proceedings or any further process, there is a need to refer back to these events, there will be an account of what they have said to the court.

2. S, who is aged 23, is the biological mother of both of the children. However, they do not share the same biological father. D's father is the second respondent, B, who is aged 32. The third respondent, C, is aged 29. He is not the biological father of R, but he has recently become the mother's husband. R's biological father is thought to be E, who resides now in Latvia. He has failed to engage with paternity testing. However, his sister has provided a DNA sample which suggests that indeed he is the father of R. He has not engaged with these proceedings since that fact was discovered and announced at a hearing on 16 October.

3. The mother is a national of Latvia. She came to the UK in December 2018. She initially lived with B. Following her relationship with B the mother lived with E. During the latter part of that period, in May 2021, she met C and they were in a relationship in addition to her continuing relationship with E until November of that year.

4. In June 2022, following her separation from E, the mother and C started to live together and they remained together throughout these proceedings until some six or seven weeks ago. Indeed, they married each other on 2 October 2023. However, on 31 October they announced that they had separated, albeit, on C's case, they have remained in touch and on friendly terms since then.

5. C is a national of Albania. He came to the UK in 2017 and he has, in more recent times, made at least two applications for asylum. He told the court that his most recent application for asylum would now be withdrawn, and he would be submitting a further application. Both the mother and C have a good command of English, but they have each been supported by the presence of an interpreter who has provided confirmatory backup to them and interpretation when needed during the four-day hearing.

Background

6. On 26 January 2023, R was found to have some 20 bruises to her scalp and her thigh, all of a fairly similar age. Those to her scalp were fingertip bruises, indicating that their likely cause was gripping by a hand. A month later, on 28 February, R attended a child protection medical where it was discovered that she had a dislocated hip requiring corrective surgery, which was subsequently found to include a fracture to the hipbone. The consultant paediatrician reported that these were injuries caused by an adult. A further medical examination revealed healing fractures of (1) the right lower forearm at the wrist; (2) the left thigh bone at the knee; (3) the right thigh bone at the knee; and (4) a vertical compression fracture at the level of T12 in her backbone.

7. These injuries are all considered to be non-accidentally caused, either by the mother or C. The local authority, which had been aware of the children for some time, were also concerned about poor supervision of them, neglect and earlier exposure to domestic abuse between the mother and her previous partners, B and E.

8. On 1 March the children were removed from the care of the mother and C under police protection. The parents were arrested and bailed and there remains an ongoing police investigation. The parents consented to accommodation by the local authority under Children Act 1989 section 20 two days later, and on 17 March, the court made the first interim care orders which have remained in force. The children are currently in a foster placement together, where they have remained since 30 March. The local authority reports that they are thriving in this foster placement. It is worth noting that

there were private law proceedings between the mother and B in 2021, culminating in a judgment by a District Judge on 8 March 2021.

9. Following their initial interview, the police investigation has continued. The mother and C were subsequently arrested again on 25 October on suspicion of causing grievous bodily harm and they were reinterviewed. During those interviews, they were both shown the catalogue of texts and photographs that had by then been discovered on C's phone, showing communications between the couple throughout the relevant period. Many of these messages refer to bruising on one or other child, with accompanying photographs. In their interviews, each sought to accept the fact of the messages, but explained them away so as to deflect blame. No significant admissions were made, save that the mother admitted to hitting D on "two occasions".

This hearing

10. The applications that fall for determination are, firstly, by the local authority for care orders with respect to both D and R. Secondly, the local authority have applied for R to be placed for adoption. Thirdly, there is an application for a declaration to clarify the fact, as it is now agreed to be, that C is not R's father, such declaration being preparatory to the amendment of R's birth certificate so that it reverts to solely naming the mother. Lest I forget to say so later, I intend to make that necessary declaration in a form agreed by counsel at the end of this hearing.

11. The present hearing was listed as the "final" hearing at which all issues with respect to both children were expected to be resolved. Unfortunately, but for sound and acceptable reasons, it is agreed that further assessment must now be undertaken before a final decision can be taken on the proposal that D should move to be cared for by his father, B. It is not necessary in this judgment to explain this aspect in more detail. It is agreed that an independent social worker will now be instructed to undertake a holistic assessment of B and his ability to offer D a long-term home. The report of the ISW will be available in January 2024 and it is anticipated that there will be a final hearing in February or March.

12. Dependent on the outcome of this hearing, the court may be in a position to make final orders for R as, if her mother is to be ruled out as a carer, there is no alternative plan other than adoption. It may however be agreed to adjourn R's case to run alongside D's, because all involved take the view that it is important, if possible, for these two young children to remain living together.

13. Whilst B has remained an active party, he is not accused of harming the children and the main focus of the hearing has therefore involved the children's mother and C. Whilst the mother's case on the facts has changed during the process of investigation and in her evidence to the court, she does not admit doing anything that caused physical harm to the children, C's factual case, whilst expanding in response to fresh evidence and questioning, has remained consistent in that, apart from inadvertently, he says, causing bruising to R's scalp, he has never struck or otherwise caused physical harm to either child.

14. In circumstances where the accounts given by each of the two adults is at odds with the other, and in the case of the mother has significantly altered over time, the text messages and photographs extracted from C's phone, have played a very prominent role in the hearing, as will become clear.

Significant harm

15. The local authority assert that both children were suffering significant harm and were likely to suffer significant harm at the start of the child protection process in March. Many of the local authority assertions as to the fact that the two children were injured are accepted by the mother and C. The issue for the court is the question of which of these two adults was responsible for this situation. I will therefore record the main elements of the local authority case at this stage before turning to the evidence of causation.

A. Physical injury to R

16. The first injuries seen to R were scratches on her scalp, shown in a photograph attached to a text message on 18 July 2022 when she was aged three months. The adults say that this was caused by a kitten and there is no other evidence to attribute it to another cause. This injury therefore falls into the category of neglect and poor care rather than that of an adult directly causing harm to the baby. I will deal with the evidence of other bruising to R that is referred to in the text messaging and photographs when I come to allegations of hitting and pinching the children.

17. On 21 January 2023 the mother sent a photograph to C showing fingertip bruising to R's scalp with an accompanying message that simply read "WTF", with four question marks. "WTF", it was agreed, standing for "what the fuck", followed by another saying "Why" with question marks? C replied, "I sorry. When I put her to sleep she was crying a lot and I did not mean to do that." Then "Was accident. I forgot she have sensitive skin", and "Was just holding with finger too long in head. That's why", and finally, "Sorry".

18. In his evidence C told the court that he must have caused the bruising whilst he was cradling the baby who was crying whilst the mother was tending to D. He accepts that he must have gripped her head too tightly but he says that he did so inadvertently and without understanding that it might cause bruising. Irrespective of that explanation, when R was examined by doctors on 26 January, she was seen to have no fewer than 20 bruises to her head and body. Neither adult has given any account of this bruising other than that by C relating to the four or five on the scalp. The explanation given to doctors by the mother was that the injuries were caused by young D lifting R up and dropping her, and that has been known as "the cot incident", and I will deal with that in more detail later. That explanation was accepted by the doctors at the time.

19. In the middle of this course of events in January 2023, the couple re-registered R's birth so as to add C as the father. The juxtaposition of that event with the bruising to the child is of note. On 25 January R was due to go to playgroup. In text messages the mother initially said she would not be attending because of the bruising to R's head, saying to C that it was "too risky. They will contact social services". The plan then

changed and the couple agreed, as C confirmed in a text, to keep R's hat on and R is seen in a photograph with a large woollen hat pulled low down and covering her head, but, at the playgroup, the bruising was indeed seen and a referral to the authorities was made.

20. At the time, as I have indicated, the explanation given of the cot incident was accepted by the doctors. A month later on 28 February, R underwent a comprehensive medical examination. By that time, the mother, at least, had concern that there was a difficulty with R's left leg. In the course of that examination, the fact that her left hip was dislocated was discovered and she subsequently underwent surgery to reposition the hip. Expert opinion has now confirmed that the dislocation was probably caused by inflicted trauma rather than as a result of some congenital or other medically explicable cause. In addition to the dislocation, the hipbone itself has signs of fracture at its head, a fracture which supports the finding of an abusive causation.

21. A full skeletal Xray survey was undertaken on R at that time and it identified the following three fractures. I have already mentioned them but I will give them their technical labels now. (1) A healing fracture involving the left distal femoral metaphysis (that is the left knee above the joint); (2) a healing fracture involved the right distal radial metaphysis (the right wrist); and (3) a healing fracture of the right distal femoral metaphysis (the right knee above the joint). There was also suspicion of a fracture to the spine at T12 level which has subsequently been confirmed. Finally, in terms of injuries to R, doctors identified a bruise to her right eyelid and a red mark to the pinna of her left ear on 1 March.

B. Slapping both children on the face

22. Before the sequence of WhatsApp and text messages (referred to as "text messages" throughout this judgment) were discovered on C's phone, the local authority were not aware that D may have been assaulted by either adult at all. From mid-October 2022 the messages contain a number of texts from D's mother telling C that she had "hit" or "slapped" D. In her evidence she claims that, apart from one occasion when

she "lightly slapped him once on his bottom and once on the face leaving no marks", these text messages are false and were sent by her to cause C to believe that she had in fact hit her son in order to protect D from any punishment from C when he returned home from work. Other messages reveal that D had bruising to his face at other times, without either adult claiming to have hit him but where he plainly has been slapped or hit by one of them. In addition, messages between the adults refer to blue marks on the faces of both children. These are accepted to refer to bruises. The mother's case is that any such marks were caused by C slapping D and R, an assertion that he denies. Both of them accept, however, that when one or other child had bruising, they applied cream to their faces. The cream is said to be a standard product used for eczema or nappy rash and they both claim that it was applied to assist the healing process. That assertion is not accepted by the local authority, who claim that the application of cream was an attempt to hide the bruising.

23. One particularly striking photograph is that taken on 18 November, a week before an incident took place at the mother's friend, Y's house that I will describe shortly. In this photograph, D has a large amount of cream covering marks of bruising on his lower jowls, rather than being cream that has been rubbed in and absorbed so as to assist healing, the prime purpose of these dollops of cream seems to be to obscure the marks.

C. Assault on D at Y's home

24. On Friday, 25 November 2022 the two adults and both children visited the mother's friend, Y, at her home for a small party to mark the mother's birthday. Also in the home that night were Y's partner, her two children and the partner's 10 year old son, M. All four visitors stayed overnight. In addition to the mother and C, the court heard detailed evidence from Y. There is a degree of common ground between their various accounts. It is agreed that, at least by 7 or 8 pm, all were present and that at some point the children were put to bed. Y's daughters were in one room and D, together with M in another. D would not settle and was busy running around and generally causing a disturbance. Both the mother and Y went up to try and settle him but without success. There came a time when either the mother or C went into the room

and D was heard to cry loudly as if in pain. Thereafter, he was seen to have significant redness to both sides of his face, more so on the left, and this turned in time to a substantial degree of bruising over the course of the following days.

25. In addition to almost daily photographs showing this bruising that were taken by the mother and sent to C in this period, the court has seen photographs taken in her house on the morning after the assault by Y. The existence of these photographs was not apparently known to either of D's carers until only a few months ago. Both adults accept that D sustained a significant injury to his face that night as a result of the actions of one of them. The issue therefore is which of the mother or C carried out this assault on D. Each blames the other, but Y supports the mother's account and says that it was C.

26. In addition to the assault itself, this episode is also evidence of a failure to protect D in that, even after the commencement of these proceedings and the police investigation, neither adult disclosed that there had been any assault on D. Information about the event only came to the notice of the authorities after the text messages and photographs on C's phone were seen.

Neglect

27. On 15 June 2022 there is a report that D, then aged two-and-a-half years, was seen out in the middle of the road after the front door of the home had been left open. This is accepted by the mother. A month later on 20 July, the mother records in a text that D is "running out of the house again", which she confirmed in evidence that he did. Finally in this context, on 28 July D was reported missing to the police and was found a mile away from the house. He was wearing no shoes and had cuts to his feet. This again is accepted by the mother.

28. Under the heading of neglect, the injury to R apparently by the kitten must be included.

Emotional harm

29. Although not part of the threshold findings applicable in the current proceedings, which must be related to circumstances in March 2023, a further particular element of the history is relevant in the context of emotional harm and that is that in the course of the earlier private law proceedings between the mother and B in the judgment of a District Judge in March 2021, findings of fact were made following a contested hearing. The judgment describes the mother as young, vulnerable and dependent upon her then partner, who the judge found was abusive to her. D was born into that family where the parents had a "volatile" relationship and within which the father admitted shouting regularly occurred between the two parents.

30. The judge made findings as to specific incidences of violence, one involved the mother being kicked in the face when on the ground. On another occasion, B, in frustration at the young baby's behaviour when he had been left in charge of him at bathtime, apparently immersed him under the water. The District Judge concluded his judgment as follows:

> "Those are my findings. In general, they illustrate a relationship characterised by frequent and loud verbal arguments. Those arguments, so far as the father's behaviour is concerned would, on occasion, escalate quickly into volatile, aggressive, and occasionally violent behaviour and that the father's behaviour on occasion extended to trying to prevent the mother seeking help or assistance, in part by efforts to remove her phone, an action replicated with his previous partner."

31. Now, it is right to stress that B does not accept those findings and the court has not heard from him. I set them out in this judgment because the young child, D, entering the household that later contained the mother and C, had already experienced living in a volatile and abusive environment.

32. Under the heading of emotional harm, it must not be forgotten that being the victim of physical assault, as is asserted in this case, carries with it the likelihood of an element of emotional harm. Living in a household where one or both of the adults behave at times in an unrestrained and angry manner and where a child may witness or otherwise experience their brother or sister being assaulted will have an adverse emotional impact upon them. Again, there can be no finding of significant emotional harm, but those observations may be relevant at the welfare stage of this case.

Failure to protect

33. Whichever of the two adults did not assault D at Y's house was nevertheless guilty of a serious failure to protect both him and R from further injury, firstly by not reporting it to the authorities at the time; secondly, if the mother is not the assailant, by her not separating from C; and thirdly, by neither of them telling the police or the social workers or the court of the episode once the investigation commenced.

34. On 25 January 2023 R was taken to playgroup by the mother. The bruising on the head was still visible but the baby was wearing, as I have said, a large woolly hat. The mother sought to keep the hat on inside the playgroup because, she says, the child had a temperature, but the bruising was seen and led to the referral. This was, I find, another attempt to hide the injury and was an episode of failure to protect.

35. Further in terms of failure to protect, once the full extent of bruising to R was discovered and social services raised the level of their investigation, on 26 January C sent a text to the mother instructing her to "clean all conversations" between them from her phone and she did so. Fortunately, for whatever reason, he did not. In clearing her phone of these incriminating texts and photographs, the mother was deliberately seeking to cover up and hide evidence of sustained abuse of both of her children at a time when, having not done so before, she should have instead been reporting it to the authorities. This is, again, evidence of a serious failure to protect her children from harm and of putting her own interests and those of C well ahead of the welfare of her two young children.

36. On 28 January, as I have indicated, a full child protection medical examination was undertaken and the dislocated hip was detected. The account given by the mother was that this must have been caused by young D. In relation to this and other injuries, the mother gave an account of leaving the two children unattended whilst she was in the kitchen. When she went in to them, she saw that D had picked R up from her cot and then dropped her. This has been referred to as the cot incident. It is an account that the mother has maintained for many months. C says it is the account that the mother told him and he still adheres to it as an explanation for at least some of R's injuries.

37. The mother's case has, however, changed and she now says that the cot incident was entirely made up and that it was a lie that she was told to make on the instruction of C. If that is so and it is a lie, the invention of the cot incident and her maintenance of it in her interviews and statements over the past eight months again amounts to a serious failure to protect her children by seeking to explain away injuries which she must have known were caused by one or other of herself and C.

38. The case for the local authority, firmly supported by the children's guardian, is that the evidence establishes a sustained process of collusion between the mother and C aimed at avoiding the detection of injuries and deflecting blame. The degree to which they have gone to the extent of still, it is said, lying to the court about a number of significant events, puts their collusion at a high level. The mother, it is said, at all turns has prioritised her relationship with C over the needs and safety of her children. Despite knowing (on her case) that he was the perpetrator of the bruising to D at Y's home and asserting, as she must, that he caused the four fractures to R, she nevertheless married him on 2 October, only six weeks before the hearing where she hoped to persuade this court to rehabilitate the children to her care. She only separated from him at the end of October following the police interview and the discovery that the police had found the text messages and photographs.

39. During the hearing, the court learned that she had more recently submitted a very positive account of C to his immigration solicitors on 9 November and it was her

evidence, although denied by him, that they had had sexual intercourse only days before the hearing.

Expert evidence

40. It has been possible to list the detailed evidence of the injuries sustained by the children at this stage of the judgment because the expert evidence and the evidence provided by the various contemporaneous photographs of the children contained in the WhatsApp messages, is accepted by the mother and C. It is therefore only necessary to record briefly that the two instructed experts were, firstly, Dr Oystein Olsen, who is a consultant paediatric radiologist at Great Ormond Street Hospital and Dr Katherine Ward, who is an independent consultant paediatrician, currently paediatrician to children in the care team in the Bradford District Care Trust, each of these two individuals is a nationally acknowledged expert in their field.

41. The expert reports are detailed and comprehensive and during the course of each, all of the possible reasonable alternative explanations for the manifestations of injury are considered before being discarded. From the accepted expert evidence, the following are of particular note. Dr Olsen advised that vertebral fractures to the spine are extremely rare in children. According to an authoritative textbook:

> "Vertebral fractures due to child abuse are compression fractures of the vertebral bodies … These result from extreme flexion or extension, in particular at the lower thoracic and higher lumbar level, for example, direct impact violence, such as a blow or a kick or from alternating hyperflexion and hyperextension during shaking."

42. Dr Olsen considered that the compression fracture to R's spine strongly suggests that it was caused by forceful forward flexion of the spine. The injury was not self-sustained nor caused by a trivial domestic accident or by normal or even rough handling; it will have required an episode of very significant trauma involving forced, forward bending of the backbone. He advised that it was at least one month old on 10 March.

43. In his addendum report, Dr Olsen states:

> "I think the nature of the hip injury and the injury to the backbone, is such that the person or people who caused those injuries will be in no doubt as to what exactly happened and when."

44. Both Dr Olsen and Dr Ward advise that traumatic hip displacement is another extremely rare traumatic injury to young children and requires significant force.

45. The metaphyseal fractures to the two knees and wrists are almost diagnostic of abuse where the extreme end of a long bone is pulled or twisted so forcefully that the growing plate of newly forming bone (the metaphysis) is separated from the shaft. Fractures of this type are caused to a baby in circumstances well outside the course of normal handling and involve forceful pulling, twisting or flexion of the joint.

The legal context

46. I can take this part of the judgment shortly. There is no conflict between any of the parties as to the appropriate law that has to be applied to the fact-finding process. The court has been assisted by counsel for the parties who have provided an agreed note of the law. I have read it and it correctly summarises my understanding of the legal approach. The local authority make each of the abusive assertions that they make in the schedule of findings. The burden of proof is upon the local authority to make good those assertions. They will only be proved in each case if the court is satisfied that the evidence establishes not only that the abuse took place, but also any finding as to the

perpetrator because the evidence establishes those facts on the balance of probability. Anything less than that will result in no such finding being made.

47. In the present case, two carers were responsible for the children and the court therefore has to look at the possibility at the end of the day of not being able to find on the balance of probability that one or another injury was caused by one or other of the two individuals. The court is assisted by reference to two cases, *Re B* [2019] EWCA Civ 575 in which Peter Jackson LJ described at [48] and [49] the approach to be taken. In particular at [49] his Lordship suggests the following approach:

> "The court should first consider whether there is a 'list' of people who had the opportunity to cause the injury. It should then consider whether it can identify the actual perpetrator on the balance of probability and should seek, but not strain, to do so … Only if it cannot identify the perpetrator to the civil standard of proof should it go on to ask in respect of those on the list: 'Is there a likelihood or real possibility that A or B or C was the perpetrator or a perpetrator of the inflicted injuries?' Only if there is should A or B or C be placed into the 'pool'."

48. In a second case, King LJ turned to the topic. The case is *Re A (Child: Pool of perpetrators)* [2022] EWCA Civ 1348 where, in particular at [34] her Ladyship said:

> "… in future cases judges should no longer direct themselves on the necessity of avoiding 'straining to identify a perpetrator'. The unvarnished test is clear: following a consideration of all the available evidence and applying the simple balance of probabilities, a judge either can, or cannot, identify a perpetrator. If he or she cannot do so, then, in accordance with *Re B* [2019], he or she should consider whether there is a real possibility that each individual on the list inflicted the injury in question."

49. I propose to adopt that distillation of the test.

50. A further matter to bear in mind at all times, particularly in this case, is the relevance in terms of the assessment of the ultimate fact-finding process of the fact that each of the two main witnesses has told lies about certain matters during the course of the proceedings thus far and, it is said, during the course of their evidence to the court at this hearing. I accept the distillation of the learning in relation to lies that is set out by counsel. The fact that someone has lied about something does not prove that they are in any way culpable of an event that is alleged against them. People lie for all sorts of reasons. I do not intend in this judgment to use the fact that one or other of the witnesses has lied as positive proof of anything. It does, however, indicate that the person is an unsatisfactory witness and where the person has agreed that they have lied because they are covering up, then I accept that explanation from them.

The position of the parties

51. At the close of the hearing the local authority's position was that the court should find on the balance of probability:

(a) that the 20 recorded bruises to R's scalp and thigh seen on 23 January were inflicted by C.

(b) That the four occasions recorded in text messages in October, November, January and February where the mother states that she has hit or slapped D, are occasions when she did indeed hit or slap him causing injury. For example, that seen in the photograph of 18 November three days after her text of 15 November.

(c) that the adult responsible for hitting D around the face when the family were staying over at Y's house on 25 November was C.

In relation to all of the fractures seen in R and each of the other unexplained injuries, the local authority case is that it is not possible for the court to find that the perpetrator

was one or the other of the only two people with the opportunity to cause the injuries, namely the mother and C. The authority, however, do submit that the evidence establishes that there is a likelihood, a real possibility that both the mother and C inflicted these injuries or that one or other did it and that there should, accordingly, be a finding that they are both in the pool of perpetrators with respect to the fractures and the other unexplained traumatic injuries.

52. The case for the mother is that, whilst she admits on one occasion slapping D on his bottom and face, this did not result in any injury and she is not the perpetrator of any physical injury to either child and that the perpetrator must be C. Mr Yeung, counsel for the mother, accepted that a finding that both adults were in the pool of perpetrators was open to the court.

53. For C, his counsel, Ms Watkins, presented a mirror of the mother's case. Apart from accepting that he inadvertently caused bruising to R's scalp, C is said not to be the perpetrator of any physical injury to either child. Ms Watkins accepted the summary of the law that had been agreed between counsel with respect to the approach to be taken to findings as to the pool of perpetrators.

54. For the children's guardian, Mr Duncan, counsel for the children, did not demur from the local authority case. In the course of his submissions he highlighted that the evidence established a high degree of collusion between these two adults and, as a result, the significant degree in which both failed to protect these two very young children from significant harm.

The mother's changing accounts

55. Both parents have admitted that at various stages and in various ways, they have told lies to each other and, in the mother's case, to the police and to this court. It is therefore possible to make some general observations as to their individual credibility at this stage before turning to their detailed evidence. In doing so, I am cautious about making a general finding as to reliability and then applying that with a broad brush to

absolutely everything that one or other might say, and that is not the course I am following. The issue of credibility in the quest to find some solid ground upon which to discern the underlying truth, is a much more complicated one in this case. The fact that one of the adults is unreliable on one issue does not mean that they are not giving an evidentially sound account on another.

56. In this regard, the court is assisted, as it often is in cases of this nature in modern times, by having sight of the text messages and photographs that passed between the couple at the relevant time. Such material can provide the court with a privileged and ostensibly reliable account of what each was saying and doing sometimes minute to minute on particular days, but even this material needs cautious evaluation as the mother says that, although she claimed to be hitting D on certain occasions, these admissions themselves were a lie aimed at reassuring C that she was being more strict with D than was actually the case.

57. With those caveats, I propose nevertheless to describe in some detail at this stage the way the mother's account of matters has developed and changed during the past nine months because it sets the scene for my account of her oral evidence that will then follow.

58. During that time she has given different accounts of the events surrounding the injuries that she now accepts were inflicted on her two children, either by her or C. Initially, the focus of questioning in terms of physical abuse was limited to the bruising and fractures caused to R. It was only when the text messages and photographs were discovered that it became clear that D, too, had suffered injury by being slapped around the face.

59. The mother's account was first given in an initial police interview on 1 March. In that interview, she sought to place the blame for any injury to R upon D. She explained to the officers that D was autistic, in particular that he had Asperger's Syndrome and that he had ADHD. She described his behaviour as being very physical, at times involving

R, and that he was difficult to control. She made no allegations against C and did not admit any abusive behaviour herself.

60. In her first statement made in these proceedings on 14 April, the mother described being the primary carer of the children and she said in terms:

> "C is barely at home and I cannot remember an occasion when I have left him with the children alone, except we are not in the same room at all times."

61. She claimed that R had sustained marks and bruising to her head on one occasion by D lifting her up out of the cot (the cot incident) and about which she gave a detailed account. She denied causing any harm to R herself and could not account for any other injuries. Referring to the cot incident, she said:

> "What other explanation can I give except to say what I believe or saw."

62. She denied dressing R in a large hat on 23 January in order to hide any injury. She acknowledged failures in the past in terms of her supervision of D getting out of the house on his own.

63. In her third statement she purported to address the findings that had by then been reported upon by Professor Olsen. In it she describes her normal routine, with details of many daily activities out and about with the children. She describes a number of episodes of interaction with or between the children which are not now put forward as possible explanations for the injuries. In this statement she again gives a detailed account of the cot incident. In particular, she claims to have noticed small bruises on R's head afterwards which were, she says, "obvious". She again denied hurting the children. It is of particular note that she makes no reference to C whatsoever in this eight-page statement. Indeed, his name is not even mentioned.

64. On 25 October the mother undertook the second police interview. In the initial stages she described how the couple would regularly wrap R tightly in a blanket and also how they would from time to time stretch her legs whilst doing so. She once again gave the police a detailed account of the cot incident. Both during the cot incident and at other times she described D "straddling R's back" and "riding her like a horse". She suggested that R's legs may have been injured during a visit to a place called the play centre where play includes children bouncing off play cars which bump into each other. In reply to express questions she denied that C had ever caused injury to either R or D and she went so far as to say that she would never live with him if he had done so. She said that their relationship was "very good". She was asked if she was scared of him in any way to which she replied, "No. I wouldn't have married him if I'd been scared of him. I would have run away."

65. It was at that stage of the interview that the officers began to take the mother to the detailed account of WhatsApp and text messages. In relation to an event where D apparently spilled some milk, the mother admitted that she had slapped him "just on the cheek", explaining that that was usually how parents "do it if they are very naughty in my country". Later she admitted slapping D again in the same way on a different occasion and she described how C would squeeze the cheeks of each child to the extent that they would show bruising.

66. As the interview moved on, the mother eventually changed her account of the bruising to R's head and claimed that C had caused that bruising. When asked further about the spilt milk incident, the mother said that she had been worked up and was angry before she slapped him. She said that it was not a true "accident" and what she meant by using the word "accident" was that she did not mean to do it but "just simply got to me".

67. After a break the interview resumed, and the mother repeated her claim that C had been responsible for the fingertip bruising to R's head. She also said that she was scared of him. She gave an account of D being assaulted by C one evening when the adults and children had gone to visit her friend Y's house to celebrate the mother's

birthday. She described how they stayed overnight there and at one stage C went up to see D, who was crying, who then turned to screaming. When the mother and Y got to the bedroom, there were marks on D's face and Y's son claimed that C had punched D. She confirmed that C had caused injury to the children's cheeks by pinching them, but explained that he was not doing it on purpose but was "just playing". She accepted that she had slapped D on occasions but had never caused any marks or bruising. She did not offer any realistic explanation for the fractures to R's back, hip, leg and wrist.

68. The mother's final statement for these proceedings is dated 13 November. In it she says she had married C on 2 October in order to assist his visa application, but also because she loved him. Although she saw marks on R's head and bruises to D's face, she trusted C and accepted his explanations. She again gives an account of D being injured by C during an occasion when Y and her children were present, although the statement says that Y was visiting the mother rather than the other way around. She explains that she accepted C's explanation at the time, which was that D had hit himself on the bed. She could offer no explanation for the injuries to R.

69. The mother's oral evidence over the course of two days, oddly, given the differing accounts that they each contain, commenced with her confirming that each of her statements and the contents of her police interviews were true.

70. I have set out the mother's various and varying accounts to establish the position as it was before she gave evidence. She entered the witness box as a witness who was already admitting to have given dishonest accounts, lies to the authorities and the courts about serious issues. That fact or status did not however mean that no reliance could be placed on anything that she said, but it did necessarily increase the degree of caution that the court must have before accepting any part of her evidence without looking for further corroboration from other sources.

Mother's evidence

71. In describing her relationship with C, the mother explained that, although he had never hit her, his behaviour towards her was very controlling. He would often become angry with her and became wound up over very small things. He was also very controlling with respect to money, requiring her to pay all the bills and then handover any remaining cash to him. Conversely, he never divulged what he was earning.

72. Given an explanation offered for scratch marks to R's scalp in July 2022, the mother was asked at a number of stages about any animals that were kept in the family home. Initially in her evidence-in-chief she said there had been three kittens over the time that she was with C. On one occasion he had thrown a cat against a wall and the animal had lost an eye. He had part strangled two of the cats, but this was after the children had been removed and was "three or four months ago". In reply to a question from the court to identify any animal that had been in the family home at any time when the children were living there, the mother said, "One cat was there just before the two children were taken away." She explained that there had been something wrong with that cat, as it was not moving properly. The cat had come from Y and had been returned to her. She asked C if he had injured the cat but he said he had only given it a shower.

73. I refer to this because, over the course of the evidence as it has become clear, the mother's account of these animals is inconsistent. Also because it was only in the witness box that the mother told for the first time that C had been abusive to these animals in the way that I have described.

74. With respect to the injuries sustained by D and R, the mother maintained her evidence that she had not caused any bruising or other injury to either child. She no longer said that D may have been responsible for any of R's injuries. She was also clear that the cot incident had "never happened" and that she had only described it because C had told her to do so by repeating an account that he had made up. They had moved the cot to another room, but that was simply to back up the lie, not because the incident had actually happened. She maintained the account given to the police of C being responsible for assaulting D on the occasion when Y and the family were present,

explaining that she had not said so earlier because C was always threatening her and she was scared of him. She was asked about the series of photographs of D taken over the course of 28 November and the following days which show extensive bruising to his face. The mother was plain that C had caused these injuries on the night at Y's house.

75. On the day in question, the mother said that she, C and the children had gone over to her friend Y's home for a party and overnight stay to mark her birthday. Y was there with her two daughters, her partner and his ten year old son. After the children had gone to bed, D did not settle. The mother said she wanted to go up to him but C said that he would go, which he did. She said that after a little while D was heard to cry hysterically and be screaming out. It was not a normal cry. The mother and Y went upstairs just as C left the room. They went in, turned the light on and, in the mother's words, saw D's face "covered with bruises". Y's partner's son said that he had seen C hitting D with his fists. The mother said she had asked C what had happened and he said that D had hit himself on the edge of the bed. There had been no marks on D's face before he went up to bed.

76. In cross-examination on behalf of C, Ms Watkins put her client's case, which was that the mother had gone upstairs when D would not settle and that she was heard screaming at D and D's crying then changed tone before the mother came back downstairs saying, "I can't deal with him." Her response was that that was all lies. The mother denied any conversation with C, as he asserts was the case, in recent months when she told him of the photographs that Y had and that he should go to the police to take responsibility for the injuries to R that were then the subject of the investigation. The mother's response was that this was a lie. In subsequent days, being weekdays when C was away at work, he asked for pictures of D's face which the mother took and sent to him by WhatsApp. In one of his messages C says, "Tell her that he hit himself on that bed." In her evidence the mother said at the time she did believe C's account of D banging his face on the bed. She said that she did not know why she did but now she does not believe it.

77. There are text messages sent from the mother to C on 12 and 13 October 2022 in which she says on the first day she had slapped D and put him in his room, and on the second that she just wanted to slap him. In addition, on 15 November she sent a text message saying that she had "hit" D because she thought he had broken something before realising that the cat must have done so. Her counsel asked if she did hit D. The mother replied, "In those messages I did say that, but I did not do it." She explained that C was always asking her to be strict with the children and so she had sent messages to him so that when he came home from work he would not punish them himself. She went on to say that C would "often come back from work and hit D and put him in his room and not feed him", although she did ensure that D was fed.

78. Pausing there, whatever the true position relating to the detail, and C went on in his evidence to give a different account, both of them speak in their evidence and through these text messages about each of the two children being slapped or hit around the face. Whilst each denies doing it, it is inescapable for them to avoid a finding that there was a culture in this small family unit of the children regularly being hit or slapped in this way, even if at one time or another or at all, one was not directly responsible for delivering the blow, both were engaged in maintaining this culture in which these two very young and vulnerable children were being abused. Slapping a child anywhere on the body may be abusive, but to slap him or her around the face most certainly is. The act carries an emotional impact and is a breach of the bond between child and carer irrespective of the associated physical injury which also obviously follows.

79. On 28 January 2023, there is a text message from the mother saying that she had hit D and that his lip was bleeding, but that it had been an accident. In evidence she gave a similar explanation that she had said this was for the benefit of C and D's lip was not bleeding on that day.

80. During cross-examination by the local authority, the mother described D's behaviour over much of this period. He would often have tantrums if he did not get what he wanted. He became jealous after R's birth and that the number of tantrums increased.

There was almost one every day. She agreed that, on an occasion when D had spilled some milk and then had thrown some toys at R, she did "lightly slap him". Pausing there, the mother's account of D's behaviour did have a ring of truth about it. It is plain from the text messages that D's behaviour was certainly at times a cause of great stress and difficulty for the mother, coping alone as she was for most of the days with these two children. An example of this is the episode I have just referred to regarding spilt milk. The mother agreed that in the relevant text messages she said that she had gone "crazy" and hoped that there would not be "any blue on him", meaning bruises. She said that she had said that because she wanted C to think that she was being strict. She said that she had not hit D "that hard to cause bruises", adding "I did not mean to slap him. I don't know what came on to me." Asked how many slaps, she said, "Once." Asked where, after a pause she said, "On the bum and then on the cheek. So twice."

81. She explained that when she had told the police that she had slapped him on "two occasions", she meant the two slaps on this one occasion. She said that she had regarded the slapping as "a big mistake". In evidence the mother described C as squeezing the cheeks of both D and R "all the time", and that she was asking him not to be so rough as the children would have bruises. She agreed that it was not all right for C to squeeze the children's cheeks to cause bruising. With regard to R she said that she did not see him do it, "but every time I saw her she had new bruises out of nowhere". She agreed that she had not told the health visitor about this. She said that she was scared to do so but she did ask C not to do it anymore.

82. In text messages on 15 November, the mother describes finding that some Christmas decorations had been broken and that she had again "hit" D, thinking it had been him before concluding that it must have been the cat. In her evidence in chief the mother said that there was no cat until "just before" the children were removed at the end of March, but she clarified that that meant November when she had taken it in. Another example of the mother's inability to be accurate about details even of this sort. With regard to the bruising to R's scalp, the mother said that she had been very angry with C over this as the text messages at the time indicate.

83. During cross-examination it became clear that the 28 January, on which the mother sent a text saying that she had hit D, that his lip was bleeding but it was an accident, was a Saturday and that C was not away at work on that day. She explained that this message was another lie. She had not hit D and his lip was not bleeding. Initially, and before it was known to be a Saturday, her evidence was that C did not see the children that day as they were in bed when he came home from work. She had been out at lunchtime however she said on the Saturday and that she sent him a text, but she did not know where she had been. She could not say if C had asked her about the bleeding lip later in the day.

84. As I have recorded, on admission to hospital on 1 March, R was seen to have bruising to her eyelid and to the pinna of one ear. Mother's account in the witness box was that the eyelid had been hit by R hitting herself in hospital with a toy that had been given to her by the nurses. This account was given for the first time in the witness box; it is not recorded in any medical notes or police interview or statement, for that matter C also said he had not heard it before. On this point the mother's account was simply not credible. She explained the ear marking to R as R hitting her head when turning around in bed, as the mother had seen her do on a previous occasion but not on this occasion. Neither explanation accords with the medical evidence, which is that the probable cause is abuse.

85. With regard to the hip injury, the mother had no explanation but described R crying if picked up in the period of ten days or so before the hospital admission. A medical record of 28 February has her saying that there had been difficulty with the left leg for possibly over a month, but that it had been worse for the last two weeks. In her evidence the mother accepted that this was correct.

86. More generally it was put to the mother that she was the main carer of the children and that there would have been opportunities for C to be alone with them. In response she described for the first time going out at weekends regularly for two or three hours at a time to get her nails groomed or to visit friends. This is very much at odds with C's case which is that he was never left alone with the children, save for, on occasions,

being in a different room with the flat with them while the mother was present in another room. In her first statement she had said C was never left alone with the children, but when questioned she said that he had told her to say that.

87. With respect to the allegations of failure to protect, the mother claimed that C had made it clear that she was not to go out and that he would know from the neighbours if she did so. That evidence was itself at odds with her own statement which described a daily routine of being out with the children, visiting places and shopping for most of each morning. She did, however, agree that she had failed to protect the children. She agreed that until the final police interview she had been lying about what was going on and that, if the messages on the phones had not been revealed, she would not have disclosed that D had been injured at Y's house and at other times.

88. In questioning by Mr Duncan on behalf of the guardian, the mother agreed that both she and C had described the children as "demons" at times in the texts. She said that this was just jokey language. With respect to a message sent by her on one occasion saying "good luck to him (meaning D) with you". She said that this did not refer to the prospect of C hitting D and that she meant "Good luck to you (meaning C) with D". Mr Duncan also asked C about this use of language and he too described demon as a term of affection. He also agreed that in a text he had described someone as being "evil like R". C explained that as meaning that she was "cheeky like a kitten".

89. In this part of her evidence, the mother had to agree with Mr Duncan that, as a result of her reported actions in protecting herself and extracting herself from abusive relationships with B and E, she knew how to raise the alarm and who to contact and, if necessary, to do so via a third party.

Y's evidence

90. Y gave evidence in accordance with a statement that had been filed the day before which, after describing the events of the evening and D's disruptive behaviour, asserted that it was C who went upstairs immediately before the boy's cry changed to one that

concerned Y and the mother who then went upstairs to find D with marks on his face. Y said that her partner's son, who had been in the room with D, told her that C had hit D. In evidence, Y explained that she had come forward now because the mother had asked her to do so. Previously she had held back because again the mother had asked her to do this. When asked by Ms Johnson for the local authority when she had last spoken to the mother, Y's evidence was less than satisfactory. Initially she said, after a long pause, that it had been some time ago when she had found a job and the mother had called her. She then agreed that recently they had in fact spoken every day. When asked if they had spoken "yesterday" she said, "I can't remember", and then "I think yes", but they did not discuss the court case, although the mother had been in the witness box all day that day. I found this part of Y's evidence wholly unsatisfactory and not credible.

91. From that shaky start, the credibility of Y's evidence in my assessment improved. She later confirmed that the date of the photographs she had taken was 25 November in the morning, meaning that the events that had taken place at her home had been on the evening of Friday, 24th. She described all four adults as drinking Captain Morgan rum, either mixed with coke or otherwise. She did not describe any as being drunk. Y then gave a clear account of events with C being the one who had gone into the room, D's cry changing and the partner's son stating that C had hit D. She described this as being two blows, with a punch like motion, but she demonstrated with the heel of her hand pushing out rather than a fist. She had taken photographs of D's injuries the following morning before anyone else was up.

92. In cross-examination on behalf of C when his account of events was put to her, Y's demeanour was one of genuine bewilderment and incredulity. C's case at that time was that he had been there with the family in the late afternoon, around 5 or 6 pm and that he had taken charge of the cooking, not only working the barbecue but also preparing the salad. Y's response to counsel was to say "What salad? It was already prepared." She was seemingly giving a most genuine reaction to an incorrect assertion. In his own evidence C gave a different account saying that he had not got to the house until around 8 pm. He made no mention of preparing salad but simply for cooking

pre-prepared skewers on a barbecue. Y explained that she had come forward because she did not wish to keep these matters secret and "for this person" (C) "to learn that a child is not a toy." She later added, "I actually cannot stand C after I have seen everything. I have nothing to say to that person." She considered that the event at her house was a very serious assault on a child. It was put to her that she was lying and she replied, "I am not lying. Why lie about something like this?"

93. By the end of her evidence I had, despite its dishonest start, formed a positive view of Y's credibility. She came across as a person who was child-focused. She had taken the photographs. There is no reason to doubt that she was worried about the treatment that this child had received and that she was now giving an account of what had happened.

C's evidence

94. C's oral evidence was more straightforward than that of the mother in that his case, which is one of denial of opportunity and denial of any assault, has been maintained throughout. He described working long hours in London as a construction worker so that he would leave the home early in the morning and not return until around 7 pm at night. He agreed that this work was unlawful as he is an asylum seeker, but he needed to work to live. He maintained that following the couple's separation on 31 October they had only met on one brief occasion on Sunday, 12 November. They had not met at any other time and he had certainly not had a sexual encounter the previous week with the mother. He held to his case that he had never been left in sole charge of the children and he denied that the mother had gone out at weekends prior to the removal of the children. He had never put the children to bed on his own.

95. Concerning bruising to the children's cheeks, he said that pinching cheeks was not a traditional custom in Albania and he denied either pinching or slapping either child. There was, C said, one occasion when he did pinch R's cheeks during soft play. Her cheeks "went a bit red" but there was no bruising. C said that he had, however, seen the mother slap D on an occasion in a supermarket, an allegation which she denies. In cross-examination on being shown texts, he agreed that he would sometimes

squeeze R's cheeks and do it a little harder than he should, but it was just play and he did not intend to harm her.

96. On 1 September 2022 there is a text message from C to the mother about D saying "Slap him in the face." C gave a convoluted explanation for this message saying, "Whenever D did something wrong, the mother wanted to slap him in the face so she asked me to send her a message if I was told he had done something wrong saying, 'Slap him in the face' to confirm her in doing it so that she had my approval for slapping him." He said that he did not think that it was good for her to slap him, but he had sent the message because he had been asked to do so. If C's explanation had any credibility, one would expect there to be a number of such messages as there are frequent occasions when the mother reports that D had, in her view, behaved badly. Yet, this is the only one. I regarded this part of C's evidence as simply not capable of belief. The plain explanation is that he sent the message to tell the mother to slap D in the face and that he thought that that was an appropriate parental response. He said that he saw bruises on D's cheeks on a number of occasions, for example after the milk incident, after the cat had broken a decoration and, again, that there was a big cut on D's lip in January after the text saying that she had cut his lip.

97. C maintained that cream was administered to the two children to assist healing. A regular, if at times almost daily, request from C in the text messages to show photos of the children when they had bruising was explained because he was simply concerned about how the children were doing on days when he was at work and could not see them. He accepted that he "might" have caused the bruising to R's scalp and demonstrated how he had held her by holding a doll in court. Whilst the demonstration had his hand on the doll's scalp, there was no dynamic force demonstrated and it was presented as if in a still photograph. When he saw the photographs he thought people would think that he had done something bad.

98. C's account of the evening at Y's house is similar to that of the mother, save for the crucial time when one or other of them is upstairs with D and his cry changes shortly before he is seen with marks on his face. C says that it was the mother who was

upstairs with D at this time. He initially said that she was drinking and soon became tipsy as the evening moved on, but later clarified this by saying that everything that he had said about drinking related to after the incident and not before. He said that D had been playing up and the mother had been up and down to try to quieten him. There came a time when he could hear D getting more upset and his cry changed. The mother came downstairs and said, "I can't take it with D anymore so you'll have to go up and settled him." C describes finding the child tearful and hot. He put the light on and could see redness on the left side of his face. It looked like he had hit his face on the corner of something. C's account of what follows is of interest as it largely accords with that of the mother. He says she shouted at him, "What have you done?" Both Y and the mother shouted at him. He says that they went upstairs and saw D and asked the other boy what had happened. C did not hear this but the two women immediately told him that the boy had said that C had hit D twice with his fist. He tried to talk to the mother but she was shouting and she told him to "Get out of the room." He told the court that the mother had not wanted anyone to know about the incident at Y's house and wanted the two of them to keep it as a secret.

99. C said that he first became aware that Y had photographs of D's injuries during a conversation with the mother in the summer. He reported that she had said that, in order for these photographs not to be given to the police or to the court, he would have to leave and take the blame for the injuries that were known of at that time. He says she asked him this many times. When asked why the existence of the photographs was some kind of threat to him, he replied, "Because the mother believed what the boy had said and she was insisting that he had hit D." This is an interesting answer as on C's case the mother must have known that it was she who had injured D and yet he says she believed what the boy had said. The mother said that if he admitted the known injuries, then she would not speak about the Y incident. Even at that stage C says that he still believed that D had simply banged his head. He was asked how this would explain the fact that D has marks on both sides of his face and he replied that he thought the other marks were from D playing before he went to bed.

100. The court has no information about the bed and whether there are any hard surfaces upon which a child might have banged the side of his face, but C does not assert that the bruising on both sides, which there plainly was and is shown in the photographs, can be explained by banging on the head on each side of the child's face.

101. Moving on, C's evidence about when R was at hospital with the mother, she sent a text asking C to go there with D and he replied, "No way." Once again, C gave a convoluted explanation for this saying that he meant that if D was to go to the hospital with C, then D's father should also come and that the boy should not go there unless his father did. How the mother was to read that account into the two words "No way" is not clear. It was another telling and wholly unbelievable explanation to avoid the clear meaning of the words which are that C thought that it was a very bad idea to take D to the hospital. His advice, as evidenced by another text, was for the mother to leave R in the hospital and come back home to him. In respect of the fractures to R, C could offer no explanation and said that he was unaware of them until told about them after the x-rays. He said that the mother was the baby's main carer and she must know.

102. In cross-examination C accepted that his earlier statements were untrue when he described the mother as a good mother. He explained that he had done so because he did not want to make it look bad for her. His criticism of her care developed during his evidence and during cross-examination by Mrs Page on behalf of B, he said that she would leave the children with other people while she went off to have sex with other men.

103. Throughout his evidence, C held on to the cot incident as being an accurate account of an actual event given by the mother, even though he did not witness it and even though she is now clear that it was a fabricated story made up to explain the 20 bruises, including those to R's scalp, which C now admits. His tenacity in holding on to this account may be explained because, without the cot incident, there is no other explanation put forward by either adult to explain the bruises in addition to those which he now accepts.

Findings

104. In approaching the task of reaching factual conclusions on the complicated and conflicting accounts of these two individuals, I have placed a significant degree of reliance upon the text messages and photographs as representing not only some solid evidential ground in an otherwise fluid set of explanations, but also because they, to some degree, provide a "fly on the wall" insight into what the mother and C were saying to each other in real time and what they considered to be important in their lives. As I have made clear from time to time in my review of the evidence where, to avoid the otherwise obvious meaning of a text message, one or other has given a convoluted explanation, I have rejected it. I have approached the text messages as meaning what they say unless it is clear that they mean something else. At the end of the evidence I had not detected any reason to depart from the natural meaning of these often very simple but chilling messages.

105. It is unnecessary to give an elaborate evaluation of the credibility of the two main witnesses, save where it is against their own interests to say what they say, for example by making an admission, and save where their evidence accords with the text messages or other "known knowns", I have no confidence in relying upon anything that either of them has said in evidence. Each is focused on saving their own skin. Neither showed any, and I repeat 'any', concern for the children during the course of their evidence. The children, save to describe difficult behaviour, came over as blank cyphers, as objects, rather than vulnerable individuals deserving of the utmost care and warmth. The mother's account in particular was largely devoid of any emotional affect. I am concerned that there may well be long-established underlying reasons for this, as she is plainly a vulnerable young adult, but I nevertheless record that, for the mother of two children who have been injured in this way, she presented and has acted in a manner which is far from that of a caring maternal figure.

106. Some people are good at details and dates whilst others are not. In this the mother is not a good historian. That is not to be seen as a criticism, but again it presents a barrier to the court in being able to rely upon any account that she gives. Her varying account

of the cats in the household, largely irrelevant to the issues in the case, is an example of her giving very different descriptions at each turn.

107. I will take the various categories of injury in turn.

108. Firstly, the 20 bruises to the scalp and thighs in January 2023. Despite his denials, I accept the case of the local authority that it is C who is responsible for all of this bruising. My reasons are, firstly, that he admits being responsible for the scalp injuries. The other bruising is of a similar age. Secondly, his account does not actually explain the bruising to the scalp. Far greater force would be needed to inflict bruising of this sort than the simple holding that he demonstrated in court. Thirdly, as I have found, there was a culture of hitting and slapping the children in this small household. It is what, from time to time, the two adults spoke about in the text messages. Fourthly, the texts show a high degree of collusion around the bruising to R at this time, but the messages shows that it is C who is actively pushing the collusive processes out of the two of them. Fifthly, in this context it is C who instructs the mother to clear her phone of all messages. For some reason he did not do that, but the implication is clear that he wanted to cover up any evidence of abusive behaviour at the time that there is going to be or there may well be an investigation into the extensive bruising to the baby's body. Sixthly, he holds on to the cot incident, as this is the only explanation for any bruising at this time that does not involve him. He does so, although (a) the medical evidence is that the cot incident does not explain the bruising; (b) there is no reliable evidence that it occurred at all; and (c) I find that the evidence of the cot incident is not established and therefore it did not occur. There is no other explanation put forward in evidence at all for the bruising to R, other than it must be the responsibility of C, and that is the finding I make.

109. Next, the other bruising to R's cheeks. Again I find that C is responsible for this. He admits the mechanical action of squeezing the child's cheeks at least on one occasion. He admits that, on occasion, he may have been doing this harder than he should. The mother's evidence is that redness resulted from it. In the text messages, crucially, she, on more than one occasion, asks him to be more gentle. On the basis of that evidence, I

consider on the balance of probability it is the finding of the court that C did cause bruising to R's cheeks by squeezing them.

110. Regarding the injuries to D, as described in the texts and as seen in photographs, the evidence of the texts, which I have referred to, has the mother describing hitting or slapping D on four occasions, 1 October, 15 November, 28 January and 7 February. I take those text messages at face value. No other tenable explanation for them other than that they are an accurate description of what she had done is acceptable and I therefore find that on those four occasions she did indeed hit or slap D. A finding that the mother has done it is supported by the texts that I referred to in which C says, "Slap him". I rejected C's explanation for sending this and, in any event, his explanation does not preclude the fact that the mother slapped D on that occasion.

111. I also find on the evidence that C has from time to time squeezed D's cheeks and caused injury.

112. Fourthly, the photograph of 18 November to which I have already made reference with a large quantity of cream on D's face, establishes that there was significant bruising at that time and that he was injured. The photograph is worrying because it, in line with some of the other photographs, both of D and R, may be said to demonstrate a degree of 'frozen watchfulness' in the child, indicating a degree of unhappiness on the child's part in the situation in which they are being presented. My overall finding in relation to physical injuries to D's face is that at different times, each of these two, the mother and C, were responsible for slapping or hitting him around the face.

113. Next, the event at Y's house and the assault on D. My finding is that C caused this injury to D on the balance of probability. First of all, I rely on Y's evidence. I am impressed by the way she decided to take photographs of the injury the next morning without telling anyone. That was a child-focused and responsible action taken by someone who was concerned about the child. Secondly, I found that she was basically a credible witness who gave a straightforward account. Thirdly, making full

allowance for the fact that she is the mother's friend and has no relationship with C and they cannot even speak to each other because they do not share a common language, the content, tone and manner in which her evidence was given indicated that she was describing the event as it actually happened. Fourthly, the text messages are preoccupied by C wishing to know who knows what and to cover up. It is C who says in one message, "Say he hit his head on the bed." Those words do not indicate a person putting forward an account that they believe is true; it is putting forward an excuse or an alibi or an explanation. Fifthly, the text from the mother to C on 1 December is telling. It describes a friend of the mother's being recorded as saying that she is very sorry for D that C hit him. There is no response to that message from C. Sixthly, C's account does not explain the bruising on both sides of the face. Seventh, I consider that the account that C gives of the mother approaching him in the summer of this year and purporting to make a deal with him by not going to the authorities with Y's photographs if C is prepared to take the blame for the injuries were at that stage known about, indicates that the photographs had some leverage over C rather than the mother. There is nothing for him to lose if the mother goes to the authorities with photographs of an injury that she inflicted and he did not. I considered that evidence coming from C himself, even though it is not accepted by the mother, as being particularly telling. It is hard to understand an explanation for the two of them who do know what went on on that night of talking in this way, unless it is C who was the perpetrator of the injury.

114. Next, C's evidence, again, is that the mother believed that he had done it. How could that be if she in fact is the perpetrator? Finally, C's evidence is that from the first moment the account of Y's partner's child was, as I have described, namely that C was the perpetrator and that account from the partner's child was given and has been maintained since. If it is suggested that Y and the mother have colluded with each other to develop a case against C, they were extremely quick in doing so on C's account because, as soon as they came out of the room they were shouting at him and claiming that the 10 year old boy had made this allegation. For all those reasons, I find on the balance of probability that C was the perpetrator of his serious assault on D at Y's home.

115. With respect to the fractures and other injuries, there is no clear evidential basis for holding, on the balance of probabilities that it was either one or the other that inflicted them. The injuries are not expressly referred to in the text messages and both have equally colluded in covering up any other evidence of responsibility. It is accepted that each had the opportunity to injure R. On the findings that I have made, there was a culture of physical abuse in this household and each has been the perpetrator of assaults on D and, in the case of C, on R. I consider, applying the applicable law, that there is a real possibility that either the mother or C or both of them were responsible for causing the fractures to R and the other unexplained injuries. I therefore find that both are in the pool of perpetrators for those injuries, it not being possible to find on the balance of probabilities that it was one or other of them.

116. Failure to protect. Sometimes in some cases the issue of failure to protect is seen as something of an ancillary finding of little additional importance to the overall findings of abuse that have been made in the case. That is not so here. The failure of both adults, but given the context of these proceedings particularly the mother, in this case is of a very high order indeed. The mother has at all times prioritised her relationship with C over her children's welfare. If, as at times, she has said she is scared of him, she had experience of how to succeed in blowing the whistle and escaping. But the evidence as to fear is ambivalent. She married him only two months ago. She claims to have continued to meet up with him and to have had sex with him in the last week or so.

117. The mother was very actively involved in the covering up of any sign of injury at each stage of the progress of the text messages. She has been wholly dishonest and evasive in her evidence, only accepting anything if she is required to do so by clear and cogent evidence, for example, the text messages and photographs which require her to do so. Her attempts to explain away matters are convoluted, indicate a degree of intelligence and engagement with the factual evidence, but not with concern for her children.

118. As far as findings of neglect are concerned, I have already indicated the basis upon which findings will be made in that respect.

119. That is my judgment.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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