Neutral Citation: [2023] EWFC 319 **Case No: LS 22 C 50687 & 50688**

IN THE FAMILY COURT **Leeds Family Court**

SITTING AT LEEDS **Westgate, Leeds**

Date: 18 August 2023

IN THE MATTER OF THE CHILDREN ACT 1989

AND IN THE MATTER OF: P and Q (Minors) and R, S and T (Minors)

Before : **Mr. W. J. Tyler KC, sitting as a Deputy High Court Judge**

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RE P AND Q AND OTHERS (MINORS) (NO. 1) (SKULL FRACTURE: FACT-FINDING)

Between :

KIRKLEES METROPOLITAN BOROUGH COUNCIL **Applicant**

- and -

(1) A MOTHER, M1, (2) A FATHER, F1
(3) A MOTHER, M2, (4) A FATHER, F2
(5) P and (6) Q (Minors)
(7) R, (8) S and (9) T (Minors) **Respondents**

Hearing dates: 7 – 11 August 2023
Judgment delivered on 18 August 2023

JUDGMENT

Felicity Hemlin of counsel (instructed by the legal department) for the local authority

Huw Lippiatt of counsel (instructed by JWP Solicitors) for M1

Semaab Shaikh of counsel (instructed by Nadat Solicitors) for F1

Jane Curnin of counsel (instructed by Ramsdens Solicitors) for M2

Sally Devall of counsel (instructed by Jordans Solicitors) for F2

Natalia Perrett of counsel (instructed by Wilkinson Woodward Bearders) for the children, P and Q, through their Children's Guardian

Parties, Applications and Representation

1. This case concerns the futures of five children from two families.

2. P, a girl, was born in June 2020, so is three years and two months old. Q, a boy, was born in January 2022, so is one year and seven months old. P and Q are the children of M1 and F1.

3. R, born in December 2017, and so five years and seven months old is the elder sibling of S, born in February 2019, so four years and five months old, and T, born in May 2021, so two years two months old. R, S, and T are the children of M2 and F2.

4. The Local Authority, Kirklees Metropolitan Borough Council, brings applications for public law orders pursuant to Part IV of The Children Act 1989 in relation to the five children. The two separate cases were consolidated, but for reasons I shall set out in this judgment, will presently be re-separated, one case to conclude with no orders today, one to continue for further work.

5. The case came before me for a composite final hearing in the week of 7 August when, over five days, I heard evidence almost entirely, as it turned out, in relation to disputed factual allegations made by the Local Authority. During that hearing, the Local Authority was represented by counsel, Ms Felicity Hemlin, M1 by counsel, Mr Huw Lippiat, F1 by counsel, Ms Semaab Shaikh, M2 by counsel, Ms Jane Curnin, F2 by counsel, Ms Sally Devall, and the children by counsel, Ms Natalia Perrett.

6. This judgment is given a week after the conclusion of the trial, not because I have taken time to perfect or reserve judgment, but because it is the first time I could sit again, given other professional commitments. This is, effectively, an ex tempore

judgment from notes and so will not make reference to all of the evidence I have read, and which informs this decision, but to the more salient parts only.

7. *[Paragraph redacted]*

Background

8. The background can be relatively quickly stated. M1 and M2 are sisters, M2 being the older of the two. M1 is married to F1; their children are P and Q. M2 is married to F2; their children are R, S, and T.

9. At the relevant time, the two families lived close to each other in a town in Yorkshire. The sisters are close to each other, the husbands get along well with each other and the children of the two families saw a lot of each other and were close.

10. There had been some issues in each of the families. There has been some domestic abuse perpetrated on M2 by F2. This has included physical violence including in the presence of, and potentially endangering the children. By all accounts, this is not a current issue.

11. Separately, F1 has been involved in an incident which included, on any view, some violence. He does not admit the full degree of the allegation against him but accepts enough to demonstrate very poor decision-making and involvement in an ugly and ultimately violent incident.

12. As it transpires, neither of these issues has impacted on my decision making. I raise them as they were flagged up by HHJ Hillier as being of potential relevance at the

point that the Local Authority ill-advisedly sought permission to discontinue these proceedings.

13. The single issue that brought both families to this court and which led to the removal of all five children from their parents to live for a period in placements with extended family members is the fact of the discovery that Q had an unexplained skull fracture.

14. At about 4 pm on Saturday 8 October 2022, Q was presented by M1 at A and E. The boggy swelling on the left-hand side of his head, which had prompted taking him, transpired to be a subgaleal haematoma overlying a branching left parietal skull fracture.

15. No explanation was given at the point of presentation which satisfied medics as plausibly explaining the injury. Given that Q's uncle and aunt, M2 and F2 had looked after Q and P for a few hours the evening before presentation at hospital, and given the inability to pinpoint exactly when the injury was likely to have occurred, the Local Authority intervened, orchestrated the removal into family placements of the children of both families, and issued these Part IV proceedings.

16. During the course of the week of evidence, certain facts have been established as being uncontroversial between the parties.

17. First, at the time of the injury, although they have previously lived together, F1 was not living with M1. It seems that she had had enough of his interest in other women and had asked him to leave. The romantic relationship was, effectively, over. F1 lived with his parents in the week, but most weekends would come to the children's home, sleeping on the sofa, and would play a full and significant part in the children's lives during these periods. Due to this arrangement, the last time F1 had

been to the home or seen his children before Friday 7 October, had been the previous Sunday. The children had been entirely in M1's care from then until the evening of Friday 7th, save for periods when P, but not Q, was at nursery.

18. On Thursday 6 October, her mother dropped P off at nursery. At around 1 pm she then met her mother, the maternal grandmother, who took her and Q to a local hospital, where Q had an appointment to give a blood sample for testing in relation to an unrelated medical issue.

19. At about half past two that afternoon, the mother, and Q left the hospital and the maternal grandmother drove them back to their home, dropping them off at about 3 pm. Q, and after being picked up from nursery at 3.40, P, were then in their mother's care overnight. On the morning of Friday 7 October, the mother took P to nursery, was alone with Q until they picked P back up in the afternoon and then was alone with the two children until F1 arrived at the home that evening.

20. There have been slightly different accounts given as to the time he arrived but having seen evidence from his work and having heard his description of going to his parents' home to shower and change before heading over to the children's home, I accept that this was probably at about 7 pm.

21. The plan for that night was for F1 and M1 to go out with friends to a Hallowe'en themed 'Scare Fest'. M1 described this as being part of an attempt to rekindle their relationship. M1 had arranged for her sister, M2, to look after the children for them.

22. Analysis of text messages has allowed the respondents to agree that it was probably at around 8 pm that they arrived at M2's home. Food was made and given to the children. Pleasantries were exchanged; none of the adults recalled anything

untoward and no hint from any adult or child of any problem. At 8.45 pm, F1 texted the friends to ask where they were. It is common ground that the friends arrived shortly afterwards and drove F1 and M1 off on their night out.

23. F2 and M2 describe F2 going upstairs with T, M2, arranging for the girl cousins to go to their beds, R and P sharing a room (S had been displaced to T's bed, and T was to stay in his parents' room). Q was with F2 in that bedroom when F2 felt an unusual soft patch on the side of Q's head. He showed it to M2, and they concluded that it was nothing to worry about but agreed that it should be brought to M1's attention, in due course.

24. Crucially, in the context of my task, it is accepted that F2 undertook a few searches on his mobile phone. The first of these is timed at 21:32 and was *"Why is my baby's head like a soft bubble on one side"*. This led to searches at 21:39 for *"Baby head bulging on side"* and at 21:40 for *"Craniosynostosis baby's head shapes, when to worry"*, although I accept that the latter two may have been automatically-generated, suggested searches rather than having been specifically typed.

25. The relevance of the timing is this: M1 and F1 had left at some point after 8.45 – that is established by a text message. F2 had noticed the swelling and made the first search by 9.32. Assuming, as commonsense dictates we must, the swelling noticed by F2 was the subgaleal haematoma, subsequently diagnosed, for the injury leading that to have occurred in the care of F2 and M2, it must have been caused in the three-quarters of an hour or less between Q's parents leaving and F2 making the search. Not only must the fracture have been caused but the swelling would have had to come up in that time. It has been F2 and M2's case throughout that this is inherently extremely unlikely to be the case.

26. Some time after 10 pm that night, there was a telephone call between M2 and M1. It seems to be accepted both that M1 asked after her children and that M2 said they were fine, not mentioning the swelling. M1 asked if M2 minded extending her period of babysitting a little so that M1, F1 and their friends would have something to eat. M2 did not mind. Food was had in *[a Yorkshire town]*, paid for at 12.14 am and F1 and M1 picked the children up closer to 1 am. The children were taken home and put to bed.

27. In the morning, it seems that F1 got up with them, this requiring a 6 am start, to give Q some medication. F1 describes giving Q his bottle, later in the morning giving him half a Weetabix with milk and Q sicking up some of the Weetabix. He also describes an explosive poo that necessitated washing Q down in the bath, during which F1 washed Q's hair, a process which would have necessitated F1 running his hand over Q's head and, in all likelihood, over that part of the left-hand side of his skull which was swollen. F1 says he noticed nothing amiss.

28. F1 and M1 left home with the children at about 1.15, lunchtime, on the Saturday for F1 to see a physiotherapist, during which M1 remained in the car with Q and P. She said she noticed nothing unusual about Q, the appointment was 2 pm until 2.30. The family then drove to F1's parents' house for F1 to pick up some car-cleaning products. M1 says that while F1 was talking to his father, she attended to Q who had become agitated and had pulled off his hat and that whilst smoothing his hair down, she noticed the side of his head feeling *"weird and soft"*. She says she rushed out of the car, showed F1 and his parents and it was quickly decided that Q should be taken immediately to hospital.

29. There had been a plan for M2 to mind P and Q that afternoon so that M1 could shop for a present for the maternal grandmother, unhindered by small children. In fact, F1 and M1 dropped off just P with M2 en route to the hospital and left in such a rush that it was only in a phone call a few minutes later that M1 told M2 that they were headed to hospital and why.

30. This was the first occasion on which M2 told M1 that F2 and she had noticed a soft patch on the side of Q's head the night before and she wondered out loud if it was the same thing. M1 told M2 that she should have told her this much earlier.

31. A fair amount of questioning during the trial explored the seemingly strange fact that Q's parents had not been told about the unusual appearance of Q's head either at the time or when the 10 pm phone call had been made or when F1 and M1 had picked the children up at about 1 am.

32. At the hospital the fracture was discovered, the haematoma was diagnosed, and the medics not being satisfied that there was a plausible explanation, the usual child protection process was put in train, leading, ultimately, to the trial before me.

Possible Explanations

33. Two possible explanations have been presented as potentially explaining the skull fracture. The first is that Q is said to have fallen when at *[a]* hospital *[in a Yorkshire town]* when he attended for blood tests on Thursday 6 October. The account given to Dr Catherine Lawrence during the child protection medical on Saturday 8 October, was described by Dr Lawrence, thus:

> *"While I was examining [Q], mum told me that he had fallen backwards from standing height whilst in the hospital waiting room on Thursday 6 October 2022. He did not cry, and mum was unsure what part of his body he had hit."*

34. During a strategy meeting, one of the, initially allocated social workers described the mother's account to her, thus:

> *"The only explanation parents can give for the injury is that [Q] attended [a] hospital on Thursday 6th of October 2022 for routine blood test due to his heart condition. Whilst he was in the waiting room mum said that he has pulled himself up on a chair, as he is mobile and crawling, thrust himself backwards off the chair looking for mum and landed on his bottom but the force of him falling has knocked him over onto his head."*

And she says:

> *"He landed on the left side of his head and banged his head, quite hard, on the hospital waiting room floor. That is the only account mum could think of how he would have got this injury. She checked him over at the time and she did not notice any injuries on his head. He settled and soothed with her quite quickly and had not noticed any changes in his behaviour or his presentation that would indicate something was wrong over the next two days."*

35. By the point of her statement, in these proceedings, the mother described the incident somewhat differently:

> *"There was a table in the waiting room which had some paper and crayons on. Q was crawling around on the floor exploring. He then used a chair to pull himself up to standing. I was sat near the window, and I saw him put himself back and I heard a thud. I thought that it was his head that hit the floor but cannot be sure. He seemed to land and slide a bit back. Q started crying so I went over to him to check that he was OK. I checked his head, and it was fine. Q cried for about a minute or so but then he was fine. I have photographs and videos of Q and I on my phone shortly after he had fallen over. I have the video of that on my phone."*

And in one of the reports it says that *"I told the doctor that Q did not cry. That is incorrect. I did tell the doctor that he cried but just not for very long."*

36. The second possible explanation is little more difficult to enunciate. The first account I have seen of it is in M1's statement:

> *"I remember on the 7th of October, whilst I had left the children in the living room to go and get ready, Q started crying. I wasn't sure if it was because I'd left the room or if something had happened. There had been occasions when P has hit Q. I was changing my clothes and doing my hair, so I was ready to take P to nursery. He cried for a few minutes, and I went back in, picked him up and consoled him. He settled quickly and appeared fine after that."*

37. There was no description in the mother's statement of anything of any note taking place, either when she was alone with Q while P was at nursery or between P returning and F1 attending at 7 pm. The only reference to that period in the statement, was this:

> *"I picked P up from nursery at 3.40 pm and then made tea for us all. I know that I was Facetiming my friend, […], as she screenshotted a picture of us whilst on Facetime. The evening will just have been spent relaxing and watching TV."*

38. While giving her oral evidence and whether she was describing the same incident or another one, the mother spoke of Q after P's return from nursery. For the first time in her oral evidence, she described having been in a different room to the children, hearing crying, walking into the living room where they were, and noticing a heavy metal bowl being in a different place to where she had left it. She did not describe Q being particularly or unusually upset or as having reduced consciousness although she did describe, again, for the first time from the witness box, hearing a cry, the like of which she had not heard before. Her attempts to describe this, however, did not leave me very much the wiser.

The Expert Evidence

39. Two experts were instructed in this case, Doctor Adam Oates, Consultant Radiologist, and Doctor Alan Elias-Jones.

40. Doctor Oates, in his report, and in an addendum, confirmed that following the CT scan on 9 October, an extensive bleed within [Q]'s subgaleal space was found along with a branching fracture of the left parietal bone and subdural bleeding. No further skeletal injuries were noted.

41. Doctor Oates concludes that the radiological appearances were consistent with a significant impact injury to the head which would be recognisable as such to any carer in attendance at the time.

42. After he had read the statements of the parties and considered the possibility of a fall on 6 October from standing being the cause of the injuries, Doctor Oates stated:

> *"Although I cannot specify a percentage likelihood, I believe in the large majority of cases, such young children do not sustain skull fractures (if they did hospitals would be overrun with skull fractures as toddlers frequently fall over as they start to walk) but, nevertheless, I believe a skull fracture is possible."*

He goes on to state:

> *"In regard to the specifics of [Q]'s radiology and the constellation of features, the branching nature of the fracture, the very large subgaleal haemorrhage and the presence of the subdural haemorrhage, leads me to conclude that this is not typical of a low impact head injury such as falling off a sofa or bed – a relatively common presentation to hospital. I do not believe the mechanism described by mother can be completely dismissed or that it is absolutely implausible, but rather that it would have to be considered a very unusual consequence of a relatively common event."*

And he summarised his conclusions, thus:

> *"In my opinion, the extent of the injury would be atypical for such a scenario."*

43. He went on to state:

> *"If the court does not accept that household fall even on the 7th of November* [he got the date wrong] i*s the cause of the injuries, I do not believe it can necessarily be inferred that the injuries are abusive (based solely on radiological parameters) for example a child being accidentally dropped from an adult carrying position or being pushed accidentally or deliberately from a pull to standing position, thereby with an additional momentum to that provided by gravity alone, then I believe such a skull fracture and injury may occur. However, I understand that no such event*

has been disclosed and, ultimately, I have significant concerns that the true cause of the injuries may not have been disclosed".

44. From a radiological perspective, Doctor Oates concluded that the injury was less than 10 days old as at 9 October.

45. Doctor Elias-Jones also produced a report. He concluded that the explanation given about a fall in hospital from standing was unlikely to have caused Q's injuries. As to the possibility of P having caused the injury when the siblings were left playing together, he thought it very unlikely that the two-year-old would be able to generate the force required to cause the injuries which would, he said, require a significant force from falling onto the head or a direct blow to the side of the head.

46. As to the likely reaction, unless in a suppressed conscious state, that is encephalopathic secondary to the injury, Q would have cried vigorously for several minutes and would not have been easily consoled, thought Doctor Elias-Jones. He would expect the swelling to start within the first hour but to take a little time, perhaps four to six hours to become obvious to someone unaware of the injury. He said that he would expect the child to have been miserable and in pain at the fracture site the day after the injury, probably drowsy, with associated vomiting and to have been irritable, likely with a headache, possibly drowsy and reluctant to feed – possibly vomiting – in the 48 hours following the injury.

47. In cross-examination it was possible for Doctor Elias-Jones to supplement what was a very brief written report. The initial pain, he said, was caused by the fracture being caused. If the part of the scalp overlying the fracture site were lightly pressed when there was swelling over it, it might not make the baby cry. He did consider, however, that a child with a recent skull fracture and underlying subdural

haemorrhage would not be expected to be acting in a normal manner. As to mechanism, an explanation would require a fall onto a hard surface, the head striking a head surface or a blow from an object or fist.

48. Asked about accidental falls, Doctor Elias-Jones was of the view that injuries such as these would be a very unlikely consequence of an infant falling from standing up, especially as the child would be likely to fall on his bottom, and probably then shoulder, before the side of his head would come into contact with the floor. If the fall, as described, had caused his injuries, this would be the first time in 40 years in paediatrics that Doctor Elias-Jones had come across such a thing.

49. Doctor Elias-Jones could not think of any other cause of the soft swelling noticed by F2, on the left-hand side of Q's head other than its being the subgaleal haemorrhage. It is not a part of the head where, for example, a bulging fontanelle could cause alarm to a carer.

Social Work Evidence

50. I heard evidence from the social worker, *[whose identity is anonymized, and to whom I shall refer throughout as "SW"]*. In relation to all four of the adults, she confirmed that she considered them to have cooperated fully and completely with the Local Authority. She also confirms what is seen throughout the evidence, which is that this injury aside, and in the case of F2 and M2, the domestic abuse aside, the quality of care given to each of the children is high and the homes seem to be loving and nurturing places for them.

51. Issues arose in the course of SW's evidence as to the quality and the completeness of note-taking with which I need not burden this judgment, save only to record that I will be slow to treat any social work notes as definitive when it comes to detail, or as complete, without other corroboration.

52. At the point of hearing her evidence, it was hoped by at least some of the parties that I could proceed to make final decisions in relation to the children, even if significant findings were made.

53. I confess that I have struggled to understand the Local Authority's approach to its reasoning and risk assessment at a number of points in this case.

54. In particular, I did not and still cannot understand how the Local Authority can say, on the one hand, as per their initial findings sought at their highest, that a parent had intentionally inflicted a very serious injury to a child, had suppressed the truth about that, including not seeking medical attention, had continued to lie about that, and in the process, had caused another family's children to be removed; but on the other hand, that there has been complete cooperation with the Local Authority in the process, and that risk can pre-emptively be assessed as sufficiently low to justify the children remaining in the home with light touch supervision.

55. As it is not now suggested that there could be final orders in the event of significant findings, I need not labour the point on this judgment. The social worker was very new to her job at the time she was writing the various assessments. I regard it as representing a failure of supervision rather than a failure on her part that those assessments should have made it through the quality-assurance process, as they must have done.

56. Two further aspects of the Local Authority's conduct in this case require mention. I emphasise, before I set them out, that neither of them, as I understand it, is the fault of this particular worker.

57. Firstly, at the point that the court was asked to sanction the return of all of the children to the care of the two sets of parents without any explanation for the injuries or any fact finding, safety plans were put before the court which involved frequent social work visiting. I cannot say for sure, but it may well have been by a fairly narrow margin, that HHJ Hillier sanctioned (if that is the right word) the return of the children at that point in the process. (I am far from persuaded that I would have done so.) On any view, this was a risky rehabilitation, the Local Authority being entirely ignorant, at that point, of the true cause of potentially life-threatening injuries to a child. It is shocking then that the Local Authority did not deliver on its promised visiting of the children until the Children's Guardian flagged up their failure. I would like, and will direct, an explanation for this failing from the appropriate manager, probably the Assistant Director of Children's Services.

58. The second issue which has concerned me, is Children's Services' immediate response to the injuries when notified of them by the hospital. During her evidence, I took this social worker through a host of references in the medical bundle to medics expressing real concern that the Local Authority was not imposing any supervision on the parents' access to Q in hospital and notwithstanding (a) the unexplained, very serious, and possibly inflicted injury, and (b) the fact that an infant admission to hospital in no way replicates supervision. For example, the social work manager was told in terms by the hospital that there would only be one overnight check on Q, who was otherwise in the care of the parents who may – it was not, of course, then known

– have caused a very serious injury. The medics, wholly professionally, expressed their unease. One nurse even took it upon herself to do *"spot checks"* which would not otherwise have taken place, such was her consternation. I am baffled by the Local Authority's decision-making in this crucial period and particularly in relation to access to and non-supervision of time with Q. Again, I would like and will direct an explanation.

The Parents' Evidence

The evidence of M2

59. I found M2 a straightforward witness; she seemed inclined to try to help the court. She is clearly still very upset by the impact on her and directly on her children of these proceedings and is troubled by the lingering impact, in particular on the elder two, of the removal from their parents' care.

60. Given that no findings are now sought by anyone against her, I need not dwell in too much detail on M2's evidence. I accept the accounts given of the period between Q and AP being dropped off on the Friday night and their being picked up in the early hours of the Saturday morning.

61. I have been slightly puzzled by the ease with which M2 satisfied herself that there was nothing medically concerning in the fact of the swelling on Q's head and that she did not tell her sister about it. I suppose that the latter fact may, to some extent, flow from the former. I also note that the particular times at which she did not tell her sister were: first, during a telephone conversation when her sister was having fun

on her first night out without the children; second, very late at night; and third, the next day when F1 and M1 were clearly in a rush to be elsewhere.

62. I have also been troubled by the description of Q's presentation. M2 and T in common with M1 and F1, do not describe the presentation which Doctor Elias-Jones would expect.

63. Ultimately, I came to the view that M2 was telling the truth about this. I could not see any reason for her not to do so. The only rider to this is that M2 might have been less likely to notice a subtle change in Q's behaviour that night, both because she is less familiar with him, than, say, her own children, and because she was clearly busy with a house full of children. The consequence of her description being, broadly, accurate – of which I will say more below – is that either that Q simply did not respond to his injuries, as many children would (or as Doctor Elias-Jones would expect most children to; and there is always huge scope for variation between human beings) or, second, that Q's injury was not caused on the Friday but sometime earlier.

The evidence of F2

64. I also found F2 to be a straightforward witness. He was thoughtful and careful with his answers and appeared to be inclined to assist the court. F2's description of the swelling, both in his statements and to the court, was entirely consistent with what I have read and heard from medics. It is unfortunate that, at a point when the event was fresher in his mind, the police officer (during the interview) randomly plucked from nowhere only a £2 coin as a size comparative of the swelling. F2 told the police it was bigger than that, but it is not entirely clear by how much.

65. F2's description of how he noticed the swelling was helpful. He was in the habit of gently stroking a baby's head to soothe or to display affection. In that process, unsurprisingly, he felt the swelling. He did not describe it as having been otherwise visible. As with M2, I accept F2' description of Q's presentation.

The evidence of M1

66. M1 was a polite, calm witness, if a little bit more subdued that the others. I was struck that she became upset and started to cry early on in her evidence in chief when asked to describe the events of the morning of Friday 7 October. She had broken down at a similar point of questioning in her police interview and later in her oral evidence to me, again, became upset at this point. This was curious, because on her case she does not describe anything particularly upsetting as having taken place then. To be upset at recounting, for example, being told of the fracture, or the removal of one's children would be entirely expected – this seemed to me less so.

67. It also seemed to me that M1 allowed a few glimpses of a slightly more troubled period than she had previously said. At the timing in question, she told us she and F1 had separated due to her perception of his philandering. She was suddenly left with the sole care of two children. She did not perceive that F1 really understood how much she had to do for them: *"I did not feel supported by him"*. At one point in her evidence, she became upset and spoke of how others perceive her as a perfect mother, giving me the impression that this, too, added to unspoken pressures.

68. I absolutely accept her love and devotion to her children. By and large, no doubt, I was being told the truth. Ultimately, I was left with the impression that there was more that M1 knew than she was willing to say.

The evidence of F1

69. F1 was also a polite witness. I noted him at the back of court wiping his eyes, seemingly upset, when M1 was telling me that she had felt unsupported by him at the relevant time. And it seemed to me as he gave his evidence that he feels a degree of shame now for how he treated M1 then. His love for his children was evident, both from his manner and the fact that he devoted himself to the full range of care tasks that appear as he was with them.

70. I confess that I have struggled in relation to his account of the morning of Saturday 8 October. Firstly, there have been slightly inconsistent accounts in relation to when and how much Q was sick. Secondly, on his own account, F1 had Q's care for several hours that morning, including bathing him and washing his hair, yet did not notice a swelling which, even the night before, had struck F2 as unusual.

71. He was also rather less surprised by the eleventh-hour description of a metal bowl as a possible way in which P might accidentally have injured her brother, at one point suggesting that there had been a telephone call between them that day about this, before retracting that suggestion.

72. As with all the adults, there was rather less curiosity about the true cause of Q's injuries from F1, than I would have expected. I do take into account, however, that even as this trial began, the experts had not entirely ruled out the fall in hospital and so it may be reasonable for a parent, enmired in care proceedings, and who did not know the true cause, to cling to that known explanation rather than to contemplate a less palatable one.

The Law

73. The law, insofar as it relates to finding of fact hearings, in Part IV Children Act cases can be simply stated. I do so of this judgment in shorthand both as this is an ex tempore judgment, not fully reserved, and because the principles are very well-known to me. I have the full quotations from the judgments which establish these principles firmly in mind at all times.

a. It is for the Local Authority to prove its case and each fact it asserts.

b. Corollary to this, and very importantly, there is no burden on the parents or any of them to prove their innocence.

c. The standard to which the Local Authority must prove the facts for which it contends is the simple of probabilities.

d. I can proceed only on the basis of proven facts, which can include inferences from proven facts, only to the extent that those inferences are reasonably drawn.

e. I must survey the wide canvas of evidence.

f. Expert evidence is just one part of that canvas. It must be weighed together with the other evidence including, very importantly, in a case of alleged non-accidental injuries, the evidence of the parents.

g. Lies are not necessarily probative of guilt save in the very constrained context of the so- called revised *Lucas* Direction.

h. The repeated telling of a story can lead to innocent inaccuracies.

i. Testimony based on memory is intrinsically fallible.

The Parties' Positions

74. The Local Authority's position has varied significantly. By the close of proceedings, the Local Authority made it clear that they seek no findings against M2 or F2, either in relation to the injury itself, or in relation to a supposed culpable failure to seek medical attention.

75. The injury was sustained, the Local Authority now says, in the care of M1, not F1, and was on 7 October. The Authority considers and seeks a finding that the injury was the result of an undisclosed accident rather than being inflicted, that the mother would have known how it occurred, that it occurred, and would have known that medical attention was required.

76. Ms Hemlin told me that the Local Authority had *"reflected long and hard as to infliction"* and that it was *"unable to reconcile what they know about this mother with her inflicting the injury deliberately."*

77. As to F1, the Local Authority says it is inconceivable that he would not have become aware of the injury, that he has downplayed important information, for example, in relation to vomiting, and so he has, effectively, knowingly colluded with the mother after the event.

78. Mr Lippiat, for M1, urges me to consider the fall in the hospital. Being an unlikely consequence does not mean this is not the cause, he would say. If not the fall, then possibly something involving the bowl. Both of these possibilities are made more likely, Mr Lippiat says, taking into account all that is known about M1, the

implausibility of her inflecting an injury and not seeking medical advice, and then the immediate rush to hospital on discovery of the injury.

79. For F1, submissions were made that the injury must have been caused in M1's care, he too ruling out M2 and F2. He denies being aware of the injuries at any time before it was discovered when he was at his parent's house. Ms Shaikh points to the actions of M1 and F1 not being consistent with their both being aware and colluding. Why would they take the children to the aunt and uncle's house if they both knew, she asks. Why would they, ultimately, seek medical attention if they both knew?

80. Substantive submissions were not made on behalf of M2 and F2, given that no party sought any findings against them, and I had confirmed that that was my settled view quite independently of the parties' positions.

81. The Children's Guardian settled on the same view as the Local Authority, that something happened in the mother's care on 7 October, but that infliction is inconsistent with what is known about this loving and caring mother who would not, in the Guardian's view, have gone to *Scare Fest* if she had been involved in an inflicted event. Again, like the Local Authority, the Children's Guardian considers that F1 must have known more than he has said and that he has colluded and minimised.

Discussion

The fall at hospital

82. In assessing whether anything happened at *[the]* hospital, and if so, what, I am more assisted by M1's earlier account than her later ones. Those given at the child

protection medical and the social worker's description, settle on a low-level fall, from standing, probably with the first point of impact being the bottom. The effect of this, of course, would be to reduce yet further the notional distance of fall and thus momentum.

83. The description of Q's reaction falls a long way short of anything which would follow an injury of such severity as to cause a skull fracture and a very large subgaleal haematoma. The combined expert evidence is that a low-level fall is a very unlikely cause of this sort of injury. That is the more so when the fall is as was initially described and where it leads to no real reaction on the child's behalf, who, of course, was seen by medics for the purpose of blood-taking, very shortly afterwards.

84. It seems to me vanishingly unlikely that a fall of this sort could led to injuries of this nature. In combination with the absence of any real reaction on Q's part, I unhesitatingly find that this was not the cause.

Injury when with aunt and uncle

85. It is with equal confidence that I exclude the possibility of the injury having occurred during the half an hour or so when all of the adults and all of the children were present at F2 and M2's house or during the three-quarters of an hour, if that, after M1 and F1 left and before F2 made the Google search. There is nothing to suggest that anything untoward happened in that time and it is virtually inconceivable that there was an incident, whether inflicted injury or undisclosed accident, and the swelling came up in time for that search to have been made, at that time.

Timing of injury

86. It follows, then, that the injury must have been sustained before Q was dropped off with his uncle and aunt. Given his presentation at hospital on the Thursday, the absence of anyone describing any incident or impaired presentation before Thursday, and the fact that the swelling was a surprising feature, at least for some, when discovered on the Friday and the Saturday, it seems to me very unlikely that Q was already injured when he was taken to *[the]* hospital on Thursday 6 October.

87. The inevitable conclusion, then, is that the injury occurred at some point between the mother and Q being dropped off back home on Thursday afternoon and Q and P being dropped off at their aunt's house on Friday evening.

Causation of injury

88. I bear constantly in mind, that there is no burden on any of the adults against whom findings are sought to prove anything. However, I am entitled, indeed, bound in my view, to take into account that on the evidence it is simply not credible to suppose that something could have happened to Q while in his mother's care – an attentive mother by all accounts – in a small flat, which could have caused his injury, without her being aware of it.

89. The possibilities, it seems to me, are these:

    a. there was an accident, whether or not negligently caused, of which M1 must have been aware but which she has not disclosed, and which did not lead to her seeking medical attention;

b. there was an incident during which she inflicted the injury on Q, again, of which she must have been aware and of the significance of which she must have known but, again, did not seek medical attention;

c. the sibling P somehow did something to Q to cause the injury; again, in my view, M1 would have had to have been aware of this and, again, did not seek medical attention;

d. F1 did something to Q in the short time he was present in the flat, in the mother's presence. Again, if this, M1 would have had to have been aware of it and on that scenario, would both have failed to seek medical attention but also failed to tell anybody that her ex-partner had injured the child.

90. I can deal with possibility (c) fairly quickly. The only suggestion that P did anything came very late in the date. It was an unformed suggestion, simply involving a moved bowl and a strange but short-lived cry. The description was inconsistent with anything previously said and did not, in any event, include an aftermath even remotely consistent with what Doctor Elias- Jones describes. If P had accidentally caused some accident, then, first, the mother would have had to have been aware that it was a significant incident and, second, there would have been no reason not to seek immediate medical attention and immediately to tell the truth. It would scarcely be the fault of a two-year-old if they had caused some accident.

91. I can also deal with (d) fairly quickly. There was nothing at all to suggest that, in the short period he was at the flat, having attended at the beginning of what he hoped would be an enjoyable evening, F1 somehow, by accident or infliction, caused the injury. If he had done, M1 would have had to have been aware of what had happened. If so, and if she had played no part in it, it seems to me completely

inconceivable that M1 would have done nothing, said nothing, and dropped Q off with his aunt and uncle. It is equally unlikely that, if dropped off so soon after, Q would have presented as described – I exclude this possibility.

92. This leads me to the inevitable conclusion that the injury was caused by M1 some time between being dropped off from *[the]* hospital on Thursday afternoon and F1 arriving on Friday evening. It also leads to the inevitable conclusion that M1 has knowingly suppressed a true account of what happened. If, as I find, this must be the case, it would have been immediately obvious that Q was hurt. A further consequence must be a finding that M1 deliberately and culpably failed to seek medical advice, and that she has continued from then until now deliberately to withhold the truth, notwithstanding the catastrophic consequences both for her and her children, but also for her sister and her family.

93. It is the combination of these latter findings which leads me to disagree with the reasoning of the Local Authority and the Children's Guardian. I entirely accept that, by all accounts, M1 is a good, caring, gentle and loving mother. I equally accept that it is not incumbent on her to prove anything, to establish, by discharging any notional burden on her, that the injury was innocently caused. However, I cannot reconcile her not seeking medical attention, her dropping the children off as planned, her not telling the truth at the hospital and her continued silence, even when it impacts on so many loved ones, with an accidental cause, even one born of an evident lapse of supervision.

94. In my view, if for example, she had turned her back and Q had fallen off a changing table, or if she had dropped him through carelessness, or if he had tumbled down some stairs whilst she was distracted, any sense of guilt or shame at her own

carelessness would not have been sufficient to subvert her instinctive reaction to seek medical attention.

95. I am driven then, absent any remotely feasible explanation, to the conclusion that this injury must have been inflicted by M1. I cannot say in what circumstances or when, as I have not been told the truth. It seems to me that Thursday afternoon or evening or overnight from Thursday to Friday are less likely as times for the injury than Friday daytime, not least because of Q's being described by all as behaving largely normally by Friday. But I cannot say.

96. As for the motivation, again, I am in the dark due to not having been told the truth. I doubt that this mother would have acted in any premeditated or deliberately cruel way. It seems more consistent with what I know about her that she was struggling, for whatever reason, more than she has let on, and that she has momentarily lost control. This is not a finding, more of a judicial musing, recognising that many parents, including otherwise very good parents, come before these courts having acted violently – but out of character – *in extremis*.

97. As to F1, as I have indicated, there are aspects of his evidence I have found a little difficult. On the face of it, it seems unlikely that he would not have noticed the swelling when he bathed the child. However, it is far from inconceivable that the bathing, in the context of cleaning up a child covered in faeces, was rushed and perfunctory and, in those circumstances, even a large bump was not noticed.

98. On the face of it, one might expect F1 to have noticed the swelling earlier than that afternoon. However, a carer who is not on notice of the possibility of an injury is perfectly able to miss something that might be obvious to someone else, and I note Q having had a decent head of hair by then.

99. On the face of it, one might expect greater consistency when describing, for example, vomiting or not on Saturday morning. However, there is a circularity to the argument that he must have known the significance of the vomiting. To a parent, who has not noticed that there may be an injury, an infant bringing up a bit of milk or milky Weetabix may perfectly conceivably excite no particular concern.

100. On the other hand, Ms Shaikh's reasoning, on his behalf, is powerful. If F1 had somehow known there had been an incident, accident, or infliction, by which his son had been caused injury, and if he had, for whatever reason, agreed to suppress this fact and not seek medical attention, then why would he, in agreement with M1, have dropped the children off with M2, rather than simply cancel Fright Night? And why would he and M1 have orchestrated the discovery of the injury on Saturday afternoon and then rush to hospital and inevitable consequences?

101. Ultimately, I am not satisfied that the Local Authority has discharged the burden of proving any wrongdoing on F1's part, whether through collusion, dishonesty, or culpable failure to seek medical attention.

102. My only findings, then, relate, as above, to M1's having been responsible for the infliction of the injuries. It follows from my reasoning, also as above, that I can positively exclude M2 and F2 as bearing any responsibility for the injuries, which finding should be prominently recorded on their file.

103. Given the stage at which the Local Authority case changed, it seems more appropriate to me that proceedings in relation to R, S, and T are dismissed rather than that I give permission for them to be withdrawn.

104. The proceedings in relation to P and Q will continue. As I have set out, I do not consider the Local Authority's assessment to fit the findings I have made. That does not mean that I have formed the view that the children should be removed, now or in the future, simply that there is more work to be done in relation to risk assessments before decisions can be made.

105. In the circumstances, I would expect responses from M1 and F1 to my judgment within a week or so, the case coming back before me a week or so later for case management directions and, if issued, adjudication of any Part 25 applications.

106. I hope counsel can draft an appropriate order emanating from my judgment. That, then, is my judgment.