

PUBLIC LAW – FACT FINDING – IDENTIFICATION OF PERPETRATOR
Neutral citation number: [2024] EWFC 337 (B)

IN THE FAMILY COURT AT CHESTER
IN THE MATTER OF THE CHILDREN ACT 1989
AND IN THE MATTER OF A, B & C

BEFORE HER HONOUR JUDGE HESFORD

BETWEEN:

A COUNCIL	Applicant
-and-	
MOTHER	1st Respondent
-and-	
FATHER	2nd Respondent
-and-	
MATERNAL GRANDMOTHER	3rd Respondent
-and-	
PATERNAL GRANDFATHER	4th Respondent
-and-	
A (BY HER CHILDREN'S GUARDIAN)	5th Respondent
-and-	
B & C (BY THEIR CHILDREN'S GUARDIAN)	6 & 7th Respondents

WRITTEN JUDGMENT FOLLOWING FACT FINDING HEARING

JUDGMENT DATED 12 NOVEMBER 2024

Representation

Ms Withers	For the Applicant
Ms Pratt	For the First Respondent, Mother of A
Ms Anslow	For the Second Respondent, Father of A
Mr Whitty	For the Third Respondent, Mother of B & C & MGM to A
Mr Sefton	For the Child A, via her Guardian
Mr Carlen	For the Children B & C, via their Guardian

The Fourth Respondent was neither present nor represented

Her Honour Judge Hesford:

1 INTRODUCTION

1. This judgment concerns A, a girl of x months of age today. A is a happy, healthy child.
2. In the interests of attempted brevity, I have not set out all of the evidence which I have heard and read but have highlighted particularly relevant matters. Nevertheless, all evidence has been considered and taken into account.
3. This judgment is structured as follows:

Section 1: Introduction

Section 2: The proceedings

Section 3: The nature of the hearing and case management

Section 4: The parties positions

Section 5: The local authority evidence, threshold and findings sought

Section 6: The Threshold

Section 7: The timeline relevant to the injuries

Section 8: The Maternal Grandmother's evidence

Section 9: The mother's evidence

Section 10: The father's evidence

Section 11: Submissions

Section 12: The legal principles regarding fact finding

Section 13: Analysis

Section 14: Findings

Section 15: Decision

2 THE PROCEEDINGS

4. The application before the court is the local authority's application for a care order.
5. This is a finding of fact hearing with the Court tasked with determining whether A has suffered non-accidental/inflicted injuries and if so, then to determine the perpetrator of the injuries if possible. Depending upon my findings and the parties positions thereafter, I will consider the welfare of A at a future hearing.

6. On [a date] A, then approximately 5 weeks of age, was presented by her parents to Hospital A&E after parents were directed to do so by a Doctor from the NHS 111 service. They attended due to a half-moon-shaped mark on A's lower left shin which parents initially believed was a rash; they had completed the "glass test" for meningitis before bringing her to the hospital. Upon examination at hospital, it was determined by paediatricians that *"there was a well demarcated curved lesion to the anterior medial aspect of the left lower leg, this was uniformly purple in colour. It extended approximately 2cm downwards then 2.5cm across in a curved manner. On the left outer thigh there was a faint 1 x 1cm blue-purple circular area of discolouration with petechiae (small non blanching spots) within it. There were some small vertical, red, thin lines to the posterior aspect of the left leg"*.
7. The following day, a Child Protection medical took place which concluded the following; *"The 1 x 1cm circular mark on the left upper thigh contains petechiae. This is consistent with a bruise. This had not been noticed previously by the parents. The curved linear lesion on the left lower leg is an unusual curved shape. It had an acute onset noted around 4 hours previously, and no history was offered. No history has been offered to how she has obtained this. There are two suspicious marks on the left leg of A Jayne. The circular lesion on her left upper leg, looks like a circular bruise. The mark on her left lower leg is was a curved linear shape, and solidly purple in colour. It had only been noted acutely. No explanation was given for this mark. It is an usual shape, and appears bruise like. Bruising in a non mobile infant, in the absence of any explanation is suggestive on a non accidental injury."*
8. Prior to her hospital admission, A had lived with her mother and maternal grand mother (MGM) and the MGM's own children B & C. On A's discharge from hospital a few days later she was placed in the care of the MGM. Following a repeat skeletal survey, A was found to have focal new bone formation at the costovertebral junctions of the left 7th and 8th ribs consistent with healing fractures. As the MGM was then within the pool of perpetrators, A was moved to foster care and proceedings were also instigated for B & C; they were initially moved to live with relatives but soon returned home to live with their mother under a strict safety plan. A remains in foster care and has settled into her placement well.
9. The parents deny being responsible for the injuries and have not been able to offer credible explanations. Initially, there were additional potential perpetrators, being the MGM, B and the paternal grandmother. Having considered the totality of the evidence, the Local Authority eventually reached the conclusion that the only people who had a reasonable opportunity to cause the injuries to A were her parents. Accordingly the local authority do not seek findings against any other person.
10. Although the family was not known to Children's Services prior to the index event, this is not simply a single issue case. During the proceedings, both parents have spoken of concerning behaviours in the other including vague references to controlling behaviours and physical assault. The mother has also made comments about drug use by the father and his mother. Were these issues found to be true they would raise concern about further risks that would affect A. Whilst within the supported and limited setting of family time both of A's parents have been able to demonstrate their ability to meet A's basic

needs, the local authority has identified a number of areas where further exploration and support is needed.

3 THE NATURE OF THE HEARING AND CASE MANAGEMENT

11. The hearing took place over 3 days including submissions.
12. I had the valuable opportunity of seeing the parents give evidence in the witness box and to form my own opinions about their evidence and credibility. It was extremely useful to do so.
13. The medical experts did not give oral evidence.
14. The proceedings for A are now at week 31, beyond the 26 week target and the delays were caused by the need to obtain expert medical evidence and to list the hearing when the experts were available as initially they were to be required to give evidence. There will be some further delay following this hearing as there are a number of possible outcomes and the parents' responses to my decision and findings made will be crucial within final care planning for A together with reflection by the Local Authority and Guardian.
15. The plans for B & C are for them to remain in the care of their mother, the MGM. As she is also an option as a future carer for A if findings were made or if it was not possible to ascertain who was responsible, their proceedings were unable to conclude despite the plan; further assessment would be necessary.

4 THE PARTIES POSITIONS

16. At the commencement of the hearing and throughout the oral evidence, the Local Authority sought findings against the parents in relation to the injuries. At the conclusion of the evidence, in their submissions, they amended their case to seek findings only against the mother. They will consider the longer-term welfare position thereafter depending upon whether findings were made or not.
17. The mother denies causing any of the injuries and seeks for A to be rehabilitated to her care.
18. The father denies causing any of the injuries and seeks for A to be rehabilitated to his care.
19. The respective Guardians await the outcome of the Fact Finding process before they are able to formulate their recommendations.

5 THE LOCAL AUTHORITY CASE, THRESHOLD & FINDINGS SOUGHT

20. The Local Authority has provided a written opening for this hearing. At paragraphs 7 to 12 there is a useful summary of the background to the parents relationship leading up to A's birth which I will set out and adopt here. It is useful in setting the scene both for this fact finding hearing and for the future consideration of welfare issues.

BACKGROUND AND CHRONOLOGY UP TO BIRTH OF A

7. A was born on 2024 at Hospital following spontaneous labour. A is the parents' only child. The parents met through a friend on snapchat, finally meeting in person in .2022 when they were 18 and 19 years old. Mother recalls how she felt sorry for Father at first because he was living with his nan and his mother had never brought him up. Mother had wanted to take care of Father. Father considers Mother to be his first serious relationship.

8. Father has spoken openly about his family dynamics growing up and him having identified his maternal grandparents as his role models rather than his own parents with whom he did not have a close relationship with during childhood. Father's mother, was only 14 years old when Father was born; Father recognises that his parents relationship was inappropriate whereby his father had 'groomed' his mother into a sexual relationship. When his mother had moved to live independently, Father remained living with his grandmother. When Father was about 12 or 13 years old he started to help his grandmother who had been diagnosed with [a debilitating] Disease, eventually becoming her carer. As a result of the impact of being a young carer, Father exhibited challenging behaviours as a young adolescent and describes himself as 'emotionally reactive' at that time. He is insightful into the impact of him being a young carer and describes a lack of support around him to help him manage. He was particularly impacted by the death of his grandfather.

9. By contrast, Mother has always been cared for by her mother and describes a childhood 'full of activities and days out'. Mother describes her mother as being 'more like best friends'. Despite describing a happy childhood, Mother has talked about struggling with anxiety after witnessing her grandmother suddenly take unwell and have a heart attack when she was around 10 years old. As a result Mother worried about everything and experienced panic attacks where she couldn't breathe . Mother was referred to CAMHS at school however does not feel like that helped. Around age 15/16 Mother developed an eating disorder and was diagnosed with bulimia; this was around the time her father died. Mother has had three relationships prior to her relationship with Father; the last relationship being physically and emotionally abusive.

10. Mother describes her relationship with Father as being 'really good' at first and described them to be 'like glue to each other'. However, after just three months in December 2022, they went out for Mother's birthday and Father 'wasn't very nice' to her which had been witnessed by her family. Mother had said that she had drunk quite a bit and Father wasn't happy about this. After this, Mother describes that their relationship drifted between 'on and off' . MGM recalls that she was amicable with Father when he was in a relationship with Mother but she had concerns that he was controlling of Mother.

11. 8 months into their relationship, Mother found out she was pregnant; she was 'shocked and scared' and recalls Father being adamant that she was lying about this. Father shared with Mother that he could not be a father yet and that she would need to terminate the pregnancy. Father describes it being a 'shock' finding out Mother was pregnant. Mother recalls having a scan at 16 weeks gestation and Father 'Googling' terminations and told Mother that it wasn't too late. Mother shared with the social worker

that Father 'never came round to the idea' of having a baby although in police interview contradicted that and said 'I think he was excited at the end of it'. Mother described Father as being 'supportive' during the pregnancy 'just checking up on me, like, if I was having a bit of a downer day he'd go and make me food or a drink and he'd just keep a close eye on me'

12. A was born by normal vaginal delivery; she was discharged the following day. A is described by medics as 'fit and well, on no medications with no known allergies. She is too young for immunisations'. Mother described, 'we were both really excited to be new parents'

6 THE THRESHOLD

21. The local authority submits that the s.31 CA 1989 threshold for the making of a care order is satisfied on the basis of the facts set out at. The local authority will seek to prove, on a balance of probabilities, that inter alia:

INJURIES

1. Between 4-18 March 2024 A sustained the following injuries:-
 - (i) Fracture at the costovertebral junctions of the left 7th and 8th ribs.
2. On 15/16 March 2024 A sustained the following injuries:-
 - (i) 1 x 1cm circular mark on the left upper thigh containing petechiae which is consistent with a bruise.
 - (ii) A well demarcated curved lesion to the anterior medial aspect of the left lower leg, which was uniformly purple in colour, extending approximately 2cm downwards then 2.5cm across in a curved manner.
3. In the absence of explanation or memorable event, the injuries at paragraph 1 above were caused by abnormal excessive squeezing, compressive force applied to the chest
4. In the absence of explanation or memorable event, the injuries at paragraph 2 above were caused by blunt force trauma inflicted with a degree of force.
5. At the time injuries were inflicted, A was in significant discomfort and was showing signs of distress; it would be a notable event; it was apparent to any person who had caused the injuries to A that he/she had hurt her.
4. The child, A, has no underlying health condition causing or rendering her more susceptible to the injuries she sustained
5. The perpetrator of the injuries knew the child's declining presentation was related to their earlier actions and they concealed the truth about circumstances in which the injury was inflicted. Accordingly, they failed to seek prompt and necessary medical attention for the child.

6. *The injuries set out above were caused by Mother and/or Father.*
22. Both parents have fully responded to the threshold and provided further information and timelines in several statements. Both have continued to deny causing any harm to A.

The Medical / Health Evidence

Family Nurse

23. The Family nurse filed one report withing these proceedings and also included in the bundle were her health visitor records.
24. In live evidence, she confirmed the contents of her written evidence and ably dealt with cross examination. She was a very impressive witness and was fair, open and honest with her responses. Her relationship with the mother commenced following the MGM raising concerns about the father and she had regular contact from autumn 2023. It is clear that much of the information she received concerning the father's alleged abuse and controlling behaviour came from the MGM. The mother had never raised any concerns about the father's behaviour with A to her despite their very positive relationship and frequent contact.
25. She was clear that she had spoken with the mother on several occasions about the suggestion from the MGM of domestic abuse and the mother had consistently denied any such abuse by the father. She clearly had a good working relationship with the mother and mother had not raised concerns about the father even when she had visited her alone, merely saying that he had a short fuse and could be angry but that it was hard for him not being in his home environment. She described their relationship as "loving", with "disagreements being resolved by giving each other space and talking later. Mother also stated that "father could be angry when playing on games console, but this had changed during the pregnancy". "I asked mother whether she noted any controlling or abusive behaviours from father; she no." She used visual tools and was quite involved in discussing abuse and was satisfied that mother had understanding. Indeed she made disclosures about previous partners but not the father. Disclosures by mother about the father were only made after the injuries to A. She was also of the opinion that the mother was "ambivalent" about her separation from the father, due to her own feelings for him, the separation was for A.
26. On a date a few days before A's admission to hospital, she spoke to the mother on the telephone after mother had texted her saying that A was "unsettled and screaming last few days" and gave advice about bottles and contacting the GP. She visited on 2 days later when A was weighed and there were no concerns, nothing unusual. I note that her notes state "she (mother) rang father one morning when A was crying. Father provided lots of reassurance and told mother to place baby down safely and walk away, which she did". This is the phone call which has been the subject of much controversy and which I will address later. I do, for now, note that there was no mention of A having urinated on her sister's baby's nappies as the reason for the phone call as mother claimed in her oral evidence. She noted that on that day the mother looked tired today. She presented as a little overwhelmed." In oral evidence she stated that she did not look happy and was overwhelmed, she had a "look in her eyes"

27. Mother contacted her by text to discuss A's hospital admission. Her note reads "The purple rash had only appeared at 5:30 on Saturday as we were getting her changed". There is no mention by the mother whatsoever of the alleged events of the night before including the "piercing cry" etc, nor of any concerns that father was responsible for any injuries.
28. Later in the month, a few weeks after the hospital admission, she spoke to the mother who at that time felt that the bruises could have been caused accidentally by the father changing A's nappy by holding her legs when A kicked. She confirmed that she "has never observed any rough handling" by father. A few weeks later mother was wondering whether the father had injured the ribs when winding A. She felt that the father would be more heavy handed whilst she was, according to him, too gentle. Mother, however, "can not recall A's behaviour being different or crying as if in significant pain".
29. She agreed that the mother can present as quiet and shy in meetings but she is capable of asserting herself. She was clear that despite the mother's claims to the contrary, she had never told her to wean A before 6 months of age.
30. Her interactions with the father were positive and she had no concerns about how he held A; no issues in contact, he was interested and appropriate.

Other medical / health evidence

31. In addition to the evidence of the family nurse, there are reports within the bundle from, the Children's Safeguarding Specialist Nurse (Midwife services), a Consultant Paediatrician and named Doctor for Safeguarding and from, mother's GP. They were not called to give evidence and their evidence was not challenged.

Dr Watt – Consultant Paediatric Radiologist

32. Dr Watt filed one report dated 26 June 2024.

Dr Chawla – Consultant Paediatrician

33. Dr Chawla filed one report dated 8 July 2024 and an addendum report (answering questions) dated 28 October 2024.
34. Neither Dr Watt nor Dr Chawla were called to give evidence and the contents of their reports and their conclusions were therefore not challenged by cross examination. Accordingly there is agreement as to the injuries sustained by A, the timing of those injuries and the likely cause of the injuries. The medical evidence is accepted by the parents.
35. I have received an agreed "Summary of Medical Evidence" which I set out here:

Consultant Paediatric Radiologist, Dr Watt

1. A presented at the age 5 weeks with bruising. She was found to have suffered two rib fractures.
2. A was not mobile and could not have caused the fractures on her own.

3. *I did not identify any condition or treatment that would result in an increased risk of fracturing in A from my perspective.*
4. *No explanations to account for the fractures have been provided.*
5. *An undisclosed inflicted injury or injuries, either intentional or unintentional, could account for the fractures I have identified radiographically.*
6. *Based on the imaging findings alone, the estimated age both fractures is between 1 and 4 weeks old on [date].*
7. *These fractures probably occurred at the same traumatic incident as they show the same pattern of healing and are adjacent.*
8. *The mechanism of injury for rib fractures in general in this age group is commonly a compressive force to the chest.*
9. *The amount of force required to cause such fractures is not known but is out with normal or even vigorous handling of an infant with normal skeletal strength*
10. *It is probable therefore that a carer who was not present at the time of injury would not be aware that a fracture was now present after the fact. A carer present at the time of injury would probably realise that a significant injury had taken place but possibly not that a rib fracture had occurred as there would commonly be no external signs of injury such as swelling, deformity of the chest wall or bruising.*

Consultant Paediatrician, Dr Chawla

11. *As A is non ambulant with no underlying medical cause for bruising, these bruises seen are very likely as a result of application of excessive pressure. This could be due to fingertip marks, holding A forcefully or an object being forcibly applied on that area.*
12. *Rib fractures do not occur in normal handling as they require an excessive amount of pressure for them to occur. An infant's rib cage is compliant and resilient and therefore does not fracture easily. Rib fractures occur as a result of application of excessive force applied to the chest in a squeezing or compressing mechanism causing excessive play and traction at that point, which then breaks the bones.*
13. *In the absence of clear story of high impact accidental trauma, an underlying metabolic or other causes (none identified here), the rib fractures seen here are very likely caused by application of compressive or squeezing forces to the chest and are likely, on a balance of probabilities to be non-accidental.*
14. *In my opinion, neither the bruises nor the rib fractures, could have been caused by overly rough handling.*
15. *Neither of the two sets of injuries are birth injuries.*
16. *After a review of all documents, I am satisfied as a paediatrician, that there is no medical condition being missed here and no further investigations are required.*
17. *The injuries seen in this child are traumatic in nature and in the absence of a suitable accidental account, very likely on a balance of probabilities, are non-accidental.*
18. *Both sets of injuries require application of excessive force, over and above that is used in daily handling. Application of pressure to cause the bruising is a painful process.*
19. *A break in the bone, resulting in a fracture due to application of a significant force is a painful process and I would expect A to suffer in pain as a result of being subjected to the forces causing the injuries seen. The pain suffered at the time of occurrence of the fracture is likely to be significant such that A would have been distressed.*

20. *As a significant force would be required to cause the injuries seen, A would have cried in distress at the time of sustaining the above injuries. The cry is very likely to be distinct from that of a child who is hungry and should be a notable event.*
21. *Any person responsible for causing the injuries, is very likely to know that excessive force was used, in addition, the distress evident in A, would make it apparent that she had suffered injuries.*
22. *Any person, not present at the time when the injuries were sustained, may not realise the nature of the injuries. The signs and symptoms of rib fractures after the initial injury, may be fairly nondescript.*

7 THE TIMELINE AND WRITTEN EVIDENCE RELEVANT TO A'S INJURIES (4 TO 18 MARCH)

36. The time frame for A's injuries is x-x March 2024. The bruising is believed to date from around y-y March 2024 and the rib fractures within the full period of time. It is of course well established that accurately dating bruising is not possible and it is not an exact science.
37. Following her birth, A was primarily cared for by mother at the MGM's home. For the first 10 days following her discharge from hospital, the father stayed at the MGM's home returning to his home thereafter. He then primarily visited at weekends.
38. The father specifically recalls visiting A and the mother at home on the weekend of the hospital admission according to his written evidence. He was present in the home from the afternoon of the Friday to Saturday when A attended hospital. He had care of A for night feeding although mother was present in the room throughout albeit she was apparently asleep in bed.
39. According to the Health Visitor father was also present a week earlier following the family photo shoot. He accepted this in his evidence.
40. In his initial statement the father states that in reality he had '*very little unsupervised contact with A. Except for periods when Mother was mduring a night feed which I tended to do when I stayed over, the only time I would have unsupervised contact with A was if mother or a member of the household popped out of the room for a short period and I was left alone. Even when doing the night feeds and Mother was asleep, I would still be in the same room*'
41. The MGM works Monday-Friday; normally leaving the house at 8.30am and returning home between 2-3pm. She was in work each day until the date of the hospital admission. She was clear that the only time she had sole care of A was after that date when A was placed in her care after her return from hospital; at all other times there was someone else with her when she was around A.
42. The mother was always present at the home and was the primary carer for A. She was alone on each weekday between 8.30am and 2/3pm.
43. A visited the paternal family on one occasion.

44. The health visitor visited the home on a week before the hospital admission and discussed feeding. The mother described A as having periods of being 'unsettled' and being 'fussy with the bottle'. During the visit, A was observed to 'forcefully vomit' and the health visitor advised (repeating earlier guidance) that her feeds were too large. The mother was advised to offer small frequent feeds and to pace the feeds.
45. Mother reported that A continued to present as unsettled and a few days later, she contacted the family nurse for support as A was reported to have been '*screaming over the last few days, not sleeping well and being sick more frequently*'. The health visitor advised the mother to arrange a GP appointment and request treatment for reflux if A did not settle following change of bottles.
46. The health visitor visited again on the day before the hospital admission when the house was "busy" following the birth and return home of the mother's sister's new baby. Mother reported that following a change of bottle, A was settled during the day however was '*crying more at night*'. She planned to contact the GP on Monday to discuss the regurgitation with them. The MGM reported to the health visitor that the mother was finding it hard to settle A at night, so she had asked her to settle her. The health visitor observed that mother looked '*tired and a little overwhelmed*' and asked whether she was feeling increased worry and anxiety at night when she was alone; she replied yes. The father reported that the mother had '*face timed him one morning when A was crying, he reassured her and advised her to place A down and walk away, which she did*'.
47. The father also addressed this phone call in his police interview '*It was either a few days or a week prior to us going into hospital originally. Erm, [mother] was on the phone crying her eyes out saying that she was having a hard time settling her. Er, she was struggling settling her. Erm, A wouldn't settle. She wouldn't... she wouldn't feed, she wouldn't stop crying, and, and [mother] was getting... You could hear it in her voice just get really upset. Her mum was in work. Everyone was out so she had no help. She was on her own. She was on her own. Erm, I think one of her... one of her... one of her brothers might've been there. Just one of them though, erm, and yeah*'. His own mother was also present and in her police interview she stated '*There was a few phone calls made that, erm, [father] has told me about of just like in the night of her phoning [father] up saying that she can't do it, and there was also one where I physically heard it myself. Erm, one day [father] had answered the phone, and she was crying down the phone saying that she can't cope anymore, she wouldn't keep... she wouldn't sleep, she hasn't been sleeping, erm, and she was tired, she can't do it, she was just crying down the phone going, I can't do this anymore, [father], I can't do this anymore and [father] was like, calm down*'
48. Mother stated that on the evening before the hospital admission, the father offered to do the night feeds to allow mother some time to rest. She described going to sleep '*around 11-12pm. To my knowledge, [father] remained in the room with A whilst I slept, either sat on the end of the bed, or walking around the room with her*'. She expands in her witness statements recalling waking '*in the early hours of the morning as A was crying and would not settle. [father] appeared to be quite flustered as I woke up and could not settle her down*'. She stated that she recalled that A's cry was '*louder than usual*' although there are no reports of her crying unusually from any of the other 5 people in the house.

In her most recent statement, the mother went further, by recalling that *'[father] was flustered, he handed her over to me after waking me up stating 'you can sort her out, she won't fucking shut up'*

49. This, however, is contradicted in her police interview where she describes the father saying that he would sort A out so she could get some sleep, *'and then he phoned me after about ... about ten minutes after me having a sleep he'd erm, like shouted me to help Ar ... erm, him settle A, so he then woke me up and wanted me to settle her off'*. When explored further she confirms he was *'in the bedroom with me, but I was asleep for about five, ten minutes'*. It is difficult to reconcile why the father would have needed to telephone the mother for help if they were in the same room.
50. The versions mother gave to the family nurse on 2 occasions are also different. *"On Friday night, father offered to do the night feeds - mother fed A at some time between 10pm-midnight and both parents were awake and downstairs. At around 4am A woke for another feed. Mother awoke but drifted off to sleep for around 5 minutes, whilst Father was attending to A. FN asked mother whether she observed any rough handling during the time period in which father was attending to A that night – she said she had not observed any rough handling then or any other time, however if A doesn't settle he can present as "worked up" and passes A over to Mother"*. Later still *'Mother said the Friday night into Saturday when father cared for A and attended to her feed and nappy change - he was alone with A for around 10 mins whilst Mother was still asleep- he woke mother when A wouldn't settle and she then settled her'*.
51. Both parents submit that the day of the hospital admission was a normal day, with no marks notices to A's leg when she woke and was fed and changed by mother. Following the disturbed night, both parents and A went back to sleep until around 10am; they were expecting friends and family visitors later. At around 5.30pm during a nappy change, a 'rash' was noted to A's leg by mother and then by The MGM. They describe trying the glass test and as the mark was not fading they were concerned about meningitis and called 111. During the 111 call the mother advised the operator that A had experienced sickness for *'roughly three or four days'* and *'diarrhoea had started today'*. She described a *'purple rash on her leg'* like a *'purple blotchy rash. We thought it was a bruise at first, by my mum's put a glass over it and it's just not disappearing'*. They were allocated to a local paediatric assessment service who would call them call within two hours and were then advised to take A to A&E.
52. The health visitors notes from a month later record a detailed conversation with the mother around the fractures which contains information from the mother whereby each parent talks (or criticises) the other about their physical care of A thus: *"MGM said the police officer stated compressing A's chest may have caused the injury and both Mother and MGM stated they have not witnessed any incident in which A was compressed. Mother said she has wondered whether father winding A would cause such injuries. Father used to challenge mother about the way she was winding A and stated she was too gentle. Father would be more "heavy handed" and this is something MGM also witnessed. MGM again discussed that she had observed father be heavy handed when dressing A and he said "just grip her like this" and tried to force legs into baby grow... Mother also noticed (as she discussed last visit), that father could be distracted by his*

phone when holding A and that on one occasion when winding her, he was looking at phone and his hand slipped from under her chin to her neck and mother took A from father.” There was also a conversation with The MGM when she set out details of what the father had said when The MGM phoned mother at the hospital “[father] could hear MGM and stated he will just say it is him and will say it is an accident. MGM asked father why he would own up to something he didn’t do. father said because it will get all of this over with. When the call ended, mother asked father why he would say he done something he hadn’t done as he would still get into trouble if it was accidental. Mother said she felt father wasn’t understanding the consequences of accidentally hurting A and that this would still be taken very seriously. Father then asked social worker what would happen if the injuries were caused accidentally.”

53. In addition to the statements of evidence, there are parenting assessments of both parents and the MGM. Whilst these are primarily concerned with welfare matters, any relevant information concerning the injuries which was discussed during the assessment process has also been considered.

8 MGM’S EVIDENCE

54. The MGM filed two statements which are contained in the condensed bundle for this hearing. I have addressed the parts specifically relevant to the timeline in section 6 above. Since the MGM is no longer in the pool of perpetrators I will address her evidence in more detail here rather than in the analysis section as per the parents evidence.
55. In her first statement she states that she has “previously been concerned about Father and that he was not the best person for my daughter and I haven’t always had the best relationship with him”. She raises the issue of whether he has been dishonest but does not accuse him of anything specific or even criticise his care of A in any way save for an issue about testing milk temperature and putting on a babygro.
56. Her police interview again is overwhelmingly negative in tone regarding the father, again mainly information reported from the mother. There are also issues between the families and clear resentment, leading to her leaving the room and sitting on the floor in the kitchen when paternal grandmother visited. She also considered his family to be “controlling” when they requested and sought a recording of the baby’s first cry at hospital.
57. The MGM gave evidence in a calm and thoughtful manner and at times showed appropriate openness to the suggestions which were put to her. It is clear that there is no love lost between her and the father and she willingly admitted that she and he did not get on and that she tolerated him for the sake of her daughter: “He was not what I wanted for my daughter”. I found her to be basically an honest witness but it was clear that her personal opinion of the father has impacted upon how she perceives matters. She cannot be considered to be independent, her dislike of the father was apparent throughout and this may mean a tendency to think the worst of him and the best of her daughter. As well as seeing some of the couple’s behaviour herself, she has also clearly received a detailed narrative of the father’s alleged behaviour from the mother’s point of view and seemingly simply accepted this as the truth. The majority of her evidence

about the father was not what she herself has witnessed but what her daughter has told her. Her evidence was overwhelmingly negative about the father but when pressed she was not able to provide much of a basis for this. She spoke of her “gut feeling” – a phrase also used at times by the mother in her live evidence.

58. She spoke of how she considered the father to be very controlling of the mother. In reality the only matters that she could point to in evidence were the issues of the gender reveal party, the argument near father’s home and him calling the mother stupid. She was defensive of the mother, taking what the mother told her at face value as being the truth, likely as this fitted in with her perception of the father. An example of this was the father’s allegation that the mother had struck him with a boot; she would not accept that it could be true or that it was even possible that her daughter had done that as there was no mark from the boot on him. There was no thought that such an assault may not produce a mark.
59. Her description of the issue of the gender reveal party does not, in my judgment, evidence any form of controlling behaviour. The father simply sought to have the party nearer to him for his own personal reasons whereas the mother wanted it at home for her personal reasons. It was simply an argument, a difference of opinion but this then was used by the mother and the MGM as an example of his alleged controlling behaviour. It is not. During the incident and argument near father’s home it is clear that both parents now admit to being drunk and behaving badly. The MGM has only the mother’s description of the events prior to the phone call from her daughter, and which it appears were not entirely open and frank. She heard very little of the events even during the call – she simply “didn’t like the way he spoke to her or was with her”. In relation to name calling, both the parents admit to calling each other names and there is no evidence that either was worse than the other. She herself heard them shouting at each other over the phone on some occasions and she had felt the need to go upstairs and intervene, to tell the mother to stop. In my judgment, her evidence fell far short of establishing that the father was controlling of the mother. It was very one sided. Additionally she admitted that she has never seen him being violent or lose his temper.
60. She also sought to suggest that the father was heavy handed with A “the way he was rocking her” (yet A showed no distress at this), risking her safety by wearing sliders on the stairs and using inappropriate language about A as well as one occasion when he put on her babygro by grabbing A’s leg. She accepted that this was one occasion only and he never repeated it again after she had offered guidance. It was clear that she wholly blames him for the incident when she had to collect her daughter from father’s home town in the middle of the night, despite them both being very drunk and her being unaware of the true events, accepting her daughters version as gospel despite the circumstances. Indeed she appears to believe everything her daughter has told her about the father as the truth, even when denied, such as holes in walls and broken monitors. She appeared to be reluctant to accept the nurse’s description of the father as being “very gentle and loving” with A and in response brought up an occasion when she said the father has moved her legs like a frog. She saw his wanting to hold A on the few days he visited as being possessive. In my judgment she sought to place the father in the most negative light possible at every opportunity, without actually having evidence to

support the same. I accept that she was being truthful in her evidence but it was far from independent and her beliefs and opinions are clearly skewed in favour of her daughter.

61. She was not in agreement with the nurse that the mother was overwhelmed and considered that she was coping well although it was hard. She felt that it was just because Mother was a new mum, just struggling with reflux sometimes. She was also reluctant to accept that the mother may have been extremely upset as father described in the phone call, although she then accepted that she was not there. She was unaware, therefore, of just how hard mother was finding it at times, either she simply did not notice or mother did not tell her/hid her struggles or she has minimised the issues “to me she is just a new mum”.
62. Although she gave evidence about what she knew of the night before the hospital admission, her information was from the mother’s own narrative. She has no first hand knowledge and heard nothing. She saw the mark to A’s ankle when she was helping mother with a nappy on the day of admission. They had all thought differently as to what the mark was.

9 THE MOTHER’S EVIDENCE

63. The mother has filed three statements which are contained in the condensed bundle for this hearing. I have addressed the parts specifically relevant to the timeline in section 6 above.
64. The mother was an unimpressive witness. There were significant differences between her oral and written evidence and within the written evidence itself including the police and nurse’s evidence. In an attempt to keep this judgment to a more manageable length, I have not set out here all of the evidence which I heard or read. Much of it was not controversial and it serves no purpose to repeat it here. I have addressed only the most pertinent issues and discrepancies and my analysis of the mother’s evidence as a whole in the “analysis” section. In view of these issues I have of course considered the “Lucas” direction as set out in the law section of this judgment.

10 THE FATHER’S EVIDENCE

65. The father has filed three statements which are contained in the condensed bundle for this hearing. I have addressed the parts specifically relevant to the timeline in section 6 above.
66. The father gave evidence in a calm and confident manner and overall I found him to be a truthful witness. Given what the mother has accused him of doing to their daughter throughout this matter, he remained composed and still reluctant to criticise her for which I give him credit. It was clear that he remained supportive of her and found it hard to believe that she was responsible. His live evidence reflected his written evidence in the main and any discrepancies were not significant. He did at times appear to forget many matters but unlike the mother’s evidence this was universal and not just in response to more difficult questions. In reality for much of the time with A before her injuries he was simply concentrating on the moment. He did not seek to blame the

mother, not even as a form of retaliation for the issues which she levelled at him. His evidence was altogether more plausible.

67. Again in an attempt to keep this judgment to a more manageable length, I have not set out here all of the evidence which I heard and read. Much of it was not controversial and it serves no purpose to repeat it here. I have addressed only the most pertinent issues and discrepancies and my analysis of the father's evidence as a whole in the "analysis" section.

11 SUBMISSIONS

68. I heard submissions from all parties and I have carefully considered these when coming to my conclusions and writing this judgment even if I do not specifically address all points made.

12 THE LEGAL PRINCIPLES REGARDING FACT FINDING

69. The legal framework resolving the schedule of findings sought is now well settled and I will set out a summary here. All has been applied.
70. The core principles are summarised by Baker J (as he then was) in *Re JS* [2012] EWHC 1370 (Fam) and approved in many cases since.

"36. In determining the issues at this fact finding hearing I apply the following principles. First, the burden of proof lies with the local authority. It is the local authority that brings these proceedings and identifies the findings they invite the court to make. Therefore, the burden of proving the allegations rests with the local authority.

37. Secondly, the standard of proof is the balance of probabilities (Re B [2008] UKHL 35). If the local authority proves on the balance of probabilities that J has sustained non-accidental injuries inflicted by one of his parents, this court will treat that fact as established and all future decisions concerning his future will be based on that finding. Equally, if the local authority fails to prove that J was injured by one of his parents, the court will disregard the allegation completely. As Lord Hoffmann observed in Re B: "If a legal rule requires the facts to be proved (a 'fact in issue') a judge must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are 0 and 1."

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

39. Fourthly, when considering cases of suspected child abuse the court must take into account all the evidence and furthermore consider each piece of evidence in the context of all the other evidence. As Dame Elizabeth Butler-Sloss P observed in Re T [2004] EWCA Civ 558, [2004] 2 FLR 838 at 33:

"Evidence cannot be evaluated and assessed in separate compartments. A judge in these difficult cases must have regard to the relevance of each piece of evidence to other evidence and to exercise an overview of the totality of the evidence in order to

come to the conclusion whether the case put forward by the local authority has been made out to the appropriate standard of proof."

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

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

42. Seventh, the evidence of the parents and any other carers is of the utmost importance. It is essential that the court forms a clear assessment of their credibility and reliability. They must have the fullest opportunity to take part in the hearing and the court is likely to place considerable weight on the evidence and the impression it forms of them (see *Re W and another (Non-accidental injury)* [2003] FCR 346).

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

44. Ninth, as observed by Hedley J in *Re R (Care Proceedings: Causation)* [2011] EWHC 1715vFam:

"There has to be factored into every case which concerns a disputed aetiology giving rise to significant harm a consideration as to whether the cause is unknown. That affects neither the burden nor the standard of proof. It is simply a factor to be taken into account in deciding whether the causation advanced by the one shouldering the burden of proof is established on the balance of probabilities."

The court must resist the temptation identified by the Court of Appeal in *R v Henderson and Others* [2010] EWCA Crim 1219 to believe that it is always possible to identify the cause of injury to the child.

45. Finally, when seeking to identify the perpetrators of non-accidental injuries the test of whether a particular person is in the pool of possible perpetrators is whether there is a likelihood or a real possibility that he or she was the perpetrator (see *North Yorkshire County Council v SA* [2003] 2 FLR 849. In order to make a finding that a particular person was the perpetrator of non-accidental injury the court must be satisfied on a balance of probabilities. It is always desirable, where possible, for the perpetrator of non-accidental injury to be identified both in the public interest and in the interest of the child, although where it is impossible for a judge to find on the balance of probabilities, for example that Parent A rather than Parent B caused the injury, then neither can be

excluded from the pool and the judge should not strain to do so (see Re D (Children) [2009] 2 FLR 668, Re SB (Children) [2010] 1 FLR 1161)."

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

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

72. In Re A (Children) (Pool of Perpetrators) [2022] EWCA Civ 1348, King LJ re-emphasised that judges should apply the simple balance of probability standard when determining whether it is possible to identify a perpetrator from a list of those who could be responsible. In coming to a conclusion each person should be considered individually by reference to all of the evidence. Glosses such as 'straining' to identify a perpetrator should be avoided. 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."*
73. In Re A (A Child) [2020] EWCA Civ 1230, the limitation of oral evidence was once again highlighted and the courts warned to assess all the evidence in a manner suited to the case before it, and not to inappropriately elevate one kind of evidence over another.
74. In Re H-C (Children) [2016] EWCA Civ 136 the Court of Appeal reminded judges in family cases of the proper approach to witnesses who tell lies as originally set out in R v Lucas [1981] QB 720. There are many reasons for this which do not denote guilt, for example, fear, shame, loyalty, panic and distress. An innocent person may lie to bolster their case. A lie should never be considered as direct proof of guilt. In criminal proceedings, to be capable of amounting to corroboration a lie must be deliberate, relate to a material issue and be motivated by a realisation of guilt and a fear of the truth. The same principle applies here. This point was emphasized again in Re A, B and C (Children) [2021] EWCA Civ 451.
75. In Re L-W (Children) [2019] EWCA Civ 159 the Court of Appeal overturned a finding of failure to protect, where it had not been shown that on the particular facts of that case, the mother should have identified a risk to the child. Lady Justice King stated:-

“62. Failure to protect comes in innumerable guises. It often relates to a mother who has covered up for a partner who has physically or sexually abused her child or, one who has failed to get medical help for her child in order to protect a partner, sometimes with tragic results. It is also a finding made in cases where continuing to live with a person (often in a toxic atmosphere, frequently marked with domestic violence) is having a serious and obvious deleterious effect on the children in the household. The harm, emotional rather than physical, can be equally significant and damaging to a child.

76. Such findings were made in respect of a carer are of the utmost importance when it comes to assessments and future welfare considerations. A finding of failing to protect can lead a Court to conclude that the children's best interests will not be served by remaining with, or returning to, the care of that parent, even though that parent may have been wholly exonerated from having caused any physical injuries.
77. Any Court conducting a Finding of Fact Hearing should be alert to the danger of such a serious finding becoming 'a bolt on' to the central issue of perpetration or of falling into the trap of assuming too easily that, if a person was living in the same household as the perpetrator, such a finding is almost inevitable. As Aikens LJ observed in *Re J*, "nearly all parents will be imperfect in some way or another". Many households operate under considerable stress and men go to prison for serious crimes, including crimes of violence, and are allowed to return home by their longsuffering partners upon their release. That does not mean that for that reason alone, that parent has failed to protect her children in allowing her errant partner home, unless, by reason of one of the facts connected with his offending, or some other relevant behaviour on his part, those children are put at risk of suffering significant harm. This professional and realistic approach allowed the Court to focus on what was, in reality, the only live issue, namely; was GL's history of violence sufficient to lead to a finding of failure to protect upon the mother's part?" Similar points were made in *G-L-T (Children)* [2019] EWCA Civ 717.
78. I have also considered the recent case of *Hayden J, Lancashire County Council v M, F, A & J* [2023] EWHC 3097 where the judge found the father to be the perpetrator contrary to the submissions of the Local Authority and the Guardian after considering propensity. Hayden J addressed in detail the issue of propensity evidence and criminal matters at paragraphs 37 to 42 and in family matters from paragraphs 43 to 51. Mr Justice Hayden underlined the duty on judges to draw on the totality of a wide canvas of evidence and, where that evidence permits, to identify the perpetrator of significant harm. He reminded us that this evaluation is carried out on the balance of probabilities (nothing more, nothing less) and, while this builds in a risk of error, lawyers and judges should not shirk that obligation out of an abundance of caution. The wide canvas of evidence invariably includes a variety of evidence, including hearsay and evidence of propensity to cause harm. Drawing together that evidence and properly drawing inferences from it assists in building a picture of the family's life at the point at which significant harm is caused. Identifying the perpetrator avoids tainting the non-perpetrator parent while also providing the foundations for constructive and safe strategies for a child's future care.
79. Of course I remind myself that the experts are to guide and assist the court and I should of course consider the whole canvas of evidence.

13 ANALYSIS

80. I have considered all the evidence which I have read, watched and heard and it has all been taken into account in performing my analysis.
81. The standard of proof required to identify the perpetrator or perpetrators of A's injuries is the balance of probabilities and if I am able to identify the perpetrator to that requisite standard it is my duty to do so. A has a right to know who injured her and needs to know the truth, if possible.
82. I am satisfied that the mother has deliberately made efforts to try to attach blame to the father for the injuries. She has set out to paint him in the poorest possible light yet without any evidence to support her claims – either historic or at the time of the injuries. No allegations about the alleged incidents in the night time were mentioned to any professional at the time and the mother's later suggestions or explanations that this was she was basically scared of the father (or indeed his mother) simply do not ring true and are wholly unsubstantiated. In my judgment these allegations were made to either divert attention from herself or to muddy the waters about the father. She on several occasions denied any abuse by the father to the nurse even when spoken to on her own and at no stage did she accuse the father of abuse or state that she was scared of him. The same is true for her police interview, where she initially refers to the father as being violent towards her and then admits that he was never physically violent to her, instead he would "just be quiet" or "ignore her". I do not accept that she was being honest with much of her evidence. This includes her numerous claims in her oral evidence to have reported things to a variety of professionals, co-incidentally none of whom appears to have taken any notes, recorded or reported the same. It simply does not ring true that so many professionals would forget to record so many statements by the mother about her beliefs or accusations. One example is her assertion that the nurse told her she could stop breast feeding, another is that she claimed to have told someone about the possibility of the father injuring A by winding her prior to the discovery of the rib fractures and she also claimed in her oral evidence that she had claimed that she told the professionals about the father "she wont fucking shut up" comment. There is no reference to this comment before her final statement – it is not in the evidence of the nurse, nor any of the social workers evidence and it is not in her own police interview. There were other examples too.
83. I have of course considered the Lucas direction in relation to the mother and I note, of course, that where it is alleged that a person has lied, as here, the court must approach this allegation with considerable care, as highlighted in Lucas, above. Having identified the alleged lies in issue, the court must ask itself whether the local authority has proved, on the simple balance of probabilities, that the alleged lie has been told. The court must accordingly seek to distinguish a lie from, for example, "story creep", mistake, confusion, memory failure or distortion arising from impairment. Once the court has undertaken that analysis it moves to consider why the proven (or accepted) lie has been told. This is important because people may lie for many different reasons - embarrassment, a sense of shame for having caused an injury accidentally, a desire to hide some other wrongdoing or a mistaken belief that lying might improve their position. Of course, it is also imperative that the court reminds itself that just because a person lies about one issue, it does not automatically follow that they have lied about everything.

84. There are many other inconsistencies in the mother's evidence. I do not intend to address them all, it is unnecessary, but I will highlight a few others which are particularly relevant to the picture of the father which the mother sought to paint. An example is in her initial statement when she is seeking to show that the father was rough with A and she claims that "My mum tried multiple times to show father how to change A as he would try and force her legs into her baby grow." The MGM's evidence was clear, though maybe rather grudgingly, that this had happened on one occasion and she then showed him what to do and he learned. Another is her repeated references to the father's alleged temper and controlling behaviour towards her but for which she was unable to provide any coherent evidence and indeed admitted that father was never violent but walked away.
85. I am satisfied that the mother was not coping as well as she claimed to have been with A, particularly during the 3 day period when she was mainly alone with her and that she deliberately hid this from her own mother. I make this finding as I found the MGM to be a mainly truthful witness and I accept her version of events, which is that she thought her daughter was coping. I accept that she has tended to see her daughter in the best possible light and the father in the worst but I do not accept that she was lying in her evidence which was clear that she was unaware of the extent of the mother's difficulties and minimised the issues as being "just a new baby". Her personal animosity towards the father meant that her evidence was in my judgment rather skewed in favour of the mother. She was of course away or working during this period and did not see the mother when she was possibly at her lowest. I compare her comments to the quite graphic descriptions by the family nurse of the mother being overwhelmed. I wholly accept the evidence of the family nurse which said that the mother was under pressure and was not coping. The fact that mother does not admit or hid that she was not coping is not suggestive of guilt for actually causing the injuries but may have been done out of pride, not wanted to admit how hard she was finding it and that she was indeed overwhelmed.
86. There were issues with the mother's recall during cross examination. I accept this was also the case for the father but I will address this separately. There were many instances where mother appeared to be deflecting with her answers by not remembering or saying different things to her written evidence and she appeared to be easily suggestible to expanding her answers, possibly to show that she was trying to answer or if she thought it could assist her position. Overall, she was a poor witness and her answers occasionally became more detailed as people can tend to do when they are lying. Again I think she was simply trying to paint the picture that father was responsible. She claimed to have gaps in her memory where she couldn't remember things which did not assist her case but then conversely claimed, as an example, to precisely remember her sister being present at the day of the phone call to the father even though she had never mentioned this before. The father was adamant in his written evidence that the mother was alone and this is reflected in his police interview and conversation with the nurse. He accepts that one of the mother's brother's may have been present but it was clear that the issue was the mother being alone without any support on the day.
87. The father in his live evidence was also forgetful but unlike the mother, he did not seek to fill in gaps or expand upon matters, for example he was not drawn to attach a specific

date for the phone call, even when it was possible that if he did it could have harmed the mother's case. Instead he remained resolute that he could not remember and this rang true. Indeed he was vague as to his memory of various dates and events during his evidence, but since he is not making any specific allegations against the mother or others, and his case is that he does not recall any events which may have caused harm to A, again this is credible. He simply was living day to day and there were no issues of concern to him. Even when he reported the phone call in his evidence he makes no allegation against the mother and when he told the nurse of the phone call ("one morning"), this was not done in an accusing manner but was reporting how he had been concerned about mother and told her to place A down and walk away. It predates the discovery of any injuries and I accept this was done out of concern, certainly not as any accusation. The family nurse also records that mother rang her a few days earlier seeking support for the same issues. It is likely that the calls were within the same period of time as the issues are so similar and this was the worst period for A and mother's inability to settle her.

88. Another area where the mother's evidence and credibility was lacking was her version of events and description of the reasons for the phone call to the father before the injuries as well as the circumstances of the call itself. Mother submitted for the first time in her oral evidence that her upset was due to A having urinated on her sisters nappies. This was never mentioned to the father (I accept his evidence of this) and it was not mentioned to the police, family nurse or any social workers. It was mentioned to the grandmother at some point later, but since she has taken and accepted whatever her daughter says as fact it is merely hearsay and not corroborative evidence. There is simply no reason for the father to lie about whether the issue of the nappies was mentioned, no motive for lying. There is motive for the mother in lying, in order to minimise how poorly she was coping and to give justification for the stress and phone call. I prefer the evidence of the family nurse that at the time of this call – and the precise date is not crucial for the purposes of this judgment – the mother was overwhelmed and not coping. I also accept that the mother was alone on the day (save for maybe a younger brother) as father states. Again there was no reason for him to lie when he discussed the call with the nurse and if the sister was present, as mother claimed in her oral evidence (but not in any contemporaneous, timely or written evidence), then mother could have asked her for help but would likely have mentioned it to the father. She was seeking help and the father suggested she put A down and walk away for a break, not seek help from someone at the house as would surely have been the case if she was not alone. It is yet another of the mother's inconsistencies and embellishments in an attempt to discredit the father and therefore appear more positive herself.
89. Mother's evidence about the events of the night before the hospital admission was wholly inconsistent and in my judgment wholly incredible. In her initial statement, she clearly wrote "I cannot say that there was any memorable event that happened when A was in my care that would cause these injuries." It is clear from her own evidence that the father did not have sole care of A, when she was not present, on any occasion. The only time he was ever alone with A was a short time when they were out and the period where mother alleged the injuries happened, when she was in fact lying right next to them. It is extremely hard to see the opportunity, let alone the motive, for the father to injure A when her mother was lying next to her. Despite this lack of coherent opportunity

(and her own responses to the events she alleges), this then changed throughout her written and oral evidence. There were discrepancies as to who woke first – her or the father, whether she was woken by A’s cry or by the father, how long she was asleep, whether and when the father was asleep, how long father looked after A – 10 minutes or more than an hour and how long it took to settle A – 30 minutes to 90 minutes. Her evidence about A’s “piercing cry” is also not credible. She stated in her oral evidence that the father woke her to help her as he could not cope but also that she woke whenever A cried in the night. It is simply not credible that such a cry as she describes would not have woken her, however tired she was. What is also not credible is that having heard such a cry she mentioned it to no-one at the time the injuries were discovered, to none of the professionals at the hospital, not to the family nurse, she never asked the father about it and remained silent even when she knew her child had been seriously injured. In her oral evidence, she claimed that she believed it was father from when they were at the hospital but that she did not say anything as she was intimidated by the father and his mother at the hospital. I simply do not accept that. Even her own mother’s evidence showed that mother was quite capable of standing up for herself against the father. There is also an example of this with the foster carer who she challenged.

90. She did not mention “a piercing cry” it in her first statement to the court, nor does she say that the father was swearing at her when “I woke”, he was merely “quite flustered”. By her final statement the father was “waking me up” and “swearing at her” and in her oral evidence she claimed that the father had lost control. In my judgment, this is not “story creep”, rather the mother is deliberately embellishing her evidence to support the case she is advancing.
91. The mother’s position regarding the bruising is also confusing. Of course bruises are notoriously difficult to date and may not show immediately after an event. A note from the contact supervisor records that mother first saw the mark on the leg in the morning when she woke up and thought it could be a birth mark. In her initial statement she says that on waking at 7am the mark was not noticeable. In her live evidence she had not seen the mark until changing the nappy much later in the day at 5.30; the same time as it was noticed by the MGM. In her initial statement she says that she noticed it “earlier that day”. What is clear is that they each stated that they thought the marks may have been something different but no-one accused another of being responsible at the time, despite the mother claiming in evidence that even a few days after the hospital admission, when they were still at the hospital, she though father was to blame. Indeed the contemporaneous hospital notes set out no such beliefs or allegations but rather the mother’s support for father, the closeness of their relationship and disbelief that either could be thought responsible. Yet another contradiction in the mother’s evidence.
92. I have also considered the issue of propensity as it relates to the father, as this is one of the bases of mother’s case against the father. In my judgment, the mother has failed to establish that any of the father’s alleged behaviours suggest that he would have been more likely to injure A. I do not accept that the father has been violent to the mother; indeed she accepts this herself. He has a conviction for criminal damage at his grandmother’s property which predates these issues by a considerable time and no other convictions. The offence was also when the father was younger and under

considerable stress in caring for an elderly infirm relative at a very young age. There is no evidence that he was ever violent towards mother or even particularly argumentative with any of her family or that he would be violent to A. The family nurse's evidence, the contact supervisors and indeed the mother's and even the grandmother's evidence was that he was gentle and loved A. He was open and reflective, in his evidence, about his childhood difficulties and this was echoed by the social worker in her assessment.

93. The suggestions by mother and her mother about the father rough handling A was simply not borne out by the evidence and nor were their suggestions that he was violent and controlling. Father's evidence that he cannot really remember the night in question itself is in my judgment credible, to him it was a normal night when care was shared as agreed on other occasions. I preferred the father's evidence to that of the mother's. He was in simple terms, much more credible. I do not accept that the father's comments about "taking the blame" are indicative of guilt as mother submits, they are not an admission.
94. When considering my decision, I have of course considered the issues of opportunity, motive, propensity in the light of the evidence as a whole. The reality of this matter is that this is a sad case, with a young mother as primary carer who was under considerable stress with a poorly and fractious baby and she was overwhelmed and not coping. The father had extremely limited opportunities to harm A and any evidence of the mother that he did precisely this is countered by her own evidence that she saw and heard nothing at the time, followed only by her attempts to place father in the frame at a later date. The only opportunities the father had were a few minutes when they were out for the day together when mother reported nothing unusual at all, and somewhere between 10 minutes to an hour or so, depending on which version of mother's evidence you choose to believe (10 minutes said to the nurse became over an hour in her live evidence), when she was lying next to them in the bed on the night in question. Even then, she reported her concerns to no-one and her description of events has varied to widely as to be almost now incomprehensible. In short, he had practically no opportunity to cause the injuries, whether they occurred on one of more occasions.
95. The mother, however, had considerable opportunity. She was the primary carer apart from the few occasions when the father was also present, and her mother had little input in reality, certainly insufficient for her to be placed in the pool of perpetrators. The MGM herself in her evidence was clear that she had never had sole care of A and I accept her evidence of this. The period for the injuries is around x - x 2024 for the bruises (but this is not necessarily accurate due to dating issues) and y - y 2024 for the rib fractures. It cannot be ascertained whether there was one of more event which caused them. What can be said with certainty is that the mother was present with A throughout that period. I accept also that the mother was alone with A without any support for a period of up to 3 days, during the days when her mother was at work and her sister at hospital giving birth. Any incident which occurred then would be unwitnessed and unreported. It is also likely due to the evidence which I have already addressed that the phone call to the father, which was effectively a cry for help when she was at the end of her tether, was within that same period.

96. The evidence also shows that the mother was under considerable stress and was no longer coping – as the family nurse said, she was struggling, tired and overwhelmed. She phoned the family nurse for help a few days before the hospital admission and the father around the same period. The coherent evidence points towards the mother being alone and having a loss of control on one or more occasions during this period. Mother's claims to the contrary or that it was the father to blame was simply not credible. None of her allegations against him stood up to challenge and they were not substantiated. Conversely the father's evidence in respect of the mother remained unshaken, he did not seek to blame her for the injuries other than on the basis that it was not him so it must be mother. He struggled to believe it, it is clear from his evidence. He even stated that he would still be happy for the mother to still care for A, although he later reconsidered this. He gave evidence that the mother herself had a temper and could be violent – on their night out near father's home and another occasion hitting him with a boot, something he immediately and contemporaneously reported to the mother's mother although she chose not to believe him. The father was not under stress – he was only assisting in care on weekends in the main and was sleeping and rested. His main areas of stress appear to be from gaming and he stated in evidence that this is no longer as much of an issue, indeed mother accepted that he had improved in this regard during the pregnancy. Mother's evidence was that when stressed otherwise he withdrew and became silent.
97. The suggestion that he must have injured A whilst the mother was lying next to him in bed simply does not stand up to scrutiny, there is no contemporaneous mention of a piercing cry or scream and nothing is said to any professionals at the hospital.
98. The reality is that I must exclude the father as a potential perpetrator for the injuries. He had no suitable opportunity, no reason or motive to injure her, no relevant propensity and the evidence simply does not support such a proposition.
99. That leaves the mother on her own in the pool of perpetrators, a pool now reduced to one. I am entirely satisfied that the local authority has proven their case and satisfied the burden of proof that the mother was responsible for the injuries to A. She had opportunity, motive and the evidence, especially her own evidence, does not support her case that it was the father.

14 FINDINGS

100. I make the following findings, having applied the civil burden of proof and considered all of the evidence
101. I am satisfied that the injuries were caused by the mother in one of more moments of loss of control when she was overwhelmed with caring for her very unsettled daughter. It is possible that the mother did not fully appreciate what she had done at the time because A was so ill and suffering from reflux and she could not necessarily recognise a stronger cry from a squeeze to ribs causing a fracture to a cry from merely being very poorly with reflux but I accept the medical evidence that she knew that something unusual had occurred and chose to hide it. The mother was alone at the time when the injuries occurred and no-one else witnessed the cries. She told no-one of what had happened or any concerns she may have had. She was also a new, young and

inexperienced mother. I am unable to say factually precisely how the injuries occurred as no mechanism has been suggested by either parent in their evidence. I accept the evidence of the medical experts in that regard.

INJURIES

1. Between x - x 2024 A sustained the following injuries:-
 - (i) Fracture at the costovertebral junctions of the left 7th and 8th ribs.
 2. On y - y 2024 A sustained the following injuries:-
 - (i) 1 x 1cm circular mark on the left upper thigh containing petechiae which is consistent with a bruise.
 - (ii) A well demarcated curved lesion to the anterior medial aspect of the left lower leg, which was uniformly purple in colour, extending approximately 2cm downwards then 2.5cm across in a curved manner.
 3. In the absence of explanation or memorable event, the injuries at paragraph 1 above were caused by abnormal excessive squeezing, compressive force applied to the chest
 4. In the absence of explanation or memorable event, the injuries at paragraph 2 above were caused by blunt force trauma inflicted with a degree of force.
 5. At the time injuries were inflicted, A was in significant discomfort and was showing signs of distress; it would be a notable event; it was apparent to any person who had caused the injuries to A that he/she had hurt her
 4. The child, A, has no underlying health condition causing or rendering her more susceptible to the injuries she sustained
 5. The perpetrator of the injuries knew the child's declining presentation was related to their earlier actions and they concealed the truth about circumstances in which the injury was inflicted. Accordingly, they failed to seek prompt and necessary medical attention for the child.
 6. The injuries set out above were caused by the mother.
102. For the sake of clarity, I record that there is no evidence that the father was aware of any injuries or that he failed to seek medical assistance.

15 DECISION

114. I make the findings as stated.

HHJ Hesford

Date 12 November 2024

