Neutral Citation Number: [2024] EWFC 412 (B)

IN THE FAMILY COURT **CASE NO: ME23C50330**

SITTING AT MEDWAY.

IN THE MATTER OF THE CHILDREN ACT 1989

BEFORE: **HHJ CLIVE THOMAS**

BETWEEN:

KENT COUNTY COUNCIL **Applicant**

- And -

A **1st Respondent**

- And –

B **2nd Respondent**

- And –

C AND D
(Minors acting by their Children's Guardian)

3rd and 4th Respondents

- And –

E **Intervenor**

Legal Representation.

Mr Woodward – Carlton KC and Mr Paisley, (Counsel) , on behalf of the Applicant Local Authority.
Mr Storey KC and Miss Slee (Counsel), on behalf of the First Respondent Mother.
Miss May, (Counsel), on behalf of the Second Respondent Father.
Mr Hooker, (Counsel), on behalf of the Step Maternal Grandmother.
Mr Pidduck and Mr Batt, (Counsel), on behalf of the third and fourth Respondent Children.
Mr Goodwin KC and Mr Chippeck, (Counsel), on behalf of the Intervenor.

Judgment.

Judgment Date: 18th December 2024.

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Background facts

1. The court is concerned with the welfare of C who is rising 7, (DOB: 7th January 2018 and D who is 16 months, (DOB: 22nd July 2023). This judgment follows a fact-finding hearing that was listed for fifteen days commencing on the 28th November 2024. All refences to page numbers relate to the PDF trial bundle.

2. A, (DOB 7th October 1997) is the mother of both children. E, (DOB 9th March 1991) had parental responsibility for D at the time of the index events in November 2023. DNA testing has since excluded E as being D's father. D's putative father is believed to be X. C's father is Y.

3. On the 13th November 2023 a CT scan revealed that D had suffered a bleed to the left side of her brain. This led to the arrest of E for GBH with subsequent bail conditions that E was not to have any unsupervised contact with D. On the 17th November 2023 A was also arrested for GBH following the discovery that D had sustained a haemorrhage behind her left eye. Bail conditions were put in place preventing A from having any unsupervised contact with the children. Following these events D and C were placed with Miss F, the ex-partner of the maternal grandfather Z. The children have remained in F's care to

date. One of the few pleasing aspects of this case is that D does not seem to have sustained any long-term difficulties associated with the subdural haematoma.

Summary of judgment

4. Regrettably this is a long judgment. The bulk of the judgment is a recital of some of the evidence that I have seen and heard. The reader may wish to move to the analysis, discussion and findings section which begins at page 79. In the index above I have highlighted in bold those pages where I have made findings on the pleaded allegations. In summary my findings are as follows:

   a. I do not find that on the 8th or the 11th November 2023 E lost momentary control and shook D causing her to suffer a subdural bleed and consequent retinal bleeding.
   b. E did not assault A on the 24th December 2023 by grabbing, pinching and yanking her arm.
   c. I find that E did in December 2023 threaten to kill everyone in F's house if he was stopped from seeing D.
   d. I find that E did between September 2023 and January 2024 threaten to end his life but I do not find that he did this to control or influence the behaviour of A.
   e. I do not find that between September 2023 and January 2024, E coerced A into deleting her Snapchat application and some male friends on her social media applications.
   f. Even if I had found that E had shaken D on either occasion I would not have found that A failed to protect her daughter.

The findings sought

5. The local authority's pleaded claim appears on pages 24 - 26. The local authority advance four allegations. Firstly, that E and or A inflicted injury upon D, secondly that they failed to seek appropriate and timely medical advice and treatment, thirdly that in the event that E is found to be the sole perpetrator that A failed to protect and finally that E was threatening, controlling and/or abusive to A. At the conclusion of the trial the local authority indicated that, on the inflicted injury allegation, it was only seeking a finding that E was the perpetrator. The local authority during the trial did not advance a case for its pleaded claim

that there was a failure to seek appropriate and timely medical treatment. On that basis therefore I am required to determine the allegations that E inflicted injury upon D, that A failed to protect D from significant harm and that E was abusive.

The alleged inflicted injury

6. It is averred that on admission to hospital on the 11th November 2023 D had sustained a subdural haematoma and retinal haemorrhages and that these injuries were inflicted by E and were caused either by a shaking or impact mechanism or a combination of both. The local authority contend that there were either two episodes of trauma on the 8th and 11th November 2023 or there was one episode of trauma that occurred on either the 8th or 11th November 2023. It is said that the level of force applied was significant, excessive and greater than that used in the normal care and handling of a child. The local authority say that at the time that the subdural haematomas were sustained D was likely to have been in pain, shown signs of distress or she would have been unwell. It is said that after the causal event D is likely to have remained unwell for at least a few hours and a perpetrator or a non-perpetrator care giver would have recognised that she was unwell and in need of medical assistance.

Failure to protect

7. The local authority advances the following three specific allegations in support of their case that A failed to protect D from significant harm:

   i. By continuing in a relationship with E, who she knew to be threatening, controlling and abusive.
   ii. By continuing in a relationship with E, who she knew misused alcohol and drank every day.
   iii. By continuing in a relationship with E, even though she had suspicions that E may have shaken D or handled her roughly.

E was abusive

8. The local authority's pleaded claim is that "E has been threatening, controlling and/or abusive to A as follows:

   i. On 24.12.23, E assaulted A by grabbing, pinching and yanking her arm.

ii. In December 2023, E threatened to kill everyone in F's house if he was stopped from seeing D.

iii. Between September 2023 and January 2024, E threatened to end his life, so as to control or influence the behaviour of A.

iv. Between September 2023 and January 2024, E coerced A into deleting her Snapchat application and some male friends on her social media applications".

The evidence

The medical chronology (as set out in the medical records)

9. D was born in good condition on the 22nd July 2023 at 39.4 weeks gestation. On the 18th October 2023 D was taken to A/E after developing swollen thighs, irritability and vomiting following routine immunisations carried out that day. D was observed for a period and given paracetamol before being discharged, (933). On the 24th October 2023 D was seen by her GP with a green discharge from her right eye for which she was prescribed an ointment.

8th November 2023

10. The incident call note at 17.03.51 under the heading 'crew not E's records fitting - at 17.04.06 it records one eye droopy, shaking, then at 17.4.29 it reads clenching (1636).

11. The ambulance service clinical note at 16.57 on the 8th November 2023 noted this:

> "Patient began crying so dad picked her up to console her and then laid her supine on the sofa, dad states patient became silent and begun gasping for air. Picked patient up and noticed she was limp and floopy, call to 999 C1 response. Call handler guided dad through rescue breaths, pt then reported to take a deep breath and became stiff, arms shaking".

12. On attendance the ambulance crew noted:

> "patient laying on changing mat. Alert . Airway open and self maintained. No dyspnoea. Pt pale in colour. Good tone, not limp or floopy. Good grip. Pt appears lethargic easily consoled after crying. Pt tracking objects with eyes, but few episodes witnessed of eyes rolling. Normal cry. No high pitch or constant cry". (1641).

13. D was found to have a normal respiratory rate, normal oxygen saturations, normal body temperature and normal blood sugars. The Ambulance services' "secondary survey notes" record "pt exclusively bottle fed, feeding as usual recently, filling nappies as usual, abdomen non – distended and soft on palpation", (939).

14. The clerking note timed at 21.16 records this:

> "Patient was said to be laying in her bed today with the father, when he noticed her shaking her leg and subsequently had upward rolling of the eye and became floppy. Father was said to have given her some breaths and she came round after some minutes. Child has otherwise been well", (984). It was noted that observations in the emergency department had all been within normal limits.

15. D arrived at A/E at 18.19. The triage note timed at 18.39 recorded:

> "Dad was with baby, mum went to shop, baby then went floppy and eyes rolles back, dad called mum back and 999 called, advised to give 5 rescue breaths which dad did and baby gasped", (989).

16. The triage note also records: "I have considered the safeguarding topics, child's interaction with parents/carers and have no concerns at this time". On examination D was described as looking well, alert and active feeding well on the bottle and had a flat anterior fontanelle. A suspected diagnosis of early bronchitis was made and D was discharged home.

17. In the discharge letter under the heading Chief Complaint Additional Information the following is recorded: "Dad went to shop – called mum saying baby was floppy, eyes rolling. Ambulance called. Dad gave 5 rescue breaths and the D cried. Mum reports she went very pale. Mum reports no illness or fevers. Pale slightly mottled appearance" (980).

9th November 2023

18. On the 9th November 2023 D was seen in A/E at 7.17 pm with a history of vomiting and reduced feeding. The A/E clerking note at 10.40pm

recorded that A was concerned that D was unwell after the episode the day before when she became unresponsive. D was described as being irritable, having reduced feeds and vomiting. No neurological concerns were noted, and the fontanelle was described as soft. D was discharged. The clerking note records: "I have considered the safeguarding topics, child's interaction with parents/carers and have no concerns at this time", (963). Feeding was discussed and the parents were advised that 8oz feeds were too much and they should reduce the feeds to 6oz, (964).

11th November 2023

19. On the 11th November 2023 the paramedics attended the family's home at 20.45 pm. The ambulance call note recorded:

> "patient was fitting now not breathing effectively. the father was noted as being with D, (1647) the notes read: Possible seizure this evening reported to last approximately 15 minutes, but family cannot be sure. Family report she became rigid, followed by an episode of vomiting. She then became floopy and foaming at the mouth. Family then reported patient to stop breathing Dad then performed 5 minutes of CPR. On arrival this was noted: "tone normal, patient crying but able to be consoled. No abnormal breath sounds, no abnormal positioning, no accessory muscle use/recession. No nasal flaring, no apnoea/gasping, rapid breathing rate pallor and mottling present cap refill of approximately 4 seconds. No cyanosis(1647)".

20. Later in these notes it was reported that the patient had "a large vomit, followed by foaming at the mouth". It was also noted that on arrival "patient had a dramatically elevated RR of 60, however patient distressed and crying. RR reduced on route to ED".

21. The triage noted timed at 22.01 records "I have considered the safeguarding topics, child's interaction with parents/carers and have no concerns at this time", (976). The clerking note at 22.24 reads: "mum stated that patient was playing and then started to cry and she went stiff and floppy after which she started to vomit and this episode lasted about 15 minutes after which they noticed she was no breathing and dad had to give CPR".

22. On page 1004 there is a handwritten document entitled “Integrated ChED & Paediatric Clerking note which records amongst other thing this: “Baby was fed one hour before. Father was on the sofa with the baby. Father turned her towards the television, and she started crying. Father rocked her, and then she went quiet and then father looked around, at her she rolled her eyes up, tensed up went cold her lips when blue and still stiff mother came down to the living at this point and grabbed her off dad. Then she vomited then mum on recovery position. Father called 999 at 20.20 as per advised by 999 father gave 5 rescue breaths at this point she became floppy”. The note also records “last Monday had a floppy episode eyes rolled back.

23. On the 12th November a history “from mum and dad” was noted by Dr Ramadan who recorded this: “2 episodes Monday and last night, facing tv then tensing up floppy, stiff arm, eyes rolled back, projectile vomiting, cyanosed……Monday episode – laying on Dad’s belly, started screaming then went limp cold gave mouth to mouth breathes” (1046).

24. D attended A/E at 21.45 . On examination she was noted as being well with no concerns as to her respiratory and neurological functions or her level of consciousness. D’s fontanelle was described as being normotensive, (i.e indicative of normal blood pressure). D was admitted with a provisional diagnosis of breath – holding episodes. On the 12th November 2023 a lumbar puncture was performed. No abnormalities were noted.

25. On the 13th November 2023 D was reviewed by the consultant Dr Patil who recorded this: “father reported that while D was with Mother last Monday Dhad a floppy episode followed by projectile vomiting on Tuesday floppy episode was following about 15 minutes seizure episode, (her body was rigid), floppy, stiff arms, eyes rolled back rang 999 gave 5 mouth to mouth breathing until ambulance came”…Dr Patil explained that CT head showing fluid haemorrhage /fluid compressing on brain tissue. Father replied that he is usually not living with them at home and there is a sibling about 4 year old brother (autistic) living at home with mother and D…father denied being known to social services he said that mother may be known to them he will call her and confirm later …..father reported that he was imprisoned for threats to kill back

in 2020”, (1050). On page 1051 Dr Patil noted “no obvious bruises or marks”.

26. There are clinical notes on page 1078 that appear to be nursing notes made on the 13th November which record amongst other things this: “when I had been in the cubicle talking to dad he said that if this is an injury the only way it could happen is if the 5 year old sibling did something as his behaviour is bad and has ADHD, autism. He then asked if it could happen when swimming as they went swimming, a few days ago and D went under water , could the pressure of going under water cause a bleed on brain……Dad said that a possible cause is by shaking the baby, Dad commented that if he were to do that he would have caused injury to the arms as well and made a demonstration of this”. On the same day it was noted that both mum and dad were “in the room and acting appropriately”, (1079).

27. On the 13th November 2023 it was noted that D had not suffered any further episodes of seizure or floppy episodes since being admitted. On the 13th November 2023 D was seen by Dr Singham, an Associate Specialist Paediatrician. That medic has produced a witness statement dated the 29th January 2024 in which he documents D’s presenting history on the 11th November 2023 in these terms: “D was on the sofa with her father, as he turned to watch the television, D started crying when her father started rocking her, she went quiet. At this point he observed that D’s eyes had rolled and she seemed tense and cold. Her lips went blue. At that point, her mother came down to the living room grabbed her off her father and which point D then vomited. Her mother put her in the recovery position. Her father then called 999 at 22.20 hours and was instructed to provide CPR in the form of 5 rescue breaths. D was floppy at this point”. Dr Singham noted that the mother video recorded this event at around 8.19pm.

28. On the 13th November 2023 a CT scan was performed and the report noted: “an acute left sided no frontoparietal subdural heamatoma exerting mild mass effect in the form of a placement of a left frontal cortical sulci, no midline shift noted. No obvious depressed calvarial fracture identified . High density noted and along the posterior aspect of the falx cerebri and suggesting haemorrhage extension along the falx cerebri” (1002). Otherwise, the scan was reported as being normal.

Following the scan D was seen by Consultant Paediatrician Dr Patil who noted normal tone, normal power, head circumference 40.5cm and an absence of any external marks or bruises concerning for injury.

29. On the 14th November 2023 there is a clinical note that records “mum was worried about head size she thinks it looks bigger”, (1053).

30. On the 14th November 2023 there was a strategy meeting. On page 1172 there appears this comment: “It is also reported that you have an irritable cry”. The note seems to suggest that this comment was made by E. This same note records this re E: “previous for driving offence, racially aggravated offences, fear of violence offences, controlling and coercive behaviour, criminal damage, breach of non-molestation order, aggravated vehicle taking, malicious communications assaults….there are 57 crime reports lots of DA with other females…intelligence reports-mentioned that he has been TA (2019), 1st February 2019 3 years infantry, 7 years as an MMA fighter well-built and has tendency to become aggressive”. On page 1173 there is a note that “Dr Kanu reported that father has been cooperative with the hospital”. On page 1172 there is reference to A in November 2020 being a victim of abuse by an ex-partner, (not E) which led to some involvement with social services.

31. On the 16th November 2023 a skeletal survey was carried out. The report noted “radiographic findings in the right tibia are concerning for a possible fracture”, (926).

32. On the 16th November 2023 D was seen by a consultant paediatric ophthalmologist who noted this: “On examination there was no evidence in either eye of periorbital bruising, petechiae, or subconjunctival haemorrhages. The right eye fundoscopy was normal. On fundoscopy of the left eye there were deep, multiple intraretinal haemorrhages and one large subhyaloid haemorrhage involving fixation”. The consultant also noted that the baby was born with subconjunctival haemorrhage on the right eye (1619).

33. An ophthalmology review on the 16th November 2023 found retinal haemorrhages in the left eye but none in the right. A skeletal survey carried out on the 16th November 2023 reported a possible fracture of

the right tibia. Repeat x – rays two weeks later showed a persistent abnormality of the right tibia although no definite fracture was seen. There are nursing notes on the 16th November 2024 in which the nurses observed and informed the social worker that "we felt mum was not interacting with D that much", (1177).

34. On the 17th November 2023 Dr Singham at Medway Maritime Hospital carried out a medical examination of C which was normal "with no obvious evidence of injury", (929). On the same day an MRI scan had been arranged ((1060) but did not take place. On discharge on the 23rd November there is a note that the MRI scan should be performed in outpatients (1068).

35. On the 18th November 2023 A informed the consultant that her grandfather had an hereditary condition of fundal bleeding (1063).

36. On the 20th November 2023 the CT scan was discussed at a multi – disciplinary meeting where this was noted: "There are thin hypodensities in the left occipital lobe between brain sulci (sagittal image 25 of 45), suggestive of acute subarachnoid haemorrhage in addition to the reported left frontoparietal subdural haematoma. There is possible right subdural effusion. I note that there is a request for MRI head for this child, that is already scheduled", (927). The report's conclusion reads "Acute left sided frontoparietal subdural haematoma causing mild mass effect , no midline shift. Urgent neurosurgical opinion is advised" (928).

37. The skeletal survey reported on the 14th December 2023 was reported as "no fracture identified in the ribs and long bones of the upper and lower extremities" (1463). On the 19th December 2023 an MRI was carried out which concluded "MRI features of the left frontal and left occipital subacute subdural haemorrhages, with no midline shift or mass effect" (1464).

38. D remained well during her in patient admission with only a small amount of vomiting documented on the 14th November but otherwise she was described as feeding well. D was discharged on the 23rd November 2023.

The medical evidence

39. I have been provided with a number of medical reports for which the author and summaries are set out below. I also had the benefit of hearing the oral evidence of Mr Jalloh, Dr Cartlidge and Dr Hogarth.

Dr Keenan, consultant paediatric haematologist

40. Dr Keenan has provided three reports dated the 21st March, 15th May and the 22nd July 2024. In his final report Dr Keenan says that the "testing of blood clotting is now complete as best as can be done in a child under 1 year of age". Dr Keenan says that only mild platelet function disorders had not been specifically tested for. Dr Keenan says that "mild platelet function disorders could not cause the bleeding seen in D". Dr Keenan thus opined that "no blood clotting disorder had been identified" and that "the bleeding observed in Dshould be considered to have occurred on the balance of probabilities in a child with a normal blood clotting system (709).

Dr Olsen, Paediatric Radiologist - report dated the 11th March 2024 and addendum dated the 1st July 2024

41. Having reviewed the radiological findings Dr Olsen did not identify any fracture or other injury (420).

Mr Markham, Consultant Ophthalmologist report dated the 23rd April 2024

42. Mr Markham says that it is "very likely …that the retinal haemorrhages in D's left eye were secondary to a period of raised intracranial pressure transmitted down the dural sheath of the optic nerve on that side compressing the central retinal vein". Mr Markham's opinion therefore is that the cause of the intracranial haemorrhages had indirectly caused the retinal haemorrhages. Whilst offering the view that non – accidental trauma would appear to be more likely than accidental trauma Mr Markham defers to the views of the paediatric neurosurgeon and paediatric neuroradiologist (525).

Dr Hogarth, Consultant Neuroradiologist, report dated the 30th April 2024.

43. Dr Hogarth opined that on the basis of the neuroimaging "the most likely explanation for the intracranial bleeding is inflicted injury by a shaking mechanism" (537).

44. In terms of the timing of the injury Dr Hogarth says that the CT scan performed on the 13th November 2023 showed low density subdural fluid collections which could be indicative of chronic subdural haematomas (i.e. an injury that occurred more than 2 weeks before the CT scan), or acute subdural haematomas. Dr Hogarth opined that the low-density fluid was due to acute subdural effusions and not chronic subdural effusions. An infant's skull has bony plates the borders where those plates come together are called the sutures. If there is abnormal intracranial pressure the sutures spread apart or splay. Dr Hogarth noted that in D's case the sutures were not splayed hence he saw "no reason to prefer the explanation that the low density fluid is chronic", (536). In terms of timing Dr Hogarth says this: "The scan allows for a single traumatic event close to the time of the CT head scan as a potential explanation. The possibility of more than one traumatic head injury at separate times in the weeks leading up to the CT head scan cannot be excluded on the basis of the available neuroimaging" (536). Dr Hogarth says that the "extensive fresh SDH seen on the CT head scan is unlikely to be more than 10 or so days old".

Dr Hogarth's oral evidence.

45. Dr Hogarth agreed with Mr Storey that he had not come across a case where the MRI scan was performed five weeks post presentation and that this was not part of the standard protocol. Dr Hogarth added that from memory he thought that an MRI scan should have been completed within three to five days. Dr Hogarth could not explain the long delay, postulating that it could be in line with a local protocol or there may not have been sufficient clinicians/scanners available to carry out the scan.

46. Dr Hogarth agreed with Mr Storey that in this case there was an absence of spinal imaging. Mr Storey suggested that what one looks for in these cases is evidence of spinal bleeding which is evidence of some kind of trauma to the spine. Dr Hogarth replied that the standard protocol was to carry out spinal imaging and imaging to determine ligamentous injury which may be supportive of a traumatic causation. Dr Hogarth explained that what is normally required is imaging to the top of the neck (the cervical – cranial junction), to determine if there had been any ligamentous injury. Dr Hogarth said that these injuries cannot be determined by a CT scan unless the ligamentous injury is "gross". The MRI scan carried out on D was of a type that "is not

effective in assessing ligamentous injury to the top of the neck". Dr Hogarth agreed with Mr Storey that in cases of suspected NAI he would expect the MRI scan to have covered the cranial juncture. Dr Hogarth said that ideally the MRI would have been performed within a few days of the CT and ideally included the imaging of the spine which would have revealed the status of the ligaments at the top of the neck.

47. Dr Hogarth agreed with Mr Storey that there was an absence of evidence as internal and external contusions and that there was no evidence of impact against a hard and non – yielding surface. Mr Storey's suggested that the bleeding was all subdural - there was no evidence of subarachnoid or subpial haemorrhage or parenchymal injury or evidence of hypoxic ischaemic brain injury. Dr Hogarth replied that MRI scans were better at detecting those features but that he could agree that there was no evidence of their presence.

48. Mr Storey referred Dr Hogarth to three research papers, (Whitby et al: Frequency and natural history of subdural haemorrhages in babies in relation to obstetric factors (2003), Looney et al: Intracranial haemorrhages in asymptomatic neonates, (2007) and Rooks et al: Prevalence and evolution of intracranial haemorrhage in asymptomatic term infants, (2008)). Dr Hogarth agreed that knowledge had changed since 2003 and that incidences of subdural bleeding in babies that were delivered normally is recognised as a common consequence of birth. Dr Hogarth agreed that as D was not scanned prior to the 13th November it is unknown if she suffered from a brain bleed at birth nor is it known if there was any blood present on her brain prior to the 8th November. Dr Hogarth agreed with Mr Storey that if an infant sustains a bleed in the subdural space, whatever the cause may be, two things will happen. Either in time the blood will go away or it remains and becomes chronic with the formation of membranes. Dr Hogarth agreed with Mr Storey that the question for a radiologist is whether the lower density material on the scan is acute or chronic. Dr Hogarth accepted Mr Storey's suggestion that on that question he deferred to the clinical findings arrived at by Dr Cartlidge. Dr Hogarth said that it was not possible to exclude the presence of older blood by looking at the CT scan and that if there was chronic blood it could extend to birth as there was no way to determine how old the blood was.

49. Mr Storey said that Mr Jalloh had said that D's symptoms on the 8th, 9th and 10th November could be associated with bleeding on the 8th or before that date. Dr Hogarth replied that he did not disagree with that. Dr Hogarth said that the neuroimaging does not tell us if there were one or two assaults.

50. Mr Storey explored with Dr Hogarth the possible impact of the lumbar puncture. Dr Hogarth replied thus:

> "there is complexity to this question, we can say that when we perform lumbar punctures, we don't consent for subdural bleeds… there is no known association to require us to consent a patient… you can find case reports where there have been bleeds associated with lumbar punctures…it is difficult to define the casual mechanism if there is one at all. We would not expect taking spinal fluid from the bottom of the spine to produce anything as dramatic as we see on the CT scan….I suppose if there was a preexisting chronic subdural bleed could it be disturbed by a lumbar puncture? Its theoretically possible but you are taking the spinal fluid from a different space…the subarachnoid space does not communicate with the subdural space…if there was a change in pressure of the subarachnoid it could possibly affect the subdural….there is possibly a mechanism but in general we do not expect to cause subdural bleeding with a lumbar puncture".

51. Mr Storey concluded his cross examination by suggesting that when one brings all of the above factors together "a serious contender is that we don't know what the cause is". Dr Hogarth replied, "I am happy with the category of the unknown".

52. Mr Goodwin for E did not seek to put any questions to Dr Hogarth. I asked Dr Hogarth a series of questions. I referred Dr Hogarth to the Whitby and Rooks paper. In the Whitby paper the authors concluded that subdural haemorrhages in newborn babies "resolved completely by 4 weeks of age" Dr Hogarth replied that one of the cases in the Whitby trial was not followed up until the child was 3 months old but when they did scan there was an absence of a subdural bleed. I also asked Dr Hogarth to comment upon the fact that in the Whitby and Rooks paper the location of the bleeds differed from those found in

cases where the baby had been shaken by a care giver. Dr Hogarth said that “trying to distinguish between birth related and inflicted by looking at the location is not going to be valid, there is no pattern”. Dr Hogarth also said that the last study was Rooks and that the general understanding was that we expect these birth related bleeds to resolve after a few months. The problem, said Dr Hogarth, is that these are small studies. I took Dr Hogarth to the Rooks paper where it is said: “Most of the SDH resolved by 4 weeks” and “our study suggests that SDH in an infant older than 3 months of age is unlikely to be birth related regardless of the mode of delivery”. Dr Hogarth’s reply was “ I would find that reasonable and I would agree”.

53. When I asked Dr Hogarth what the most probable mechanism of injury was he said “from the neuroimaging perspective the most straightforward is trauma, we have fresh bleeding”. Further he said that if the court accepts Dr Cartlidge’s opinion then the low density subdural appearances favour the conclusion that the subdural haematomas are acute “that to my mind points to a post natal traumatic cause”.

54. Following this evidence Mr Goodwin asked a series of questions. Mr Goodwin suggested that Dr Hogarth was saying to the court that the trio of literature relied upon does not represent the ultimate word on the incidence and resolution of birth related bleeds. Dr Hogarth said that the papers involved surveying small numbers and there has been no big study since Rooks, “we may never have more data to rely upon so it has its limits”. Dr Hogarth said that in this case “we do not have ancillary features, bruising etc on the skin ….causation becomes less certain when those supportive elements are absent …so it is right to be cautious…I am offering the court the full spectrum as to the explanations”.

55. Dr Hogarth agreed that it was fair to say that “from the neuroimaging I cannot exclude the possibility of pre – existing cranial bleeding that originated at birth”. Mr Goodwin suggested that the court must factor in when coming to a determination the absence of other symptoms. Dr Hogarth replied “yes they have to be factored in - my area of evidence is one facet of a more complicated picture”. Mr Goodwin suggested that if in this case there had been a skull fracture with bruising, then Dr

Hogarth may not have entertained the possibility that the subdural bleed was birth related or as a consequence of an unknown cause. Dr Hogarth's response was that those "possibilities remain on the table… causation is less certain without the ancillary supportive features of a NAI".

Dr Saggar, Consultant in Clinical Genetics and Senior Lecturer in Medicine, report dated the 29th July 2024

56. Dr Sagger on page 733 says this: "I am not able to find any evidence of any genetic disorder or any significant evidence of a connective tissue disorder that would lead to cerebral bleeding after normal handling or minor force".

Dr Cartlidge, Consultant Paediatrician, report dated the 30th July 2024

57. Dr Cartlidge noted that D suffered a low density – subdural fluid collection over the left frontal lobe. Dr Cartlidge opined that the subdural fluid collections were not a chronic subdural collection but instead an acute traumatic effusion. Dr Cartlidge explained that a chronic subdural collection takes at least 2 – 3 weeks to develop whereas an acute traumatic effusion "develops at the same time as a traumatic head injury", (759). In the same paragraph Dr Cartlidge also said that an "acute traumatic effusion is found very shortly after the casual event". Dr Cartlidge offered four reasons for his opinion that the subdural haemorrhages were acute rather than chronic. Firstly D had a normal head circumference which is not consistent with long standing excess of fluid in the subdural space. Secondly D's fontanelle was soft on admission which is consistent with there being no increase in intracranial pressure. Thirdly the cranial sutures on the CT scan were not separated which is again consistent with an absence of any increase in intracranial pressure. Finally, there were no subdural neo – membranes found on either the CT scan or the later MRI scan.

58. Dr Cartlidge did not consider that the subdural bleeding was birth related or that it was attributable to any medical condition. Having regard to her age Dr Cartlidge considered that D had "insufficient mobility to self sustain the head injury" (763). Dr Hogarth opined that the head injury was caused by head trauma "the principal mechanism was shaking, with or without an impact with a semi – yielding object" (746). Dr Cartlidge opined that the "absence of a scalp swelling and a

skull fracture is evidence against the head firmly hitting an unyielding object, but I cannot exclude it having impacted with a semi – yielding object" (765).

59. In terms of the timing of the injury Dr Cartlidge says that is based on clinical features and radiological interpretation. Dr Cartlidge noted that "typically radiological ageing will identify a broad window of possible dates for the casual event", whereas "a frank history of symptomatology will usually pinpoint the moment when a head injury was sustained" (764). Dr Cartlidge noted that the treating radiologists opined that the subdural haematomas were acute but they did not date them more precisely and he observed that Dr Hogarth had advised that the fresh subdural blood was up to about 10 days old on the 13th November 2023.

60. Dr Cartlidge says this on page 765:

> "The clinical features of acute subdural bleeding typically altered consciousness, pallor, floppiness, impaired breathing and vomiting shortly after the casual event. I think that a casual event was immediately before D suddenly became unwell. If the accounts regarding symptomology are found to be credible, this was shortly before the emergency services received a call 20.20 hours on 11 November 2023. Also, D had similar adverse symptomatology shortly before the emergency services received a call at 16.57 on 8 November 2023. I am concerned that this was an earlier episode of head injury. The alternative is that a single casual event occurred on 8 November 2023, but the apparent return to near normality between 8 and 11 November 2023 causes me to favour there having been two casual events".

61. Dr Cartlidge says that the force needed to cause the subdural bleed is not known since experimental evidence is unobtainable. However, "in my opinion the force needed would have been obviously excessive to a normally competent and responsible person" (765).

62. Dr Cartlidge opined that following the causal event, people "seeing her during these times would have recognised her to be unwell and in need of medical assistance" (766).

Dr Cartlidge's oral evidence

The mechanism of movement

63. Dr Cartlidge, in response to a question from Mr Woodward – Carlton, said that when reporting on these cases he is at all times looking for evidence of some action which "caused the head to move vigorously back to front and side to side". Dr Cartlidge said that there was an absence of any evidence as to how D's head could have accidently moved in that manner. Dr Cartlidge in response to questions from Mr Storey said that he accepted that some parents would shake a child in panic if the child displayed symptoms of a subdural bleed.

64. Dr Cartlidge agreed with Mr Storey that over the last 20 years or so the accepted thinking as to the causation of shaken baby syndrome has evolved and that it is now accepted that it does not require multiple movements. There can be one movement with an arrest.

65. Mr Storey asked Dr Cartlidge to consider the movement of D on the 8th November when A returned from the shops as set out in her police interview. Dr Cartlidge confirmed that he had seen the transcripts but not the video interview. Mr Storey says that this describes D being grabbed by A who scoops her round and places her on the floor. Dr Cartlidge said that the only part that he was interested in is what was happening to D's head - "its about the rapidity of change of movement like a whiplash effect ….I have factored in that she is likely to have been floppy which increases her vulnerability….I need to know if anything was supporting the head… was there a hand there?…. I would not be surprised if that was not known – it's an important detail. I don't know without seeing this action. If not supporting the head and the movement is rapid the head could move around unsupported which would be harmful but I am not able to say". Mr Storey put to Dr Cartlidge that if the child had lost head control and the parents had panicked and then moved D abruptly to the floor it could account for the injury. Dr Cartlidge's reply was "it makes me sit up and listen but it's about whether the head moved with an alarming degree".

The presence/absence of other medical findings

66. Mr Storey put to Dr Cartlidge that when a subdural haematoma is found, additional medical findings are often present. Dr Cartlidge's response to the suggestion that there was an absence of spinal bleeding was that there was no evidence to determine if there had

been spinal bleeding as this was not investigated and the CT and MRI scan did not involve the spine. Dr Cartlidge agreed that there was an absence of the following:-

i. An injury to the cranial cervical juncture,
ii. External and/or internal contusions outside or inside the cranium,
iii. The presence of a cerebral venous thrombosis,
iv. Any metaphyseal fracture,
v. Posterior rib fractures,
vi. Bruising to the body,
vii. Hypoxic Ischaemic Injury.
viii. Axonal damage,
ix. Perimacular folds.

67. Dr Cartlidge agreed with Mr Storey that there was an absence of subarachnoid haemorrhages and that the bleeding was subdural. Dr Cartlidge said that the anterior fontanelle was soft, notably on the 11th November and that he would not have expected D to have been suffering from raised intracranial pressure with such a presentation. Dr Cartlidge agreed that he would have expected the clinicians, on the 8th November to have picked up a bulging fontanelle and that if D had this on the 8th November it would have been unlikely to have resolved by the time she reattended A/E on the 9th November 2023. Dr Cartlidge noted that there had not been any healthcare professional who had witnessed D suffering from a seizure.

The child's attendance at healthcare appointments prior to November 2023

68. Dr Cartlidge accepted Mr Storey's suggestion that this child "was not hidden away" from healthcare professionals prior to November 2023. She had attended midwifery and health visitor appointments and D's weight and height were appropriately monitored. Dr Cartlidge also accepted that the child medical carried out on C was all clear. Dr Cartlidge accepted the suggestion that A's record up to November 2023 was "Hunky Dory".

Evidence of illness on the 9th November

69. Dr Cartlidge agreed that on the 9th November 2023 D had a raised temperature of 38.2 degrees. Dr Cartlidge asked Mr Storey if he had

looked at the charts to determine if that was a persistent reading. Mr Storey's response was that he did not know and that was something that needed to be checked. Dr Cartlidge accepted that a subdural bleeding does not cause a high temperature. Mr Storey suggested that there was thus evidence that D was ill on the 9th November 2023. Dr Cartlidge response was "that is probably the only evidence".

Whether a lumbar puncture can cause subdural bleeding

70. Mr Storey put to Dr Cartlidge that there were at least three papers which suggested a link between the performance of a lumbar puncture and a subdural bleed. Dr Cartlidge said that he had not come across that and that he could not think how that process could come about. Mr Storey accepted Dr Cartlidge's suggestion that this was a question best put to Mr Jalloh. Dr Cartlidge added that should Mr Jalloh support this he should also be asked if there would be a noticeable clinical change to the child at the moment that the lumbar puncture was performed.

Whether there was one event on the 8th November or two events on the 8th and 11th November

71. Dr Cartlidge in response to questions from Mr Storey said that it was more probable that there were two events but that one event that took place on the 8th November was possible but less likely. Dr Cartlidge said that the event on the 11th November seemed more serious than just a "lingering effect of an earlier injury". Dr Cartlidge said that he was not discounting that it could be a single event. Mr Storey suggested that there was a single event on the 11th and a funny turn on the 8th and that forces were potentially applied to D's body on the 11th. Dr Cartlidge's response was that that was a "perfectly plausible explanation".

BRUE and ALTE

72. Mr Storey referred Dr Cartlidge to two phenomena known as BRUE and ALTE. BRUE is the acronym for a Brief Resolved Unexplained Event, and ALTE is the acronym for an Apparent Life-Threatening Event. My understanding of BRUE is that it occurs in infants younger than one year. The event lasts for 30 to 60 seconds and involves a cessation of breathing, a change in muscle tone, a change in skin colour to pale or blue and unresponsiveness. My understanding of ALTE is that it tends to occur in infants aged one to three months and involves apnoea, marked change in skin and muscle tone, and gagging or choking. Dr Cartlidge said that it is "medically recognised that children can have a

funny turn which can be frightening to the parents". Mr Storey put to Dr Cartlidge that as for the event that took place on the 11th November "we could be in ALTE or BRUE territory" or this could be related to the events on the 8th. Dr Cartlidge's response to this suggestion was "yes". Dr Cartlidge accepted that before A came down the stairs on the 11th November the question to be answered was whether D had sustained a BRUE or an ALTE was it a consequence of an existing illness or did she sustain some form of trauma.

E's witness statement of the 21st November 2024

73. Mr Storey asked a number of questions in relation to this statement. On page 3 paragraph 7 E describes feeding D on the 8th November 2023. Mr Storey suggested that this description had the hallmarks of normality and asked what the significance was of D feeding. Dr Cartlidge's response was that if D was feeding normally it is not likely that she had recently sustained a head injury. Mr Storey pointed out that when D was taken to hospital the parents were told that they were overfeeding her and that they should be giving her 6oz feeds and not 8ounces. Mr Storey asked Dr Cartlidge what this told him. Dr Cartlidge said that "prior to the 8th November there is no reason to doubt that she is a well baby" and that everything was unremarkable prior to the 8th of November.

74. Dr Cartlidge did not think that any over zealous burping of D by E would have caused an injury to her head. Dr Cartlidge accepted the suggestion put by Mr Storey that there could not have been anything wrong with D prior to A going to the shops or else she would not have made that journey.

75. Dr Cartlidge was then asked by Mr Storey to consider the events when A was at the shops and E'Ss description of D shaking and screaming and gasping for breath. Dr Cartlidge said that shaking and gasping for breath was consistent with a seizure but infants do not scream when they are having a seizure. Dr Cartlidge said that the alternative explanation was that D was having a screaming episode.

The presence of a brain injury

76. In response to questions put by Mr Goodwin, Dr Cartlidge said that the imaging did not reveal a brain injury because the CT scan performed on the 13th November would not have been sensitive enough to detect a

brain injury, adding that an MRI should have been performed at that stage. Dr Cartlidge said that if an MRI scan had been performed on the 13th November it would not have surprised him if it had not revealed a brain injury. Dr Cartlidge said that absent a brain injury and the presence of a subdural bleed the symptoms were probably caused by a concussion. Dr Cartlidge agreed that the nature and severity of symptoms was likely to be linked to the presence and degree of brain injury. Dr Cartlidge agreed that part of the reason why the hospital did not undertake any scans at an earlier point was because D's symptoms were relatively non specific.

The clinical note of the 11th November 2023

77. I took Dr Cartlidge to the clinical note on page 1044 which is a paediatric clerking note for the 11th November which says: "father rocked her and then she went quiet, then father looked around at her, she rolled her eyes up tensed up went cold her lips went blue". Dr Cartlidge said that the word rocking in its usual sense is a gentle movement. Dr Cartlidge said that the movement had to be forward and backward and side by side and excessive to cause multi focal bleeding. Dr Cartlidge said that it did not necessarily have to be separate movements of forward and backwards and side to side - it needed to be a movement that caused the baby's head to move in a circular manner. Dr Cartlidge confirmed that if that entry is correct that was the moment when an injury was sustained or one of the two injuries.

Mr Jalloh, Consultant Paediatric Neurosurgeon, report dated 12th March 2024

78. Mr Jalloh opines as to the nature of the injury, the mechanism of injury, the timing of the injury, the cause of the injury, the alternative explanations for the injury and how D is likely to have responded post injury. I have set out below a summary of Mr Jalloh's opinion as to each of those elements.

The nature of the injury

79. Mr Jalloh opined that the CT scan of the 13th November 2023 showed multi focal subdural collections along the left side of the brain and between the two hemispheres of the brain and possibly along the right side (453).

The mechanism of injury

80. Mr Jalloh advanced two mechanisms that may cause a subdural haematoma a shaking injury or an impact type injury. Mr Jalloh opined that the subdural haematoma suffered by D was most likely caused by a shaking injury. There are two reasons why Mr Jalloh arrived at this view. The first is that impact type injuries tend to produce a focal subdural bleed i.e. to just one side of the brain. Rarely will an impact type injury be of sufficient force/energy to cause a multifocal distribution of subdural blood (454). Secondly there "was no evidence of scalp swelling or a skull fracture to indicate an impact – type injury" (454).

The timing of the injury/injuries

81. Mr Jalloh opined that the "acute blood on CT indicates that the subdural bleed was caused within 10 – 11 days of the scan" (454). As the CT scan was carried out on the 13th November D would have sustained her injury some time from the 2nd November 2024.

82. Mr Jalloh expressed the view that the "likelihood is that D sustained an episode of trauma shortly before her presentation on the 8th November", and after she was last observed to have been behaving and feeding normally. (457). Mr Jalloh considered that D's history of "becoming limp and floppy is consistent with encephalopathy associated with a brain injury". Mr Jalloh explained that when "an infant presents with a profound encephalopathy including apnoea and the need for resuscitation, the likelihood is that the episode of trauma occurred just before the collapse". As for the second presentation with a floppy episode on 11th November, Mr Jalloh opined that this might have followed an additional episode of trauma or might result from a fluctuating encephalopathy and/or seizures.

The cause of the injury

83. Mr Jalloh opined that "an episode of non – accidental injury involving shaking is the most likely cause of D's head injury" (455). Mr Jalloh set out three reasons for arriving at this view, namely the presence of multi focal subdural haemorrhages, the absence of any reported accidental trauma and the presence of retinal haemorrhages (455).

The alternative explanations for the injury

84. Mr Jalloh ruled out birth trauma as a possible cause as the "subdural haematoma contains acute blood and therefore would not age to the time of birth", (455). Mr Jalloh did not consider that D had sustained an

accidental fall as no such fall was disclosed by A and E. In addition, said Mr Jalloh "subdural bleeding… from an accidental fall are focal, affecting one side of the head and not midline" and would be associated with scalp swelling and most likely a skull fracture (455).

85. Mr Jalloh said that "normal handling, accidently rough handling, and minor domestic accidents would not be expected to cause any injury at all" (456). Mr Jalloh expressed the view that despite infants being susceptible to head injury from shaking "the force that results in brain injury from shaking would still be considered unnatural and inappropriate by a witness or perpetrator" (456).

D's likely response post injury

86. Mr Jalloh said that the evolution of symptoms after an episode of trauma depends on the degree of encephalopathy (brain dysfunction). Mr Jalloh described the symptoms of a mild encephalopathy as "not seeming right, irritability, lethargy and vomiting". Mr Jalloh said that severe encephalopathy is associated with "seizures, apnoea, changes in heart rate and circulation, reduced conscious level, (for example, going limp or floopy) progressing to life threatening collapse", (456). Mr Jalloh opined that the "the episode of trauma…. would have likely been painful or distressing and therefore Dwould have displayed an immediate change in behaviour such as crying or irritability. However, this may not represent a significant change in behaviour if she was already crying and/or unsettled".

Mr Jalloh's email of the 3rd May 2024

87. Mr Jalloh was provided with the video taken of D by E just after her collapse on the 11th November. Mr Jalloh noted that the "video showed an infant held sideways with her right side down eyes closed, appearing floopy and with vomit drooling from her mouth". Mr Jalloh says that this did not alter his opinion as set out in his March 2024 report.

Mr Jalloh's oral evidence

88. In reference to paragraph 7 of E's witness statement of November 2024 and the events of the 8th November 2023, Mr Jalloh in response to questions put by Mr Storey said that an inability for an infant to feed is one of the features that one sees with a brain injury. Mr Jalloh also said that this was not an absolute, and that it was possible for an infant to sustain a brain injury and still be able to feed. Mr Jalloh did not consider D's ability to feed as a strong marker in determining when she

sustained the brain injury. Mr Jalloh agreed with Mr Storey's suggestion that prior to the 8th November 2023 D was normal and that her symptoms manifested on the 8th November.

89. Mr Storey put to Mr Jalloh that Dr Cartlidge in his oral evidence had accepted the theory that it is not uncommon for infants to suffer an ALTE, causing the parents to panic and shake the child, which then causes the child to sustain a brain injury. Mr Storey averred that there was case law where judges had come to that conclusion. Mr Jalloh's response was that "I have come across that theory and I have seen judgments where the court has preferred the explanation that a resuscitating shake is the cause of the head injury. It's a theory proffered by some in cases that I have been involved with". Mr Jalloh agreed with Mr Storey that this court is looking for a force/mechanism that could cause injury. Mr Jalloh said that the mechanism had to be a rapid acceleration and deceleration.

90. Mr Storey asked Mr Jalloh what the process was to explain D projectile vomiting on the 9th November and enduring another episode on the 11th November. Mr Jalloh's reply was that she had sustained a brain injury and that a brain injury can result in myriad symptoms days after the initial presentation. Mr Jalloh said that projectile vomiting was consistent with a brain injury and that there was possibly a second incident on the 11th or that presentation relates to the incident on the 8th. Mr Jalloh considered that both scenarios were possible. Mr Jalloh said that when D was in hospital on the 11th she remained relatively well and there were no signs of encephalopathy and no seizures, so her clinical presentation was on the milder side.

91. Mr Goodwin asked Mr Jalloh if there was clear evidence that D had sustained a seizure. Mr Jalloh said that there was no clear signs of seizure when D was in hospital. Mr Goodwin suggested that the parents' description of D going stiff and having shaking arms was not necessarily indicative of her suffering from a seizure. Mr Jalloh's reply was that these symptoms were specific signs of encephalopathy - whether it's "disordered by seizure is difficult to know - it's a symptom or sign that comes from the dysfunction of the brain".

92. Mr Jalloh accepted Mr Goodwin's assertion that on the 11th November D had a normal tone when examined by the clinicians. He did not however accept the suggestion that the presence of a normal tone was an indication that the injury was at the milder end of the spectrum. Mr Jalloh said that we "should not focus on the presence of disordered tone - that is a soft sign I don't think that it's important… when reviewed in hospital D did not have sustained features that were specific to brain dysfunction". Mr Jalloh stood by his comments in his report that when D presented on the 11th November there were no concerns as to her respiration or neurological functioning. Mr Goodwin suggested that "those two areas of functioning both militate against a second acute event on the 11th November". Mr Jalloh's response was that "there was either one event on the 8th with fluctuating presentation with another acute episode on the 11th or there was an episode of trauma on the 11th. Either of these scenarios are consistent with D's benign presentation in hospital".

93. Mr Goodwin noted Mr Jalloh's observations in his report that, as far as the 8th November was concerned, any change in the child's behaviour after an event may be masked by normal crying or irritability. Mr Goodwin said that Dr Cartlidge had informed the court yesterday that it is possible to have an injury and symptoms not picked up by a lay person. Mr Jalloh's reply was "that is possible". Mr Jalloh agreed with Mr Goodwin that that fits with the opinion that he expressed in paragraph 4.31 of his report where he says that it is possible that an episode of trauma causes subdural bleeding and only a mild encephalopathy and that a carer who had not witnessed an episode of trauma would be unlikely to attribute non – specific behavioural changes of a mild encephalopathy to an episode of trauma. Mr Goodwin took Mr Jalloh to paragraph 4.32 of his report where he said that encephalopathy amplifies and progresses over time, producing progressive clinical signs that at some point reach the threshold where medical input is sought. Whilst the infant is unlikely to behave entirely normally during this period the signs can be relatively non-specific. On that basis Mr Goodwin put to Mr Jalloh that although D could have appeared normal prior to her collapse on the 8th that did not mean that she was in fact normal. Mr Goodwin suggested that the "apparent normality prior to the 8th does not mean that she was normal". Mr Jalloh said that may be possible but the period when she is most likely to have sustained injury

was shortly before the first clinical presentation. Mr Goodwin noted that Mr Jalloh had not defined shortly to which Mr Jalloh replied, "I mean within minutes". Mr Goodwin suggested that "it was possible that the event took place an hour before, and the clinical presentation was non specific so it was not picked up and then there was a deterioration whilst D was in her father's care". Mr Jalloh said that was possible, but the more likely explanation was that there was trauma just before the clinical presentation.

94. Mr Goodwin put to Mr Jalloh that subdural bleeding is a rare complication of a lumbar puncture. Mr Jalloh's reply was "yes this has come up before in cases that I have been involved with. If in theory a lot of fluid was drained this could lead to a change in pressure to the spine ...I have not come across this in infants". Mr Goodwin challenged Mr Jalloh as to why it would be different in the case of infants. Mr Jalloh said that it would be different due to a differing constitutional structure - infants have a fontanelle and a more pliable skull and are thus less prone to intracranial pressure. Mr Jalloh ruled out in this case some form of pressure effect arising from the lumbar puncture.

95. I asked Mr Jalloh to consider the paediatric clerking note for the 11th of November. Mr Jalloh said that this indicated a "profound presentation; a profound collapse". When I asked if this made it more likely that there was a second incident on the 11th Mr Jallow replied, "I think it does make it more likely - the more profound the clinical encephalopathy the more likely that a second episode of trauma preceded that collapse".

Police disclosure

96. The PNC for A reveals an absence of any convictions and a caution for shoplifting (1703). E's PNC indicates that he has been convicted for a number of offences including harassment in 2019, engaging in controlling/coercive behaviour in an intimate/family relationship between January 2019 and July 2020, driving whilst uninsured and without a licence or MOT in 2022, and breach of non-molestation orders in 2022.

97. On the 14th November 2023 the police attended at the hospital and spoke to A and E. E stated that he had performed CPR on Monday and D had been taken to hospital by ambulance where she was discharged with eye drops. On Tuesday the parents reported that they were still

unhappy with how D was presenting so they attended A/E and were sent away after a diagnosis of bronchitis. The note records that the parents stated that on Wednesday and Thursday there were some improvements. The note records that on Friday "A was upstairs to put C to bed when she came downstairs, and Ewas performing CPR on D", (1837). On the same day the police officers visited C at school. He is reported to have said that Mum and D were good but E was "bad. C also said that Ehits mum, hits mum in the eyes and mum cries".

98. There is a further police note of the 14th November 2023 which records the consultant explaining the results of the CT scan to E. E said that he does not usually live at home, "that [the] brother could be responsible" and that they took the baby swimming recently where she went under the water. When the consultant explained the bleed on the brain, E is said to have said, "if I were to do that, I would have caused damage to her arms" (1839).

99. On the 14th November 2023 the step mother of A, F, was spoken to by police officers who recorded this on page 1842: "F said that A is a good mum to D but she always had a bad gut feeling about Eand the person he is. F said that E has anger problems. Fstated that she had a call from A on the Friday and came straight round, when she walked through the front door she stated that Asaid to her that she was upstairs putting C to bed, she heard D scream and she ran downstairs and that was when Etold her to ring an ambulance and he was conducting CPR". F said that there was alcohol around the room on this date when paramedics attended".

100. On the 14th November 2023 DC Elliot and the social worker Isabella Stone visited C at his school. The police note of this visit can be found on page 1837 and says this: "We also attended Primary School in order to speak to C who is the son of A but not E. C is mainly nonverbal with the capacity to say some words. C was asked about who lived at home and he stated mum was good, D was good but then said Ewas bad. C also said that E hits mum, hits mum in eyes and mum cries".

101. On the 15th November 2023 the police asked E to recall the events "on Monday 6th when D first suffered a seizure" (this is a reference to the 8th not the 6th). The police note records: "He said that A had left for the

shop when he had been feeding D. Following finishing bottle (8oz) she was giving smiles before her eyes went, and he describes her going pale and cold. He called A on the phone, as he did not know what to do. A returned within minutes and they called for 999 assistance. He described how he was told to do 5 mouth breaths and Dcame back around on the 6th breath". E described returning to Medway hospital on the Tuesday and that there were no reported medical episodes on Wednesday or Thursday. The note then says this: "On Friday evening when A was putting her son C to bed, E was feeding D on the sofa…E believed it may have been around 8pm when he fed D and she screamed out for more. As A was coming down the stairs she began to cry more and he passed D over to A she went stiff cold and pale and he started to record on his mobile phone whilst trying to use A's phone to call the ambulance" (1841). E, in response to the question what he does when he is annoyed with D, said that he did not get annoyed, and he is obsessed with her.

102. On the 17th November 2023 there is a police report where A is said to have said that C around five days prior to this incident had shaken D whilst in her pram to wake her up and that she had not noticed that anything was wrong with D following this incident. On the same day the following is recorded:

> "A was asked about her relationship with D stated that her and E have a good relationship. A stated that her and E have been together 2 months, and she did not initially know that E was the father of her child. A looked at a date on her phone when her and E had unprotected sex, put two and two together and found out he was the dad. A stated that E could be heavy handed but had no concerns with D being in the care of E. A also stated that E does not like her son C, she has stated this has caused problems because they have no relationship. A stated that if her and C didn't learn to get on she would have to split up with E(sic) (1836)".

103. It was also recorded that A had said that E could be heavy handed but that she had no concerns about Dbeing in his care (1836).

S47 enquiry re C dated the 14th November 2023

104. This was conducted by the social worker Isabella Stone and the police officer DC Elliot who spoke with C on the 14th November 2023 and recorded the following:

> "We asked you who you live with. You said mummy. We asked if you thought your mummy was good or bad and you put your thumb up. We asked you if D lives with you. You said yes. We asked if she was good or bad and you put your thumb up to say good. We asked you who else lives with you, and you said E. We asked you if Ewas good or bad. You put your thumbs down and said bad. We asked you why he was bad and you rubbed your eyes and made a 'wa wa' sound as if you was crying. We said does he make you cry, and you shook your head. You said that he makes you sad. We asked why he makes you sad and you said he hits your mummy. We asked you where he hit your mummy, and you pointed to your eye and said in eye. We asked you what your mummy does when Ehits her, and you said that your mummy cries. We asked you if Ehas ever hurt anybody else in the house and you said just Mummy. You then became very agitated and kept looking at your teacher assistant . Your teacher assistant, then said that is enough and that you have come in a little bit uncomfortable now. We said this was fine and that you should go back to class. We said goodbye to you, and you gave us a big smile and wave as you left the room".

Paramedic, Amber Petch, witness statement dated 15th July 2024

105. Miss Petch was the paramedic who attended on the 8th November 2023. In preparing this statement Miss Petch had sight of the Electronic Patient Report form which appears in the bundle. Miss Petch recounts the contents of that document which I have set out above. Miss Petch noted that both parents were present on scene when she arrived. Miss Petch noted that when taking the child to the ambulance both parents wanted to finish their cigarettes before leaving. Miss Petch also says that one of the parents, she cannot recall which, went to the local shop and returned with carrier bags which contained cans of lager/beer.

Miss Petch's oral evidence.

106. Miss Petch said that the first paramedic in attendance was Mr Wilson who was not required to make any written note of his attendance. Miss Petch agreed with Mr Storey that when she arrived D

was in good condition and neurological normal. Miss Petch explained that despite those normal findings, it was standard protocol to convey the infant to hospital. Miss Petch said that there was no urgency in transporting D to hospital and that blue lights were not engaged.

Paramedic, Miss Judge, witness statement dated 15th July 2024

107. Miss Judge has provided a witness statement dated the 15th July 2024. This statement does not provide any additional information than that contained within the clinical note save that she says that she found the mother to be vague in her responses.

Miss Judge's oral evidence

108. Miss Judge confirmed in response to questions from Mr Woodward – Carlton that the entry on page 1647 under the heading "History of Presenting Complaint" (as set out in paragraph 15 above) was the note that she generated en route to hospital. Miss Judge said that she, A and D were in the back of the ambulance and E was in the front with the driver. Miss Judge when asked if she had spoken to E replied, "from what I can remember he was in the front with my colleagues so calling through to help with questions".

109. Miss Judge confirmed that her colleague Miss Milburn arrived at the scene some 25 minutes prior to her arrival (it since being confirmed that there were no notes generated by Miss Milburn). Miss Judge in a series of questions put by Mr Storey said that when she arrived D's breathing was rapid, as was her heart rate and her skin was pale and mottled. Miss Judge agreed that before being conveyed to hospital D seemed to have made a full recovery with only the administration of oxygen. Miss Judge explained that when she attended the home was crowded with paramedics and firemen. Miss Judge could not remember the number of individuals that were present.

110. Miss Judge made this remark when describing how the entry on page 1647 was generated: "she said that she wasn't there, and she would speak through to dad to see what happened". Mr Storey referred to Miss Judge's comment in her witness statement that A was vague in her responses and suggested that this was not surprising bearing in mind the number of people that were present and the ordeal that she had just endured. Miss Judge replied "I don't know I found it hard to get a history as to what happened".

111. Miss Judge in response to questions from Mr Goodwin could not recall if she spoke to E whilst in the home. I asked a series of questions as to the note that Miss Judge produced on page 1647. Miss Judge said that when they were in the ambulance and she was asking A questions, A would ask the question to the father who was sitting in the front of the ambulance - "I got the impression that she didn't know and had to ask the father....the father seemed to know more about what had happened". Miss Judge said that A did not appear to be very distressed adding that people respond to these events in different ways. A could not remember if E had been distressed.

DC Tiffany Elliot, witness statement dated the 12th November 2024

112. DC Elliot said that the first time that she met A and E was during a joint s47 visit at Medway Hospital on the 14th November 2023. DC Elliot was accompanied by the social worker Isabella Stone. On the same day DC Elliot and Miss Stone visited C at his school. DC Elliot referred to the allegations made by A as conveyed to her step mother F which led the latter to reporting E to the police in January 2024. DC Elliot said that "A stated she reported this due to the breakdown of their relationship", (74 supplemental bundle).

DC Elliot's oral evidence

113. DC Elliot in response to questions from Mr Storey confirmed that she had interviewed A on the 14th November and that A had given a full account of the history and that interview was subsequently converted into a witness statement by DC Elliot's colleague.

114. Mr Goodwin asked a series of questions about DC Elliot and Miss Stone interviewing C on the 14th November (the police note appears on page 1837 and is set out above in paragraph 42). DC Elliot denied that this was a pre interview assessment with a view to considering whether an ABE interview would be carried out. DC Elliot said that if there had been a pre interview assessment "we would have had an intermediary because of his age and after speaking to him we realised that he was non verbal". DC Elliot said that she was not ABE trained. DC Elliot explained that there was no requirement for there to be an intermediary when conducting a s47 enquiry - "we want to speak to the child to see if they make any disclosure". When Mr Goodwin asked if it had been their aim to obtain a disclosure, DC Elliot said our aim was to speak to him

and to ascertain details about his home life. DC Elliot could not recall if prior to the interview she had been told about C's learning difficulties. DC Elliot agreed with Mr Goodwin that she would have made a note if she had been given this information. Mr Goodwin suggested that we can assume that DC Elliot was not told about C's learning issues as there was an absence of any note. Mr Goodwin then asked if DC Elliot had adapted her approach to take account of C's difficulties. DC Elliot replied that "when the social worker and I spoke to C it was clear that he was not verbal". DC Elliot said that she could not remember if she and the social worker had planned how to approach C or what adjustments they could implement to accommodate his learning needs. DC Elliot agreed with Mr Goodwin that if there had been any pre planning it would have been documented and conceded that she didn't think that there had been any pre planning with the social worker before they both spoke to C. DC Elliot accepted that a note was not taken as to the questions asked and the replies given. Mr Goodwin suggested to DC Elliot that C could have been influenced by the style of questions asked and that it was very important that C was given an opportunity to provide an uninfluenced account. DC Elliot agreed.

115. Mr Goodwin took DC Elliot to the note that was generated following the meeting with C on the 14th November as set out in paragraph 42 above. Mr Goodwin said that C was being asked either leading questions or closed questions. DC Elliot's reply was "we would use that approach with a s47". DC Elliot did not accept that this form of questioning "was not ideal" or that advanced planning would have avoided questions of this type as "every child is different". DC Elliot accepted that she had not received any training as to how to ask questions of children.

Social worker, Miss Halfpenny witness statement dated the 28th November 2023

116. On page 130 Miss Halfpenny notes that E was currently serving a 24-month Community Order dated 21st April 2023 for controlling and coercive behaviours towards an ex-partner. Miss Halfpenny records that:

"The police have reported that he has a very complex domestic abusive history and has been charged with various domestic abuse offences. Details include previous driving offences, racially aggravated offences, fear of violence offences, controlling and coercive behaviour, criminal damage, breach of Non molestation Order, aggravated vehicle taking, malicious communicates and assaults. The police have reported that Mr E has been cautioned for driving offences, theft and class A drugs. Furthermore, the police have reported that on their system there are 57 crime reports, including lots of domestic abuse with other females including 4th September 2023 for contacting an ex-partner on Instagram thereby breaching a restraining order.

At a Strategy Meeting on 21st November 2023 Debra Williams, probation officer shared that there are concerns about E's behaviour in his past relationships and that there have been threats to harm children and his partners. She stated he has not received any convictions for threats to harm children but that his paperwork states that he has made threats. She stated E is completing his unpaid work and attends when asked to but he is evasive.

On 23rd November 2023 I asked Debra Williams for further information about E's offences. She informed me that E was charged with the following offences spanning a period between August and September 2022: Criminal damage to property valued under £5000, engaging in controlling and coercive behaviour, two counts of Breach of non-molestation order, two counts of Use a motor vehicle on a road/ public place without third party insurance, two counts of drive a motor vehicle otherwise then in accordance with a licence and use of a motor vehicle on a road without a valid test certificate. Debra Williams has explained that the 24 month Community Order E is serving covers the above offences".

Social worker, Miss Stone, witness statement dated the 29th October 2024

117. Miss Stone refers to the joint s47 investigation during which on the 14th November 2023 she and DC Elliot visited A and E whilst they were in the hospital with D. Miss Stone on page 31 of the supplemental bundle noted that both "E and A were very welcoming to myself and PC Elliot, they were laying down in a bed next to D but sat up and engaged well

during this visit". On the same page Miss Stone makes this observation: "Both A and E could not remember the details of when D was having her seizures and kept stating different dates and times that the seizures happened. I do appreciate that this may have been due to them feeling very stressed and worried for D". Miss Stone again in reference to the meeting on the 14th November says that "A seemed worried and nervous when talking to myself and PC Elliot, as she was forgetting details of D's seizures, including dates, times and the time leading up to the seizures".

118. Miss Stone noted that E had been open and honest that he was known to Kent Police "and was honest about the reasons why" (32). Miss Stone also recorded that "E continued to forget the details of D's seizures, including the time leading up to seizures, the times and dates of the seizures".

119. On the 15th November 2023 Miss Stone spoke to A on the telephone. Miss Stone on page 31 records this:

> "On 15th November 2023, at 11:15am, I spoke to A on the phone. I had to introduce myself and explain who I was to A again, as she explained that she had spoken to lots of professionals over the last two days. During this phone conversation, A explained that she was not happy as E had been arrested for 'GBH of hurting D'. A stated 'E wouldn't hurt a fly and he wouldn't hurt me. A also said that she had spoken to PC Elliot and knows that C had said that E hurts her. A said that her and E play 'slapsises' and this is what she thinks C was talking about. A said that E had never hurt her and she does not believe he would hurt D. A got very emotional during this phone call, and asked if she could call me back at a later time".

120. Miss Stone refers to the meeting that she and DC Elliot had with F on the 14th November during which "F said she had a 'horrible gut feeling' that E had hurt D but had no evidence of this" (33).

Miss Stone's oral evidence

121. Miss Stone was taken to her note of her and DC Elliot's meeting with C on the 14th November as set out above. In response to a question from Mr Woodward – Carlton Miss Stone said that she and DC Elliot had been told by A that "C's speech is limited, and he was nervous around new people we knew that he had to engage his trust". Miss Stone

agreed with Mr Storey that when she visited A's home on the 14th November there were "loads of pictures of A and the children, the children's bedrooms were tidy and there was a clean and well stocked fridge, …there wasn't anything alarming".

122. Miss Stone accepted Mr Goodwin's suggestion that there was no pre planning involved with the visit to C on the 14th November 2023. Miss Stone recalled that A had told her that C had "quite serious speech and language difficulties……I remember that the school was undertaking an assessment to see if he had any additional needs". Miss Stone informed Mr Goodwin that she had received training in how to speak with children with serious communication needs and how to approach the questioning of children for the purpose of proceedings. Miss Stone did not accept Mr Goodwin's suggestion that it may have been sensible for them to pause prior to conducting the interview with C to consider involving an intermediary. Miss Stone's reply was "I was following the police lead and DC Elliot had confirmed with her sergeant that we could speak to C". Mr Goodwin put that asking a child closed questions was not ideal. Miss Stone replied "that was working with C at the time". Mr Goodwin suggested that he should have been asked open questions such as "what do you feel about mum or E?" Miss Stone accepted that the questions "could have been asked that way". Mr Goodwin asked why, after C rubbed his eyes, did she ask a leading question. Miss Stone's response was "because when we asked about E he made the crying motion". Mr Goodwin put to Miss Stone that they were putting words into C's mouth. Miss Stone's reply was that they were just working with how C was able to communicate.

123. I asked a number of questions of Miss Stone who provided the following response: the interview took place at the office of the family liaison officer; C was very nervous; the interview was carried out immediately following them introducing themselves as the social worker and police officer, C was sitting close to the family liaison officer; C was looking at the family liaison officer between questions, when he became very agitated he kept looking at the family liaison officer and he was shuffling his bottom as if he wanted to get up.

Witness statement of the Health Visitor Miss Sharon Thompson dated the 5th February 2024

124. Miss Thompson's observations of A with C and D were all positive with A showing affection to the children and handling of D "with care and warmth" (180). Miss Thompson also noted that the home was untidy and was observed to be cluttered (181).

Viability assessment of E dated the 3rd May 2024

125. On page 579 the social worker records the following:

> "E shared that he has ADHD, depression, anxiety and PTSD. He takes the following medication; Concerta XL for ADHD, Omeprazole for acid reflux and Quetiapine which is an anti-psychotic medication which E believes was prescribed for 'split personality disorder'. This was prescribed when he was in prison in 2020. He explained that this is because he can fluctuate between being really happy or being really low and locking himself away".

126. On page 585 the following information is noted under the heading "Information received from probation officer Debra Williams":-

> "E was sentenced to a 24 month Community Order on 21/04/2023 for the offence of Controlling or Coercive Behaviour in an intimate or family relationship. He has requirements attached to the order to attend the Building Better Relationships programme (BBR), 12 months mental health treatment, 40 Rehabilitation Days and undertake 100 hours of Unpaid Work. He currently has 75 hours of the Unpaid Work outstanding. He has yet to undertake the BBR programme. He was referred to Medway Mental Health but as he lives in Swale this was recently closed and a referral was made to Swale Mental Health. He has yet to start treatment. E is very much in denial of any wrong doing.....
>
> E has previous convictions including previous for offences committed within a relationship. He is currently assessed as a high risk of harm to partners and given his current situation in relation to D is assessed as a high risk to known children".

Letter from E'S probation officer, Miss Williams dated the 14th February 2024

127. On page 1654 Miss Williams says this: "E does not have a requirement to be drug or alcohol tested. There has been no occasion

when he has attended Probation where he has presented giving concern that he is under the influence". Miss Williams records that she challenged E as to why he had failed to tell her that he was in a relationship and that he was believed to be the father of D. E's response was that the probation officer had not asked him for that information and that he and A had not decided if they would be in a relationship yet.

Police witness statement dated 14th November 2023

128. A said that she did not have any concerns about how E was with D but that he was "rough handed in general". In reference to the 8th November incident, A says that she was at the shop with C. A then said this: "E called really panicking, he said she had gone all floppy and her eyes rolled back". At this point A returned home (1848).

129. Following D being discharged on the Monday A said that on the Tuesday D would not stop being sick, that she would feed and then projectile vomit. A and E and A's father took D to hospital where she was discharged with a diagnosis of bronchitis.

130. A said that on the Wednesday and Thursday D appeared to be getting better. A then said this:

> "On Friday last week I was upstairs sorting out C, getting him ready for bed, I was coming down the stairs and E started saying "she is going to go into one, she is going to go into one she tensed up and had a seizure", E was holding D up, he handed her to me and I knelt down….put her into the recovery position…she was sick, she then stopped breathing and E did 5 or 6 breathes for her and chest compressions. He had to do that about 5 or 6 times and then she came round" (1849).

131. A said that E often forgot to take his ADHD medication when he stayed at her house "this sometimes makes him feel unwell", (1850). A said that neither she nor E took drugs, that she didn't really drink alcohol, and that E drank sometimes at the weekend. A said that she had been told that the bleed on D's brain could have been caused by "shaken baby syndrome". A's reply was "D flings her head back, when she gets the hump she swings her head", (1850). A said that if she got annoyed with D she placed her on the floor in a safe place and that she went to "smoke a fag". A said that E "doesn't really get annoyed with

her" but if he does "he will either put her in her car seat and then walk away or give her to me".

Transcript of police interview with A dated the 17th November 2024

132. A said that before the first event D "was perfectly fine and happy". Before she went to the shops A said that D was "doing her little whinges like cry whinges", (1920). A also described D as being a bit groggy as she was teething. A said that E phoned her in panic, and he said "come back come back. I don't know what's wrong with D", and that when she and C returned D was all floppy (1924).

133. In terms of the second incident A said that prior to the events later that day that D was "completely fine that day.....she was all happy chappy", (1939). A said that she was upstairs sorting out C and that when she was halfway down the stairs E panicked and said "she is going into one, she is going into one" and Dtensed her whole body. A said that D kept on being sick then she started foaming and then she went floppy, (1936). At a later point in the transcript A said that E said "'something's happening, something's happening' I was halfway down the stairs anyway. Then it all – it just all went" (1942). A few moments later in the transcript A again maintained that E said "she is going into one she is going into one, I said calm down. Then he came downstairs. I came downstairs sorry. Went in there. I went calm down. Then she tensed up and then as she was tensing up, he passed her over to me and that's when she went all floppy and that's when I put her on her side" (1943). A was asked if she heard D make any noises before this or did she just hear E panicking. Her response was "No she was completely fine", (1944). The police officer said to A "you were upstairs. You came down to her having a seizure". A replied "Yeah. Going into one" (1945).

134. A informed the police officer that D was about a month and half old when E first met her, (1953). A also said that E did not like C because C had bitten, punched and kicked her when he was having a "melt down" (1954). A informed the police officer that she did not leave C alone with E (1956). A reported that she believed that E had two other children, (1966).

135. A explained to the police officer that when C shook D's pram, D was groggy and crying but that she gave her a bottle and she "settled back down". A also said that C "nudged the pram". (1973). However, A also

accepted that she did not witness the incident with the pram (1977). A also said that there had not been any further incidents involving C (1974), and the incident was not witnessed by E (1978).

Transcript of police interview with A dated 30th April 2024

136. By this stage A was no longer in a relationship with E. A said that she no longer hears from E or talks to him and that E had a new girlfriend, (2000). A maintained that she broke up with E "because I found out that he was cheating", (2007).

137. In this interview A informed the police officer that when "D had these injuries, he weren't really panicking. He was grabbing beers out the fridge ready to go" (2001). A said that F had told her that E, on the first and second occasion that Dwas taken to hospital, was taking beers from the fridge, (2002). A said "I didn't say it in my last interview, but he does drink quite a lot". A maintained that E would drink every day, (2003). On page 2015 A says this: "His dad used to buy him a crate. And then after when he has finished that crate roughly about, probably about 5.00 pm, 6.00 pm in the afternoon, he used to keep on asking his dad, "Can I have some of your beers? Can I have some of your beers?" They had to hide the beers because of his drinking habit". A also makes this comment: "I used to tell him, "Don't drink whilst you've got D". Because that brings out a stronger side of him, the aggression side of him" (2017). When the police officer asked A if E had been drinking on the 8th and/or the 11th November her response was: "He had been drinking. I'm not going to … no one is a good parent. Obviously, he said he only had a couple. And all of a sudden, he buys these two big, massive Buds. Like, you get the regular ones and then you get the massive ones. And he could down them within a minute" (2018). A claims that when the couple were in the waiting room at the hospital on the 9th November that E "hid a beer underneath the pram" (2025).

138. A told the police officer that she thought that E may have harmed D. On page 2012 she said this: "And it got me thinking the days that he was alone with her was both of the times that she stopped breathing and all of that. And I was panicking and he wasn't". On page 2019 A said this: "When he hears a screaming baby, he just tells D to shut up".

139. A said that on the 10th November she carried out some kind of internet search. On page 2025 A said this: "Well, I was thinking to myself

-- because I was looking it up obviously, floppiness, eyes going back and then also projectile vomiting the next day. I looked it up and it actually said online -- my mum and that says, "Don't believe everything online". But I said ... what was it? I went sickness, that had to add up to some type of shake. And I was thinking to myself, like -- it got me a bit thinking because -- and then I go, I say to him, like, "What did --" like, I asked him, "What did you do?" And he went, "I didn't do nothing. All I done was shake her like side to side", with his hand over her chest, shaking her side to side, like, to calm her or soothe her, he said". On the same page A said this: "Well, he didn't say he shook her. He said he basically -- like, I can't describe it that well. He said he tried soothing her. But he's roughhanded. So he tried swaying her side to side on her belly".

140. When asked to recall the events of the 11th November A said this:

> "Literally. what happened was, I said, "C, come on, let's go upstairs, put you to bed. I put some TV on for you. You can watch some TV". She's bursting out crying downstairs. And all of a sudden, I hear silent. And I go running down the stairs like, "What's going on?" "Oh, she's gone like this", and I get handed a floppy baby. And then she goes tensed. I'm thinking to myself, "What's going on? She's screaming one minute". I'm thinking to myself, "He's making me feel like she's cried so much that she's tired herself out. She's just gone". Because sometimes when babies cry so much, they just naturally just go to sleep. But not to that extent" (2020).

141. A claimed that when she was in hospital with D that E had video-called her saying that he had slit his throat (2003). A asserted that E would make these threats throughout their relationship. A also said that E took cocaine at new year but that as far as she was aware he was not a regular drug user (2005).

142. A asserted that E had said that if F stopped him from seeing D "he'll go round to her house and kill everyone in it and leave D standing", (2008). A also claimed that E had said that if A "stopped him from seeing D, he'll come after me as well".

143. In response to the question 'has E physically harmed you?', A's response was "play fighting we have, but he goes a bit too rough after I

say no" (2009). A also alleged that on Christmas Eve E grabbed her after she tried to walk out following an argument. A said "as he grabbed me, he pinched my arm and tried yanking me back into the house. I told him to get off of me" (2009).

144. The police officer referred A to the phone message that she had sent on the 9th November which read: "Fucked off home have we? Guilty?, (2021)"A said that she could have sent this message because she had found out that E had been cheating. A also said "I could have accused him to have done something to D", (2022). A maintained that at that stage they had not been told by anyone at the hospital that D had potentially been shaken, (2023). A then said that she recalled that on the 9th November she had found nude photographs/videos on E's phone and she had accused him of cheating on her whilst in the waiting room at the hospital, (2024). The police officer also referred A to another message that she had sent E on the 9th November which read "don't care about your daughter then". A says that E left her sitting in the waiting room at the hospital because she said she had caught him cheating on her.

145. A confirmed to the police officer that a whatsapp chat had been created called Dand that she had added a number that she says was E's because she recognised the 43. A confirmed that the number added was a new number for E and that his name on the whats app conversation was "devil 666". The police officer referred to a message that it is said was from E's new phone on the 15th November after he was arrested and released from custody. The message reads "Do not say anything, I beg you, A. I love you", (2029). A says that she thought this was when E had threatened to slit his throat. The police officer challenged A as to whether this was the day that E had threatened to slit his throat and asked if this comment "is anything to do with what happened to D?" (2030). A's response was "I wouldn't have thought so…because at the time, I didn't think he would have done it" (2031). The police officer asked this: "What changed from the 9th when you were concerned after you were Googling about a shaken baby, to the 15th when he was arrested for it?…Why did you think that he might have done it then but you don't think he did it on the 15th when he was released from custody?" (2031). A's response was: "As I said before, I was a bit half and half about if he did it, did he not do it or anything like that. But the only

thing that could come off that message is that he didn't want me to say anything to his family about him wanting to end his life" (2031). A was unsure if she had had a telephone conversation on the 15th November when E had threatened to end his life. A says that E had made those threats to kill himself "quite a few times", (2032). The police officer asked if E had told A something that she was not telling the police. A's response was "no he didn't" (2035).

146. On page 2037 the police officer put this question to A: "So on the 9th when you said to me you're 50/50, you've had a few Googles, you've had a few conversations with people. Why on the 9th then when you had this slight inkling -- you said you weren't 100 per cent, I'll take that. Why did you then leave him alone with her again?". A's responded thus: "I think it was because where I was in the house, I thought I'd be gone for a couple minutes, five minutes just to put my son -- like, put a nappy on him, get him ready. What, five, ten minutes, come back down. She was crying. And I thought, "Yeah, it'll be all right. It'll be all right with her". But it weren't until she screamed her head off and then went silent that I've come down the stairs, nearly twisted my ankle to see what was going on. And then all of a sudden he's lifting her up going, "she's gone floppy" (2037).

147. A could not recall the message that E sent on the 13th November after A ignored his call which read "Don't be like that", nor could she recall her response "Leave me alone for ten mins, please let me calm down", (2038). This interview ended with A responding to the question "who caused the injury to Dback in November?" with the answer "no I don't know" but saying that she had her suspicions that it might have been E, (2040). A says that E was left alone with D "and he was calm as anything", (2040).

A's witness statement dated the 4th March 2024

148. It is accepted that A has in this statement erroneously identified some of the November 2023 dates. A said that on the 6th November 2023 D was crying when she and C went to the shops (183). A says this when she received the call from E: "when E called, he was panicking and saying I needed to get home quick and that there was something wrong with D. I asked him what was wrong but he was panicking and didn't say , so I said "Ok I am on my way". A said that as she and C ran back to the

house, “I stayed on the phone to him the whole time”. A said little as to the events that unfolded when she returned to the house and prior to the attendance of the paramedics save for this comment: “when I got back E called 999 and they told him to do CPR and an ambulance was called. I called my mum and was crying. I then called my dad. The ambulance took about 10-15 minutes” (183). When they were at the hospital A says that she asked E what had happened “and he said she just kept crying and then she passed out and went limp and her eyes rolled back” (183).

149. On the 7th November A said that D was unable to keep any feeds down and projectile vomited. A explained the trip to A/E on the 9th November. A also said that the 8th, 9th and 10th November were just normal days and that she could not recall anything.

150. On Saturday 11th November 2023 A said this:

> “D was getting better and then when I was upstairs with C getting him ready for bed I could hear crying quite strongly, E was downstairs with her. As I came downstairs and got to the bottom of the stairs I saw she started going funny in her face, her pupils were dilated and as E picked her up her arms and legs went stiff, her legs were crossed. I picked D up …she was being sick and she was stiff. She then went floppy with her eyes closed and seemed to be struggling to breathe and was gasping as she was being sick…..she then stopped being sick and stopped breathing and went pale. E videoed it on his phone, he was trying to unlock my phone to call an ambulance. He unlocked it and I called 999. At this point she had stopped breathing and we laid her on the floor and E tried to breathe into her and did chest compressions” (184).

151. On page 185 A said that the “only thing I can think of was that E can be heavy handed sometimes he knows this. When he first met D in September 2023 he didn’t support her neck very well or that she might fling herself back. A couple of times she flung herself back and he caught her, I did raise with him that she needs supporting”. A also said that sometimes E would lay D on the sofa and rock her side to side “but he can be a bit rough”. A said that more than once she had to tell E to be more gentle.

152. A said that she began her relationship with E in September 2023 and that he would stay about twice a week, (185). A said that E made her delete all her male friends off social media and to delete snapchat.

153. A denied that E was ever violent towards her or physically aggressive in any way. A said that C's report of E hitting her in the eye did not happen and speculated that sometimes she and E would "play slapsies …maybe this is what C saw and heard", (186).

154. A said that she ended the relationship with E in January 2024. A claimed that in December E had told her that if her solicitor told her to lie under oath and to say that he had caused the injuries to D he would hunt her family down. A said this in paragraphs 33 to 36 of her witness statement:

> "33. I text him to say the relationship was over and he text me back indicating he would end his life.
>
> 34. During the time we were together he slit his throat a few times. The first time I ever saw it I was in hospital looking after D. I went outside for a cigarette and he facetimed me from the summerhouse at his parents home. He said "I can't do this anymore", I don't really know what he meant but he seemed to be gasping for air and he had blood coming from his neck. I immediately hung up and called his Mother and told her.
>
> 35. A few weeks later he did it again. We were in bed at his house and he woke me up and had blood on his pillow and saying "I can't do this any more" and was crying.
>
> 36. I am now worried that he might be guilty of something and that was why he did it. I really don't know if he did anything to D or not".

A's oral evidence

155. In chief A said that the anti-depressant medication that she was taking affects her because "I can't cry - it blocks that side of my emotions".

156. In chief A corrected a comment made in her statement to the police re E's drinking and asserted that E would drink every day and that he would drink beer or cider. A said that "I hate beer" and that if she does drink, she drinks shots with lemonade "so it's less strong". When Mr Woodward – Carlton asked A how alcohol affected E's mood her reply was "when he was drinking he was more chirpy....when not he would hide in a hole". A said that E when he had been drinking "didn't come across as drunk ....his body was used to the drinking". When Mr Woodward – Carlton asked A if now looking back should she have left E because of his drinking, she replied "no". A explained how she had been brought up by her mother who was an alcoholic and that she thought it was "normal to be around someone who drinks but you do not know what they may do I know that now".

157. A informed Mr Woodward – Carlton that E did not like C and that he was very rude to him and told him to "fuck off and come back when you can speak". A said that she had no recollection of E calling C a fucking spastic. A explained that most of the time C would remain in his room when E came around and that if E was there C would just stand in the doorway, and was scared to come into the room. Mr Woodward – Carlton asked A if she thought that C was frighted of E to which A replied, "I think he was wary of him". Mr Woodward – Carlton reminded A of F' oral evidence in which she had said that if E's name was used, C would panic. A then said this: "yes if I mentioned his name C would look around for him". A agreed with Mr Woodward – Carlton that C's fear has lasted a long time.

158. When recounting the events of the 8th December 2023 when she returned from the shops A said in chief: "In my house the front room is in the back I told C to wait in the front room ....E was holding D with one hand on her shoulder and one hand on her bottom.....I think he was sitting on the edge of the sofa....I grabbed her underneath her head and bottom and placed her on the floor because E was on the phone to 999". When Mr Storey asked if D was handed back to E, A replied, "he grabbed her and placed her on the floor and the ambulance crew on the call were telling him what to do". In cross A said that before she went to the shops D was a bit whingy, a bit grizzly and that E was making up a bottle and that she thought that he was going to feed her. A says that she

asked E if he would look after C when she went to the shops to which he replied, “no he’s not my child so I had to get him out of bed”. A could not recall if E had been drinking adding that he “smelt of stale beer not ponging like drinking a lot”.

159. A said that it was no more than two minutes from the shop and that “I picked up the basket walked a few steps then the call he said ‘get your arse home now, D’s gone floppy, her eyes were rolling back, you need to get your arse home now’”. A said that E “sounded a bit worried” and that he wanted her to remain on the phone whilst she ran back home “dragging C”. A was unable to recall what was said whilst they were on the phone during her return to the house.

160. A said that when she opened the front door she told C to stay in the front room whilst she went to the living room at the back of the house. A said “I grabbed D from E then he decided to call the ambulance…I supported her head when I grabbed her…her eyes were open but back nearly disappearing”. When Mr Woodward – Carlton said that E had said that D’seyes were not rolling back A replied “they were”. A said that “she was trying to gasp for air, there was no sick just froth”. Mr Woodward – Carlton asked if there was anything about the handling of D that had worried A to which she replied, “the way we were playing pass the parcel…we could have been smoother …not so rough handed when trying to get her to the floor”. Mr Woodward – Carlton put to A E’s assertion in his recent witness statement that she went to purchase beer on the 8th before leaving in the ambulance . A replied “he demanded it otherwise he said he would get it from the hospital. I went to get it because he demanded it”. As for the reference in the ambulance note that they would not leave on the 8th with the ambulance crew until they had finished their cigarettes, A’s response was “they told us there was no rush so we could finish our fags”.

161. Mr Woodward – Carlton referred A to her text message sent on the 9th November which read “fucked off home have we guilty” (2061). A said that she did not think that this was anything to do with D. It was because she had found inappropriate photographs of other women on E phone and “I confronted him”. In respect of the entry on page 2063: “don’t care about your daughter then”, A says that she sent this because E did not return.

162. When setting out the events of the 11th November in chief A said this: “I went upstairs … I went upstairs he had her in his arms…she was screaming and screaming the mum instinct in me told me something was wrong…I was coming down the stairs …E is on the edge of the sofa….he held her up and said “shes gone into one again. I grabbed her and put her in the recovery position”. A said “I was holding her in the recovery position. I placed her on the floor supporting her head and neck”.

163. In cross A said that E arrived at about 6pm and that she could not remember if he had been drinking. A said that before she went upstairs D was “fine she was a bit ratty the TV was on in the background”. A says that she was not upstairs for very long and she assumed that E would feed D. A said “I heard D screaming and screaming, my mum instinct kicked in I went downstairs…by the time I was half way down the stairs she had stopped screaming”. A agreed with Mr Woodward – Carlton that at this point she was handed a floppy baby. Mr Woodward – Carlton took A to her police interview on page 2037 and asked if D had been crying before she went upstairs with C. A replied, “she was whinging not crying because she was hungry I think”. Mr Woodward – Carlton took A to page 184 paragraph 15 of her March 2024 witness statement and in particular to the point where D was placed on the floor. A says that she placed D carefully on the floor and that E was becoming agitated because he could not unlock A’s phone.

164. Mr Woodward – Carlton took A to the social worker’s case note dated the 23rd November 2023, (42 supplemental bundle) in which the social worker recorded: “Your mum said no and she mentioned that she knows about your dad, E's criminal record and commented that she is not worried about this and said he would never harm you, D”. A in cross said that “at the time he was my partner, at the time I did not think that he would do anything wrong …I only knew what he had told me that he had been imprisoned for a driving offence and that was it” . A maintained that she did not know about the conviction for threats to kill or for controlling and coercive behaviour and that she only found about these convictions when she read the court papers.

165. A in response to questions from Woodward – Carlton explained that she had made a "Clare's Law "search on Mr H because at a midwifery appointment they informed her that they had conducted some checks on Mr H which revealed that he had been involved in incidents of domestic abuse. A said that this was the reason why she stopped Mr H seeing D. A informed Mr Woodward – Carlton that she had not made a Clare's Law search against E because she didn't think she needed to because he was quite loving and that she had only made a Clare's Law enquiry when she was close to breaking up with him . A said, "I wish I had done it earlier then I would not have been in this predicament". A agreed with Mr Woodward – Carlton that E poses a risk to children.

166. When Mr Woodward – Carlton asked A when she had first seen signs of E being aggressive her response was that at her twin cousin's birthday when E made her choose between attending that event or staying with him. A said that E had threatened to slit his throat if A did not choose him. When Mr Woodward – Carlton put to A that E had denied facetiming her whilst in hospital threatening to slit his throat she responded, "bullshit he did do that….at the hospital….there was blood round his neck and he started breathing oddly". A alleged that E had made her get rid of snap chat and that he said that if she deleted snap chat, which he considered to be a dating app, and tidy up the house that he would move in with her. A said that she did clean up the house and she was unable to speak to her friends on snapchat. A said that she did not confront E about this adding "I was worried he would snap at me …I have had domestics in the past….I don't want to make that person worse so I kept quiet…I was afraid as to how he would react".

167. Mr Woodward – Carlton took A to E's second police transcript on page 2069 where E'S message "Do not say anything. I beg you A. I love you?" was put to E (to which he responded "no comment"). A said this was when E had slit his throat and that he did not want her to say anything to his family. A says that she telephoned his mother and told her that somebody needed to check on E.

168. A accepted that F had told her that she should not leave E with the children and that "she was right about that". A explained to Mr Woodward – Carlton that E had, on her birthday, threatened to kick

down F's door if she failed to open it. A said that everyone except E laughed. A said that if she had taken that incident more seriously, she would have told E to go home. A said that E had told her that every time he puts his rings on he gets into fights, and that he didn't really explain why, other than saying that a lot of people knew him and wanted to hurt him. A described E as Jack the Lad but "when he was with me he didn't get into many fights". A said that on the 24th December 2023 she had tried to leave E's parents home and he "threw things in my face and grabbed me by the arm".

169. Mr Woodward – Carlton referred A to her disclosure to F in January 2024 in which she alleged that E had made threats against her in December 2023. A explained that this had all come about because F did not want to have the contact sessions in Sittingbourne. A said that E had said that if F were to stop contact, he would go to the house and only Dwould remain standing. A said that E had also said that that threat would include C and that "he will go as well". A said that E's denial of this threat was a lie. A said that E had always called F a "fat cunt" and that he did not like her "because she has a mind of her own, she will say what she thinks".

170. Mr Woodward – Carlton said that it may be suggested A had not made any allegations re E's drinking or his behaviour leading up to the events of November 2023 because she was still in a relationship with E. A replied that when a relationship is over the other party cannot react to what is being said unless they physically come to the door - "I had a red flag on my house, I felt safer to say these things".

171. Mr Woodward – Carlton took A to F's police witness statement in which she said that A in the early hours of the 8th October 2023 sent a text saying "don't let Lewis take D" and a later message saying "don't worry about the last message I was drunk and pissed off", (1858). A explained that E had disappeared and he did not come home straightaway, adding that "I got annoyed because he didn't come straight back ...I was wound up and I was worried that he would take D because he had been drinking". A said that E had told her that he had got into a fight and that he had been hit by a scaffolding pole. A explained how that evening E was loud and that he trampled over her sister and her best friend who were sleeping on the floor.

172. A told Mr Woodward – Carlton that the medication that she was taking in November last year did not have any effect on her ability to care for D. Mr Woodward – Carlton took A to her police witness statement on page 1850 in which she said that E would often forget to take his ADHD medication and that sometimes made him feel "unwell". When asked to explain what she meant by "unwell" A replied, "he told me he mopes around; he doesn't feel like doing anything …he keeps to himself".

173. A said that E could become frustrated with D when she would not settle, and he would hand Dto A and go out and have a cigarette. A said that if D would not take the bottle he could become snappy and say "take the fucking bottle or something like that". A explained how E would try to feed D every time he came around but that "she did not have that bond". A said that D would fidget and that she could sense E becoming frustrated. A said that when that occurred E would pass D to her and that he sometimes would swear aggressively or sometimes in a jokey way when doing so. Mr Woodward – Carlton asked A if she believed that E was safe to look after D. A replied, "back then yes, now no". A said that E could get annoyed with D and that he "got a bit hot headed…..he turned red and would say take her I am going to have a fucking fag". A said that if she had not been there "I would have been very worried if I left her alone because I thought that I couldn't trust him".

174. A was asked by Mr Woodward – Carlton to explain what she meant by E having rough hands. A reply was in relation to E bouncing D too vigorously on his knee and that "he was quite firm and heavy handed and when I told him he was being a bit rough he would say that he wasn't and would get a bit frustrated". The cross examination of A ended with her denying that she did something to cause D's injuries and her saying "I don't know what happened. He could have done it. I was not there. I can't say how it was done or anything".

175. A in response to questions from Mr Goodwin said that at the time she wanted to have a family with E. A said that at that time she enjoyed being with E that he had his crazy side, he would pull faces, that it was nice talking with him on the sofa and that they bantered. A explained

how she had seen another side to E “everyone else was judging him…I didn’t do that…you don’t judge a book by its cover”. A also said that E had a nasty streak.

176. A did not accept Mr Goodwin’s suggestion that E had told her about his conviction for threats to kill and that she only knew about the driving offence. A accepted that she did not carry out a Clare’s law search because she did not have any worries about his behaviour, adding “not until Xmas”.

177. A accepted that prior to being with E she would meet men casually for sex using social media. Mr Goodwin suggested that E, in asking her to delete snapchat, was trying to stop A meeting men for casual sex. A replied “no I was loyal”.

178. A said that E “smiled and interacted and cuddled D…he barely changed her…he would get frustrated”. A said that on some occasions E would say “shut up” to D in a jokey voice. Mr Goodwin suggested that when she described E as being rough with Dshe meant when he winded her and bounced her on his knee. A replied, “yes he was barely alone with her”. A accepted that at the time she trusted E with D and that there were no signs of risk “at that time”. A agreed that is why she left D on the 8th November to go to the shops.

179. A said that E on the 8th had had a few beers - “he was never drunk; his body was used to it”. A denied the suggestion that E had said that A had gone to the shops to purchase sweets and cigarettes. When Mr Goodwin asked if E had been in a good mood before she went to the shops she replied, “yeah he was alright”. A said that before she left D was a bit grizzly “but nothing to worry about” and that as far as she was aware E was fine managing her. A said that she thought that she had not put anything in her basket before E called, adding “I think I picked up a pack of chicken, then he called, and I put the basket down where I stood and left”. A agreed with Mr Goodwin that she was probably gone for only two to three minutes.

180. A confirmed that E sounded panicked on the phone and that when she arrived, she could see that he was concerned about D. A agrees that she grabbed D quickly “playing pass the parcel both quite ‘rushy rushy’,

her head is probably going all over the place". A could not remember who moved D from the mat to the floor adding "I think E put her on the carpet".

181. On the 11th November A said that before she went upstairs D was a bit grizzly. A explained that C's bedroom was above the living room where she left E with D. A said that she heard D screaming but she didn't hear E say anything whilst she was upstairs. A recalls being halfway down the stairs when E said "she is going into one". Mr Goodwin took A to page 1944 of her police transcript where the police officer asked A if she heard D making any noises to which she replied, "No, she was completely fine". Mr Goodwin put to A that she did not tell the police that Dwas screaming, to which she replied, "I might have got the question confused - I meant when I left her to put C to bed". Mr Goodwin's response was "it is a clear question" and A replied, "my mind was everywhere". A did not accept Mr Goodwin's suggestion that she came down the stairs because she had finished putting C to bed. A said, "no I came downstairs because D was screaming". Mr Goodwin took A to her witness statement given to the police where again she makes no reference to Dscreaming before she came downstairs, (1849). A's explanation was that "my head was all over the place".

182. A told Mr Goodwin that she did not see E pick D up – "she was in his hands....I grabbed her from him I may have handled her rapidly...we both handled her a bit panicking....I don't know how fast (sic)". A also said that E "takes her when he does CPR....I put her on the floor when he was on the phone, he took her from me" . When Mr Goodwin suggested that this was all done in a "rapid and panicked way", A replied, "more or less". A accepts that she had told the social worker that E would not hurt a fly and that she was upset when he was arrested. When asked if she thought, at that stage, that E would hurt D she replied "no". When asked if A had any basis for then thinking that E had injured D she again replied "no". A then said this: "once we played slapsies, I never hit him and he never hit me apart from Xmas Eve when he was aggressive". A accepted that E did take Slapsies a bit too far and that she had left a handprint on E's back.

183. A accepted that F held strong views about E and that she told her clearly that he was not a good man. A also agreed that she told F that

she liked him, and he was different behind closed doors. A informed Mr Goodwin that she had spoken to F since the couple had split up, and that she is still very critical of E and that "she thinks that he injured D but she has no evidence".

184. In respect of the alleged threat made by E to F on A's birthday, A says that he threatened F in front of her. Mr Goodwin suggested that if he did make those threats was it not possible that he was joking, to which A replied, "he didn't seem it - I stayed silent". When Mr Goodwin asked why A had not left E sooner, she replied "the way I work, it takes me a lot of thinking and progress for me to say that's it (sic)". Mr Goodwin asked A if she delayed telling F about the alleged threat that E had made in December 2023 because at the time she didn't take it seriously. A replied "yes".

185. Mr Goodwin put to A that E had not facetimed her saying that he had cut his throat. A said, "I saw blood that is why I phoned his mother". A explained how C was waiting to be assessed for autism and that his speech in November of last year "was not that good….he wouldn't say sentences …..it was difficult to understand him…..it was difficult for strangers to understand him". A informed Mr Goodwin that E had told C off and that C "did not like being told off by anyone". A said that C may have heard her and E playing slapsies, but he would not have seen it. A said that E "has never hurt my eye in front of C, I think he is wrong about that …I was surprised he said that…he has never come out with that before……He doesn't understand questions when asked because of his learning issues". A accepted that E had told her that he did not want to bond with C in case they split up as it would be confusing for C. A says that she had no memory of E calling C 'a fucking spastic' and accepted that was something, if said, that she would have remembered.

186. A accepted that she took an overdose on the day that D was discharged from hospital because "my kids were not coming back to me". A said that at the time she was carrying E's baby, and the overdose seemed to have caused her to miscarry. A said that E was very upset and accepted Mr Goodwin's analysis that E went from believing that he had two children with A to having none. A explained that on Christmas Eve they were at E's parents' house and E "threw in my face the overdose and the miscarriage so I walked out". Mr Goodwin put to A that E denied

having pulled her back. A accepted that she did remain at E's parents' house over Christmas and that she and E shared a room.

187. In response to questions from Miss May A said that she could not recall telling F that E had called C 'a fucking spastic'. A accepted that F had a better memory than she adding that "my meds make me forget somethings, I try to push horrible things to the back of your brain and then you tend to forget". A accepted that C was wary of E and that he had good reason to be wary. When Miss May asked why A had not left E sooner, she replied "I needed support my mums in London and my dad works all of the time". A explained how she had moved from the London Borough of Lewisham where her family lived to Essex and then Kent. A accepted that she should have left E when he told C to "fuck off until you can talk….he said that just before D was ill" and when asked why she did not, she said she was blinded by love. A accepted that she had put her relationship with E before C.

In response to questions from Mr Hooker A said that she did not take the threat that she alleges E made against F in December 2023 seriously - "I laughed it off it was all words". The only threat that A could identify as a threat against herself was the incident when E told her to choose between seeing him or her twin cousins adding "I don't know if I would call it a threat".

188. Mr Pidduck took A to E's police transcript of the 15th November 2023 in which he said that there was a DNA test that had confirmed that he was D's father (1874). A replied, "he told his mum there was a DNA test but there was no DNA test when she asked to see it he said that he had burnt it".

189. A drew a plan of her home which shows that C's bedroom was above the living room. In re – examination she said that the door to C's room and the door from the foot of the stairs to the living room were all open during the 8th November incident. I took A to the police transcript of November 2023, (1924) in which she does not mention on the 8th November E during the phone call that D had gone floppy and that her eyes had rolled back. I also asked A to look at paragraph 5 of her witness statement of March 2024 (183) where she says, "I asked him what was wrong ….and he didn't say". A replied that "I was trying to

process ……..it's a bit of a blur….my memory is improved from speaking to F". A said that the entry in the police note at page 1837 which said "parents stated ….when she came downstairs, and E was performing CPR" was incorrect.

The maternal step grandmother F

Police witness statement dated the 18th April 2024

190. F said that she first time she met E was on the 7th October 2023 which was her step daughter, A's birthday. F said this on page 1857: "When I first met [E] I found him to be quite arrogant, [he] made a comment about coming through my front door if I didn't answer the front door later on for him to pick up D. This was not a good first impression to me. [E] also stated he would only have one drink as when he drinks, he gets into fights. I made a comment to [A] to ask if he was trying to intimidate me: but [A] laughed this off. I also said to [A] "you don't half pick em".

191. F said that on the 8th October 2023 she received a text message from A which read "don't let Lewis take D". F did not respond to this message but the following day she received another message from A in which she said, "don't worry about the last message I was drunk and pissed off". F said that the following day A told her that E had come to her home, that he had been arguing and "being loud" with A, and that he was keeping everyone awake and that he had got into a fight (1858).

192. On the 8th November F recalls receiving a call from either A or E, (she cannot recall who) "telling me D had a fit and could I pick up C as an ambulance was coming". The ambulance crew were in attendance when F arrived. F says that she asked A what had happened and A replied, "I don't know I was up the shop with C, and E called and said she had had a fit" (1858). F said that both A and E made the ambulance wait for them to finish their cigarettes.

193. On the 11th November 2023 F say that she received a call from E , and that when "I answered the phone [E] said "you need to get round her now to get C". I replied "who the fuck do you think you are talking to"[E] then said that D had had a fit and he was waiting for ambulance. With that I got straight up and went straight round to [A's] property" (1858).

194. On arrival F said that A came down the stairs and that she was hysterical. When F asked A what had happened F reported A as saying, "she had a fit, she had a fit" and that she had been upstairs putting C to bed when she was having the fit. F then recounted this: "I was putting C to bed, I heard D scream and when I came downstairs she had stopped breathing". F said that she had responded by saying "what the fuck, they don't scream when they stop breathing", and that A kept saying "I don't know" (1859). F said that she asked who was with D when she screamed. A replied to E to which F said "oh so once again she was with him on her own when she is having a fit".

195. F alleged that on the 22nd January 2024 she reported E to the police as A had informed her that E had made a threat that if F did not turn up for contact or if she stopped him seeing D "that he would come through my front door and the only person that would be standing is D". At the time F believed that this had been a recent threat. It later transpired that E was alleged to have made this threat around Christmas time. F alleged that A had told her that E "had threatened her if she changed her statement and told Police he had hurt D" (1860). F on the same page makes this comment: "I have asked [A] on numerous occasions what happened to D as my gut instinct tells me she is not telling the truth, but [A] has stuck to her original story. I feel like there is something missing in her story, but I don't know what it is. [A] did tell me that [E] was quite rough with D when he was patting and burping her". F also claimed that E called her a "fat cunt" and a "slag" on a whatsapp chat that had been set up on the 20th November 2023 for family members to be able to keep up to date with D's progress (1860).

F' witness statement dated 30th May 2024

196. In this witness statement F addressed the alleged threats to kill made by E in or around Christmas 2023 and allegedly reported to F by A on the 19th January 2024.

F' witness statement dated the 28th October 2024

197. In this statement F took issue with some of the matters recorded by a social worker during a conversation that F had with her on the 24th November 2023. A referred to the 11th November incident and said that when E called her his actual words were "you need to fucking come round and get this boy", (201). On the same page F added "that also on this occasion, I asked A what happened and where she was. She replied "I was putting C to bed and I heard a scream and ran downstairs. He was resuscitating her and then he screamed at me to phone an ambulance".

F's oral evidence

198. In chief F said that she had only met E on three occasions - the first on A's birthday on the 7th October 2023 and then on the 8th and 11th November 2023. F described E as a "pig he was aggressive and intimidating A was infatuated with him … he was not a nice man". A in chief said that E had not directly threatened her, nor had she seen him handling D in an aggressive way.

199. F told Mr Woodward – Carlton that she did tell A how she felt about E, but she could not recall if this was the day after A's birthday nor could she recall A's response. F said that on each of the three occasions that she had met E he "stank of alcohol". F explained how E on the 7th October was wearing big chunky rings but "I did not think deeply into why he had rings - I think he thought he was a gangster". F said that she did move beer bottles when the paramedics arrived, but she could not say how many bottles there were or who had drunk the beer. F said that she had asked A why she allowed E to speak critically about C, but she could not recall A's response. F told Mr Woodward – Carlton that she had told A "a few times…not to leave him with the kids as he was not a nice person". F informed Mr Woodward – Carlton that neither A nor E had told her that they may have accidently hurt D.

200. In response to questions from Mr Storey F said that A handled D appropriately and that she had a close bond with the children. F also said that since November of last year A had not missed any of her contact sessions with the children.

201. In response to a question from Miss May, F said that A had informed her that E would describe C as a "fucking spastic" but that she could not comment if he had behaved in a concerning way around the children as she had not seen him interacting with them. F explained that when C first came into her care E'S name could not be spoken as it would cause C to have a look of panic on his face. F did not know if E's alleged comment "come and get this fucking boy" was made in C's presence.

202. In cross F accepted Mr Goodwin's assessment that she did not like E and that he rubbed her up the wrong way. Mr Goodwin referred to the alleged threat made on A's birthday where it is said that if F refused to let him in E would come through the door. Mr Goodwin suggested that

this may have been said as a joke to which F replied, “yes its possible”. F also said that A’s opinion of E changed after their relationship ended.

Police transcript dated the 15th November 2023

203. On page 1876 E said this about the events of the 8th November 2023. “Obviously she just quickly run to the shop to go and get dinner bits. So I'm sitting there. She was all right. She got a bit raggy so I just put my hand on her belly and just, like, went like that. So obviously she wriggles about, and she started smiling so I thought, "Ah, lovely". Went to put the telly on, the next minute she’s gone into, like, hysterics and then just went all floppy and everything. But before she done that, going in one, I've got on the phone to A to get her arse back from the shop because I didn’t know what to do. I just panicked. So I rang her and then as soon as she’s turned up then I rung the ambulance”. On page 1902 E said that when he called A “I stayed on the phone”.

204. When asked to recount the events of the 11th November E on page 1869 said this: “She went stiff first. Then obviously she started -- 'cos I've got it on my phone, on video of what actually went on apart from when she froze up. But she started crying after a feed. Then obviously A put her son to bed upstairs. She’s come back down because she’s heard her crying. She’s got a hold of her. Rolled her on her side because she was projectile vomiting”. On page 1870 this is said: “she sat on the sofa with me. So she’s there, so I was sat here, she was on the cushion. And then that was it because obviously she’d just fed so I had to burp her and everything. And then she went into one”. E said that “She’s just screamed, like, she was crying 'cos she’s still hungry. And then that's when she just went off on one. But A come straight back down the stairs. That's when she took her out of my arms 'cos she just went all stiff. So A took her out of my arms”. E said that A was present on the 11th November, (1872). E said that on the 11th November before D had been unwell he had consumed two beers, (1894). On page 1900 E said “she was halfway down the stairs anyway. She was upstairs just putting C up to put a DVD -- but she was halfway down and obviously when she hears her screaming, I was, like, "Babe". I just shouted out, "Babe".

205. E on page 1882 described his feeling about spending time with D in these terms:

> “I love it. I absolutely love it. I'm getting smiles, like, the majority of the time I'm getting smiles. She’s happy, cuddly. She talks to me as

babies do. So I can sit there, have a conversation with her and I'm happy. Like, I'm getting to spend time with my first daughter".

206. E said that there were "not really" any "side effects" if he did not take his ADHD medication "presumably it keeps my brain levels steady. Instead of me going at a million miles an hour it slows you down" (1896).

207. When E was asked about his relationship with C, his response was "don't have anything to do with him", (1887). E on the same page said "If it doesn't work then I know I'm going to just see D. I'm not going to interact with and get a bond with a child if it's not going to work. I've shot myself in the foot too many times to do that".

Police transcript dated 15th May 2024

208. During this interview E responded to all questions put to him by saying "no comment".

E's approved and unsigned witness statement January 2024

209. E referred to events at the "end of October 2023" and said this on page 161:

> "I cannot recall there being any issues with D during this week, but I do recall her being quite fussy. D only seemed to settle for either N or myself. This would be for things like feeding, being changed and going to sleep".

210. In reference to the events on the 8th November E asserted this on page 161:

> "I was sat on sofa with D on my chest after a feed. I had winded D. A popped out to get something from the shop which is about 2 minutes' walk away. I then noticed about a minute after A left that D went stiff and cold. I phoned A straight away as I didn't know what to do and told her to get back as soon as possible. A came straight back so was at home within a minute of me calling her. When A got back she took D from me and I then phoned 999".

211. E set out his recollection of the events of the 11th November on page 163, the relevant elements of which are as follows:

"b. I went back over to A's late afternoon that day. We had dinner. A put C to bed. I had just made up a bottle to feed her whilst D was in her bouncer in the front room. I picked D up, sat on the sofa to feed her. I then needed her muzzie, so I placed her sitting up in the corner of the sofa so she couldn't fall down. I then picked the muzzie up, then picked D up and she went stiff again. By this point I heard A was coming down the stairs, I shouted for her and she came in the room and A picked her up off me and held her on her side as D started to vomit. I started to record the incident so we had something to show the doctors

c. Whilst I was using my phone to record, I used A's phone to call 999. At first I couldn't get onto A's phone as I was getting the code wrong. d. Whilst on the phone to 999, we placed D on the floor, her eyes rolled into the back of her head. I ended up giving CPR to D that day as well. I think it was about 5 minutes before the paramedics arrived. By that point D was breathing slightly so I picked up D and placed her on the sofa so the paramedic could look at her and put an oxygen mask on. I was very upset and distressed so I went outside to have a cigarette and I ended up hitting the wall. Whilst I was smoking a cigarette I was on the phone to my mum".

212. E denied ever hurting A and described the game of slapsies on page 165 in these terms:

"The only time I can think of that might have been misinterpreted was when we were messing around one night on the sofa and playing "slapsies" – C was up in his bedroom but I guess could have heard us mucking around".

213. E referred to his arrest on the 15th November in the early hours and how he says one of the police officers knocked over his mother and prevented his father from entering the home. E accepted that he got angry "by the situation as it was complete uncalled for, (sic). "

E'S witness statement dated the 21st November 2024

214. This statement does not appear in the trial bundle. E asserted that his ADHD medication "can affect my ability to remember things accurately……I am on the wrong dosage….and this impacts my memory", (paragraph 3). In paragraph 4 E said:

> "I have not caused the injuries on purpose….I think it is entirely possible that I may have accidently moved D after she collapsed in a way that could have contributed to her presentation, my memory is not clear. I think it is possible that A may have mishandled her accidently whilst trying to help her then, (emphasis added). E says that "a lot happened in such a short space of time when D had her seizures as both myself and A were panicking and moving D around and handling her from one to the other".

215. E provided in paragraph 7(a) to 7 (x), as set out below, his account of what happened on the 8th November 2023 prior to the arrival of the paramedics.

a. Throughout the following the TV was always on.
b. I fed D holding her in my left arm and held the bottle in my right hand
c. I lifted her up and put her over my left shoulder.
d. I burped her by patting her bum. I managed to get a couple of burps from her.
e. She then got "raggy" whilst I was holding her on my shoulder
f. When I say "raggy" – I mean she started crying and screaming. It was a stressful cry and when she was doing it she was trying to catch her breath.
g. I then brought her down and held her again in my left arm
h. "I went like that" (This is from the police interview – "I was trying to sooth D by rubbing her tummy with my fingers. She wriggles about and she started smiling so I thought, "Ah, lovely"
i. I placed her on the sofa to my left with a cushion behind her so she was sitting upright.
j. I got up to get the remote controller off the TV stand.
k. At this point A and C left to go to the shop. The shop which is about 2 minutes' walk away.
l. I sat back down on the sofa, lifted D onto me and then lay down on the sofa.
m. It didn't take long for D to fall asleep.

n. She was fidgeting in her sleep.
o. I felt her get cold whilst she was on my chest.
p. She then started shaking.
q. Screaming and gasping for breath.
r. I sat up and moved her from on my chest back into my left arm.
s. She continued to struggle for breath and then went limp.
t. I phoned A straight away. D was still in my left arm and I was using my right hand to use my phone.
u. I didn't know what to do and told her to get back as soon as possible.
v. I said something like "there is something wrong with D hurry up and get back".
w. A came straight back so was at home within a minute of me calling her.
x. When A got back D was still in my arms.

216. E took the following issues with what is noted in the medical records (this appears to be in respect of the 8th November incident):

- He was not lying on a bed.
- D's leg was not shaking,
- One of D's eyes was "all gunky from conjunctivitis so that was shut",
- "D's eyes did not roll into the back of her head – that was the second seizure later in the week".

217. E in paragraph 9 set out his evidence as to the 11th November incident:

a. I went back over to A's late afternoon that day. We had dinner. A put C to bed. I made up a bottle to feed D. Whilst I was doing that she was in her bouncer in the front room. I picked D up, sat on the sofa to feed her. I then needed her muzzie, so I placed her sitting up in the corner of the sofa so she couldn't fall down. I then picked the muzzie up, then picked D up and she went stiff again. By this point I heard A was coming down the stairs (she had finished putting C to bed so was coming down from that), I shouted for her and A came flying into the room quickly and took D out of my arms rapidly. She grabbed D and pulled her in, and held her on her side as D started to vomit. I started to record her on my phone so we had something to show the doctors.

b. Whilst I was using my phone to record, I used A's phone to call 999. At first I couldn't get onto A'ss phone as I was getting the code wrong.

c. I couldn't get into the phone so I gave A the phone and I took D from her. A then unlocked the phone. A called 999.

d. Whilst on the phone to 999, we placed D on the floor. Her eyes rolled into the back of her head. I ended up giving CPR to D that day as well. A left the phone with me and left the room. I think it was about 5 – 10 minutes before the paramedics arrived.

e. At some point A phoned F to come up to the house as we needed someone to look after C.

f. By that point D was breathing slightly so I picked up D and placed her on the sofa so the paramedic could look at her and put an oxygen mask on. I was very upset and distressed so I went outside to have a cigarette and I ended up hitting the wall. Whilst I was smoking a cigarette I was on the phone to my mum. Whilst on the phone I saw a fire engine come down the road – it turns out they have come to help the paramedic as an ambulance had not arrived (the paramedic arrived previously in a car on her own). An ambulance turned up eventually to take D to hospital.

g. Whilst they were getting D into the ambulance, A ran to the shop to buy some things. Then when the ambulance was ready to leave, A was stood at the back smoking a cigarette. I remember she insisted on finishing the cigarette before getting in and later I had a go at her about this when we were at the hospital because it delayed the ambulance leaving".

218. E said that he considered that one of the doctors caring for Dr Singham "judged me from the second I was there because of the way I looked", (paragraph 13). E denied making threats about F as reported to F by A. E says that "A has made these threats up".

219. E referred to the incident when it is said that C shook D's pram. E said that on a day that he cannot remember A called him and said that "C was kicking off .....and C threatened to go and shake D and wake her

up". E did not attend at A's house, and he asserts that "I never saw C shake D or her pram and only know of this one occasion when A told me he had threatened to do so" (paragraph 27).

220. E denied ever cutting his throat whilst in a relationship with A and maintained that he has cut his throat on two occasions when his grandfather passed away and in 2022 following the death of his friend, (paragraph 29).

E's oral evidence

221. In chief E said that his ADHD medication "slows my brain down" and that his antipsychotic medication makes him "more mellow". E confirmed that he was on this medication in October/November 2023. E said that for a period this week he had stopped taking Quetiapine because "I was like a zombie". E explained that he had seen his GP and he was back on his medication and that "I feel better more chilled …no 100%…I need it to kick back into the system".

222. In chief E described that he was "over the moon" when he was told that Dwas his daughter and that when he discovered that he wasn't, "it destroyed me…I didn't know what to do". E explained how he loved being a father. In chief E said that when he fed D she would "sometimes play up…I would get frustrated not angry…I felt like I was not good enough…I would go out and have a fag". E said that he did not shake D or injure her and that he did not know who had injured her.

223. On the 8th November E told Mr Goodwin that he could not recall how D was before A went to the shops. E said that A was only gone for a minute or a minute and a half. E said that he "probably had two beers that is not a lot…two beers don't get me intoxicated". E says that when A returned "she took D off me…….we moved her a lot quicker than we should have done".

224. On the 11th November E informed Mr Goodwin that he had made up a bottle and that he and Dwere on the sofa, that she was fidgeting, "she was crying but I didn't know what sort of cry to look for then, ….then she went floppy I heard A coming down the stairs and I shouted 'Babe come here….she took her off me…I recorded it because the first time the hospital didn't carry out any scans". When Mr Goodwin asked E if he could remember how he handled D he replied "probably moving

her too quickly…I was a wreck just panicking …I didn't know what to do …I was lost".

225. Mr Goodwin said to E that A had reported that at times he could be heavy handed. E's response was "with me I am a bull in a china shop …I would bounce her on my leg too quickly…she was a big baby…when I patted her on her back, I patted her too hard that is why I changed to patting her on her bum".

226. In cross Mr Woodward – Carlton took E to the social worker Miss Halfpenny's witness statement of the 28th November 2023 and in particular to that part of the statement that sets out some of E's offending (131 see above). E refused to accept that he had been convicted for coercive and controlling behaviour and insisted that it related to a driving offence. E did accept that in 2019 he had made threats against his ex-girlfriend and her family and "I went to prison for it". E also accepted that he had two convictions for domestic abuse against ex partners. Mr Woodward – Carlton put to E that the threat that he had made to F, (which he is said to have conveyed to A in December 2023), was similar to the threat that he had made previously and for which he had been imprisoned. E denied making this threat and stated that he would not have done that as it risked him being returned to prison and not then being able to see D. E said that A had made this up after their relationship had ended. E maintained that he had told A within a week of them being together that he been imprisoned for threats to kill and she responded by saying that was the past.

227. E accepted that he didn't like F and that he would refer to her as a 'fat cunt' adding "she judged me from day one". When Mr Woodward – Carlton suggested that this may have been because he had threatened to break down her door to gain entry to her property E replied, "I can't remember saying that".

228. Mr Woodard – Carlton said that E had also told F's son that he would often get in to fights. E replied only when I drink vodka. Mr Woodward – Carlton enquired of E if on that occasion he was trying to show off or intimidate F and asked if this was generally how he talked to people by threatening them. E replied "no". E accepted that he can get angry quickly "with certain people I can get a bit rowdy". Mr Woodward – Carlton said that the video of his arrest showed that E was aggressive. E agreed and said that "one of the police officers pushed my mum and I said I would headbutt him you don't push my mother". Mr Woodward –

Carlton put to E that he must have known that if he "kicked off" he would be arrested. E replied, "I don't care as long as I get a few punches in".

229. E admitted that he drank most days "through the week a maximum of three beers per evening". E admitted that on A's birthday he did get involved in a fight because he intervened between a couple and the male tried to hit him with a scaffolding pole. E could not recall arguing when he returned to A's home and denied keeping the neighbours up and trampling over people. E said that he wasn't angry or drunk but that he may have been tipsy.

230. Mr Woodward – Carlton took E to the police note of the 14th November 2023 which recorded that E had said that he "has ADHD and not on the right medication, and can be frustrated and snappy and can be impatient", (1839). E maintained that he was on the correct medication when the November events happened and said that he could become frustrated but not angry.

231. E denied the suggestion that when D cried he would sometimes snap and say shut up. E said "that is not true …if I had a bad day I wouldn't go there why would I want D to see that….they can still sense it when an adult or parent is frustrated". Mr Woodward – Carlton took E to A's police transcript of the 30th April 2024 where on page 2019 A says "when he hears a screaming baby, he just tells Lilly to shut up". E said that this was not true and that "I may have said it jokingly". E did not accept the suggestion that if he was in a bad mood he would say it more aggressively and said "I hide it away kids don't need to see that".

232. E accepted that when he would feed D he could become frustrated and upset because he could not feed her and that he would then give D to A "she is the mum she knows how to do it". E agreed with the suggestion that D could "play up" - "even for A she would push her bottle out…but that's what kids do". Mr Woodward – Carlton asked E what he would do if A was not there. E said that he would call his own mother. If neither were available "I would wait a few minutes and try again then have to wait to see if she takes the bottle….you've got to be patient with kids". E when asked if he was patient replied, "yes and no" and agreed that it can be challenging when you can't get the response you want. Mr Woodward – Carlton put to E that he can act without thinking and that punching the wall on the 11th November was not a

sensible thing to do. E reply was “everyone is different as to how they destress themselves”.

233. E denied telling C to “fuck off and come back when you can speak properly”. Mr Woodward- Carlton suggested that C was scared and wary of E and that he would stand in the doorway. E said that he did not know if C was wary of him and that “I would just concentrate on D….I didn’t speak to him ….I didn’t want to interact with him ….my focus was on D”. E also denied that he had called C a ‘fucking spastic’ adding “he has a speech problem I am not going to take the piss out of him”. Mr Woodward – Carlton took E to the witness statement of Fiona White a clinical sister at Medway Maritime Hospital dated the 9th November 2024 (65 supplemental bundle). In paragraph 5 Miss White refers to the events of the 13th November 2023 and says this: “I went back into the cubicle and confirmed identity details with E, I do not recall if A was still on the loudspeaker via the phone at this time. Whilst I was still in the cubicle talking to E, he stated that if this was an injury, the only way it could happen was if the 5-year-old sibling did something, as his behaviour was bad, and he has attention deficit hyperactivity disorder (ADHD)/autism. I did not question further as to what he meant by this”. Mr Woodward – Carlton put to E that he was trying to blame C. E response was: “I don’t remember saying that …..I would not have used big words, [referring to attention deficit hyperactivity disorder] ….he has not got the strength to do anything”. Mr Woodward – Carlton reminded E of F’s evidence that for months and months the mention of his name caused C to panic. Mr Woodward – Carlton put to E that “you were unpleasant to that little boy and that is why he was scared of you” to which E replied “never”. That is why, said Mr Woodward – Carlton, C had given the thumbs down for you to the social worker and the police officer. E’s response was “I don’t know - I was not there”.

234. In her police transcript at page 1922 A had said that E on the 8th November had been a “bit snotty…..he had a bit of dust an all that up his nose…where He’s been helping his mate’s nan and grandad”. E told Mr Woodward – Carlton that he could not remember that and that he was fine. E said that before A went to the shops, he probably had two beers. E did not remember A offering him paracetamols, (1923). Mr Woodward – Carlton put to E that in his January 2024 statement E did not mention that Dwas crying. E’s reply was “I can’t remember”.

235. Mr Woodward – Carlton took E to the medical entry on the 12th November 2023 when D was seen by Dr Ramadan, (the note begins

history from mum and dad). Mr Woodward – Carlton said that the note said, “laying on dads belly, started screaming, then went limp, cold and gave mouth to mouth breaths” (1046). E agreed that D was on his belly and that she went limp but “not screaming - it’s not right”. Mr Woodward – Carlton took E to the ambulance note for the 8th November at page 1640 which records “patient began crying so dad picked her up to console her”. E explained that to console D “I tickled her belly with my fingers …[and] it was possible that she started crying”. E said that he could not remember if D gasped for air. E said that he remembered D’s eyes rolling on the 11th November but that he did not think that they rolled on the 8th November.

236. E said that he could not remember if on the 8th he was trying to feed D. Mr Woodward – Carlton took E to his police transcript where he confirmed that he had just fed D, (1880). E responded by saying “ I cannot remember”. Mr Woodward – Carlton suggested that D had just fed but she was still hungry and whinging, but you couldn’t feed her anymore as she had had enough. E replied, “I am not 100% it could be”. E denied shaking D on the 8th November 2023.

237. Mr Woodward – Carlton referred E to paragraph two of the witness statement of the social worker Miss Stone dated the 29th October 2024. Mr Woodward – Carlton pointed out that Miss Stone had observed that neither he nor A were able to remember the details of when D was having her seizures and that they provided different dates and times as to when the seizures had taken place. E agreed with Mr Woodward – Carlton that he found it difficult to remember the details. Mr Woodward – Carlton referred to paragraph 3 of E’s statement of the 21st November 2024 where he asserted that his medication adversely affected his memory. E said “I get bits and pieces….some bits are blurry”. Mr Woodward – Carlton put to E that most of the accounts that he has given as to the events in November 2023 are quite brief and then he provided real detail in paragraph 7 of his recent statement in which he set out about 30 individual details. Mr Woodward – Carlton asked when E had come up with the list to which he replied, “when they asked me the questions”. E accepted that his memory was still a bit blurry and Mr Woodward – Carlton asked should we be cautious that the detail in paragraph 7 may not be right. E replied “ I am not able to remember every detail”.

238. E confirmed that on the 9th November A had found photographs of nude women on his phone and that she was angry and he left to have a cigarette because A was trying to embarrass him in the waiting room.

239. On the 11th November E said that he believed that he had consumed one beer before attending A's home whilst out with his friends and that he had a couple of beers whilst with A. Prior to the collapse E said that he has "no clear memory of when D was fed". E then said that "I vaguely remember starting to feed her". When asked if D cried E said, "I think so". E said that he rocked Don his knee. Mr Woodward – Carlton said that he had previously said side by side and asked, "so which was it". E replied, "I can do either I don't remember".

240. Mr Woodward – Carlton asked if D was crying or screaming reminding E that A was clear that D was screaming. E response was "babies cry - it could be classed as screaming". Mr Woodward – Carlton said that A says she was handed a floppy baby. E replied, "no she took her off me". Mr Woodward – Carlton said that in previous accounts that have been given it is just said that A picked D up - there is no mention of her being moved quickly and this only became E's account in his final witness statement . E replied "she has gone floppy…we were moving her very quickly…we should have been more careful when you panic like that you don't know what to do". Mr Woodward – Carlton put to E that it is clear from the video that A supported D's head when she took her and that she was holding D gently. E accepted that he had seen the video recently and said, "I can't remember how she held her".

241. E accepted that in the video he was agitated because he said he couldn't get into A's phone. E denied being angry prior to that. When Mr Woodward – Carlton put to E that these incidents had only occurred twice when he was alone with D, he said, "the second time A was in the room". Mr Woodward – Carlton put to E that it was not being suggested that he intended to harm D but in an instant, he lost control, and he handled her far too roughly and that he had panicked perhaps because he had not been able to feed her. E replied, "sometime she would take the bottle sometimes she wouldn't - it was hurtful". When Mr Woodward – Carlton asked E if he was suggesting that A had hurt D he replied "no not purposively …but moving her too quickly…we could have moved her too quickly".

242. As for the events of Christmas Eve, E said that he had grabbed A's wrist "not to harm her but to get her back so we could talk". E said that

he only asked A to delete her contacts on Snapchat of the men that she had been sleeping with because he didn't like the fact that they could still contact her. E maintained that he hadn't asked A to delete her friends. E said that he had not demanded that A delete her previous acquaintances and that he only asked her to do so. E denied cutting his throat when he was with A and said that if he had done so his parents would have taken him to hospital. E denied that he had cut his throat to control A.

243. In response to a question from Miss May, E denied having told C off, adding "that is down to her - I just suggested a punishment". E said that he did not tell C to "fuck off until he could speak" or that he had called him a "fucking spastic". E said that "I wouldn't say that to a child". E could not offer an explanation as to why C was scared of him. E also denied that on the 8th November he had telephoned F and said "come and get this fucking boy".

244. E informed Mr Pidduck that he carried out the DNA test online. E said that A had sent this off and that she told him of the result over the phone, (c/f 1874). When Mr Pidduck put to E that the subsequent DNA test showed that he was not the father E replied, "she must have lied to me". E denied that he had told his mother that he had burnt the DNA test result as maintained by A.

245. In response to some question from me, E said that he did refuse to look after C on the 8th when A went to the shops. E said that he had said that A was the mother, and she must be responsible. I took E to his witness statement on page 131 where he described a period of time when at the end of October 2023 A's sister N stayed at A's home with her son. In his statement E said "I cannot recall there being any issues with D during this week but I do recall her being quite fussy. D only seemed to settle for either N or myself. This would be for things like feeding, being changed and going to sleep". E said that feeding Dwas hit and miss but that A had difficulties in settling D and that he and N were able to do so. With reference to page 1044 E said that what he meant by him having "rocked" D, was that he would either rock her in his arms or he would place one of her legs over his and then he would bounce Don his knee. I asked E to look at his witness statement of November 2024 where he said that he was "rubbing her tummy with my fingers" and the transcript of November 2023 , (1877) where he said he put his "hand on her belly". E said that he had used his fingers not his hand.

The Law.

The s.31(2) threshold criteria

246. Section 31 (2) of the Children Act 1989, (CA) provides as follows:

> "A court may only make a care order or supervision order if it is satisfied -
> (a) that the child concerned is suffering, or is likely to suffer, significant harm; and
> (b) that the harm, or likelihood of harm, is attributable to—
> (i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or
> (ii) the child's being beyond parental control".

247. The burden rests with the local authority to prove both limbs of s31(2), the significant harm condition and the attributability condition. Harm is defined in s31(9) of the CA. It includes ill treatment, (including sexual abuse and non physical ill treatment), and the impairment of health, (physical or mental health) and the impairment of development, (which includes physical, emotional, intellectual, social and behavioural development). The impairment of health and development includes seeing or hearing the ill treatment of another.

248. The definition of 'significant' does not encompass a commonplace failure or a feature of human inadequacy - it denotes something that is "considerable noteworthy or important" , Humberside County Council v B [1993] 1 FLR 257, (a definition endorsed by the Supreme court in Re B (Care Proceedings Appeal) [2013] 2 FLR 1075 SC).

249. It is not disputed that D suffered a subdural haematoma and retinal haemorrhages. The case does not therefore turn on a determination as to whether the significant harm condition is satisfied. This case turns primarily on the attributability condition i.e. whether the injuries were caused by E.

The presence of risk factors and protective factors

250. In Re BR (Proof of Facts) [2015] EWFC41 Jackson J (as he then was) held that the court should evaluate if applicable a number of risk factors and protective factors. Those risk factors/protective factors can provide

the framework within which the court can analyse and evaluate the evidence. Jackson J made it clear that:

> "In itself, the presence or absence of a particular factor proves nothing. Children can of course be well cared for in disadvantaged homes and abused in otherwise fortunate ones. As emphasised above, each case turns on its facts. The above analysis may nonetheless provide a helpful framework within which the evidence can be assessed, and the facts established" (paragraph 19).

251. The court should distinguish between a risk factor that has been proven on the balance of probabilities with a risk factor that has not been formally quantified. As MacDonald J said in Re P (Sexual Abuse: Finding of Fact Hearing) [2019] EWFC 27, unquantified risk factors should be approached with considerable caution. If the court finds that one of the risk factors has been proven on the balance of probabilities the court may, to the extent that it sees fit in the particular circumstances of the case, take account of such risk factors when determining if a parent on the balance of probabilities has committed the alleged abuse.

252. Risk Factors: those factors listed as indicating risk are said to be physical or mental disability in children that may increase caregiver burden, social isolation of families, parents' lack of understanding of children's needs and child development, parents' history of domestic abuse, history of physical or sexual abuse (as a child), past physical or sexual abuse of a child, poverty and other socioeconomic disadvantage, family disorganization, dissolution, and violence, including intimate partner violence, lack of family cohesion, substance abuse in family, parental immaturity, single or non biological parents, poor parent-child relationships and negative interactions, parental thoughts and emotions supporting maltreatment behaviours, parental stress and distress, including depression or other mental health conditions and community violence.

253. Protective Factors: those facts considered to be protective were said to be a supportive family environment, nurturing parenting skills, stable family relationships, household rules and monitoring of the child, adequate parental finances, adequate housing, access to health care and social services, caring adults who can serve as role models or mentors and community support.

Findings of fact must be based on evidence

254. Findings of fact must be based on evidence, which can include inferences that can properly be drawn from the evidence. Findings of fact must not be based on suspicion or speculation, (Munby LJ in Re A (A child) (Fact Finding Hearing: Speculation) [2011] EWCA Civ 12).

The inherent improbability of an event having taken place

255. The inherent probability or improbability of an event having taken place has no impact upon the standard of proof (the balance of probabilities) that the court must apply. Jackson J in Re BR (Proof of Facts), [2015] EWFC 41 offered this guidance:

> "The court takes account of any inherent probability or improbability of an event having occurred as part of a natural process of reasoning. But the fact that an event is a very common one does not lower the standard of probability to which it must be proved. Nor does the fact that an event is very uncommon raise the standard of proof that must be satisfied before it can be said to have occurred".

The court should not consider the evidence in separate compartments

256. The court must reach a conclusion in respect of each separate allegation, but it must take care not to compartmentalise its analysis. The court must consider the entire canvas of the evidence, and each piece of evidence must be considered in the context of the other evidence, (Dame Elizabeth Butler-Sloss in Re T [2004] EWCA Civ 558, [2004] 2 FLR 83).

Evidence of propensity to cause harm

257. In Lancashire CC v R [2008] EWHC 2959 Ryder LJ, (as he then was) considered the relevance of a finding of domestic abuse between the

parents when seeking to identify the perpetrator of physical harm upon a child. He held that domestic abuse does not of itself demonstrate a propensity of violence towards children. Ryder LJ said this in paragraphs 59 and 60.

> "59. Such evidence may demonstrate that each parent has been or is capable of being physically aggressive or emotionally abusive to the other. The potential for harm to a child in such circumstances is self evident but in order to ensure that it is considered in every case, Parliament has enacted an amendment to the 1989 Act to provide for the same: by section 31(9) as introduced by section 120 Adoption and Children Act 2002 'harm' explicitly includes impairment suffered from seeing or hearing the ill-treatment of another: in colloquial terms, domestic abuse.
>
> 60. However, despite the above, what such incidents do not of themselves demonstrate is that either parent has the propensity to violence towards small children. A clear distinction is to be drawn between the relevance and admissibility of evidence which describes the harmful circumstances in which a child is being cared for and the same evidence when it is used to suggest that a person has a propensity to commit a particular act. In other words, the evidence will be very relevant to harm or its likelihood in section 31(2) and the court's assessment of risk in section 1(3)(e) of the 1989 Act but not necessarily to perpetration. It may be forensically unwise for the court to attach much, if any, weight to this evidence if it is directed only to the question of propensity. This accords with the obiter dicta of Wall J. in Re CB and JB (Care Proceedings: Guidelines) [1998] 2 FLR 211 @ 218, where he said: "Evidence of propensity … is unlikely to be of any assistance in resolving a purely factual issue", (emphasis added) .

258. In Lancashire CC v R & W & N [2013] EWHC 304 (Fam), Mostyn J preferred the evidence of the father who it was alleged had caused a subdural bleed and retinal haemorrhages. The father claimed that whilst carrying the baby he had tripped and fallen and that the child had been thrown from his arms and fell to the ground. Mostyn J noted that the father had been convicted of a number of offences but that it "is relevant to observe that his offences relate to adult males", (paragraph 13). In paragraphs 49 and 50 Mostyn J made these observations:

"49. In judging the father's credibility I do not place any weight on his criminal record as being suggestive of a propensity to assault his infant daughter. The crimes in question, while deplorable, are of a totally different character to the one alleged here. By the same token I do not derive any assistance in my task from the two ugly and unpleasant incidents where the father manhandled the mother. Again, this conduct, which is much to be deprecated, is in a class apart from the conduct which is alleged here.

50. If this was a case of abuse then it was a very bad case indeed because it would not only have involved a violent shaking but then the hurling of N, or the bashing of her face, against a hard surface. It would have been an assault in two parts. This takes the theory beyond a momentary loss of self-control into the territory of sheer malignity. I consider this to be unlikely".

259. In Lancashire County Council v M, F, A & J [2023] EWHC 3097 Hayden J referred to the obiter comments of Wall LJ in Re CB & JB (see above) and noted that Wall LJ had only said that propensity evidence was "unlikely" to be of assistance in resolving a purely factual issue but he did not exclude it. In paragraph 42 Hayden J said this:

"Moreover, and with the greatest diffidence and respect for Wall J, the starting point for consideration of the relevance of such evidence should not be hampered or distorted by a presumption that such evidence is "unlikely" to be of assistance. It will depend on the facts of the individual case".

260. Hayden J underlined the duty on the court to draw on the totality of the evidence, (the wide canvas), when considering whether an individual has on the balance of probabilities caused injury to a child. This wide canvas can include the evidence of propensity to cause harm. Hayden J found the father on the balance of probabilities to have caused harm to a child. In arriving at this view Hayden J noted this in paragraph 61:

"There is here an established pattern of F becoming violent and losing control. This is exacerbated with drug and alcohol consumption, which, as I have stated, the evidence establishes as being used in excess at the relevant time. Also, M and F were living in much more confined circumstances, arising from F's injury. Both, I note, had identified their respective needs for privacy and space.

The changed situation compromised this. I have concluded that F was behaving, as M asserted in her application, violently and personally out of control. I emphasise that all these are ascertainable facts from which reasonable inferences can be drawn. They also establish a propensity for F to lose control, in an extreme way, and to become violent. By contrast, there is no such evidence relating to M's behaviour. Cumulatively, for the reasons that I have identified throughout this judgment, I consider the evidence points markedly towards F as most likely to have caused R's fractured fourth posterior rib. On the balance of probabilities, I find that he did".

The absence of ancillary injuries in cases where it is alleged that a carer has shaken an infant

261. Where it is alleged that a care giver has shaken an infant there are often additional injuries in addition to subdural and retinal bleeding. As in the index case the absence or presence of those injuries must be considered by the court. In Lancashire CC v R & W & N [2013] EWHC 304 (Fam), Mostyn J said this in paragraph 46: "In my opinion the absence of any of the tell – tale concomitant injuries which so often feature in shaking cases is important in helping me to inform the judgment which I must make".

Failure to protect

262. An allegation that a parent has failed to protect a child is a threshold finding which the court must determine independently of any finding of perpetration (King LJ in Re G-L-T (Children), [2019] EWCA Civ 717 paragraph 68).

263. A finding of a failure to protect may have significant consequences for a parent at the welfare determination. It can lead a court to conclude that the children's best interests are not served with remaining with that parent even though that parent may have been wholly exonerated from having caused any physical injury. The court must 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 (King LJ in Re L- W [2019] EWCA Civ 159 paragraphs 63 and 64).

264. In Re L – W King LJ held that the first instance judge was right to find that the father was capable of violence to adult males. However, the judge failed to explain how the father's previous violence towards adult males was transferred to an observable risk of harm to female children. In paragraphs 60 and 61 King LJ said this:

> "60. Ms Williams accepted that it cannot be right to say that any woman who fails to separate from a partner who has been violent outside the home in adult situations is failing to protect her children, although in certain circumstances that may be the case. On the judge's findings, GL has a quick and unpleasant temper and is controlling within his personal relationships. This can be very serious and controlling and coercive behaviour is rightly, in certain circumstances, now recognised as a form of domestic abuse which can lead to a criminal conviction (Section 76 Serious Crime Act 2015).
>
> 61. On the facts of the present case however, these unattractive personality traits and/or the controlling personality of GL did not prevent the mother from acting quickly and appropriately when her child was injured, and she maintained her independence sufficiently wholly to ignore GL's suggestion that L should not be taken to see a doctor. In my judgment, putting together GL's behaviour in the home with his aggression on two occasions a number of years apart on adult men outside the home, do not go anywhere near supporting a causative link such that the mother ought to have known that GL presented a risk of physical abuse to L or the twins".

265. Later events that postdate the proceeding being issued cannot be relied upon to establish a failure to protect unless they are capable of showing what the position was at the relevant time. In Re L- W King LJ said this in paragraph 41 - 42:

> "41. In relation to evidence which emerges, or events which take place between the date of an application for a Care Order and the final hearing, Hale LJ (as she then was) considered the extent to which such evidence can be taken into account in Re G (Children) [2001] EWCA Civ 968.
>
> 42. Hale LJ noted that it is common ground that at the welfare stage, and therefore in an application of the welfare checklist found at

section 1(3) Children Act 1989, the Court can take into account all the information available at the date of the hearing in deciding what order to make, the threshold criteria having been established. The question in that case was whether the Local Authority could rely on later events in order to support or prove a particular state of affairs when the proceedings had begun i.e. in relation to threshold, not welfare. Hale LJ said [23]:

> "…I would agree with [counsel] that later events cannot be relied upon unless they are capable of showing what the position was at the relevant time. But if they are capable of proving this, then in my view they should be permitted for that purpose. It will then be a matter for the judge to consider how much weight they should be given. This will not always be an easy task."

266. In the event that after the injury was inflicted the mother fails to separate from the father that failure cannot be relied upon as a threshold finding of a failure to protect unless it is capable of showing what the position was at the relevant time. In paragraph 48 of Re L – W King LJ said this:

> "That the judge put it in the way that she did in her clarification, seems to suggest that she was saying that the failure to protect arose after the injuries and was consequent upon the mother failing to separate from GL at that stage. With respect to the judge, that cannot be right from either a legal or factual point of view. As Hale LJ pointed out, such factors might well be of significance during the consideration of the checklist under section 1(3) Children Act 1989 at the welfare stage of the proceedings, but not in respect of establishing a failure to protect which predated L's injuries".

The courts' approach to the medical evidence

267. The court does not simply follow the medical evidence without question (A Local Authority v AA [2022] EWHC 2321 (Fam)) nor does the medical evidence take precedence over the other evidence. In Re R (Children: Findings of Fact) [2024] EWCA Civ 153 Jackson LJ said this:

> "It is wrong to describe the medical evidence as the canvas against which the other evidence was to be considered. Medical and non –

medical evidence are both vital contributors in their own ways to these decisions and neither of them has precedence over the other".

268. Expert evidence must be considered in the context of all the other evidence. The roles of the expert and the court are distinct. It is the court that is in the position to weigh up the expert evidence against its findings on the other evidence. The court must form a clear view as to the reliability and credibility of the parents. As Jackson J said in Re BR (Proof of Facts), [2015] EWFC 41:

> "Each piece of evidence must be considered in the context of the whole. The medical evidence is important, and the court must assess it carefully, but it is not the only evidence. The evidence of the parents is of the utmost importance and the court must form a clear view of their reliability and credibility".

269. It is open to the court to take a view contrary to that advanced by the medical experts without the court having to reject that evidence. Charles J in A Local Authority v K, D and L [2005] EWHC 144 (Fam), reached a conclusion as to the cause of death and injury that differed from that of the medical experts. Charles J expressed himself thus:

> "In doing so I do not have to reject the reasoning of the medical experts, rather I can accept it but on the basis of the totality of the evidence, my findings thereon and reasoning reach a different overall conclusion."

270. When determining whether causation has been established, the court must weigh in the balance the possibility that the cause as to a child's injury may be unknown. In Re R, Care Proceedings Causation [2011] EWHC 1715 (Fam), Hedley J made these observations:

> "In other words, there has to be factored into every case which concerns a discrete 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." Jackson J (as he then was) made a similar observation in Re BR (Proof of Facts) [2015] EWFC41: "where there is a genuine dispute about the origin of a medical finding, the court should not assume that it is always possible to know the answer. It should give due consideration to the possibility that the cause is unknown or that the doctors have missed something or that the medical finding is the result of a condition that has not yet been discovered. These possibilities must be held in mind to whatever extent is appropriate in the individual case".

The courts' approach to the medical literature

271. The court is entitled to use the research literature to test and evaluate the cogency of the expert's opinion. The court can ask itself if the research literature supports or undermines the opinion of the expert. The court should not use the research literature as a stand-alone tool to determine what happened to the child, D and A (Fact finding: Research literature) [2024] EWCA Civ 663.

A Lucas direction

272. If it is said that a witness has lied, the court may have to give itself a Lucas Direction, (R v Lucas (R) [1981] QB 720). The application of that direction in family proceedings has been set out by the court of appeal in Re H – C (Children), [2016] EWCA Civ 136 and Re A, B and C (Children) [2021] EWCA Civ 451. A witness may may lie for a number of reasons e.g. a desire to bolster his case, (that may be true), shame or confusion. The fact that a witness has lied about one or several matters does not mean that the witness has lied about everything, and the court should reject all of his evidence. If the court finds that a witness has lied on a material issue that in itself is not direct proof of culpability. As MacFarlane LJ said in H – C paragraph 100:

"Judges should therefore take care to ensure that they do not rely upon a conclusion that an individual has lied on a material issue as direct proof of guilt". A lie can corroborate/support other evidence as to culpability if the lie can be shown to have been deliberate,

(with reference to other evidence in the case), the lie must relate to a material issue in the case and the court must find that the only explanation for the lie is the witnesses guilt and fear of the truth and there are no other innocent explanations for the witness lying such as a desire to bolster his case , shame or confusion.

273. I am not satisfied that this is a case where I have to give myself a Lucas Direction. In accordance with the judgment of Macur LJ in Re A, B and C , (paragraph 58) the local authority has not made any submissions as to any deliberate lie upon which they seek to rely.

The court's assessment of a witness's credibility

274. If a witness has given inconsistent evidence the court should determine if the witness is lying, has a poor memory, is confused due to the stress of giving evidence or has failed to appreciate the importance of accuracy. Lancashire County Council v The Children [2014] EWFC 3 (Fam). In Lancashire Jackson J, (as he was), said this:

> "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".

275. The court should guard itself against making assessments of witnesses solely by virtue of their behaviour and presentation in the witness box. Rather than attempting to assess the truthfulness of a witnesses testimony from the manner in which the evidence is given the court should consider the content of the testimony and determine if it is

consistent with the evidence that the witness has given previously and with other available evidence or known or probable facts, (Re M (Children) [2013] EWCA Civ). The court is entitled to take into account the emotional content of a witnesses testimony when evaluating their evidence, but the court should consider that emotional content within the context of the overall evidential jigsaw (Re J (A Child) [2014] EWCA Civ 875).

Hearsay evidence

276. Hearsay evidence is admissible in family proceedings (Children (Admissibility of Hearsay Evidence) Order 1993. The issue for the court is the weight that it should attach to hearsay evidence (Re W (Fact Finding: Hearsay Evidence) [2014] 2 FLR 703). The court must treat hearsay evidence anxiously and consider carefully the extent to which it can properly be relied upon (R v B County Council ex parte P [1991] 1 WLR 221).

Allegations made by children

277. Children are often poor historians and can therefore be unreliable witnesses. Children are suggestible and the reports that they may make to an adult can easily be misinterpreted and the recipient of any allegation can easily jump to conclusions (Re B (Allegation of Sexual Abuse: Child's Evidence) [2006] EWCA Civ 773). In Re B Hughes LJ said this:

> "For these and many other reasons it is of the first importance that the child be given the maximum possible opportunity to recall freely, uninhibited by questions, what they are able to say, and equally it is vital that a careful note is taken of what they say and also of any questions which are asked. All this and many other similar propositions, most of them of simple common sense, are set out in nationally agreed guidelines entitled Achieving Best Evidence".

Whether the court can make findings that are not advanced by the local authority

278. In Re Y, V and B (Fact Finding: Perpetrator) [2024] EWCA Civ 1034 Baker LJ offered this guidance in paragraphs 55 and 56.

"55. The local authority had only sought a finding that the mother was the perpetrator. The alternative finding that the identity of the perpetrator could not be established on a balance of probabilities but there was a real possibility that the mother or another person was the perpetrator was never canvassed during the evidence or in submissions. It is well established that a judge "is not required slavishly to adhere to a schedule of proposed findings placed before her by a local authority" but may, if there are good reasons, make findings of fact which are not sought by the local authority, provided "(a) that any additional or different findings made are securely founded in the evidence; and (b) that the fairness of the fact finding process is not compromised" (per Wall LJ in Re G and B (Fact-Finding Hearing) [2009] EWCA Civ 10 paragraph 16). In Re A, B and C (Fact-Finding: Gonorrhoea) [2023] EWCA Civ 437, an appeal was allowed against a finding that child had been infected as a result of an act of sexual abuse perpetrated by a mother and her partner acting jointly. That possibility was never raised by any party or the court until after judgment so neither the mother nor her partner had an opportunity to respond, either in evidence or argument. At paragraph 63 of my judgment in that case, I said:

> "It is axiomatic that a party against whom findings are sought in care proceedings is entitled to notice of the findings sought, the evidence on which they are based, and a fair opportunity to rebut them."

56. But the obligation to ensure the "fairness of the fact-finding process" is owed to all parties, including the local authority and the children. If the court in assessing the evidence forms a view that the evidence may support findings on a basis which has not been raised or considered during the hearing, it is incumbent on the court to address that possibility if the potential findings are material to the welfare decisions which it is required to make about the children. That may lead to an extension or even an adjournment of the hearing. But where the findings, if made, would have a material impact on decisions about the child's long-term care, the court cannot avoid considering them, whatever the inconvenience that may cause".

Coercive and Controlling behaviour

279. Coercive and Controlling behaviour is defined in PD 12J paragraph 3 in the following terms:

- “coercive behaviour” means an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten the victim;
- “controlling behaviour” means an act or pattern of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour”.

The parties’ submissions

280. I am grateful to counsel for their helpful written submissions. I do not intend to set them out in this judgment as I am conscious that this is already a very long judgment, and little would be gained by me elongating the same by a rehearsal of the points that are raised. I have considered those submissions very carefully and I have where relevant referred to those aspects of the submissions that I have found to have been particularly pertinent.

281. Miss May for B in her written submissions contends that E’s treatment of C is “sufficient to cross the threshold in respect of C on the basis of likelihood/significant emotional harm”. I have not been asked to make this finding. I have addressed E’s treatment of C as it impacts on my evaluation of those threshold allegations of which I have been asked to come to a view. Miss May has also suggested that A failed to protect C. Mr Hooker for F makes the same submission. Again, this is not a threshold finding that I am required to address. I appreciate that it is open to the court to make a finding that is not pleaded if there are good reasons and provided that any additional findings made are securely founded in the evidence and the fairness of the fact-finding process is not compromised (Re Y, V & B see above). It seems to me that there are good reasons in this case. These findings as they relate to C are likely to be relevant at the welfare stage when the court considers whether the children should be returned to A’s care. They are also likely to impact on any future contact arrangements with B.

282. I am not satisfied however that such a finding is securely founded in the evidence. I am also of the view that such a finding would be unfair to A. A finding that C was emotionally harmed by E sufficient to meet the significant harm condition in s 31 (2) and a finding that A failed to protect C from this harm was not raised on behalf of B until after the

fact finding hearing. A has therefore not had an opportunity to respond either in evidence or in submissions.

Analysis, discussion and findings

283. I am tasked with determining three allegations - whether E shook D on the 8th and/ or 11th November, whether A failed to protect D and finally whether E was abusive. Before I consider the pleaded claim, it seems to me that I must make some determinations on the medical evidence and on a number of specific allegations/submissions which took up a great deal of time during the trial. Those matters, which I have set out below, require a decision as they are likely to inform my decision on the pleaded allegations. In this section I will consider the following matters:-

i. My view as to the medical evidence.
ii. Specific allegations/submissions.
a. E's criminal history.
b. E's arrest on the 15th November 2023.
c. E's relationship and interactions with D.
d. E's relationship with C.
e. My assessment of the credibility of A.
f. My assessment of the credibility of F.
g. My assessment of the credibility of E.
h. The significance of the text messages sent on the 9th November 2023.
iii. The pleaded claim.
a. The events on the 8th and or the 11th November 2023.

- Whether E has been threatening, controlling and/or abusive to A in that.
- On 24.12.23, E assaulted A by grabbing, pinching and yanking her arm.
- In December 2023, E threatened to kill everyone in F's house if he was stopped from seeing D.
- Between September 2023 and January 2024, E threatened to end his life, so as to control or influence the behaviour of A.
- Between September 2023 and January 2024, E coerced A into deleting her Snapchat application and some male friends on her social media applications.

b. Whether A failed to protect D from significant harm by continuing in a relationship with E:-

- Who she knew to be threatening, controlling and abusive.
- Who she knew misused alcohol and drank every day.
- Even though she had suspicions that E may have shaken D or handled her roughly.

The medical evidence

284. In my judgement the four significant issues are the causation of injury, the timing of injury, the existence of alternative explanations for the subdural bleed and finally the lack of any evidence of additional ancillary injuries. I remind myself that it is open to me to accept the medical evidence in this case and ultimately conclude, having surveyed the wide canvas of the evidence, that the local authority has not established on the balance of probabilities that E caused the subdural haematomas and the consequent retinal haemorrhages. The medical evidence is just part of the evidence that I must consider when arriving at my view and it does not take precedence over any other evidence. It thus follows that I must make determinations as to the views expressed by the medico – legal experts to enable me to weave that evidence within the additional evidence that is before me.

Causation of injury

285. I accept Dr Hogarth, Dr Cartlidge and Mr Jalloh's evidence that the most likely explanation for the subdural haematoma is an inflicted injury caused by a shaking mechanism.

The timing of injury

286. I accept the evidence of the medical experts that the timing as to when Dsustained her injury or injuries is dependent upon the neuroimaging and her clinical presentation.

287. I accept the evidence of Dr Cartlidge in his report that "an acute traumatic effusion is found very shortly after the casual event [and that] a frank history of symptomatology will usually pinpoint the moment when the head injury was sustained". Dr Cartlidge identified the following clinical features of acute subdural bleeding: "altered consciousness, pallor, floppiness, impaired breathing and vomiting shortly after the casual event". If the accounts of symptomatology given

by the parents are correct, then I accept Dr Cartlidge's view that the injury was sustained shortly before the emergency services were called on the 8th and 11th November 2023. I also accept the evidence of Dr Cartlidge that the apparent return to normality between the 8th and 11th November "favours there being two casual events" and that two events was more probable whilst one event on the 8th was possible. Mr Jalloh's evidence on this issue mirrors that of Dr Cartlidge that the more likely explanation is that D suffered trauma just before her clinical presentations on the 8th and 11th November.

288. I accept Mr Jalloh in oral evidence accepted the possibility that the traumatic event took place an hour previously and that D's clinical presentation was non specific, so it was not picked up by her parents and that there was then a deterioration whilst D was in E's care. Dr Cartlidge also accepted in cross that the symptoms post-bleed may not be apparent to a lay person until they reach a certain point and that D's apparent normality on the 8th when A went to the shops does not preclude an earlier injury.

289. I accept the evidence of Dr Cartlidge that the fact that D was feeding on the 8th November gives "no reason to doubt that she is a well-baby". I also recognise that Mr Jalloh opined that it is possible for a baby to sustain a brain injury and to still feed and that D's ability to feed is not a strong marker in determining when she sustained the brain injury. I accept Dr Cartlidge's oral evidence that the entry on page 1044 which deals with the 11th November was the moment when D sustained an injury or one of the injuries.

290. I accept the evidence of Mr Jalloh that if an infant presents as being limp/floppy, with apnoea (absence of breathing for a period in excess of 15 seconds), and requires resuscitation, the likelihood is that the trauma occurred just before the collapse. I accept Mr Jalloh's evidence that the episode of trauma would have likely been painful or distressing for D and she would have displayed an immediate change of behaviour such as crying or irritability. I accept Mr Jalloh's oral evidence that the clinical presentation noted on page 1044 makes it more likely that there were two incidents one on the 8th and the other on the 11th November 2023. This aspect of Mr Jalloh's evidence is specifically challenged by Mr Goodwin in paragraphs 32 and 33 of his written submissions and he

urges the court not to rely on it. The basis of Mr Goodwin's submission requires my attention.

291. In his report Mr Jalloh opined that "D sustained an episode of trauma shortly before her presentation on 08 November and after the Court can determine that she was last completely well, behaving and feeding normally" (457). On the 8th November Mr Jalloh's view is that D's presentation was consistent with brain dysfunction, (encephalopathy) associated with a brain injury (paragraph 4.34). Mr Jalloh opined that the second presentation on the 11th was either caused by an additional episode of trauma or a fluctuating encephalopathy and/or seizures. Mr Jalloh returns to this theme when he says this in paragraph 4.39:

> "In summary, D's clinical presentation is consistent with an episode of trauma before her presentation on 08 November and after she was last observed to be behaving and feeding normally. This episode of trauma is consistent with causing the subdural bleeds and a fluctuating encephalopathy, responsible for her presentation on 09 November with irritability and vomiting. She may have been subject to an additional episode of trauma on 11 November shortly preceding her second collapse or possibly this was also due to a fluctuating encephalopathy and/or seizures caused by an episode of trauma on or before 08 November".

292. In my judgement Mr Jalloh in his report considered that the second presentation on the 11th was either caused by an additional trauma or it was part of the manifestation of the brain dysfunction (and/or seizures) that flowed from the events of the 8th November.

293. During the cross examination by Mr Storey, Mr Jalloh said that there was possibly a second incident on the 11th or that D's presentation related to the incident on the 8th. Mr Jalloh offered the same view when cross examined by Mr Goodwin. I agree that up until the point that I asked questions of Mr Jalloh he remained of the view that there was an episode of trauma on the 8th and that the events of the 11th were either a manifestation of that trauma or there was a second traumatic episode. I then asked Mr Jalloh to consider the paediatric clerking note. Mr Jalloh said that this indicates a "profound presentation a profound collapse". When I asked if this made it more likely that there was a second incident

on the 11th Mr Jalloh replied, "I think it does make it more likely the more profound the clinical encephalopathy the more likely that a second episode of trauma preceded that collapse". This latter question flowed inevitably from Mr Jalloh's evidence that this was a "profound presentation a profound collapse".

294. I accept Mr Goodwin's submission that for the first time Mr Jalloh elevated there being a second incident of shaking from one of two possibilities to being the most likely explanation. I do not agree with the submission that there was "no real explanation for the *volte face*". In my judgement the explanation was clear - Mr Jalloh considered the entry in a clinical note which he considered indicated a profound presentation and a profound collapse and then opined that this made it more likely that there was a second episode on the 11th as opposed to it being just one of two possibilities. With respect to Mr Goodwin, describing this evidence as a *volte face* is putting it too high. The evidence that there was a second incident on the 11th was always there. What the medico – legal expert did was to discharge his duties and to consider evidence afresh when placed before him. Following my exchange with Mr Jallow I asked the advocates including Mr Goodwin if anything arose. Mr Goodwin declined to ask any questions. It was, I suggest, open to Mr Goodwin to challenge Mr Jalloh's change of emphasis. I also do not agree with Mr Goodwin that this change in emphasis contradicted the evidence that Mr Jalloh gave to Mr Storey when he described D's benign clinical course after her second presentation. Mr Jalloh's change was in response to how D presented on the 11th when she had a collapse. It was in response to what was recorded in the note which led him to describe the events of the 11th as representing a profound collapse. I do not know if this contradicts his evidence that there was a benign clinical presentation after this event when D was in hospital. That evidence is not before the court. It could have been explored with Mr Jalloh, but it was not. With respect to Mr Goodwin, it is not the function of the court to "disentangle these symptoms in order to determine that her presentation on 11th November 2023 arose from a second incident, as opposed to being the consequence of an incident three days earlier". That is a matter for Mr Jalloh who must then offer his view. Mr Jalloh has done so, and I accept it. I thus decline Mr Goodwin's invitation not to rely upon this evidence.

Alternative explanations for the subdural bleed

295. The medical experts have considered the following alternative explanations for D's injuries other than an inflicted injury caused by shaking:

a. A blood clotting disorder.
b. A genetic disorder.
c. A subdural bleed sustained during birth.
d. A subdural bleed caused by the lumbar puncture performed on the 12th November 2023, (the subdural haematoma's having been revealed by the CT scan performed on the 13th November 2023).
e. A BRU or an ALTI.
f. Rough handling in particular when D was passed between E and A on the 8th and 11th November 2023.
g. An unknown cause.

A blood clotting disorder/genetic disorder

296. I accept Dr Keenan's unchallenged evidence that D on the balance of probabilities has a normal blood clotting system. I also accept the unchallenged evidence of Dr Sagger that there is no evidence of any genetic disorder or any significant evidence of a connective tissue disorder that would lead to a cerebral bleeding after normal handling or minor force.

A subdural bleed sustained during birth

297. I accept that the trio of research literature (Whitby, Looney and Rooks) has changed the thinking as to the existence and prevalence of subdural bleeding during normal childbirth and that it is now accepted that sub dural bleeding is a common consequence of birth.

298. I accept the evidence of Dr Hogarth, Mr Jalloh and Dr Cartlidge that the subdural bleed was unlikely to have originated during D's birth. The radiological evidence of Dr Hogarth and the evidence of Dr Cartlidge does not support this explanation. I accept the evidence of Dr Hogarth that the CT scan shows an acute subdural haematoma which is likely to have been caused by an event that took place between the 3rd and 13th November 2023. The lack of any evidence of intracranial pressure i.e. D's fontanelle was found to be soft, her sutures were not splayed, she had a normal head circumference and the absence of any subdural neo –

membranes does not support the theory that the subdural bleed can be traced back to D's birth. In addition, Dr Hogarth agrees with the Rooks paper which stated that "most of the SDH resolved by 4 weeks" and "our study suggests that SDH in an infant older than 3 months of age is unlikely to be birth related regardless of the mode of delivery".

299. I am also mindful that Dr Hogarth in his oral evidence said that he could not "exclude the possibility of pre – existing cranial bleeding that originated at birth". Mr Goodwin is right to point out in his submissions that Dr Hogarth opined that a "chronic subdural bleed may rebleed with a lower level of forcethan would be required to initiate an acute bleed de novo".

A subdural bleed caused by the lumbar puncture performed on the 12th November 2023

300. I accept the evidence of Dr Hogarth, Dr Cartlidge and Mr Jalloh that this is an unlikely explanation for the subdural bleed. I also accept that as Dr Hogarth conceded, this is a "possible mechanism".

A BRUE or an ALTE

301. I accept Mr CartlidgE'ss oral evidence that an ALTE or a BRUE are possible explanations for the events on the 8th and the 11th November 2023.

Rough handling in particular when Dwas passed between E and A on the 8th and 11th November 2023

302. I accept Dr Cartlidge's evidence that the force needed to cause the subdural bleed would have been "obviously excessive to a competent and responsible person". I accept Dr Cartlidge's oral evidence that the movement to cause injury must be the head moving vigorously "back to front and side to side" and that it can constitute one movement with an arrest. I accept Dr Cartlidge's response to my question in which he said that the movement had to be forward and backward and side by side, and excessive to cause multi focal bleeding (bleeding to both sides of the brain), it needed to be a movement that caused the baby's head to move in a circular manner.

303. I accept that in cross Dr Cartlidge did not exclude the possibility that D may have sustained her injury when she was moved between the parents and placed on the floor on the 8th and 11th November and that as she was likely to be floppy, this increased D's vulnerability to injury. In my judgement the key issue for Dr Cartlidge was whether D's head was supported. I accept Dr Cartlidge's evidence that over zealous burping of D by E is unlikely to have caused an injury to her head.

304. I accept the evidence of Mr Jalloh that normal handling and accidently rough handling would not be expected to cause any injury at all. I accept Mr Jalloh's oral evidence that the mechanism had to be a rapid acceleration and deceleration.

305. Mr Goodwin in his written submissions says that "Dr Markham's report supports the proposition that D was subject to lesser forces, quite possibly from the panicked reaction of a carer". Dr Markham opined that the most likely cause of retinal haemorrhages in infants where non accidental injury is thought to be the cause is increased cerebral spinal fluid pressure transmitted down the optic nerve. Put simply, the cause of the retinal bleeding is whatever caused the cranial bleeding. Shaking is unlikely to be a direct cause of the retinal bleeding because that would require "huge forces" and would "cause severe cervical damage" (523). Dr Markham's report supports the proposition that D was not subject to "huge forces". It does leave open the possibility that this could have been caused by the panicked reaction of a carer as that remains a possibility as to the cause of the subdural bleeding.

An unknown cause

306. The court when assessing the medical evidence must always factor in the possibility that the cause of the injury may be unknown. Dr Hogarth in his oral evidence accepted that there may be an unknown aetiology in this case. Mr Storey in his written submissions set out what he describes as "striking features" of this case which includes that when the paramedics turned up on the 8th November D was well and by the time that she arrived at the hospital on the 11th she had largely recovered. Mr Storey submits that the issue of unknown cause is a very real one in this case adding "we have not been able to locate a case that had so many of the missing features set out in for example in

Lancashire and R and Lancashire v D & E along with a complete recovery and a somewhat botched and tardy medical investigation".

The lack of any evidence of ancillary injuries

307. It is said on the part of E (and A), that the absence of any evidence of any ancillary injuries, (the so-called scaffolding injuries), undermines the view of the experts that D sustained a shaking injury. I agree that the absence of these ancillary injuries must be taken into consideration by the court when determining whether to accept the medical evidence that on the balance of probabilities D was shaken by E. Mr Goodwin in his written submissions sets out what he describes as the "anomaly list" i.e. a list of twelve scaffolding injuries that do not appear in this case. This list is replicated to a large extent by Mr Storey in his written submissions. There is value in setting out Mr Goodwin's list in full:

(a) No bruises to D's head or body at all. Not only does this militate against any kind of direct assault, but it points away from an adult gripping her hard to shake her;
(b) No skull fracture;
(c) No metaphyseal limb fractures – these are the fractures at the end of the long bones (i.e. at the metaphyses) caused by flailing limbs when a child is shaken;
(d) No rib fractures, posterior or otherwise – these often accompany an inflicted head injury from shaking because the perpetrator will grip the child around the chest to shake them;
(e) No brain injury (i.e. to the parenchyma or brain substance) – no contusions/bruising to the brain from collision with the skull during a violent shake and no tears or lacerations;
(f) No hypoxic ischaemic injury to the brain i.e. a brain subject to oxygen and/or blood depletion, often seen as a result of a shake;
(g) No axonal damage – shaking injuries can cause shearing injuries to the bundles of axons within the brain;
(h) No thrombosed veins intracranially;
(i) No subarachnoid bleeding or subpial bleeding – bleeding below the arachnoid and pial membranes can often be seen in shaking cases;
(j) No evidence of any subdural bleeding in the spine – construed as a marker of a shaking injury;

(k) No evidence of any damage at the cranio-cervical junction at the top of the neck – this can occur when the head flops from side to side rapidly during a shake. This was not scanned, but there were no signs of external injury that might have prompted an MRI of that area. The absence of evidence must be factored in. Dr. Hogarth indicated that the imaging undertaken or not undertaken in this case at Medway Hospital was not at the expected standard;

(l) Unilateral retinal haemorrhage, not bilateral. There were no other retinal features that might be diagnostic of an abusive shake i.e. no perimacular folds.

308. I agree with Mr Goodwin that this is a single injury case i.e. subdural bleeding as the retinal haemorrhages are secondary to the intracranial injury. The MRI scan was delayed until the 19th December 2023. As a consequence, there is no evidence that Dsustained the injuries set out in paragraphs (e) to (k) above. The distinction between there being a lack of evidence of these injuries being present and evidence that they were not present is academic as far as I am concerned, as their absence militates against a finding that this was an inflicted injury. I accept the oral evidence of Dr Hogarth that "causation becomes less certain when [these] supportive elements are absent".

309. I am not overly troubled by the absence of a skull fracture as my understanding of the evidence is that this would only have been present if there was an impact injury as opposed to a shaking injury. The absence of internal and external contusions, metaphyseal limb fractures, and rib fractures in conjunction with the lack of evidence of the other injuries is very problematic. Mr Goodwin refers to their absence as "an extraordinary list of absent features" and submits that the court "will struggle to find any reported cases in which a court finds proven an allegation of inflicted head injury where none of these features is present". The time that I have had to devote to this judgement has been extensive - I have thus not been able to conduct any research to test Mr Goodwin's submission nor do I feel that I need to as I am more than confident that if such authorities were available Mr Goodwin and indeed Mr Storey (who makes the same submission) would have drawn them to my attention. I do note, however that in Lancashire County Council v M & F & A & J Hayden J, although not faced with a head injury, was confronted with a rib fracture. In paragraph 55

of that judgment, he said this: “The fracture to the fourth posterior rib was an isolated injury. There are no other unexplained injuries and most particularly, none of the ‘harbinger’ injuries that indicate a carer who was failing to cope more generally. There is, for example, no evidence of a torn frenulum, no account of any earlier bruising, no other identified fractures”. I caution myself in attaching too much weight to decided cases as each case is obviously fact specific. The burden is on me to consider all of the evidence and then to determine if I can on the balance of probabilities make a finding of perpetration against E.

310. There is some force in Mr Goodwin’s submission that when one factors in E’s build and strength “it is all the more extraordinary to suggest he shook Dwithout causing any other injuries”. The problem I have with that proposition is that D according to E was a “big baby” and this line of enquiry was not pursued with the medics during the oral evidence.

311. I agree with the submission of Mr Storey that if the court concludes that there are two assaults then the absence of these ancillary injuries is “even more perplexing”.

Specific allegations/submissions

E’s criminal history

312. There can be little doubt that E has an extensive criminal history which includes a recent conviction for coercive and controlling behaviour towards an ex-partner (which led to a 24-month Community Order imposed on the 21st April 2013) and breach of a non-molestation injunction. I note that there have not been any convictions for violence or threats of violence against children. I accept the evidence of E’s probation officer that E has been assessed as posing a high risk of harm to his partners but save for the assessed risk to D he has not been assessed as a high risk to children.

313. My assessment of E’s oral evidence on this issue is that he sought to downplay the significance of his offending. This was revealed by his refusal in cross to accept that he had been convicted of coercive and controlling behaviour. I am not satisfied that E was candid with A as to the extent of his offending and I accept A’s evidence that prior to the

events of November 2023 she was only aware of his driving offences. This lack of candour is in accordance with my impression of E and chimes with the probation officer's remark that E was "evasive".

E'S arrest on the 15th November 2024

314. Having seen the police body worn video I do not accept E's assertions during his oral evidence that he was justified in his aggressive approach to the police officers because they pushed his mother who was disabled, and they would not let his father enter the home. Those contentions are not supported by the video evidence which reveals E interacting with the police officers in an aggressive and confrontational manner. E is heard threatening to headbutt an officer (which E accepted that he had said in cross). E's description of his disabled mother being pushed over by a police officer is not revealed at all in the video footage.

315. E'S response to Mr Woodward – Carlton's suggestion that he must have known that this sort of behaviour would have led to his arrest was "I don't care as long as I get a few punches in". In my judgement this is a telling statement. It reveals to me a man who has a propensity for violence and who struggles to control his emotions when placed under stress even though the consequences are likely to be adverse.

E'S relationship and interactions with D

316. I accept E's evidence that he was delighted with the birth of D and that he loved her and enjoyed caring for her. However, E on his own evidence accepted that he could become frustrated with D particularly when she would not feed. E described his frustration as making him feel that he was not good enough. I find that E's response to these feelings of frustration was to hand D to A.

317. I accept the evidence of A that when D screamed, E on occasions would jokingly tell her to shut up. I also accept A's evidence that on other occasions E would swear and tell Dto shut up in an aggressive tone. This is in keeping with my general assessment of E. I also accept A's evidence that E would try to feed D when he came round but that he did not have that sort of bond with her. This is perhaps not surprising as E was not a constant feature in D's life in that he seems to have attended at A's home for only two nights per week.

318. I accept A's evidence that E was rarely alone with D. E told the police officer on the 14th November 2023 that he was not on the right medication and that made him frustrated, snappy and impatient. I do not need to trouble myself as to the alleged cause of these emotions, but I am satisfied that this is how E would often interact with his daughter particularly during times when he was unable to feed her. E's inability to cope manifests in an emotional response i.e. to walk away. It also reveals to me a man who struggles to interact and empathise with a small infant as his focus is more on how D's non feeding impacts upon him rather than how it impacts upon D.

E's relationship with C

319. Putting aside the obvious deficiencies in the s47 inquiry between the social worker, the police officer and C that took place on the 14th November 2023, there is ample evidence for me to conclude that C was frightened of E. E himself accepts that he did not interact with C and A informed the police that E did not like her son.

320. I accept the evidence of A that C would stand in the doorway when E was present rather than enter the room. I do not accept that this can be described as wariness. I accept F' evidence that for months the mere mention of E's name would cause C's expression to be one of panic. Even if E had not made the unpleasant comments that he made to C, it is not at all surprising that a five-year-old boy with potential learning issues would be fearful of a man that entered his home twice a week and refused to interact with him. This is particularly so when one factors in E acknowledged outbursts of verbal aggression when confronted with an infant that he cannot feed. Even on his own case E's behaviour towards this little boy shows a total disregard for the feelings of anyone but himself. The image of C standing in the doorway too fearful to enter is a heartbreaking one and reflects very badly indeed upon E.

321. In my judgement the police/social worker interview with C could not be further from the appropriate way to conduct an interview with a vulnerable five-year-old. The fact that it was not an ABE interview matters not. An intermediary was not present, there was no planning, and the questioning was closed and leading. I accept the evidence of A that at that stage C was difficult to understand and to be understood by

strangers and that he did not understand questions when asked because of his learning issues. Miss Stone's evidence to me as to how C responded to their questioning illuminates in stark terms the distress that this form of questioning was causing C.

322. I do not find that E had hit A in the eyes as C is said to have alleged. There are so many deficiencies in the approach that was adopted during this interview that I cannot attach any weight to this allegation. It also does not sit with the evidence of A. It is also the only evidence of E perpetrating physical harm upon Miss Hurt prior to the events of Christmas Eve 2023. I do accept that C gave the thumbs down, as this evidence fits squarely with my assessment of the evidence as set out above.

323. I accept the evidence of A that E told C to "fuck off and come back when you can speak". This cruel statement is in keeping with my assessment of E as a man that cares little as to the impact that his actions have on others - even that of a five year old boy. I am also satisfied that on the balance of probabilities that E called C a "fucking spastic". I accept that this is contrary to the evidence of E and perhaps more significantly the evidence of A. I do not accept A's evidence that she would have remembered if C had been called a "fucking spastic" by E. A was in an environment where E expressed himself in expletives . In addition, A's acceptance that E had told C to "fuck off and come back when you can speak "gives a sense as to how desperate A was to keep this relationship going at all costs. A did not have her family close by, she needed support, and she was clearly at one stage much enamoured by E. I am also mindful that A is a poor historian. Even having regard to the clear bias that F had towards E, I prefer her evidence on this issue particularly as it chimes with how these parents were conducting themselves during this period.

My assessment as to the credibility of A

324. When one considers the traumatic events that unfolded on the 8th and 11th November 2023 it is not at all surprising that A has a poor recollection. I accept A's evidence that her relationship with E came to an end in late December 2023 when A discovered that E had been cheating on her. In my judgement it is no coincidence that A's more critical view of E coincided with this event. I thus accept the oral

evidence of F who confirmed that A's opinion of E altered when their relationship ended. I do not accept A's oral evidence that her evidence that post-dates the couple splitting up was more candid as she had a "red flag" on her house and she thus "felt safer to say these things". The reality was at this stage that E had moved on emotionally and did not pose any kind of threat to A.

325. The fact that A is a poor historian coupled with this hardening attitude towards E gives me cause to question A's reliability as an historian. That said I do not find that A has deliberately set out to mislead the court. I am mindful that A required the assistance of an intermediary, and that Dr Radcliffe assessed that A's working memory index along with her verbal comprehension fell within the category of significant impairment.

326. I do not accept A's evidence as given to the police in April 2024 that E was not panicking during the events that unfolded on the 8th and 11th of November last year. This is contrary to the evidence that she gave whilst in a relationship with him and is also contrary to E's evidence. It is also at odds with E's presentation on the video of the 11th November and with how he generally tended to conduct himself during moments of stress. Perhaps of greater significance it is contrary to the comments made in A's statement of March 2024 when she says that during the phone call on the 8th November E was panicking. It also runs contrary to the oral evidence that she gave where she again repeated that E had sounded panicked during the telephone call.

327. I also approach with caution A's evidence given in her interview to the police in April 2024 that F told her that during the 8th and 11th November E was taking beers out of the fridge. F does not hold E in high regard and has some influence over A who acknowledges that her memory is not as good as that of her stepmother. In any event whether or not E is a heavy drinker is not material unless, perhaps it can be shown that on the 8th and 11th November he was worse for drink, see post.

My assessment as to the credibility of F

328. In my judgment as noted above F admitted antipathy towards E and her belief that E injured D requires me to consider her evidence with a degree of circumspection.

My assessment as to the credibility of E

329. I will inevitably return to this issue when I consider the events of the 8th and 11th November 2023. I found E to be a poor historian. Again, this comment is made within the context of the index events occurring in short order during moments of extreme stress. I am also very mindful that E is a vulnerable individual who required the assistance of an intermediary throughout the trial. It was I who granted E's application to rely on an intermediary. It was an application that I considered with great care, mindful of the recent High Court authorities as to the courts duty to consider anxiously whether a vulnerable person's vulnerability diminishes their ability to participate and give their best evidence. In this case I was satisfied that an intermediary was necessary and that there were no other participation directions that I could have put in place to ensure that E participated fully and was able to give his best evidence. E's vulnerability was throughout the trial at the forefront of my mind.

330. I agree with Mr Woodward – Carlton that the level of detail provided in E's November 2024 witness statement does not sit with his track record of not being able to recall events with any real accuracy. I thus approach that statement with caution. I accept E's oral evidence that his recollection comes in "bits and pieces" and that some bits are "blurry".

The significance of the text messages sent on the 9th November 2023

331. It is clear that the text messages that were sent by A to E on the 9th November whilst the couple were at the hospital were sent because A believed that E had been unfaithful to her.

The events of the 8th and the 11th November 2023

332. I do not find that E was intoxicated on the 8th or 11th November 2023. I accept E's evidence that he may have consumed two beers on

the 8th November and three beers on the 11th November. I also accept A's evidence that this amount of alcohol would have had little impact upon him. I prefer A's evidence that predates the couple splitting up, that E was not intoxicated. I accept A's oral evidence that E would be "more chirpy" if he had taken a drink.

333. F does not say in her evidence that on the 11th November E was intoxicated. She merely passes comment upon the presence of beer bottles. I also note that there is no reference in any of the medical records that E was intoxicated. If he was, I would have expected to see such a reference. In fact, the medical records indicate that there were no safeguarding concerns with either parent and that they engaged appropriately with healthcare professionals.

334. When the two events occurred, D was in the sole care of E. I accept the evidence of the medics in this case that the symptoms would manifest immediately prior to the trauma. I accept the evidence of Mr Jalloh and Dr Cartlidge that the clinical features of an acute subdural bleed are the child becoming limp/floppy, apnoea (Mr Jalloh) and pallor, altered consciousness and vomiting following the event (Dr Cartlidge).

8th November 2023

335. In his interview with the police in November 2023 E accepted that on the 8th November Dbecame floppy. In his witness statement of November 2024 E said that D was gasping for breath. E's own evidence is that two of the clinical symptoms of a subdural bleed were present. In my judgement that which was reported to the clinicians immediately post the events of the 8th November is more likely to be an accurate reflection of what happened on that day. At this point E would have had a clearer recollection as to how D presented. On that basis the ambulance note tells me that E reported D gasping for air and going limp and floppy, the clerking note records him reporting upward rolling of the eye and D going floppy, and the A/E triage note records that D went floppy and her eyes rolled back. I also find that on the 8th November prior to the above symptoms manifesting D screamed. This is the history given from "mum and dad" as recorded on the 12th November clinical note and clearly could only have come from E. I do not, therefore, accept E's denial that D's eyes rolled back on the 8th November.

11th November 2023

336. E in his oral evidence asserted that D did not scream prior to becoming floppy and unwell. A in her oral evidence maintained that whilst she was upstairs with C, D screamed and screamed and then became silent. Both A and E are poor historians. I attach greater weight to what these parents reported immediately post this event. In her interview with the police in November 2023 A, when asked if D had made any noise, replied, "she was fine". In her interview with the police in April 2024 A maintained that D was screaming and then went silent. I note that E in his interview with the police in November 2023 did say that D screamed because he says she was hungry "and then she went off on one".

337. F reported to the police on the 14th November that A had told her when she arrived on the 11th that she was upstairs putting C to bed, when she heard Dscream. This is a relatively contemporaneous note. Whilst I acknowledge that I must consider F's evidence with care I am satisfied that this is an accurate reporting of what A told her. F did not strike me as a witness whose views are so entrenched that she is incapable of giving honest and balanced evidence. This was demonstrated by F's response to a question put to her by Mr Goodwin. Mr Goodwin asked F if it was possible that E was joking when, on A's birthday, he had threatened to break into F's home. F paused and then acknowledged that this was a possibility. In my judgement this was not the response of a witness who is blinded by her own narrative. I prefer the evidence of A and F, which to an extent is conceded by E, that prior to her collapse on the 11th November D screamed.

338. We also have reported by E, D's eyes rolling back, having breathing difficulties and becoming floppy all of which are associated with a subdural bleed. I do not accept E's evidence as set out in his January and November 2024 statements that D's eyes rolled back as she was placed on the floor. In my judgement the history as set out in the paediatric clerking note accurately reflects the timing of events as conveyed to that clinician by the father. That note stated that D cried, E rocked her, D went quiet, she rolled her eyes, tensed up, went cold her lips went blue, she became stiff and then A came onto the scene (emphasis added).

339. I find that E was feeding or attempting to feed D on the 8th and 11th November 2023. In the interview with the police E says that he had been feeding D on the 8th November and confirms this in his November 2024 statement. In the same statement E says that he was about to feed D on the 11th November.

340. I am conscious of the explanation that was proffered only recently by E and to an extent A that D may have suffered some type of "funny turn" and that during the subsequent panic the parents handled her in a manner that caused injury. I have difficulty in accepting this argument for three reasons.

341. Firstly, it was not advanced by either parent until recently. This is probably a less significant factor when one considers the parents vulnerabilities and their poor recollection of events. Secondly, we have a video of D being handled by A on the 11th November. It is clear from that video that A was handling her daughter carefully and gently. It seems certainly at the point that D was placed on the floor that A was supporting her neck. There is no reason to think that A would not have shown the same level of care on the 8th November. I appreciate that this does not assist as far as E's handling of D is concerned. This is significant as E accepts that he was heavy handed. Finally, I find it difficult to see how any rapid movement of the child between these parents would amount to a "back to front and side to side movement" which caused D's head to move in a circular manner as described by Dr Cartlidge.

342. I accept Mr Goodwin's submission that a heavy-handed individual may be more likely in panic to handle an infant abruptly so as to generate the necessary forces for these injuries. However, the rapidity of movement and an abrupt arrest does not seem to be in keeping with a back to front side to side movement in a circular manner as described by Dr Cartlidge as the likely mechanism of injury. When coming to my determination I do not rule out the possibility that during the period when D was passed between the parents in a limp state, that those movements could have caused her to sustain an injury. This theory was credible enough for Dr Cartlidge to conclude that it made him "sit up and listen". In my judgement E's decision to video D on the 11th November so that he could show the video to the clinicians who had

failed to scan D on the 8th is not the conduct of a man who has just shaken a baby.

343. I accept that there is an absence of any evidence that E was agitated or angry on the 8th and 11th November. I accept that E's usual response to the frustration of not being able to feed D was to hand her over to A. On the 8th E knew that A would be returning in a matter of minutes and on the 11th A was upstairs and could be recalled in seconds. These factors in my judgment cast doubt on the proposition that E in a moment of frustration shook D. Certainly, on the 11th there is no reason to think that if frustrated with D, E would not have adopted his usual approach of passing the burden to A.

344. There is some logic in the argument that the greater period that a parent is placed under stress by an uncooperative baby the more likely it is that their frustration will manifest. In this case any period of stress experienced by E could be measured in minutes as far as the 8th is concerned and in seconds in respect of the 11th. I do, however, also accept that E can lose emotional control and that an incident of shaking may happen in a split second absent any rational evaluation as to whether the other care giver can come to one's aid.

345. I do not find that D sustained injury as a consequence of rough handling by E. I accept the evidence of Dr Cartlidge that the force needed to cause the subdural bleed would have been obviously excessive to a competent and responsible person. In my view E's lack of competence as a care giver would not extend to him not having appreciated that he had shaken D. This movement in my judgement does not fall within the definition of normal handling and accidental rough handling as provided by Mr Jalloh.

346. Mr C's attempt to blame C for D's injuries does not assist me in coming to a view as whether he perpetrated those injuries. If Mr C did shake D then this could amount to an attempt by E to exculpate himself. If E did not shake D then this could be construed as the actions of an innocent man desperately seeking an alternative explanation.

347. There seem to be three features relied upon as evidence that E had the propensity to shake his daughter, namely his criminal history, his

history of violence towards adults and his history of losing control. I do not discount the first two factors, but I do approach them with considerable caution. There is an absence of any criminal history of violence and/or threats of violence towards children. I do, however, rely on my findings that E has difficulties in regulating his behaviour /maintaining emotional control, his tendency to place his needs over that of others (as demonstrated by his treatment of C), his abusive and threatening behaviour toward F and his frustration when D refused to take a feed from him. These factors show a propensity to cause harm (Lancashire (2024).

348. When I assess the evidence in this case I do so within the framework of risk/protective factors as set out in Re BR, mindful of course that the presence or absence of any factor proves nothing. I have made some preliminary findings in this case which assists me when considering the presence of risk factors. I find that E lacks understanding as to the needs of children and their development. This is reflected in his callous treatment of C and his rough handling of D and his inability to feed D without becoming frustrated.

My findings as to the allegation that E shook D on the 8th and/or the 11th November 2023

349. My task is to consider the totality of the evidence and to weigh those factors that support a finding against those factors that militate against making a finding. It may thus be useful before weighing up the various strands of evidence to set out in summary form the factors in support of a finding that E shook D and those factors that militate against such a finding.

350. The medical evidence in this case indicates that the most likely explanation for D's subdural and retinal bleeding is that she was shaken by E on the 8th and 11th November 2023 . E poses a risk of being violent and abusive to his partners and adults generally. When placed under stress E struggles to control his emotions. E has an extensive criminal history which includes a conviction for coercive and controlling behaviour and breach of a non – molestation injunction. E had difficulties whilst feeding D and when he did so he would often become angry and frustrated. It is likely that on the 8th and the 11th November 2023 E was in the process of feeding D. E lacks empathy and

understanding as to the needs of others particularly children. This was displayed by his callous treatment of C and his focus upon his own feelings when he was unable to feed D, (feeling hurt) as opposed to D's.

351. E loved D and is fiercely protective of his own family. I am also mindful that E has not been convicted of any offence of violence or threats of violence towards children. E did not physically harm C nor did he harm, threaten or control A (see post). I do not find that E's history of violence to adults and to previous partners is evidence that he has a propensity to cause harm to an infant. E was not intoxicated on the 8th or the 11th November 2023. E's standard response to D not taking a feed was to pass her to A. There is no evidence that he reacted in a different manner (save for these allegations). On the 8th November E was not agitated or angry and he knew that when he was feeding D that A would return in minutes. On the 11th November E was again not displaying any signs of agitation. If D had been uncooperative whilst he was trying to feed her, E only needed to call out to A who was upstairs putting C to bed. The fact that E videoed D on the 11th November, as he was unhappy that she had not been scanned following her admission on the 8th, is compelling evidence. This is not in my judgement the actions of a culpable individual.

352. The absence of any of the scaffolding injuries undermines the view of the medics that the cause of the bleed was a shaking episode/episodes. That is particularly so in this case where the medico – legal experts consider that two shaking incidents occurred on the 8th and 11th November 2023. There are a number of alternative possibilities as to the causation of D's subdural bleed namely: a birth related bleed, that it was as a consequence of the lumbar puncture, that she may have suffered an ALTE/BRUE, that she may have been injured whilst being transferred between the parents in a rapid and panicky manner. There is also the possibility that the cause of D's subdural bleeds will never be known.

353. Having evaluated all of the above factors I am not satisfied that the local authority on the balance of probabilities have proven that D's subdural and retinal bleeding was caused by E having shaken her on the 8th or the 11th November 2023 during a momentary loss of control.

Whether E has been threatening, controlling and/or abusive to A

354. In support of this allegation the local authority rely upon four allegations as set out below.

On 24.12.23, E assaulted A by grabbing, pinching and yanking her arm

355. In cross A described E as having grabbed her arm. A did not say that E had pinched and yanked her arm. This incident must be seen within the context of E having been told that A had taken an overdose and miscarried his child. If there was an assault, that of course would not be relevant. I do not however have sufficient evidence to establish that on the balance of probabilities E did any more than what he asserted in his oral evidence that he held A's arm to stop her from leaving so that the couple could talk and that he had no intention to cause harm. It is arguable that the fact that A remained at E's home suggests at the time she did not consider his actions to amount to an assault.

In December 2023, E threatened to kill everyone in F's house if he was stopped from seeing D

356. I remind myself that this threat was said to have been made in December 2023 but was not reported to F by A until January 2024 after the couple had split up. The comment made by DC Elliot in her witness statement of November 2024 that "A stated she reported this due to the breakdown of their relationship" lends itself to the argument that this was an unfounded allegation motivated by resentment following the breakdown of the couple's relationship. I accept that E did make this threat for three reasons.

357. Firstly, it is in keeping with E's behaviour and the malevolence that he felt towards F, whom he admitted that he referred to as a "slag" and a fat cunt". I also find that the circumstances that led to this alleged threat, as conveyed by A in her oral evidence, that F no longer wanted E's contact with D to take place in Sittingbourne, were very likely to have enraged E. Finally, I agree with Mr Woodward – Carlton who put in cross that the threat made to F was akin to a previous threat that E had made to a third party that had led to E being imprisoned. A's acceptance of Mr Goodwin's suggestion that she did not take the threat seriously is

immaterial within the context as to how this allegation has been pleaded. It may well have been and probably was an idle threat, but I find that it was made.

Between September 2023 and January 2024, E threatened to end his life, so as to control or influence the behaviour of A

358. I find that E did threaten to end his life by cutting or threatening to cut his throat when A was in hospital with D in November 2023. I also accept A's evidence that this was something that E would do throughout their relationship. I arrive at this view in part because this would be an unusual allegation to make up. The bizarre nature of the allegation makes it in my judgement more plausible. That said, this observation must be tempered by the fact that A may have been told by E that he had attempted to cut his throat following the death of his grandfather and close friend. The allegation is also supported by the subsequent text messages sent by E and is in keeping with his self-obsessive and emotionally dysregulated behaviour.

359. This allegation comes in two parts. Whilst I find that E did make these threats, there is an absence of any evidence to suggest that this was done to control or influence A. I have no evidence as to Mr J's motivation and I cannot conclude that it was done to influence A. I do not find that it was done to control A. I cannot see how it amounts to controlling behaviour as defined in PD 12J. There is an absence of any evidence for me to be able to conclude that it was designed to make A subordinate and or dependant by isolating her from sources of support, exploiting her resources and capacity for personal gain, depriving her of the means needed for independence, resistance and escape and regulating her everyday behaviour.

Between September 2023 and January 2024, E coerced A into deleting her Snapchat application and some male friends on her social media applications

360. There seems to be no dispute that A was using Snapchat to meet up with men for casual sex. There is also no dispute that E wanted A to delete those males as contacts on Snapchat. I am not sure if the use of the word "coerce" is an attempt to suggest that this was "coercive behaviour" as defined in PD12J. The bare facts as set out above do not support a finding that this was coercive behaviour as so defined. There

is no evidence to suggest that this was an act of assault, threat, humiliation or other abuse that was intended to harm, punish or frighten A. I also do not make a finding that E "coerced" A within the dictionary definition of that word i.e. to persuade an unwilling person to do something by using force or threats. I do not know if A was unwilling or if force or threats were used as this was not explored in evidence.

Whether A failed to protect D

361. This allegation clearly falls away in light of the fact that I have not found that E lost control and shook D on the 8th and/or the 11th November 2023. Even if I were to have made this primary finding, I would not have made a finding against A that she failed to protect D. For the sake of completeness, I have set out below my reasons.

362. The pleaded claim is that A failed to protect D from significant harm by continuing in a relationship with E:-

i. Who she knew to be threatening, controlling and abusive.
ii. Who she knew misused alcohol and drank every day.
iii. Even though she had suspicions that E may have shaken D or handled her roughly.

363. It seems to me that the burden would have been on the local authority to establish the following three matters:-

- The existence of the facts upon which the failure to protect is predicated. In other words, the local authority would have had to establish that E was threatening, controlling and abusive and that he misused alcohol and drank every day.
- That A knew that E was threatening, controlling and abusive and that A suspected that E may have shaken D or handled her roughly.
- If the local authority was able to establish the above it would then have to show that the knowledge of those facts and A's failure to act caused D to suffer harm.

That E was threatening, controlling, abusive and misused alcohol every day

364. As noted above I prefer the evidence of A prior to the break up of the relationship as after that event the veracity of her evidence

diminishes. On the 15th November A told Miss Stone that E would not hurt a fly and that he would not hurt her. On the video of the arrest of E, A was telephoned and one can hear her make the same assertion. A informed a police officer on the 17th November 2023 that she and E had a good relationship. I accept A's oral evidence when she informed Mr Goodwin that she did not judge E as others did, that she saw another side of him and that at that stage she wanted to have a family with E.

365. As noted above I do not accept C's allegation that E had hit A in the eye which is specifically denied by A. In cross when A was asked to recount the first time that E had been aggressive to her, A's response was that E had threatened to slit his throat if A attended her twin cousin's birthday rather than staying with him. I have already made a determination that these threats of self-harm/suicide did not constitute controlling behaviour. There is thus an absence of any evidence to support the allegation that E was threatening, controlling or abusive toward A. The only evidence that E was threatening and abusive to others is the threat that he made to F in September and December 2023. I find that E's shameful treatment of C was abusive.

366. There is evidence that E drank every day but there is an absence of any evidence that he misused alcohol save for A's evidence post the separation which I do not accept. As noted above neither the clinicians at the hospital nor E's probation officer reported any concerns that E presented before them in an intoxicated state. There is an absence of evidence to support the allegation that E's drinking each day posed a risk to D and that A therefore ought to have known about this risk. In any event I have found that E was not intoxicated on the 8th and 11th November 2023.

367. I accept that A knew that E was abusive to F. However, I fail to see how the risk of E being verbally abusive to an adult amounts to a risk of physical harm to a child and that A ought to have known that he presented as a risk to D (Re L – W). I also find that A knew that E had been abusive to C, but I do not accept that E in ignoring C and telling him to "fuck off and come back when he could speak" presented a risk that he would shake his own daughter. A knew that E could become frustrated when attempting to feed D but I am not of the view that this

knowledge was sufficient for her to have known that he posed a risk of shaking her.

368. A accepts that F told her that she should not leave the children in the care of E as he was not a nice man. With the advantage of hindsight A accepted in her oral evidence that she should have listened to that advice. I am not satisfied that F offered her view prior to the events of the 8th and 11th November 2023. Her evidence is that in September 2023 she said, "you cannot half pick them". I thus find that prior to the 11th November 2023 F did not warn A that E posed a risk of physical harm to the children. Even if I am wrong about this, I accept Mr Goodwin's submission that A "can hardly be accused of a failure to protect in circumstances where the person giving the advice did so from prejudice and first impressions rather than hard evidence".

369. A's evidence is that E could be heavy handed. I accept that A held this view prior to the 8th and 11th November 2023. I accept A's oral evidence that this risk was in relation to E bouncing D on his knee and burping her following a feed. I accept A's evidence that at that time she trusted E. There is no evidence at all to suggest that A was then and is now anything other than a devoted and caring parent. The evidence from the health visitor, her ante and post-natal records, the positive observations of her noted by professionals and her 100% attendance record at the contact sessions are indicative of her commitment to and affection for her children. In my view if A prior to the events of November 2023 had any concerns that E posed a risk of physical harm to D she would have acted appropriately to ensure that her daughter was safe. It is also worth remembering that during this period A is unlikely to have had any concerns about E as he spent very little time with D and was rarely alone with her. In my judgement this knowledge that E could be heavy handed would not have equated to a failure to protect.

370. A initially expressed no concerns to the police as to D's safety when she was in E's care. A's change of view manifests in her April 2024 witness statement which is post-separation from E and follows a period of time when A is likely to have been influenced by the views of F and an hardening attitude towards E. A did carry out an internet search on the 10th November. This was not explored during the evidence. In her police

interview of April 2024 it seems that this enquiry was to gain more information as to D's presentation on the 8th rather than to explore any suspicions that E may have been the perpetrator.

371. I am satisfied that at the material time and prior to the 11th November 2023 A did not have any suspicions that E may have shaken D, hence her assertions to the police and made during the telephone call when he was arrested on the 15th November that he would not hurt a fly. A's comment to the police officer in April 2024 that on the 10th November she was "a bit half and half" does not in my judgement reflect her state of knowledge in November 2023. This statement was made with the advantage of hindsight, following a period when A would have been influenced by F, and the couple having separated, both of whom were under scrutiny as potential perpetrators.

372. That is my judgment.

HHJ Clive Thomas.

17th December 2024