

Neutral Citation Number: [2020] EWFC 104

IN THE FAMILY COURT SITTING IN STOKE ON TRENT

IN THE MATTER OF THE CHILDREN ACT 1989

AND IN THE MATTER OF A

AND IN THE MATTER OF B

Date: 25th November 2020

Before:

Her Honour Judge Harris  
(sitting as a Judge of the High Court)

Between

STAFFORDSHIRE COUNTY COUNCIL

Applicant

And

MOTHER

1<sup>st</sup> Respondent

And

FATHER OF A

2<sup>nd</sup> Respondent

And

FATHER OF B

3<sup>rd</sup> Respondent

And

A & B

(children acting by their Children's Guardian)

4<sup>th</sup> & 5<sup>th</sup> Respondents

And

PATERNAL GRANDMOTHER

1<sup>st</sup> Intervener

And

## FAMILY FRIEND

2<sup>nd</sup> Intervener

Re A & B (Fact Finding: Head, Bony, Eye and Soft Tissue Injuries)

Julie Sparrow and Nick Brown (counsel for the local authority)  
instructed by Sarah Nicklin of Staffordshire County Council Legal Services  
David Payne and Tom Harrill (counsel for the mother)  
instructed by Jo Taylor of Timms Solicitors  
Claire Mitchell (counsel for the father of A)  
instructed by Charlotte Clark of Moseleys Solicitors  
Catherine Preen and Yolanda Pemberton (counsel for the father of B)  
instructed by Nina Skilton of the Smith Partnership Solicitors  
Christopher Adams (counsel for the children, acting by their Children's Guardian)  
instructed by Alex Herbert of McGuinness Legal  
Beryl Gilead and Lorna Robertson (counsel for the paternal grandmother)  
instructed by Wayne Hollingsworth of Cartwright King Solicitors  
Anne Williams and Hannah Whelan (counsel for the family friend)  
instructed by Joanne Jarvis of Bhatia Best Solicitors

### Hearing Dates

23<sup>rd</sup>, 26<sup>th</sup>, 27<sup>th</sup>, 28<sup>th</sup>, 29<sup>th</sup> 30<sup>th</sup> October, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 25<sup>th</sup>  
November 2020 and 9<sup>th</sup> December 2020

## JUDGMENT

**Handed down orally 25<sup>th</sup> November 2020**

**Her Honour Judge Harris sitting as Judge of the High Court:**

### **Background:**

1. There are two children at the heart of this application:

- A who was 12 months old when B was injured;
- B who was just 8 weeks old when injured.

Their guardian has been represented at this fact-find hearing by Mr Adams.

2. The children's mother is 19 years of age. She has been represented by Mr Payne leading Mr Harrill.
3. The father of A has been represented by Ms Mitchell. He has not played an active role in the fact finding.

4. The father of B has been represented by Ms Preen leading Ms Pemberton. Unless indicated otherwise, references to “father” in this judgment are references to the father of B.
5. There are two interveners:
  - a close family friend who is 17 years old. She has been represented by Ms Williams leading Ms Whelan.
  - the paternal grandmother of B who has been represented by Ms Gilead leading Ms Robertson.
6. The Local Authority is Staffordshire County Council who have been represented by Ms Sparrow leading Mr Brown.
7. On 27<sup>th</sup> September 2019, at just 8 weeks old B was admitted to hospital following a 999 call by the parents from the family home. The parents were reporting that B had suffered an acute collapse. Subsequent investigations at the hospital revealed a number of serious injuries: bilateral cerebral subdural haematomas, thin-film posterior fossa subdural haematoma, subarachnoid and intraventricular haemorrhage, retinal haemorrhages to right eye, commotio retinae and bruise to right eye, a convergent squint, two rib fractures and metaphyseal fractures to his legs. A bruise to the cheek was also recorded. Parents could provide no credible explanation for the injuries.
8. On 8<sup>th</sup> October 2019, the Local Authority initiated care proceedings. B was placed in foster care pursuant to s 20 of the Children Act 1989. A moved to live with his paternal family. Interim care orders were made on 14<sup>th</sup> October 2019. On 9<sup>th</sup> September 2020, A was removed from his father’s care and placed in foster care.
9. In the weeks before his admission to hospital, a number of individuals in addition to the parents were identified as having had sole care of B:
  - the paternal grandmother, on: 9<sup>th</sup> August; 16<sup>th</sup> August; 31<sup>st</sup> August; 7<sup>th</sup> September; 15<sup>th</sup> September; and 22<sup>nd</sup> September. She had no overnight care.
  - the family friend although still somewhat unclear: on 29<sup>th</sup> August; 7<sup>th</sup> September overnight; 20<sup>th</sup> and 21<sup>st</sup> overnight with her mother having care during the day on 21<sup>st</sup> September; and evening of 25<sup>th</sup> September whilst the mother and the father were at hospital.
  - the mother and sister of the family friend: 26<sup>th</sup> September overnight.

The Local Authority only seek findings against the family friend in addition to the parents. The father, or at least his counsel, have pursued a positive case against the paternal grandmother arguing she deliberately hurt B in order to ‘frame her son’ and secure B in her care.

### **Threshold**

#### **Schedule of Findings as sought by the Local Authority:**

10. The Local Authority seek the following threshold findings:

## **Head injuries**

- 1) B sustained bilateral cerebral subdural haematomas and thin film posterior fossa subdural haematomas containing blood of different densities.
- 2) B sustained subarachnoid and intraventricular haemorrhage.
- 3) B sustained an increase in head circumference as a result of the presence of the subdural haematomas, which resolved.
- 4) Those injuries caused B to collapse, to have difficulty/abnormal breathing, and reduced consciousness.
- 5) Those injuries were sustained either:
  - a. On a single occasion on a date between 14th September 2019 and 28th September 2019, or
  - b. On two occasions, the first being after 7th September 2019 and the second being shortly before his collapse on 27th September 2019.
- 6) Those injuries are not explained by a medical condition or cause.
- 7) Those injuries were not caused by accidental trauma, or by 'normal' handling.
- 8) Those injuries were caused by inflicted trauma, by shaking.
- 9) The force used would have been obviously excessive to a normally competent and responsible person.
- 10) The perpetrator of those injuries was the mother, the father or the family friend.

## **Bony injuries**

- 11) B sustained the following bony injuries.
- 12) Fracture of the right sixth rib posteriorly.
- 13) Fracture of the right fifth rib posteriorly.
- 14) Metaphyseal fracture of the right distal tibia.
- 15) Metaphyseal fracture of the right distal fibula.
- 16) Metaphyseal fracture of the left distal femur.
- 17) Metaphyseal fracture of the left proximal tibia:
- 18) The injuries were sustained:

- a. Fractures of 5th and 6th ribs, on or after 19th September 2019.
- b. Metaphyseal fractures of the right distal tibia and fibula, between 2nd and 16th September 2019.
- c. Metaphyseal fracture of the left femur, between 9th and 23rd September 2019.
- d. Metaphyseal fracture of the left tibia, after 2nd September 2019.

19) Those injuries are not explained by a medical or genetic condition or cause or variant anatomy.

20) Those injuries were not caused by accidental trauma, by 'normal' handling or by attempted resuscitation.

21) The rib fractures were caused by excessive compression to the chest.

22) The metaphyseal fractures were caused by forcible pulling and/or twisting to the limbs beyond their normal range of movement.

23) The perpetrator of those injuries was the mother, the father or the family friend.

### **Eye injuries**

24) B sustained the following injuries to his right eye.

25) Small blot retinal haemorrhages in the right eye.

26) Commotio retinae.

27) Bruising to his right eye lid.

28) Convergent squint, which resolved.

29) Those injuries are not explained by a medical condition or cause.

30) Those injuries were not caused by accidental trauma or by 'normal' handling.

31) The above injuries were caused by shaking.

32) The perpetrator of those injuries was the mother, the father or the family friend.

### **Soft tissue injuries**

33) Between 13th and 31<sup>st</sup> August 2019 B sustained bruising to his forehead:

- a. On 28th August 2019 there was visible bruising to B's forehead. This was sustained between 16th and 28th August 2019 or, in the alternative the bruising seen on 16th August 2019 remained visible.

- b. On or before 31st August 2019 B sustained a bruise to his cheek.

- c. On 20th or 21st September 2019 B sustained a bruise to his face.
- d. On 27th September 2019 B sustained a bruise to his cheek.

34) The mother, the father and the family friend have failed to provide plausible explanations for these bruises to a non-mobile child.

35) The above bruises were inflicted injuries. The perpetrator of those injuries was the mother, the father or the family friend.

**Failure to protect/knowledge that the other possible perpetrator(s) was/were a risk**

36) *If the family friend is the/a perpetrator:*

- a. The mother and the father permitted the family friend, then aged 16, to have the sole care of B overnight on 29th to 30th August 2019. B sustained a bruise to his cheek that was visible on 31st August 2019.
- b. The father gave an implausible explanation for this bruise.
- c. The mother and the father permitted the family friend to have the sole care of B overnight on 20th to 21st September 2019. B sustained a bruise to his face that was visible on 21st September 2019.
- d. The mother gave an implausible explanation for this bruise.
- e. The mother and/or the father, if not perpetrators, knew that B was not safe in the care of the family friend.

37) *If the mother is the/a perpetrator:*

- a. From 28th August 2020 onwards the father knew that the mother was not coping with the care of A and B alone.
- b. On 28th August 2019 the mother texted to the father:
  - “now they’re both being dicks... Fucking arseholes”
  - “...but with dickhead one being a cunt and making the other one do it.”
  - “That’s it I’m dropping him down the fucking stairs”
- c. On 12th September 2019 the father texted to the mother:
  - “.. wait until I’m back I’ll fucking sort the cunts”
- d. If not a/the perpetrator, the father knew the children were not safe in the sole care of the mother.

38) *If the father is the/a perpetrator:*

- a. The mother knew that the father was suffering with very poor mental health such that it was not safe to leave B in his care.

### **Failure to obtain medical treatment for B**

- 39) On or about 20th September 2020, the mother, the father and/or the family friend failed to obtain medical treatment for B following an episode of apnoea.

### **Procedural matters:**

11. The matter has proceeded by way of a hybrid hearing. All parties except for the family friend have had at least one counsel at court with juniors observing remotely. The family friend has participated through attendance at counsel's chambers where she has been fully supported by her legal team. The paternal grandmother has observed remotely save for when she gave evidence, as has the social worker and guardian. I am grateful to my clerk and all counsel who worked exceptionally hard to ensure the hearing ran smoothly despite the complexities of the arrangements.

### **Law:**

12. The law is not contentious. It has been set out by the local authority and agreed by the advocates. It is effectively summarised by Baker J, as he then was, in *A Local Authority v LM* [2013] EWHC 1569 (Fam):
  - 1) The burden of proof lies at all times with the Local Authority. The parents do not have to prove anything.
  - 2) The standard of proof is the balance of probabilities.
  - 3) Findings of fact in these cases must be based on evidence, including inferences that can properly be drawn from the evidence and not on suspicion or speculation ...
  - 4) When considering cases of suspected child abuse, the court must take into account all the evidence and furthermore consider each piece of evidence in the context of all the other evidence. The court invariably surveys a wide canvas. A judge in these difficult cases must have regard to the relevance of each piece of evidence to other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward by the local authority has been made out to the appropriate standard of proof.
  - 5) When determining whether a fact is proved on the balance of probabilities, the inherent probability or improbability of an event remains a matter to be considered. As Lord Hoffman said in *Re B (Care Proceedings: Standard of Proof)* [2008] UKHL 35, [2008] 2 FLR 141:

*[15] There is only one rule of law, namely that the occurrence of the fact in issue must be proved to have been more probable than not. Common sense, not law, requires that in deciding this question, regard should be had, to whatever extent appropriate, to inherent probabilities. If a child alleges sexual abuse by a parent, it is common sense to start with the assumption that most parents do not abuse their children. But this assumption may be swiftly dispelled by other compelling evidence of the relationship between parent and child or parent and other children. It would be absurd to suggest that the tribunal must in all cases assume that serious conduct is unlikely to have occurred.*

6) Whilst appropriate attention must be paid to the opinion of medical experts, those opinions need to be considered in the context of all the other evidence. It is important to remember that the roles of the court and the expert are distinct and it is the court that is in the position to weigh up the expert evidence against its findings on the other evidence. It is the judge who makes the final decision.

7) Cases involving an allegation of non-accidental injury often involve a multidisciplinary analysis of the medical information conducted by a group of specialists, each bringing their own expertise to bear on the problem. The court must be careful to ensure that each expert keeps within the bounds of their own expertise and defers, where appropriate, to the expertise of others.

8) The evidence of the parents and any other carers is of the utmost importance. It is essential that the court forms a clear assessment of their credibility and reliability.

9) It is common for witnesses in these cases to tell lies in the course of the investigation and the hearing. The court must be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear and distress, and the fact that a witness has lied about some matters does not mean that he or she has lied about everything (see *R v Lucas* [1981] QB 720). The court must also note the Court of Appeal's more recent exposition of the *Lucas* direction in *Re H-C* [2016] EWCA Civ 136, in which McFarlane LJ emphasised that the fact an individual has lied on a material issue is not itself direct proof of guilt.

10) As observed by Dame Elizabeth Butler-Sloss ... "The judge in care proceedings must never forget that today's medical certainty may be discarded by the next generation of experts or that scientific research would throw a light into corners that are at present dark."

11) With regard to this latter point, recent case law has emphasised the importance of taking into account, to the extent that it is appropriate in any case, the possibility of the unknown cause.

12) When seeking to identify the perpetrators of non-accidental injuries the test of whether a particular person is in the pool of possible perpetrators is whether there is a likelihood or a real possibility that he or she was the perpetrator. In order to make a finding that a particular person was the perpetrator of non-accidental



injury the court must be satisfied on a balance of probabilities. It is always desirable, where possible, for the perpetrator of non-accidental injury to be identified both in the public interest and in the interest of the child, although where it is impossible for a judge to find on the balance of probabilities, for example that Parent A rather than Parent B caused the injury, then neither can be excluded from the pool and the judge should not strain to do so.

13) This issue was further considered by Peter Jackson LJ in *Re B (Children: Uncertain Perpetrator)* [2019] EWCA Civ 575:

*[48] The concept of the pool of perpetrators should therefore, as was said in Lancashire, encroach only to the minimum extent necessary upon the general principles underpinning s.31(2). Centrally, it does not alter the general rule on the burden of proof. Where there are a number of people who might have caused the harm, it is for the local authority to show that in relation to each of them there is a real possibility that they did. No one can be placed into the pool unless that has been shown. This is why it is always misleading to refer to 'exclusion from the pool': see Re S-B at [43]. Approaching matters in that way risks, as Baroness Hale said, reversing the burden of proof.*

*[49] To guard against that risk, I would suggest that a change of language may be helpful. The court should first consider whether there is a 'list' of people who had the opportunity to cause the injury. It should then consider whether it can identify the actual perpetrator on the balance of probability and should seek, but not strain, to do so: Re D (Children) [2009] EWCA Civ 472 at [12]. Only if it cannot identify the perpetrator to the civil standard of proof should it go on to ask in respect of those on the list: "Is there a likelihood or real possibility that A or B or C was the perpetrator or a perpetrator of the inflicted injuries?" Only if there is should A or B or C be placed into the 'pool'.*

14) Finally, where the Local Authority allege a failure to protect, the Court should be alert to the dangers of making a finding of failure to protect as 'a bolt-on', and of assuming that such a finding was inevitable if a person lived in the same house as the perpetrator. It is necessary to prove a causative link, i.e. from requisite knowledge to failure to protect. As King LJ said in *Re L-W (Children)* [2019] EWCA Civ 159:

*[64] Any Court conducting a Finding of Fact Hearing should be alert to the danger of such a serious finding becoming 'a bolt on' to the central issue of perpetration or of falling into the trap of assuming too easily that, if a person was living in the same household as the perpetrator, such a finding is almost inevitable. As Aikens LJ observed in Re J, "nearly all parents will be imperfect in some way or another". Many households operate under considerable stress and men go to prison for serious crimes, including crimes of violence, and are allowed to return home by their long-suffering partners upon their release. That does not mean that for that reason alone, that parent has failed to protect her children in allowing her errant partner home, unless, by reason of one of the facts connected with his offending, or some other relevant behaviour on his part, those children are put at risk of suffering significant harm.*

**Evidence:**

13. The court heard evidence over 3 weeks. It has been fortunate to hear from a number of leading experts in their field:

- Professor Fielder, Consultant Ophthalmologist;
- Dr Saunders, Consultant Paediatric Neuroradiologist;
- Professor Vloeberghs, Consultant Paediatric Neurosurgeon;
- Dr Watt, Consultant Paediatric Radiologist;
- Dr Austin, Consultant Paediatrician.

The court has also considered a report filed by Dr Keenan, haematologist. He was not required to give oral evidence.

14. The court also heard from a number of witnesses of fact:

- a paramedic;
- a paediatric sister;
- the family friend's sister, herself also a close family friend of the mother;
- the family friend's mother, herself also a close family friend;
- the maternal grandmother;
- the maternal step-grandmother;
- the paternal great grandmother;
- the paternal great grandfather;
- the paternal grandmother;
- the family friend's grandmother;
- the family friend;
- the mother;
- the father.

15. I have also read the full court bundle which includes medical records, reports from treating doctors, police interviews, phone analysis and the written evidence of all those who gave oral evidence before me.

16. I will begin by summarising the key evidence as briefly as I can and the Court's assessment of the witnesses and the evidence they gave.

### **Expert Evidence:**

#### **Professor Fielder – Ophthalmologist**

17. Professor Fielder has filed two reports dated 13<sup>th</sup> February 2020 and 22<sup>nd</sup> September 2020. He identifies and confirms the following injuries:

- Convergent 350 squint;
- Commotio retinae in right eye;
- Small bruise to right eye lid;
- Retinal haemorrhages in the right eye.

#### ***Convergent 350 squint:***

18. In his original opinion and from the only image of the eyes he had seen Professor Fielder was not persuaded there was a convergent squint but felt that the appearance was due to the neonatal facial shape. In his oral evidence having been shown a further image of B in hospital he was clear that from that picture a convergent squint was present. He confirmed he would have expected the health visitor to look for and note any convergent squint present at the six week check and so it was unlikely it was present on 20<sup>th</sup> September 2019.
19. He explained the potential significance of the squint in that it can be associated with raised intracranial pressure (RICP). However, there was no note of RICP by the treating neurosurgeon and it would be very unusual on a baby where the skull sutures are not closed. He accepted that squint is seen as a non-specific response to head trauma and is suggestive of an intracranial event prior to admission. The presence or not of convergent squint did not change his opinion on mechanism/cause and does not assist on timing.
20. Similarly, the rapid eye movement observed and recorded by the paramedics on 27<sup>th</sup> September is accepted as a sign of head trauma but would not assist with timing.

***Commotio retinae:***

21. Imaging on the 30<sup>th</sup> September 2019 confirms the presence of a few small blot retinal haemorrhages in the right eye and commotio retinae. There are no preretinal haemorrhages and the left eye was normal. Imaging on 9<sup>th</sup> October 2019 showed both eyes were completely normal.
22. Professor Fielder explained that commotio retinae is a white appearance seen after trauma to the eye. The appearance is due to oedema, swelling or disruption of the retinal layers. In adults, recovery would usually be within a week. Little is known about recovery in children given an injury of this nature is so rare. Indeed, he had never seen such an injury in an infant. It was his opinion, however, that the injury would have been relatively recent, within days to a week of examination.
23. The mechanism for causing such bruising to the eyelid and commotion ratio is most likely direct trauma to the eye. It is a severe injury in which considerable force is applied.

***Retinal haemorrhages:***

24. Imaging on 30<sup>th</sup> September shows small, flame haemorrhages in the right eye. As to mechanism, Professor Fielder's opinion is that birth is excluded as it is outside the timeframe for such injuries to persist. A non-accidental injury is therefore most likely. Retinal haemorrhages are consistent with shaking, although it is possible they can be caused by direct trauma.
25. As to timing, small flame haemorrhages are small and superficial in the retina and will usually resolve within a few days and certainly within a maximum of two weeks. On 30<sup>th</sup> September 2019, B had a few small blot retinal haemorrhages which had resolved by 9<sup>th</sup> October. Therefore, in his opinion it is probable an event occurred within 14 days of 30 September. He went further in his oral evidence to conclude it was most likely, given the haemorrhages are very small and would resolve quickly, that the injury occurred within a

few days of admission. In his opinion, the latest point of injury would be on or around 23<sup>rd</sup> – 24<sup>th</sup> September.

26. He was unable to say whether the haemorrhages and commotio retinae were the result of one or more incidents.
27. The eye injuries could present as clinically silent with no external sign of injury apparent to a non-perpetrator carer

**Dr Saunders, Consultant Paediatric Neuroradiologist**

28. Dr Saunders has filed three written reports dated 13<sup>th</sup> February 2020, 22<sup>nd</sup> May 2020 and 1<sup>st</sup> October 2020. The neuroimaging revealed multi compartment subdural haematomas composed of blood of two different densities and subarachnoid haemorrhage.
29. In her first written reports, Dr Saunders expressed the view that the subdural haemorrhages could be due to two possible scenarios. In the first scenario, the bleeding would be attributable to a single injury. The older appearing subdural fluid would be explained by the likely presence of an arachnoid membrane rupture and leakage of cerebrospinal fluid from the subarachnoid space into the subdural space.
30. In the second scenario, the subdural haematomas would be composed of blood of two different ages. The acute i.e. white blood seen over the cerebral hemispheres and a thin film over the cerebellum, could be dated to somewhere between 0 and 14 days old. However, as the blood is bright white, it was in her view more likely to be closer to the earlier part of that age range than the later. In this second scenario, the older component of the blood would be difficult to age but could be somewhere between 1-3 weeks of age. It could however be older as the density of the subdural haematoma over the cerebral hemispheres is complicated by acute bleeding.
31. The subarachnoid haemorrhage is difficult to date but the bleeding arises from the same damaged vessels from which the subdural haemorrhage arises.
32. Based on the imaging, it was Dr Saunders' opinion that it is more likely that there were two injuries.
33. Dr Saunders also observes that B's collapse is likely to have been caused by the same injury that caused at least the acute subdural haematomas and therefore the acute injury is most likely to have occurred just prior to B becoming unwell.
34. Dr Saunders revisited this analysis having considered the report of Mr Jayamohan, Consultant Paediatric Radiologist instructed within the criminal proceedings. In his report he identified the possibility of membranes on the MRI scan of 30<sup>th</sup> Sept.
35. Having reviewed the MRI scans of the 30<sup>th</sup> September and 2nd October 2019, Dr Saunders also confirmed the presence of membranes in the left middle cranial fossa beneath and anterior to the left frontal pole and additional membranes on the floor of the middle cranial fossa. In her oral evidence she was very confident the membranes could be

seen. She confirms there is no chronic appearing component of the subdural haematoma in the posterior fossa and no membranes present.

36. Based on these observations, Dr Saunders concludes there is evidence of some chronicity to the subdural haematomas. The presence of the membranes therefore indicates that it is more likely than not that there were two injuries, reinforcing her earlier opinion.
37. Those revised conclusions assist with dating. Membranes develop after about two weeks of bleeding suggesting the first subdural haematoma is likely to have resulted from an injury that occurred at least two weeks prior to the MRI scan dated 30th September 2019 i.e. from before September 16th, 2019 (although it is impossible to be absolutely precise to 14 days; there is always a margin of difference). For completeness Dr Saunders notes that, in theory, the first subdural haematomas could date back to birth but observes that it is very unlikely they would persist for 9 weeks.
38. In terms of the timing of the acute bleed, Dr Saunders remained of the view that the injury occurred just before the ambulance was called.
39. The mechanism for causing such injuries would most likely be shaking or shaking with impact, although she notes there are no radiological features of impact injury. It is therefore most likely to have been caused by shaking alone. Subdural haematomas and subarachnoid haemorrhage are well recognised injuries to the brain seen in babies who have been subjected to shaking.
40. Dr Saunders considered the possibility of a rebleed from the chronic subdural to account for the acute blood. She noted that when infants with pre-existing head injuries, such as a chronic/subacute subdural haematoma, are followed over time, small spontaneous rebleeds within or around the original bleed are often identified on subsequent imaging. Therefore, she accepted it is possible that the acute bleed over the cerebral hemispheres could be attributed to rebleeding. However, as the acute haemorrhage seen in the posterior fossa is separate from the enlarged subdural spaces over the cerebral hemispheres that cannot be explained by rebleeding. In addition, rebleeding into the subdural haematomas over the cerebral hemispheres could not explain B's dramatic collapse.
41. She therefore concludes it is highly likely B suffered a second traumatic episode.
42. The force required to cause such injuries would in her opinion be extremely violent shaking, so violent an observer would say it is dangerous and likely to kill the child.
43. Dr Saunders could not see as likely the hypothetical scenario put to her by counsel on behalf of the father of the acute bleed being caused by the father picking up B in a panic and running downstairs whilst leaving his head unsupported. She expressed the view that it was hard to imagine how sufficient force/movement could be generated by such a scenario. The court also notes that such a scenario would not explain the initial sudden dramatic collapse.

**Professor Vloeberghs, Consultant Paediatric Neurosurgeon**

44. Professor Vloeberghs filed a number of reports dated 6<sup>th</sup> December 2019, 24<sup>th</sup> January 2020, 22<sup>nd</sup> June 2020 and 28<sup>th</sup> September 2020. In summary, he concludes that the findings are compatible with a shaking/shaking and impact event of which the intensity and force cannot be quantified but is well beyond normal care or play. The individual(s) involved would be aware that their actions are harmful.
45. As to timing, it was his view that the brain injury demonstrating encephalopathy with impaired consciousness and breathing difficulties most likely occurred shortly i.e. within minutes of B's presentation leading to the emergency call to the paramedics. In his view it was unlikely that there would have been any delayed presentation i.e. that B suffered a brain injury and then some hours later suffered collapse. It was his clear and firm view that there was one single event which caused the subdural haematomas and sudden collapse, very shortly before the 999 call. The most probable cause of that acute event was shaking.
46. Professor Vloeberghs also agreed with Dr Saunders that it is likely there were two events. He confirmed that the presence of membranes as identified by Dr Saunders supports a chronic bleed at least 2 weeks prior to admission. That first event can be regarded as non-critical i.e. did not cause sudden collapse or change in consciousness but the fact it was non-disclosed is concerning.
47. Professor Vloeberghs also did not consider a rebleed from the chronic subdural haematoma could explain the acute event. In reaching that view he relied on two factors: 1) B's sudden collapse; and 2) the acute bleed is in a different part of the brain (posterior fossa; subarachnoid space) where there is no chronic appearance. Similarly, he was clear that the subdural haematomas were very unlikely to be birth related.

#### **Dr Watt, Consultant Paediatric Radiologist**

48. Dr Watt filed two written reports dated 4<sup>th</sup> February 2020 and 30<sup>th</sup> September 2020. He identifies the following injuries:

- ***Left clavicle fracture:***  
The fracture is between 1 and 3 months old on 30<sup>th</sup> September and as the fracture line is probably visible on the radiograph at birth, he concludes it is likely that this fracture occurred around the time of birth.
- ***Rib fractures:***  
There are acute fractures of the right fifth and sixth ribs (posterior fractures) evident on 30<sup>th</sup> September 2019. Early callus formation is evident on 11<sup>th</sup> October 2019, consistent with progressive healing.

The approximate age of these fractures based on the radiographic findings alone is estimated at less than 11 days old on 30<sup>th</sup> September due to the absence of bone healing on the 5th rib fracture and equivocal appearance of the 6th rib fracture and then the presence of early healing on 11<sup>th</sup> October. This dates the rib fractures to the earliest date of around 19<sup>th</sup> September.

These fractures probably occurred at the same time as they are immediately adjacent.

Dr Watt explains that the mechanism for causing such injuries is compressive force to the chest. Rib fractures in children of this age are rarely caused by accidental causes. Occasionally, such fractures are seen following chest compressions (incidence of 4%) as part of resuscitation but they are uncommon and usually anterior fractures.

For a rib fracture to have been caused accidentally in a baby, a memorable incident with a compressive force or significant impact to the chest would be expected to have been identified.

The amount of force required to cause such fractures is not known but is outside normal or even vigorous handling. Statistically, the commonest cause for rib fractures in a young child is an episode or episodes of inflicted compressive force. Rib fractures have a high specificity for non-accidental injury as a cause.

Dr Watt has considered the report of Dr Arthurs, radiologist instructed within the criminal proceedings. There is a point of difference between them on the dating of the rib fractures. Dr Arthurs relies on a paper by Sanchez to date these fractures as healing fractures and as between 1-3 weeks old on 30<sup>th</sup> September. Dr Watt regards the Sanchez paper as an imprecise guide for dating fractures and does not revise his opinion.

Dr Watt confirms that symptomology resulting from rib fractures can be variable. They can be clinically silent. A non-perpetrator parent who is not present at the event may not therefore be aware of an injury. The perpetrator would be aware a significant injury had taken place but not necessarily a fracture.

- ***Metaphyseal fractures (ankle):***

Metaphyseal fractures of the right distal tibia and fibula are evident on 30<sup>th</sup> September 2019. A prominent periosteal reaction is evident. The fractures show progressive healing on 11<sup>th</sup> October 2019.

The estimated age of these fractures is based on the presence of periosteal new bone formation on 30<sup>th</sup> September and is estimated at between 2 and 4 weeks old. These fractures therefore occurred probably before the rib fractures (and possibly before the first subdural haematomas).

- ***Metaphyseal fracture - left distal femur (knee):***

A metaphyseal fracture of the left distal femur with separated bone fragments is evident on 30<sup>th</sup> September 2019. Early periosteal reaction is evident. Progressive healing of the fracture is seen on 11<sup>th</sup> October 2019.

The estimated age of this fracture is based on the presence of early periosteal new bone formation and is estimated at between 1 and 3 weeks old on 30<sup>th</sup> September.

This fracture probably occurred before the rib fractures but Dr Watt does not exclude it happening at the same time as the rib fractures.

- ***Metaphyseal fracture - left proximal tibia (shinbone just below knee):***

A metaphyseal fracture of the left proximal tibia with separated bone fragments is evident on 30<sup>th</sup> September 2019. No periosteal reaction is evident. Progressive healing of the fracture is seen on 11<sup>th</sup> October 2019 with still no periosteal reaction evident. The estimated age of this fracture is therefore difficult due to the lack of periosteal new bone formation and is estimated at less than 4 weeks old on 30<sup>th</sup> September 2019.

This fracture could have occurred at the same time as any of the other fractures, but it probably occurred at the same time as the left distal femoral fracture (knee) as it is immediately adjacent and could have occurred with same single mechanism.

The mechanism for metaphyseal fractures in general is a forcible pull and/or twist to the limb beyond its normal range of movement.

The degree of force needed to cause metaphyseal fractures is unknown but is out with that of normal handling of a child.

Metaphyseal fractures in young children can be variable in terms of symptoms and may be detected only by radiographic skeletal surveys if there is no loss of function of the limb. They may be clinically 'silent'. It is possible therefore that a carer who was not present at the time of injury would not be able to identify that a fracture was now present.

49. To summarise, Dr Watt concludes there were a minimum of two episodes of trauma with the rib fractures being more recent than the right ankle fractures. The left knee fractures overlap with both date ranges. He accepts that theoretically, particularly if one considers the opinion of Dr Arthur, that there could be a single episode that caused all the fractures. But he was clear that that was not probable. Dr Watt offered a clear rationale for that opinion: the different healing presentation of the metaphyseal fractures as opposed to the ribs and, in particular, that there was no evidence of any healing on the 5<sup>th</sup> rib fracture whereas there is established bony healing on the metaphyseal fractures. These different stages of healing would be consistent with two separate incidents at different times.
50. Dr Watt does explore the various explanations suggested by the parents but concludes they are unlikely. CPR: mother describes gently compressing B's chest a couple of times. Rib fractures can occasionally be caused by chest compressions but these are usually much more forcible than those described. It is therefore possible in theory that the rib fractures could have been caused in this way, but unlikely.
51. A is described as falling on B on 25<sup>th</sup> September 2020. In Dr Watt's opinion that is unlikely to have caused any of the fractures; no suitable mechanism or force is identified.
52. The mother had suggested that the injuries could have been cause by nappy changing or winding B. Dr Watt agrees that in theory if sufficient force was used, then metaphyseal fractures or rib fractures could be caused by these actions, but B would have been



memorably distressed as the degree of force required would have been clearly outside normal handling.

53. There was no evidence of any underlying medical condition that could provide an explanation.
54. Dr Watt concludes that the most probable cause of the fractures is an undisclosed non-accidental injury.

**Dr Austin, Consultant Paediatrician**

55. Dr Austin has filed two written reports dated 7<sup>th</sup> July 2020 and 28<sup>th</sup> September 2020. He concludes that B presented with clinical features of encephalopathy (drowsy, altered states of consciousness, apnoea and vomiting), clinical signs of change in head size and with a new divergent squint. There were no clinical indications of infection. He notes:

- The cause of subdural haematomas and retinal haemorrhages is well publicised by the Royal College of Paediatric and Child Health: abusive head trauma secondary to a shake event with/without impact. This is the consensus paediatric opinion.
- Rib fractures at age 2 months are indicative of inflicted trauma.
- The lower leg fractures on both sides are caused by an indirect mechanism i.e. twist and pull with excessive force.
- He concurs with Professor Fielder that commotio retinae is a very unusual injury. He also has never seen one in a child in 38 years of clinical practice. It is not, in his view, likely to be the result of a shaking injury with impact. If that had been the mechanism, he would have expected to see other soft tissue injuries.

56. In giving a paediatric overview of the injuries, he concludes that B presented with clear clinical features of physical abuse: at least two shake injuries causing the head injuries and the retinal haemorrhages and at least two incidents causing the rib fractures and leg fractures. The rib fractures were most likely caused by a single compression force to the chest consistent with shaking. The leg fractures were caused by multiple twist/pulling events. The force required to cause the fractures would be outside normal, even rough, handling. Taken together there were probably at least three incidents if it is accepted that the rib fractures happened slightly before the acute event leading to collapse on 27<sup>th</sup> September 2019. He does not think that one single event can account for both the acute subdural and the rib fractures as the fractures are in his view slightly older.

57. Dr Austin was very clear in his opinion that the acute event happened very close to the 999 call, describing being ‘almost certain’. He was not swayed in that view under cross examination. He was not concerned at the paramedics describing B as presenting with normal observations; being of the view that 10 minutes between the 999 call and the paramedics arrival was sufficient for a child to recover. He did not think it increased the likelihood of a delayed presentation. The court also notes the phone calls made by the father at 7.12 pm and 7.13 pm may well suggest that there was a very short delay between the injury and the parents calling for the ambulance. He notes the child is reported as

being well during the day. The breathing difficulties described by the family friend's mother and sister are very non-specific and B's subdued presentation does not assist. In his view, the dramatic change in B's condition as reported on the 999 call is the key to timing.

58. As regards the dating of the earlier injuries, in his opinion the rise in head circumference does not assist. It could reflect a gradual rise following a head trauma prior to 20<sup>th</sup> September being exacerbated by acute event on 27<sup>th</sup>. In his view it is not possible to tell. Similarly, the onset of a squint signifies something may have occurred causing internal injury to brain but he cannot say whether that is specific to the acute or chronic event.
59. With respect to the parent's descriptions of earlier breathing incidents, he notes caution against the assumption that they would correlate to the earlier abusive incident resulting in head trauma. He notes that what is described is not an uncommon description given by anxious parents of breath holding and is very different from what is described on 27<sup>th</sup> September as B going limp/floppy, changing colour and feeling 'dead'.
60. He thinks it possible that the metaphyseal fractures occurred at the same time as the older subdural haemorrhages but cannot be certain.
61. In summary an exact chronology is not possible.
62. Finally, he also gave clear evidence regarding the bruises. He confirmed that bruises are a safeguarding concern. He accepted that the bruise to the forehead seen on 28<sup>th</sup> August could possibly have been caused by a toy being thrown at B. However, even if that was accepted it would constitute a lack of supervision. As Dr Austin put it clearly: babies don't get bruises if they are properly cared for.
63. The bruises on the cheeks were very concerning. Due to being located on a fleshy area of the cheek and away from bony prominence, it was in his view that they were very unlikely to have been caused by a toggle or winding. The circular bruise on the jaw was in his view most probably caused by an adult digital imprint requiring considerable force. In his opinion the bruises were most likely to be non-accidental.
64. Dealing with clinical presentation, he notes the following:
  - The rib injuries would present non-specifically with grunt (pain), irritability, poor appetite, and sometimes would be painful on handling; all non-specific features for a non-perpetrator. It would have hurt when the injuries were inflicted but thereafter rib fractures can be clinically silent and can be missed by professionals on examination. The grunting and disturbed breathing described by the family friends overnight on 26<sup>th</sup> September is non-specific but is consistent with B having sustained the rib fractures.
  - B would have cried (screamed) when the events causing the metaphyseal fractures took place. There would have been discomfort at the site for a day or two and he then would have 'auto-splinted' i.e. reduced movement to minimise pain/discomfort. A non-perpetrator may not have understood the non-specific nature of the presentation. There would be no external swelling or bruising.

- B would have cried and been distressed when the commotio retinae was caused, unless consciousness was compromised by the event causing the subdural haemorrhages.

### **Assessment:**

65. All of the experts were in my judgment clear, authoritative and persuasive. They were all very careful to remain within their respective fields of expertise. None were dogmatic. All were prepared to fairly and openly consider alternative explanations or opinions whilst being firm in their ultimate conclusions. I found no reason to depart from their expert opinions and recommendations.
66. The court makes an additional short note about Dr Austin. It must be observed that his written report was very succinct and not the easiest in format to follow. However, his oral evidence was very helpful. It was in my assessment careful, thoughtful and expressed in detail and depth. He was very careful not to step outside what is properly known on the scientific evidence. Again, I found him along with the other experts to be very persuasive.

### **Evidence of fact:**

67. The Court heard from a number of witnesses of fact. Before turning to the witnesses who gave oral evidence before me I note, however, the most important witness statements contained within the bundle.

### **Health Visitor for A and B**

68. The Health Visitor filed two statements dated 7<sup>th</sup> and 8<sup>th</sup> November 2019. She reports that mother engaged well with respect to A. He was seen a number of times. There were no safeguarding concerns.
69. B was seen on two home visits: 7<sup>th</sup> August 2019 and 13<sup>th</sup> August 2019 at the family home. On the first visit the father disclosed mental health issues which he described as anxiety and anger but said he was dealing with it. The parents engaged well and no safeguarding issues were identified. B was then seen in clinic by a different Health Visitor on 20<sup>th</sup> September 2019. Again, no safeguarding concerns were identified.
70. It is however significant to note that it is clear from the Health Visitor's statement that the mother lied to the first response team when contacted on August 6<sup>th</sup> 2019 about living with the maternal grandmother and the father living with his mother and that the Health Visitor appeared to continue to believe this to be the case. This was a family who were therefore alert to the perception of any safeguarding risk by children's services.

### **Neonatal Nurse**

71. The Neonatal Nurse cared for B on the neonatal ward on 2<sup>nd</sup> and 3<sup>rd</sup> August 2019. She has filed a statement dated 10<sup>th</sup> November 2020. On 2<sup>nd</sup> August she received a telephone call from the paternal grandmother expressing her concerns about B being discharged home into the care of his parents. She recorded:

- The paternal grandmother believes her son to have a bad temper and she is concerned that a crying baby will quickly switch this on;
- He is well known for losing his rag;
- She believes him to be an abusive man with toxic and narcissistic tendencies;
- He has referred to B as being “a little shit”;
- He only wants to get B home as it is an inconvenience to him to have to keep visiting the neonatal unit;
- He is known for knocking people out;
- He gets so angry he punches walls and has smashed a glass in a room with a 10 month old sibling of B’s present;
- She believed he had been controlling and abusive in his relationship prior to being with the mother;
- A was constantly being farmed out.

The Neonatal Nurse records that the paternal grandmother backtracked somewhat when she was advised that social services First Response would be contacted saying she didn’t want to prevent B being discharged and didn’t want B removed from his parents.

72. First response were contacted and as a result of the concerns raised the Neonatal Nurse spent additional time with the parents on the morning of 3<sup>rd</sup> August observing care. She reported positively. The father is described as attentive, gentle and caring. No concerns were identified.
73. The Neonatal Nurse reports that when the paternal grandmother was updated that an assessment would be undertaken and support provided, she expressed relief that the family would get support.

### **Oral evidence:**

#### **The Paramedic**

74. The Court heard from one of the paramedics who attended the 999 call on 27<sup>th</sup> September 2019. She has made a police statement dated 7<sup>th</sup> July 2020.
75. She reports that when she arrived at the property the father told her that the baby had been having episodes where he would hold his breath, cry and then start to breathe again normally. That is not unusual for children and so she was not concerned. B appeared alert, not crying and was moving about.
76. She stripped B down to his nappy for examination. He didn't appear in any pain and he had no mark's or bruising on his body. Observations were within normal range and did not cause concern. At no point did B open his eyes which is again not unusual for a 2 month old baby.
77. The paramedics witnessed an episode where B stopped breathing for approximately 15 seconds before then starting to cry. He did not change colour. The father confirmed this was similar to the previous breathing episodes. Again, this did not cause her any concern as it is not unusual for babies.

78. She explained to the parents that B would need to be taken to hospital for more checks to be sure he was okay. This was usual practice for any child under the age of one year.
79. The mother appeared after the paramedic's arrival and did not speak throughout. The father engaged with the crew and travelled in the ambulance with B. The paramedics had no concerns about the parents.
80. When in the ambulance B opened his eyes and the paramedics observed that he appeared cross eyed and his eyes were shaking. It is recorded that the paramedics were told by the father that the issue with his eyes had occurred within the last few weeks and that his GP was aware. The court notes that that was a lie.

### **The Paediatric Sister**

81. The Court heard from the paediatric sister called down to A & E resuscitation when B was admitted. She filed a statement dated 23<sup>rd</sup> October 2020.
82. She reports that on initial assessment B had a low temperature, was cold to touch and pale. They therefore followed the sepsis pathway.
83. She was called aside by a nurse who made her aware of a bruise on B's cheek. The nurse said she had not asked the parents as to how it had been caused so the Paediatric Sister had asked. Father said B's brother had hit him on the face with a toy. She was sure he had not given an explanation of winding B and his ring being caught.
84. Overnight she became increasingly concerned with B's condition. She noted his eyes were crossed inwards, he had low respiratory drive and his oxygen saturation levels were dipping. His heart rate was also slower than it should be. He was quiet and still. The squint appeared to be worsening and his fontanelle was full/swollen.
85. She gave evidence that the parents account regarding the squint shifted. She said that initially the parents said it had started a few days before. Later this shifted and the parents said he had had the squint since birth. They had not reported it to health professionals. It was her view that a squint would have been picked up by a Health Visitor, GP or by the neo-natal unit. It was her recollection that the father did most of the talking and took the lead.
86. More generally, the parents' behaviour did not sit right with her. She did not regard it as appropriate for the situation; it was not consistent with that usually seen by parents when a baby is in resus. When B was in resus, she describes the mother wandering out and being on her phone. She seemed detached.

### **Assessment:**

87. The Paediatric Nurse gave clear and firm evidence. She was in the Court's assessment forthright and straight talking. Her recall of details was impressive. She was clear that the case had stuck in her head. She was also clear as to what had been written in retrospect and why. The court has the benefit of her contemporaneous record completed close to events and when very fresh in her mind. The court has confidence in the accuracy of that evidence. She was a reliable historian of fact.

### **The Family Friend's Sister**

88. The family friend's younger sister, was ABE interviewed by the police on 11<sup>th</sup> May 2020. She gave oral evidence permission having been given following a *Re W* analysis.
89. It was her recollection that she and her mum had cared for B one time and her sister, the family friend, had cared for him possibly two times. She described how on the day that they had cared for him her mum had gone out to pick something up - possibly a basket – leaving B with her. She said he was asleep on her chest. Her dad was in the next room so she was never left alone with him.
90. She felt his breathing was a little funny: like he would breath in and then you wouldn't hear anything for a little time and then it was as if he was like gasping for air. She described it, 'as if you've run a far distance and you're trying to catch your breath'.
91. Overnight, B was in a basket on the bed in the same room as both herself and her mother. She said he woke up a couple of times in the night to feed. She described him falling asleep on her chest and that she had stayed up with him until 5 am. She said his breathing was still funny, almost like rasping. She discussed his funny breathing with her mum.
92. Generally, his presentation was quiet and he seemed more limited in his movements than A. She thought he had perhaps had restricted movement in his arm.
93. She recalls seeing a bruise on B's face which she described as penny sized and brown/blue colour. It was seen by both her and her mother as soon as B arrived. She thought the mother had told her mum that she had caught B's face.
94. She thought there may have been one further occasion when B was cared for by her mother, but she was not around. She said she had never seen any other marks.
95. She said that she had never seen anything of concern in her sister's care of A, describing, for example, how if her sister gave him a bath, she wouldn't leave him unattended, but would always ask her to help. Similarly, she described the mother as a good mum. She had never seen the father care for A. Her mum had discussed that the father had anger issues, but she had never witnessed anything.

### **Assessment:**

96. I am satisfied that the family friend's sister did her best to help the court. I note that there were some inconsistencies with the evidence given by her mother:
- Whether her mother went out at all whilst B was in their care;
  - The extent to which the family friend's sister had cared for B including overnight; and
  - A lack of clarity as regards the date the bruise was seen to B's face.

Those issues will be discussed further below.

### **The Family Friend's Mother**

97. The family friend's mother was ABE interviewed by the police on 11<sup>th</sup> March 2020.

98. It is clear from her evidence that the maternal family and her family are very close.
99. She describes the father as a “lovely bloke” saying, “I love him to bits”. She reports that the parents had a good and loving relationship and he was a good influence on her. She does note some reservations: that he was a bit over-protective of her and had her on a short leash. She says he suffocated her and the mother couldn’t do anything without him being with her. She explained that he had been cheated on so was insecure; he believed that if the mother was not with him, she was doing something she shouldn’t be.
100. The family friend’s mother spoke in glowing terms about the father’s relationship with A, describing how A’s face would light up when he saw him. She reported he was very hands-on with A, describing them as a ‘proper family’.
101. She confirmed that she had overnight care of B on 26<sup>th</sup> September. The parents had a sickness bug so she was asked to have B. She collected him from the parents. The father told her B didn’t like being changed, touched or picked up and they’d changed his bum before he was collected. Later in her police interview the family friend’s mother noted that the parents had always said that. She described how when you were changing B and lifted his arm, he didn’t like it and he would whinge and cry.
102. She confirmed she had seen B with a bruise on his face and that she had spoken to the mother and she had said it was the way she had held him. The mother had described how he had moved his head forward and maybe her nail or something had stuck in his face. In her police interview the family friend’s mother suggested that this was the morning after B had stopped over. In her oral evidence she was unclear about when she had seen the bruise and thought it might have been a different occasion.
103. She recalls discussing B’s breathing with her younger daughter, the family friend’s younger sister. She thought it sounded like he was blocked up with a cold. The following morning one of his eyes was shut with what looked like conjunctivitis so she messaged the mother to take him to the GP. She was not however unduly concerned about B’s presentation. He fed fine and slept. She thought he was just ‘snuffly’ with a chesty cold. She took him back to the mother around lunchtime on 27<sup>th</sup> September.
104. She then described how later that evening she had received a telephone call requesting that she take the mother to the hospital. She confirmed that the immediate account given by the mother on the way to hospital was that he’d stopped breathing and the father had brought him to her because she was in the shower. She had then resuscitated him.
105. In her police interview the family friend’s mother says that this was the only time she had ever had care of B. She denied that her two daughters had ever cared for B on their own.
106. Within her police interview she also mentions the paternal grandmother without prompting, and observes that there was something not right about the way she had dropped B off without speaking to the parents on the last occasion she had cared for him and had subsequently cut all ties with the father. She also says the mother had mentioned A dropping a toy on B and being a bit heavy handed with him.

107. She confirms that maternal grandmother was somewhat distanced from events around B. The maternal grandmother is reported to have only seen B when the parents visited her at her house.

***Assessment:***

108. In many ways the family friend's mother came across as a generally straightforward witness. She was for example balanced about the father, speaking about positives as well as concerns.

109. In my judgment, there were however grounds to conclude that she has not been fully candid with the court:

- She wasn't truthful in her police interview. She lied about the number of times she had cared for B. She also lied about her older daughter, the family friend, having sole care of him.
- As noted above, there were inconsistencies between her evidence and that of younger daughter: i) as to whether she left the house on 26<sup>th</sup> September leaving her younger daughter to care for B; and (ii) the extent to which her younger daughter cared for B overnight.

In my judgment, she was anxious to minimise the role either of her daughters had played in caring for B and that desire to protect her daughters coloured her evidence.

110. The Court also notes the clear consistency of theme in her evidence with the evidence given by others from the maternal family/family friends:

- The mother is a loving devoted mother;
- The father was a good hands-on devoted father to A who A loved;
- There was nothing of concern in the relationship between the mother and the father, before or after B's birth, despite the serious difficulties they were experiencing;
- In the initial accounts, the family friend did not have sole care of B;
- There were never any concerns about the family friend's care of A or B;
- There were concerns about the paternal grandmother, albeit vague as to what exactly they were.

111. The Court also notes with interest a text exchange between the family friend's mother and the maternal grandmother being warned by a third party about the mother putting information on facebook that will be seen by the police. Again, this is a family who were aware of the ongoing police investigation and the need for caution about what they said and did. This is also a close family that the father remains very much part of. The Court is satisfied it is unrealistic and lacks credibility to suggest they have not spoken about events and what they should or should not say to protect and support each other.

**The Maternal Grandmother**

112. The maternal grandmother made a police statement dated 2<sup>nd</sup> December 2019.



113. The maternal grandmother was clear that as far as she was aware the mother was coping very well. She described her daughter as a devoted mother. There were no concerns. They all lived together until July 2019 when she finally moved out. During the period they lived together she never saw anything to suggest the mother or father were not coping with the care of A. Indeed, she had no concerns about the father and his care of A. The father was very good with him, treating him like he was his own. The father would take on an active role of changing and feeding A. He was supportive of the mother whilst she was pregnant and would attend hospital appointments with her. She witnessed no rough handling or speaking inappropriately about or to the children. The father had obtained work and she thought the family unit was working well. Had there been concerns she was confident her daughter would have told her. She denied saying to the paternal great grandfather that the mother was a 'shit mum' and that she had raised A.
114. Equally, she reported that she never had any concerns at all about the family friend's care of A. She was confident that had there been any concerns it would have been raised between the families. She had absolute trust and confidence in her.
115. Her contact with B had been limited. When B was allowed to come home from hospital the maternal grandmother had moved out of the property to her current address, leaving the parents alone together in the former family home. She said she would see them about two or three times a week. They would come to her house more often than she went to the former family home. She said that usually B was asleep and she would not disturb him. The maternal grandmother said she had no more than four cuddles since B was born but had no concerns. He was always clean, well fed and dressed.
116. The last time the maternal grandmother saw B before he was admitted to hospital was Saturday or Sunday 14th-15th September 2019. She confirmed that all the family came and there were no concerns. All was fine. She was then on holiday abroad from 18th - 25th September 2019.
117. The next time she saw B was on Friday 27th September 2019 at approximately 3pm. The family left about 4:30pm. She described holding B and noticing he was cross-eyed. She mentioned it to the mother and told her to speak to the health visitor. Otherwise he was happy and content. In her oral evidence she was clear that this was the first time she had noticed he was cross-eyed but notes he was usually asleep when she saw him. She wasn't told about an apnoea-type event until after B's admission to hospital.
118. After B' admission to hospital she reports that the account first given by the mother was that she was going to go for a shower and bath A when the father had walked in and said B had stopped breathing again. They rang the ambulance and the mother administered CPR. They briefly spoke about something similar happening the week before when B had stopped breathing and the mother had performed CPR. They said they did not take him to the doctors as he seemed fine afterwards.
119. It was notable that in her oral evidence the maternal grandmother confirmed having seen a bruise to B's cheek and that the father had told her he had caught B with his ring when winding him. She described it as a little red mark on his cheek bone. She couldn't be sure of the date. We do, however, know it either had to be before 15<sup>th</sup> September or the day of B's admission on 27<sup>th</sup> September. It could not have been the weekend of 20<sup>th</sup>-22<sup>nd</sup> September as the maternal grandmother was out of the country on holiday.

**Assessment:**

120. The maternal grandmother was also unequivocal in her evidence that there was absolutely nothing of concern with respect to the mother or the father or their care of the children. Her evidence was that all was absolutely fine; despite it being abundantly clear that following B's birth that there were very serious difficulties in the parents' home.
121. There were also some oddities in her evidence:
- It is apparent that she was somewhat distanced from her daughter and grandchildren following moving out of the family home in July 2019. The family friend's mother described how she had stepped in as a substitute mum to the mother. The only explanation offered for that distance was that the maternal grandmother was busy. The paternal family in contrast gave evidence that all was not actually well in the relationship between the maternal family and the father. The paternal grandmother and the paternal great grandmother described difficulties between the father and the maternal grandmother; the father having told them the maternal grandmother was racist and on one occasion she had gone to hit him whilst holding A. That would explain the maternal grandmother's distance following moving out of the family home and in my judgment has some credibility.
  - The court also notes that as with the paternal grandmother, the maternal grandmother did not visit the family in the family home. They came to her. Despite the close supportive family network the court heard considerable evidence about, none of the adults were regular visitors to the parents or providing any hands-on support in the home.

**The Maternal Step-Grandmother**

122. The maternal step-grandmother made a police statement dated 11<sup>th</sup> February 2020
123. It was her evidence that she could not fault how the mother was as a mother, describing her as excellent and devoted. She reported that the father was really good with A. There were no concerns. She said the father would take an active role in the daily care of A, changing his nappy and feeding him. She was aware of his mental health issues but never saw anything of concern.
124. As regards B, she first saw B when he was in hospital. The next time was about two weeks later when she visited the family home. B was fast asleep in his Moses basket. There were no concerns. The next occasion she saw B was on 21st August 2019 when the maternal grandmother and the parents came to the pub. B was in the push chair fast asleep. He never woke. Again there were no concerns.
125. The last occasion she was due to see the mother and the children was 18th September 2019 for lunch and for the mother to have her nails done. She received a message from the mother at 09.33, saying:

"Hello, is [the father] alright to come with us? He's not at work at the minute because his mental health is bad, he's hearing all them voices again, and doesn't feel

like he belongs here, I don't really want him in the house on his own, because he's said he doesn't even trust himself no matter how much he knows he won't do anything it's the voices. I'll pay for his dinner. If he comes if that's okay? Xxxx"

They therefore went into town and had some lunch with the father. She reports B was in his pushchair asleep. There were no concerns.

126. On 27<sup>th</sup> September, after B's admission to hospital, the maternal step-grandmother described how she received a text from the mother describing what had happened:

"I was about to bath A and go for a shower, and the father bangs on the door and he passes him to me and he looked dead, wasn't breathing or responded so I tried to do CPR and turn him on his side, that wasn't working so we rang 999..."

She and the maternal grandfather then met up with the parents a couple of days later. They gave the same account. The maternal step-grandmother described how no matter what the parents were asked they gave the same reply. She described them as "emotionless". The maternal step-grandmother accepted in cross examination they could possibly have been in shock. It was her evidence that they did not discuss anything other than the events of 27<sup>th</sup> September and the parents did not mention any prior concerns about B's eyes or breathing.

***Assessment:***

127. In the maternal step-grandmother's evidence there was a reiteration of the common themes regarding the parents, their relationship and their care of the children. In short, that there was 'nothing to see'. The court again notes the credibility of that in light of the serious issues that engulfed the parents following the discharge of B from hospital.

128. The court thus pauses there to note that in my judgment none of the maternal family/ family friends have been fully open with the police, social services or with this Court. I am satisfied that they have acted to disguise and obfuscate the truth. To put it in straightforward terms, they have closed ranks around the parents and the family friend to protect them.

**The Paternal Great Grandmother**

129. The paternal great grandmother made a police statement dated 13<sup>th</sup> May 2020.

130. She describes how she had an amazing relationship with the father when he was a child. Indeed, she describes him as the apple of her eye. Yet, at the same time she says he was very manipulative, sneaky and sly and would try to make her believe that the paternal grandmother was mistreating him. He was spoiled. They would buy him whatever he wanted.

131. She described how the father was always in trouble at school: he had anger issues and was very intimidating to other pupils. She says peers were frightened of him. He was a bully and struggled to keep friends. She described an incident at school where the father punched a student causing him quite significant injury, as a result of which he was excluded.

132. The paternal great grandmother also described an incident when the father knocked out his younger brother.
133. The paternal great grandmother reported that he struggled to hold down a job because of his behaviours. It was her view that he played on his mental health, saying he was in a dark place and used this as an excuse.
134. The paternal great grandmother described the father's relationship with his former girlfriend as abusive. She described him as very controlling, telling her what she could wear, how to have her hair, her make-up, even when she could speak. He also mistreated her dog. She described her as a shadow of her former self at the end of their relationship and that her and the paternal grandmother were so concerned that they had warned her mother about the father's behaviour.
135. As regards the mother's relationship with the father, the paternal great grandmother accepted that they seemed happy but in her view the father was becoming more dominant towards her.
136. Following the birth of B, the paternal great grandmother found the mother's behaviour strange. She felt the mother showed no emotion towards him at all. She said the father just wanted to go home and insisted the mother was with him. The paternal great grandmother gave evidence that she found it upsetting and strange that they left B alone at the hospital.
137. She was aware that the paternal grandmother had contacted the hospital and had expressed her fears and worries about B returning home. They believed that the mother was returning home under safeguarding supervision and that regular checks and visits would be made. The paternal great grandmother was clear that she had extensive discussions with the paternal grandmother about the father and their concerns about B and that she was aware the paternal grandmother was 'evidence gathering' to present to social services. She was also clear that along with the paternal great grandfather she was helping the paternal grandmother to manage the situation and giving her advice.
138. There can be no doubt that the paternal great grandmother had an extremely low opinion of her grandson and believed him capable of seriously harming B.
139. The paternal great grandmother confirmed that she saw B on the following occasions:
- 6th August 2019: the paternal family visited the mother and the father at home. She did not recall the mother holding on that day in contrast to her interaction with A. She recalls the father saying that he had been up early that morning with both A and B so the mother could have a lie in bed. He referred to them as "little bastards both of them". It was her evidence that it was said with venom in his voice. She described how the paternal grandmother had noticed that the television had broken so she ordered the father a new one from Argos. She said the paternal grandmother was concerned that if the father could not play on his games console he would be a nightmare if he could hear the babies crying. The paternal great grandmother felt the house was very cluttered and unclean.

- Friday 9th August 2019: the paternal grandmother came over with B and stayed for about an hour. There were no concerns.
- Friday 16th August 2019: the paternal grandmother spent time at the paternal great grandparents' house and the wider family came over. There were lots of people at the house. The paternal great grandmother said that paternal grandmother was there for about an hour before she took B home to the father. She was aware of a disagreement between the paternal grandmother and the father over the time she was to return B and because the paternal grandmother had showed B off to the wider family. She had no concerns about B.
- Saturday 31st August 2019: the paternal grandmother collected B and went to see the father's brother, as well as the paternal great grandparents. There were no concerns.
- Saturday 7th September 2019: the paternal grandmother again visited with B. There were no concerns.
- Saturday 14th September 2019: the paternal grandmother again visited with B. She noticed B had a scratch to the side of his right eyebrow.
- Sunday 22nd September 2019: They visited B at the paternal grandmother's address. She describes how her husband was holding B and was concerned about his chest, describing it as rattling. The paternal grandmother mentioned later whilst speaking on the phone that B had a different cry that day and appeared relieved to be in the water.

140. Following B's admission to hospital, the paternal family visited together on the Saturday morning. They met the father in the corridor. They asked how B was to which he replied: "oh he's alright it's me now, she's only gone and dumped me". The paternal great grandmother said the state of B was shocking. He was propped up on a towel and had just a nappy on and his eyes were totally crossed. She had to leave the room. She saw both the mother and the father sat in the coffee shop. The father was doing all the talking and doing hand movements. He had the mother's handbag on his shoulder and by the time they had finished the conversation they were back together.

141. She describes how the doctors were asking the parents questions and intimated did someone or something fall on B. The father had responded that A had fallen on B and then said to her: "don't you worry nanna I proper shouted at him and smacked his hand, he won't be doing that again as I proper scared him".

142. The following day they visited again. The paternal great grandmother said that the parents behaviour worried her. It was as if they did not care. She heard the mother say that B looked like the grinch and they all laughed. The parents did not seem concerned about the tests being undertaken. There were empty pizza boxes in the corner of the room where they had ordered takeaway the night before. That evening was the last time the paternal great grandparents saw B.

143. She absolutely denied any conspiracy to frame the father for the injuries to B and absolutely denied the paternal grandmother would be capable of hurting B.

### **The Paternal Great Grandfather**

144. The paternal great grandfather made a police statement dated 19<sup>th</sup> May 2020.

145. He describes the father as spoilt, awkward, emotionless and manipulative. He recalls the incident at school when the father headbutted another student. He said that after that incident the father's behaviour changed. He would be aggressive and intimidate people.

146. He said the father had a good relationship with the paternal grandmother if he is getting his own way.

147. The paternal great grandfather detailed the same concerns as the paternal great grandmother regarding the father's relationship with his former girlfriend. The paternal great grandfather said that the father would be aggressive and punch walls and would damage the TV and phones by throwing them. He also had a terrible reputation at work and couldn't keep a job, saying he was mardy and a coward. It was also his view that the father used his mental health and he questioned whether there were really any genuine problems, describing the father as a fantasist who tells lies.

148. On his 21<sup>st</sup> birthday he recalls the father had his hand wrapped in a bandage and said he had smashed a glass in the bedroom having lost his temper.

149. Following the birth of B, he also described the parents as seeming to be disinterested in B. He thought the nurse was needing to encourage the mother to hold B's hand, change and feed him. He felt the parents were not meeting his needs and their behaviour was bizarre.

150. On the first visit to the family after they came out of hospital, he also describes the father as calling them "little bastards" having been up with them early that morning. He also confirms that the paternal grandmother bought the father a new TV because she was concerned he would lose his temper if he could not play on his games console.

151. The paternal great grandfather had concerns about the basic care of both A and B. In his opinion they were not clean and their clothes were too small. He felt A was left in his bouncer too long.

152. It was his evidence that he advised the paternal grandmother to keep the father onside so she could monitor B given the concerns. He was aware she was keeping a diary and documenting her concerns so she could show Social Services.

153. He could remember seeing a bruise on B's head but was not sure when. He recalled the explanation from the father was that A had fallen on him. The father said he had smacked his hand and shouted at him so he did not do it again.

154. He also gave evidence of seeing another bruise that the father had said was caused when winding him and a button on his top had got caught.

155. The paternal great grandfather gave evidence that the paternal grandmother had told them the father was stressed and had visions of B going blue and that he had told the GP the baby noise was going straight through him and he didn't know what he might do.
156. He confirmed that 22<sup>nd</sup> September was the last time the paternal grandmother had care of B and they had seen him prior to his admission to hospital. He described holding B who seemed quiet and not his usual self. He described how he put his hand on B's back and felt his chest rattle.
157. The paternal great grandfather gave evidence that on B's admission to hospital they had received a telephone call to say B had stopped breathing. They were told the father had kicked down the bathroom door and the mother had given him CPR. The next day at hospital the father told them the mother had left him as they were falling out and she had put his ring on the side.
158. He described B's eyes as crossed and dazed. Like his wife, he had never seen anything like it before. The behaviours of the mother and the father also concerned him. He said they did not seem interested or concerned about B. He was shocked by the state of the room with empty pizza boxes from the previous night. He said they were laughing and joking and playing games on their phones. He also says the mother made reference to B looking like the grinch. His evidence is that the maternal grandmother had said to him the father was a shit mum and that she had raised A.

***Assessment:***

159. The evidence of the paternal great grandparents was striking in comparison to the evidence one usually hears from family members in care proceedings. It was in many ways uncomfortable to listen to. They clearly hold very strong hostile views about their grandson. They showed no understanding or empathy regarding his mental health difficulties. To engage in a process of 'evidence gathering' against one's grandson is certainly unusual behaviour.
160. It is clear that there are complex dynamics within the paternal family. Since B's injuries there has been a complete breakdown in the relationship between the father and his family. It is however clear that relationships were fractious and unstable before B's injuries were known.
161. The paternal great grandparents are vehemently of the view that the father was responsible for the injuries to B. They are angry. The paternal great grandmother's evidence was particularly difficult and fractious in her exchanges with counsel for the father. It is clear that she believes her grandson has caused these injuries to B. She is angry, defensive, intolerant and indignant at what she perceives to be the lack of focus on B and the case it appeared her grandson was pursuing against his mother. Whilst that kind of response is not helpful within the court arena, one can perhaps understand paternal great grandmother's reaction to cross-examination as a very natural one in light of her vehement belief that her grandson has caused very significant injuries to her great grandson and now, it appeared, was seeking to deflect responsibility by accusing his mother of some elaborate plot to harm B. One can understand why it all seemed somewhat bewildering.

162. The court must be careful therefore not to place undue weight on paternal great grandmother's demeanour. That said, such is the strength of the paternal great grandparents' belief that the father harmed B it was clear they came to court with a clear agenda to prove his guilt and ensure he does not get away with it. I am satisfied that to some degree that coloured their evidence and they were prone to exaggeration and inaccuracy. However, it is not correct to say there is no support for their strong views regarding the father:

- Whilst it is accurate to say that none of the maternal/ family raised any concerns about the father and his relationship with the mother and A, the court has already noted its reservations about the candour of their evidence to the court. I also note that the paternal great grandparents agreed that the father appeared to provide good care for A.
- Whilst the neonatal nurse raised no safeguarding concerns about the father's care of B, she was observing him within a controlled environment and when his mental health appeared stable.
- The paternal great grandparents' observations about the mother's interactions with B and that she appeared to be struggling to bond with him are at least to some extent accepted by the mother.
- There is corroborating evidence for the father having anger issues and that he is capable of quite serious violence:
  - It is accepted he did cause serious injury to a pupil at school.
  - It is accepted he did at the very least punch his younger brother causing him to fall to the ground.
  - The record of his visit to his GP in January 2018 details him suffering from "depression, anxiety and anger issues".
  - He self-reports anger issues to the Health Visitor on August 7<sup>th</sup> 2019.
  - The father accepted he had suffered from anger and issues with his temper in his oral evidence to the court.
  - Police statements from the father's former girlfriend and her mother corroborate the paternal great grandparents' account of the abusive nature of the father's relationship with his former girlfriend. The court notes that their statements are not accepted by the father but other than the usual bitterness on the break-down of a relationship, the court struggles to discern any motive for them lying to the police. Their statements are consistent, detailed and persuasive.
  - Text messages passing between the parents hint of similar controlling type behaviours: the father saying she does not need friends and exhibiting impatience when she is not responding to him immediately. He presents as jealous and insecure.
  - The family friend gave evidence of the father throwing a games controller across the floor when frustrated.
  - There was a very serious incident between the parents on 31<sup>st</sup> August 2020 when the father is described as causing significant property damage and acting in a threatening and aggressive manner towards the mother. It is clear she was very scared.

163. The court makes one final observation about the paternal great grandfather. The court was struck by the way he described listening to B's chest on 22<sup>nd</sup> September. In doing so, he came across as an experienced father and grandfather caring for a young baby in an



entirely appropriate way. In my judgment the notion that he was part of some conspiracy to hurt B and have him removed from the father's care is entirely implausible.

### **The Paternal Grandmother**

164. Having carefully considered the medical evidence, the Local Authority do not assert that the paternal grandmother should be within the pool of possible perpetrators. She remains an intervener because the father would appear, at least though his counsel, to have pursued a positive case against her.
165. The paternal grandmother was interviewed by the police on 3<sup>rd</sup> October 2020. She has also prepared a statement within these proceedings dated March 2020. The Court has also considered the contemporaneous notes she kept on her phone as part of the gathering of evidence against the father.
166. The paternal grandmother described how her relationship with the father deteriorated from when he was about 10 years old. She described him as toxic, controlling, devious, untrustworthy: a nasty piece of work. She said she struggled to call him her son. She told the police he had a temper, was self-absorbed and unable to look after a child.
167. She first visited B when he came out of the hospital at the parents' home. She was worried that the atmosphere was not particularly good. The TV had broken and the father could not use his PlayStation. She was worried he might lose his temper. She therefore went out and bought a new TV set for the family. After this first visit she only collected the father from outside the home; she did not go in except after the GP's visit on 2<sup>nd</sup> September.
168. Throughout this early period, the paternal grandmother says she was messaging the father and he was responding appropriately, sending photographs of B etc. Everything seemed fine and there were no problems.
169. From 9<sup>th</sup> August 2020, the paternal grandmother had weekly care of B. She collected him on 9<sup>th</sup> August at about 9:30am. She took him home. When she changed B's nappy, she noted that he had not been cleaned properly. There were still traces of faeces on his back. She was so concerned as to the level of care that he was being given that she decided at that point to document events on her telephone. There were no other marks to his body nor did he show any signs of distress. There were no concerns. At about 11 am they went to the paternal great grandparents' home. They were there for a couple of hours and left at approximately 2:30 pm. She took B straight home to his parents. Nothing remarkable happened.
170. On 16 August 2019 she followed the same routine. She collected B from his parents' home. On this occasion she says in her witness statement to the court that there was a bruise to his head. I pause there to note the date must be wrong. It does not accord with her contemporaneous note or the police statement which both state this was 31<sup>st</sup> August. In any event she says she asked the parents what had happened and the father informed her that A had fallen on him. She says she asked for more detail about it and the father said that A had slapped B in a playful toddler way. The father said he had then slapped B's hand and that he would not be doing that again. As the father was putting B into the car, she asked the father if she had seen what had happened and she just shrugged as though she had no idea.

171. Upon arriving home the paternal grandmother reports that she checked B over. She undressed him and could not see any bruises and gently pressed over his body to see if he was in pain. He hadn't been cleaned properly again and had the start of nappy rash. She went to visit the paternal great grandparents where other members of the family were visiting. She describes falling out with the father over the time she was dropping B off. She left her parents' house at about 2:30pm and went to see one of her other sons. She returned B at about 4 pm. The father was unhappy B had been taken to meet the wider family. He therefore said she could not pick B up again.
172. During the next two weeks she was sent a photo of B with teddies. On closer inspection she believes there to be a bruise on his cheek.
173. On 31<sup>st</sup> August 2019, the paternal grandmother's court statement says that the parents intended to go and have some tattoos. She therefore collected B again at about 9:30 am. He had a bruise on his cheek and the father said that he had been winding B and that a toggle on the top that he was wearing at the time had swung around and caught B. In her opinion it looked more like a finger mark. Again, the court notes that the date of this incident appears to be wrong and it should refer to 22<sup>nd</sup> September which is the date given in her police statement and contemporaneous notes. It also accords with the evidence of others as to when the parents went to get tattoos and others saw a bruise to B's cheek.
174. On 31<sup>st</sup> August, the paternal grandmother says she took B straight to the paternal great grandparents' home and she left B in the paternal great grandmother's care whilst she quickly popped to the shops. They left at about 11am. She describes checking B over again. He had very severe nappy rash and thrush in his mouth. She could not see any other marks and he did not appear to be in pain for any other reason.
175. She took B to see one of her other sons again and got there at around 1pm to 1:30 pm. She was there for about 1½ hours and dropped B off at about 4pm. She mentioned the nappy rash and thrush and the need to keep on top of it.
176. On 7<sup>th</sup> September 2019, she followed the same routine for collection and return. She noted no bruises or other concerns except nappy rash and thrush. She bathed him and went to the paternal great grandparents' home. From there she drove straight back to the parents' home.
177. The 15<sup>th</sup> September is not addressed in her court statement.
178. On the 22<sup>nd</sup> September 2019 she had B on the Sunday at the father's request. She collected him as usual. Her youngest son was in the house all day. In her statement to the court she says there was no bruise. That must be wrong. It was on 22<sup>nd</sup> September there was a visible bruise to B's cheek. The nappy rash and thrush had calmed down. The paternal grandmother says that B did not seem himself. When he cried, it seemed to be different. He was pale and would not take his bottle very well. He relaxed in the bath and fell asleep.

179. On this occasion the paternal great grandparents called at the house. She also describes how her stepfather was holding him and had his hand supporting his back and was concerned B felt a bit rattley on his back.
180. After the paternal great grandparents left she took B back to his parents arriving at about 3.30 to 4 pm. She describes how the father came out and took him out of the car. He seemed startled when he saw B and how pale he was. He said that B had stopped breathing 'last week'. She had to leave as she was double-parked but the father messaged her later to confirm what had happened and she told him to go to the doctor or to the hospital straight away to have B checked out. The father reassured her they would.
181. That was her last contact alone with B.
182. The paternal grandmother confirmed in her oral evidence that she never shared any of her concerns with the mother.
183. The paternal grandmother also give evidence as to the father's GP visit on 2<sup>nd</sup> September. She said she took the father to the GP as he told her that he had been having delusions. In her police statement she says that it was on the way to the doctors that the father told her he was not sleeping, hallucinating and seeing B going blue. She says he later disclosed this to the GP but her recollection of the GP's visit in her oral evidence was very vague.
184. After B's admission to hospital she also gave evidence as to how she was horrified at the state of B but that the parents didn't seem in the least worried. She says that the only time she saw the father cry at the hospital was when he told her that he and the mother were arguing and she had left him.
185. She also describes speaking to the maternal grandmother about what might have happened. The maternal grandmother immediately responded that it was not the mother and it was not the father. The paternal grandmother felt that the maternal grandmother was more worried about the parents than B.
186. The paternal grandmother confirmed that since B's admission to hospital, she has had no relationship with either parent.
187. She absolutely denies any suggestion that she may have had something to do with injuring B.

***Assessment:***

188. It is again fair to observe that the behaviours of the paternal grandmother following B's birth were unusual. The evidence gathering on which she embarked, stripping B at the start of each visit, inspecting him, bathing him, putting him in new clothes, recording her observations in a diary are not typical of a concerned but supportive mother and grandmother. As is clear from the contemporaneous phone recordings, her actions towards the father were also often devious and duplicitous.
189. To give just a flavour of those phone recordings:

On 31<sup>st</sup> August 2020 she says:

“surprise surprise [the father] used his phone yesterday to call me twice which I missed, then answered immediately to my text, and then this morning, lol. Dickhead. I’m not saying owt though. My mouth is nicely shut – lol.”

Her mother replied:

“ha ha. Let him believe he is in control but no one can control us two.”

On 2<sup>nd</sup> September the paternal grandmother said to her mother:

“I’ve listened to what [paternal great grandfather] said. He’s done the right thing for me.....”

And later she continues...

“so like [paternal great grandfather] said earlier, you’ve got to keep him closer..... If you go in in a supportive manner, you know like, twist it, you know like reverse psychology like...”

And she continued:

“so what I’m doing is I’m going to get him every week, every time I get him I’ll be checking him over but I am at the same time building a case for myself.”

Following a conversation with the father, the paternal grandmother phoned her mother and explained to her mother that before anything could be done with the father’s medication he had to be seen face to face. She then said:

“I’m going with the father. He’ll think I’m being his friend. No I’m not.”

190. The paternal grandmother’s exceptionally hostile views about her son and the language used to describe him such as ‘knobhead’, as with the paternal great grandparents, makes uncomfortable reading. It certainly, does not cast her in a positive light. Very sadly, she seems to have become so focused upon gathering evidence and building a case against the father that she lost sight of what were the most essential and basic steps to effectively safeguarding B: report her concerns to the mother or directly to the professionals.

191. However, the attack upon the paternal grandmother was in many respects unfair:

- The court notes again the comments above regarding the fact that the concerns the paternal grandmother reported to the hospital prior to B’s discharge were not without foundation.
- She was also fiercely criticised for not visiting the parents at home to offer support. I note from her contemporaneous notes she reflects on the fact that she is never invited into the property but met at the door and I note again that none of the adults appeared to have been spending any time in the family home including the maternal

grandmother. It is also clear that the paternal grandmother offered numerous times to care for B to assist the parents if they were struggling.

- It was suggested by counsel that the paternal grandmother was encouraging/manipulating the father into attending the GPs on 2<sup>nd</sup> September to disclose serious mental health concerns as part of her scheme against him. That is not supported by the father's own evidence in that he felt encouraged and supported by his mother in going to the GPs. He was also clear that it was him who spoke to the GP, not his mother. It is also nonsensical to suggest that this was the paternal grandmother manipulating the mother in light of the contemporaneous text messages passing between the parents which reveal in stark terms the difficulties with his mental health during this period.

192. The paternal grandmother also gave her evidence calmly and respectfully and, in my judgment, with great dignity in the face of cross examination aimed at painting the father as the victim of his upbringing, demonising her and in which she was accused of engaging in a conspiracy by which she deliberately and in cold blood seriously injured B in order to pin it on the father and replace the son she lost. Throughout her evidence there was not the least sign of aggression or any capacity to have violently and in cold blood injured a baby. There is also nothing in her past to suggest she would be capable of such actions. She demonstrated real and genuine distress in the face of that cross-examination and real regret at her part in failing to safeguard B effectively. Of all the key witnesses she was in my judgment the only one who demonstrated real distress at the injuries suffered by B. There can be no doubt that she loved him very much.

193. In terms of the reliability of her evidence, there were some clear inconsistencies/errors within her court statement as to the dates for the bruising she had witnessed. I am satisfied the account in her police statement given very close to events on 2<sup>nd</sup> October 2019 and entirely supported by her contemporaneous notes and the many photographs she took is accurate. I am also satisfied her police statement, again supported by the contemporaneous notes, provides an accurate record of the times she cared for B and her observations of the care he was receiving. Indeed, the details of those notes were not for the most part challenged: the thrush, nappy rash and presence of bruises. It is difficult to understand why within those contemporaneous notes she would lie about what she had seen and was being told, particularly on matters such as the explanations given by the father for the bruising when he accepts the bruises were there and is reported to have given similar accounts to others albeit differing in the detail.

194. There has been some criticism of the paternal grandmother's evidence regarding what the father said to his GP on 2<sup>nd</sup> September, and in particular whether he described seeing B going red and blue and feeling like he was not safe around him. The GP note does not record him making those comments and the Court is satisfied that the GP would have recorded any such concerns given the safeguarding implications. I do however note that in her police interview on 2<sup>nd</sup> October 2019 the paternal grandmother says the father told her this on the way to the GP which may provide one explanation for the inconsistency with the GP's record.

195. Overall, I am satisfied the doubt over the reliability of her evidence regarding the GPs visit does not undermine the overall credibility of her account. She may well have exaggerated what was said by the father either directly to her or to the GP when she

reported back to her parents. But for the most part I found her to be a reliable historian of fact.

196. Finally, I just reflect that it is in some respects an odd case to run to so vehemently criticise the one person who did record significant safeguarding concerns about the parents' care of B. The paternal grandmother's concerns have been described at various points as malicious and groundless; a difficult argument to make when sadly it turned out that she was right.

### **The Family Friend's Grandmother**

197. The family friend's grandmother prepared a statement for these proceedings dated 19<sup>th</sup> October 2020.

198. She confirms that she would be at home when the family friend cared for A or B but that the family friend did the care tasks and had overnight care. She never saw anything of concern in the way she cared for the children save for one occasion when she told the family friend not to tell A off.

199. In her oral evidence she gave evidence of seeing a bruise on B's cheek by the cheekbone. She described it as a finger mark as if someone had pulled on his cheek. She says it was discussed with the family friend's mother but she could not be sure if she had discussed it with the family friend. She would presume she did.

200. She was very clear and firm that the explanation they had been given by the mother was that she was winding B and her hand slipped. She was clear that they had not been told that it was the father who had been winding him and caught him with his ring. She did not specify whether that conversation was in person or by text exchange. She couldn't be clear as to how long this was before B's admission to hospital but it would seem to fit with B being in the family friend's care over the weekend of 20<sup>th</sup> – 22<sup>nd</sup> September.

### **Assessment:**

201. The evidence of family friend's grandmother was brief and straight forward.

### **The Family Friend:**

202. The family friend was interviewed by the police on 30/10/19.

203. It is clear that she was very close to the mother and they would see each other a couple of times a week. They regarded each other as family. The family friend also described being close to the father, saying he was like a brother. The family friend described the parents' relationship as close and strong. They never argued in front of her. She said they always seemed happy and that they worked together to look after the children. The father took an active role in caring for B who liked him and was always happy to see him.

204. The family friend gave evidence that after B's birth there were no concerns. The mother was fine. The father was very good in caring for him. She told the police she did not have much interaction with B, more with A. She described how she cared for A overnight very regularly, as much as once every fortnight. No one ever had any concerns

about her care of A. When talking about A, she volunteers to the police that he's quite heavy handed with his toys and dropping them can be quite heavy and can hurt.

205. As regards B, in her police interview she denies ever having him overnight at her mum's house or at her grandma's. She says she has seen him for a couple of hours during the day at weekends. She gives a description of how she would help keep an eye on the children if the parents were trying to do stuff round the house.
206. She told the police she thought she had B in August/early September when he was about a month old. She had him at her grandma's house. She said she had him again mid-September and the third occasion was 2 or 3 days before he went into hospital when the parents were ill. She denies ever having him on her own save for these short periods. It is now clear that was a lie.
207. Her account changes quite significantly in her first statement to the court dated 11<sup>th</sup> June 2020. In her first court statement she confirms she had B on 21<sup>st</sup> September (the mother was getting a tattoo) but not overnight. She denies having sole care of B.
208. In her police interview and witness statement she gives a more detailed account of the events of 25<sup>th</sup> and 26<sup>th</sup> September. She says that on 25<sup>th</sup> September the mother messaged her because the father was ill and asked her to look after the children whilst she went to hospital. She says the Moses basket was on the floor and A was dropping plastic bricks and a tool set into the basket. She says she told him off. B was fine and didn't show any distress. She reports that the mother and the father left about 7.45 pm and returned about midnight. She stayed on the sofa and the parents took the children upstairs.
209. The following day she describes how they were all being sick. At one point she got up quickly from the sofa to be sick in the bathroom. A was lying with her and fell off the sofa into the Moses basket but says she was not physically present as she was going to be sick and cannot give detail. A was told off. B was checked but there was nothing of concern.
210. The family friend also confirms seeing a bruise on B just before he was admitted to hospital and the mother saying she had caught him with her ring.
211. In her second witness statement to the court dated October 2020 her evidence shifts again. She says that on reflection she did not have B at the end of August but helped look after the boys at the mother's house. She now confirms having B overnight on 20<sup>th</sup> – 22<sup>nd</sup> September but gives no detail.
212. In her oral evidence she denied seeing or knowing anything about bruises to B. She denied seeing a bruise when she saw B on 28<sup>th</sup> August despite the bruise being very obvious on the photographs. She also denied seeing a bruise when she cared for B on weekend of 20<sup>th</sup>-22<sup>nd</sup> September despite the bruise being seen by both her mother and grandmother and there being apparent reference to her being told about a bruise by the mother in her written evidence. In her oral evidence she simply denied seeing a bruise or her mother/grandmother discussing it with her or being aware of any discussion with the mother.

213. In answer to questions put by the court, the family friend also gave evidence of three new events:

- An incident where the father in disciplining A, A had been so worked up the father had wrapped his arms around him and held him tightly in such a way which shocked her and really distressed A who she described as kicking and screaming and arching his back. The family friend said that she didn't think it should have happened; it was not an appropriate way to tell him off. She described the father as frustrated when doing it.
- An incident where the father threw the TV remote across the floor because he was frustrated whilst gaming. A was in the room.
- An incident where the father took her and the mother's phones because he felt they were not paying sufficient attention to A and was annoyed with them.

***Assessment:***

214. One must approach the family friend's evidence with caution given her age, her vulnerabilities and the significant and distressing personal difficulties she encountered during the fact find hearing. Nevertheless, her evidence was very troubling in a number of respects:

- She presented as emotionless and flat.
- Her evidence has shifted and changed considerably since the first police interview to her most recent statement to the court.
- We know she lied to the police about having sole care of B and caring for him overnight. That is not a mere matter of detail. It was a very significant lie. She was unable to give any credible explanation as to why she had told the police she had never had sole care of B. She said she had simply forgotten or was under stress which is not credible given the police interview was just a few weeks after B's admission to hospital.
- There was within her evidence the repetition of the key themes seen in the evidence of the maternal family/the other family friends. She denied seeing anything of concern regarding the parents' relationship or their care of B, despite her being the only witness who seemed to have regular access to the parents during September when they were very clearly struggling.
- That concern about repetition of key themes goes further. In my judgment there is evidence of collusion between the family friend and the parents. It is striking that they all give the same account to the police of apparently innocuous events as to the potential cause of the injuries to B: A dropping toys in his cot; A's fall off the sofa. It is not credible that there had been no prior discussion between them.
- Within her oral evidence, the family friend firmly denied seeing any bruising to B or speaking to the mother about it. That is not credible. The bruises were clearly there to be seen and were seen by others including the family friend's grandmother and mother. They must have been visible to her, particularly when she was undertaking primary care. It is not clear why she would lie about seeing the bruises.
- Most concerning was that in response to questions on a number of key events the family friend simply said she could not remember. That was a pattern repeated by both parents in their evidence:
  - She said she could not remember when she first had overnight care of B. Indeed, the chronology as to when the family friend cared for B remained somewhat uncertain.



- She said she couldn't remember why she had care of B for so much of the weekend of 20<sup>th</sup> – 22<sup>nd</sup> September.
- She said she could not remember whether it had something to do with the father's mental health.
- She said she could not say or remember why she did not have any telephone/text contact with the mother for some 4 weeks after B's admission to hospital. The only recorded contact she had was with the father shortly before her police interview.

It is notable, however, that whilst she struggled to remember key information as to when and why she cared for B, she was able to give a detailed account of other, perhaps less memorable, events.

215. Sadly, I did not therefore find her to be a credible or persuasive witness. The difficulty for the court is in understanding why she would lie.

### **The Mother**

216. The mother was interviewed by the police on 2/10/19. Her first witness statement is dated 5<sup>th</sup> December 2019. Her response to threshold is dated 17th September 2020.

#### ***Relationship with the Father:***

217. The mother's evidence to the police was that the relationship with the father was good and they did not argue. She said he was never violent in front of her and the allegation that he smashed a glass in front of A is malicious. The mother says the father is very supportive of her and she feels better when he is with her; indeed, her account is that he never leaves her side. The only time she says he is not with her is when she showers. She also tells the police that she never left the father alone with the children.

218. The mother is open to the police about the father's mental health difficulties. She says he is suffering from depression, anxiety, bi-polar disorder and had recently been to see a crisis team for psychosis. She informs the police he is not taking his medication. The mother tells the police that if the father feels like he's going to have an anxiety attack he is able to handle it and that he has never actually lost his temper at least around her or the children. She describes him as quite calm unless you push the wrong button. She says if he feels like he's either getting a bit angry or he's getting a panic attack, he'll go outside and he'll have five minutes to calm down. If he is depressed or wanting to hurt himself, he'll talk to her. She says that sometimes he feels like something is going to explode in his head over nothing. If it is one of those days he'll go outside for a breath of fresh air and smoke. He'll come back a completely different person. The mother tells the police that the father can control everything.

219. It is accepted by the mother that there have been previous incidents where the father has acted with temper or frustration.

- She accepts the incident with the mobile phones described by the family friend where the father removed their phones because he was annoyed. She says, however, she didn't think the father was being serious.
- She accepts the incident with the games controller where the father threw it across the floor in frustration with A in the room.

- She accepts the incident with A where the father was holding him because he was being naughty but refutes that he was applying pressure as he held B. She accepts she told the father to let go of him because A was getting worked up, describing him as red and upset and stressed from crying. She says however that she was not concerned the father was hurting him. It was accepted in cross examination by the guardian that the father was frustrated.

220. The mother accepted in her oral evidence that it was evident to her when the father's mental health was poor. She described how it could be seen in his body language, his general demeanour and his mood; she described him as stomping around. There were clear physical indicators that he was struggling: he fidgets, can't sit still, will bounce his leg and walk around. She describes how he wouldn't talk to her and it would be like walking on eggshells as she could not be sure what would happen. She said she would adapt her behaviour not to provoke him.

221. Although the mother accepted that she knew when the father was suffering with poor mental health, she denied knowing that it was not safe to leave B in his care. She says that nobody had suggested this to her, and she believed that the father loved the children and would not do anything to harm them. She says she never saw anything of concern in the way he handled the children.

222. The mother accepted that she knew the father was hearing voices (on more than one occasion) and seeing things. She denies knowing any detail, but she was aware that they could tell him to kill himself. She said she was trying to support him. She was also aware of his nightmares and that he felt things were coming after him to attack him and trying to stop him breathing. She accepted she didn't know what to do to help.

223. The mother also accepted the father's mental health was bad in September and very bad in the week of 23<sup>rd</sup> September. His difficulties were exacerbated by losing his job which had a significant impact on him as reflected in the contemporaneous text messages:

The father to the mother on 23/9: "I'm back at the bottom stuck in the fucking hole again... you think your stressing...if only you could feel how I feel now."  
The father to the mother on 25/9: "my stress levels are through the roof."

Furthermore, in her oral evidence the mother accepted that her relationship with the father was difficult and they were struggling in the couple of weeks before B's admission to hospital. She said they were less close, describing them as pulling apart. She said she didn't feel wanted by the father and that he didn't want to be with her. Again, the difficulties within their relationship are clear from the contemporaneous texts.

224. The mother did however remain firm and clear in her evidence that the father's relationship with the children was unequivocally positive.

225. In terms of her own well-being, in her response to threshold the mother denies she was struggling with the care of both children. It was however clear from her oral evidence that she was having significant difficulties. She describes in her first statement to the court that B was a very different baby from A. She wasn't able to hold him for several days after he was born, and he hated being changed and dressed. She says he was difficult to feed and wind and he would cry if you picked him up to do anything with him. He had

a high pitched and screechy cry. She accepts she struggled to care for both children alone when the father returned to work.

226. In her oral evidence, the mother gave a stark description of how she was feeling and behaving. She describes how on one day how she threw her telephone against the wall numerous times in frustration. The text messages to the father provide a revealing commentary. Whilst the court accepts the tendency for exaggeration and more extreme expression of thoughts and feelings through such messaging platforms, they reveal a young mother who was seriously struggling. The mother accepted that quite frankly in her oral evidence.

227. To again give a flavour of those messages and the extent of the mother's difficulties:

To the father on 23/08: "B fs, sounds like he's either been starved or murdered."

To the father on 28/8: "Had about what, an hour if not longer. A's being an absolute dickhead. Crying for no reasons and woke B up now there both being dicks. So long for having a little bit of extra sleep. Fucking arseholes."

To the father on 28/8: "That's it I'm dropping them down the stairs."

To the father on 12/9: "I'm going to murder them."

On 23/9, the father texted asking her not to lose her rag around him or the children.

In cross-examination the mother accepted that she was struggling as much as the father at the time. She described being extremely tired and at the end of her tether. In a striking passage of evidence, she said: "They were crying. I was crying. I was angry, frustrated." She continues, however, to deny hurting the children in any way.

#### ***Events leading to B's admission:***

228. The mother's evidence was that on the Friday night they got back from her mum's. B was asleep so she put him in his Moses basket upstairs next to the monitor. The other monitor was in the kitchen. The father, A and her were sat downstairs watching TV. She heard B stirring so made a feed. She heard the father talking to him on the monitor. She took herself for a shower and A for a bath. She says she didn't hear anything apart from the father speaking to him. All was fine. The next thing that happened was that the father banged on the bathroom door saying help. She looked and B was a little bit blue, pale and his arms and head had flopped. She tried to do CPR on B twice. On the second time she told the father to ring an ambulance because he wasn't really coming back round. The mother thought this all happened from the father going upstairs in about 7 minutes. B became more responsive just as the ambulance arrived.

#### ***Previous incidents of breathing difficulties:***

229. The mother told the police about a previous incident where B had breathing difficulties. She said they were all sat watching TV downstairs, B was in his cot. She says

the breathing incident happened again and she did CPR by breathing into his nose. She described B as struggling to get his breath and then burst out with a scream. After the incident they kept an eye on him but didn't think he needed to go to the doctors unless it happened again. B was back in his normal routine after that.

230. The mother accepts that she failed to obtain medical treatment for B following this breathing incident.

231. In her oral evidence, the mother gave evidence for the first time of a second breathing incident. She said she could remember the father running upstairs with B as described in his text to his mum on 22<sup>nd</sup> September but then her memory was blank.

***Explanations for the injuries:***

232. In her police interview, the mother gives a long and free flowing response to how the injuries may have been caused suggesting either birth trauma and/or an incident with A on the Thursday evening. As regards the latter, she describes how the family friend had stopped over and they were all unwell. She describes the family friend getting up which made A spring up and fall into B's Moses basket. She says the father managed to catch him so A only touched B a little bit. B flinched but he didn't cry. She says they kept an eye on him all night but he was fine. Nothing changed so they didn't think much of it.

233. As regards other potential explanations, the mother has also suggested that she could be a little heavy handed when changing B or winding him.

***Bruising:***

234. The mother in her evidence denies any knowledge of the bruise seen on 31<sup>st</sup> August 2019 by the paternal grandmother. It is, however, clear from the phone records that that is not true and she did know about the bruise to B's forehead. On 28<sup>th</sup> August she texts the father making clear reference to the bruise: "Also, them bruises, marks or whatever on B's forehead look so bad." She continues to say she didn't know how the bruise happened.

235. Also in her oral evidence, the mother gave a description of how the bruise on the jawline was caused by the father when winding B and catching him with his ring. She said she could not remember sending the text to the family friend's mother on 21<sup>st</sup> Sept about the bruise to B's cheek/jawline and in which she appears to accept she caused it:

"Yeah was me accidentally, I was trying to wind him and he tried to throw his head back and didn't realise how much I must of [sqouse] his cheek, sorry x".

In her oral evidence she said it was possible that this was the father using her phone.

236. The mother denies seeing the bruise to B's cheek prior to his hospital admission on 27<sup>th</sup> September.

***Parents' current relationship:***

237. The mother confirms that the parents remained together until a serious incident on 31<sup>st</sup> August of this year. In her oral evidence she described a violent outburst in which the

father caused significant damage to the property (pulling the TV off the wall, smashing it and there being glass everywhere) and he was aggressive to her, cornering her on the sofa, leaning over her and screaming in her face. She says the father was unpredictable and she was scared. The attack came out of nowhere and it was as if he just switched. She did not consider herself to be safe.

238. Despite this incident, and despite purporting to separate, the mother then described how they remained living together in the same house as friends. She told the court that they last shared a bed a couple of weeks ago and last had sex a couple of weeks ago. They speak daily by text or phone and see each other every couple of days. They have recently shopped together and she is supporting him move to a new property. In her evidence the mother was clearly ambivalent about them being separated. Despite accepting that he caused the injuries to B, she describes them as friends; as the father being someone she loves, cares for and respects.

***Potential perpetrators:***

239. The mother was clear and firm that she has never had any concerns about the family friend's care of the children describing her as always good with A and always good with B. She confirms that the family friend had both children on Wednesday 25<sup>th</sup> September whilst she and the father were at the hospital but they were in constant text communication and there were no concerns when came home. All was fine. She says the family friend did say A kept putting his plastic toys in the Moses basket but not with force, he was just placing them in and she told him off. Indeed, the mother positively asserts in her response to threshold that the injuries were not caused by the family friend. That has been her clear and consistent position.

240. As regards the paternal grandmother, when the fractures are discussed with the mother in her police interview she immediately raises the possibility of the paternal grandmother harming him saying the paternal grandmother has mental health issues, lost a child to cot death and she had a funny feeling when B was returned after spending time with her. She described a tension between them. She says that B's presentation was concerning after contact. He would cry and was unsettled; like something hurt when you handled him. He was sleepier than usual and didn't like being changed.

241. In her first statement to the court the mother says the injuries were most likely to be caused by the paternal grandmother. She has not, however, pursued that position. Indeed, in her oral evidence she accepted she does not think the paternal grandmother would be capable of hurting B.

242. The mother has now accepted in her written response to threshold and in her oral evidence that the father caused the injuries.

***Assessment:***

243. The mother's evidence was also deeply concerning with the recurrence of certain common themes.

244. The court does however note there are some positives about her evidence which need to be weighed. The mother's account of what happened on the evening of 27<sup>th</sup> September 2019 has been clear and consistent from the moment B was admitted to hospital until her oral evidence before me. That account was clearly and consistently repeated to the maternal grandmother, the family friend's mother, the paternal grandmother, the maternal step-grandmother and the professionals in the hours and days following B's admission. She has not deviated from it since.

245. That said, whilst the main thrust of the mother's account has been clear, the court notes there is a tension in the detail of the account when compared with that given by the father. Whilst both parents have been consistent in saying B was in the sole care of the father as the mother was looking after A in the bath/shower, there are elements of the account which are concerning. The father gives a detailed account to the police of B crying, having a tantrum, being distressed and that he was trying various ways to soothe him and get him to settle immediately before he went 'limp'. Despite accepting the baby monitor was downstairs, the mother's evidence is that the only thing she heard was the father at one point talking to B in a perfectly calm way. As her evidence is that she was just in the process of getting herself and A into the shower/bath in that she had just started to run the shower and was getting A undressed when the father banged on the door, it doesn't fit that she would have heard nothing of what the father describes was happening upstairs. The timing does not make sense. It is also not clear how the two unanswered phone calls at 19.12 and 19.13 would fit with that timeline. The detail does not ring true.

246. There are other significant difficulties with her evidence:

- It is clear the mother has lied about events surrounding the injuries. She lied about the family friend's mother and sister having care of B the night before his admission to hospital. She did not disclose that fact to the police and failed to disclose in her first statement to the Court. It is not clear why. Her explanation was that she was overwhelmed and had forgotten. Her police interview was however so close to the point of B's injuries that that is not credible. The mother is clearly capable of lying to the police and to professionals, as she did to the social worker on 6<sup>th</sup> August 2019 as to where she and the father were living.
- It is also of particular significance that again there were key events that the mother said she simply could not remember:
  - Whilst denying the father had smashed a glass in front of A, she could not remember the conversation with the paternal family about it.
  - She said she could not remember exactly what she was told and knew about the father's mental health following his visit to the GP on 2<sup>nd</sup> September. She gave evidence that she could not recall being told anything about onset psychosis. She accepted she knew about him hearing voices but could not remember being told what they were saying.
  - She could not remember what happened during the second breathing episode when the father called her downstairs in a panic.
  - She could not remember why the family friend cared for B over the weekend of 20<sup>th</sup> – 22<sup>nd</sup> Sept.
  - She could not remember whether she saw a bruise to B's jaw on or around 21<sup>st</sup> Sept when she was contacted by the family friend's mother.

This purported inability to remember key events, is, in my judgment, a tactic employed to deal with difficult questions or inconsistencies in the evidence.

- The mother's evidence has also shifted and developed. It did so clearly when giving oral evidence about the previous breathing incidents. In her oral evidence she gave evidence for the first time of two different incidents. She could give no reason why she had not identified the two different breathing episodes before. Her evidence on these two events was also very vague. She was unable to give any details about timings, dates or how far apart they were.
- As with the family friend there was also evidence of collusion. She also raises apparently spontaneously to the police, albeit in a way which suggests preparation, the same possible causes for the injuries as did the family friend and the father. Again, they are incidents which would not obviously have come to mind as causing any injury. All three of them are agreed the Moses basket incident with A was not particularly concerning at the time and B did not respond as if injured or hurt. The way in which this information is given to the police is highly suggestive that there had been careful discussion between them as to what to say to the police. It would certainly be difficult to believe there had been no discussion at all between the father and the mother as to what happened and what they could say to the authorities. It's also difficult to believe that once they discovered B's injuries they did not discuss matters with the family friend who had had care of B twice in the week before admission to hospital as to whether anything happened, or indeed with the family friend's mother. That is unless, of course, the parents already knew how the injuries were caused.
- Finally, it was striking to the court that the only real distress shown by the mother when giving evidence was when she talked about her relationship with the father and her struggle to accept that he had caused the injuries to B.

247. Sadly, I am therefore satisfied that the mother has not been fully open and honest with the Court about the injuries to B and how they were caused. The difficult question again for the court is why.

### **The Father**

248. The father undertook a police interview on 2<sup>nd</sup> October 2019 and has filed his response to threshold dated 17<sup>th</sup> September 2020.

### ***Mental health:***

249. The father gives an open and detailed account of his difficult mental health which goes back a number of years and he accepts can be unpredictable. He says that just before he met the mother he was seeing his GP because his former girlfriend mentally abused him. His account is that she controlled him and made him ill. He says he was abusing drugs, namely, cocaine. He says he didn't want to be here anymore, so he was either abusing or hurting himself.

250. He reports that his GP told him there were a number of things wrong including: borderline behaviour disorder; anxiety; depression; OCD; and psychosis. He tells the court he has been hearing voices since he was 17 or 18 years old. The voices tell him to do things he doesn't want to do. He describes a physical feeling of shadow men, causing

him nightmares and to wake up screaming and panicking in pain. It feels real to him. In his oral evidence he accepted he had issues with anger and temper. Before he met the mother he describes himself vividly as in a ‘bottomless hole, drug abuse, self-harming and suicidal.’

251. He has been prescribed citalopram but he says he stopped taking them after 3 to 4 months because they were making him feel worse. He denied to police that his poor mental health can manifest in anger saying it is managed through techniques such as drawing, listening to music, getting fresh air and living a healthier lifestyle. Essentially, however, his mental health is untreated. He is not on medication and he has received no counselling or therapeutic intervention.

252. The father expresses the view that if he doesn’t control matters he is going to do the wrong thing one day: his fuse will blow and he will “lose his shit”. He observes that he has not been controlling his anger so well and he’s not been an angry person for a good five years. He confirms to the police the incident where he quite seriously injured another child at school.

253. The father was open to the health visitor about his mental health problems. During her first visit on 7<sup>th</sup> August 2019 he tells her he has issues with anxiety and anger but is dealing with them. He accepts that his mental health deteriorated around the birth of B. He describes it taking a turn for the worst. He felt suicidal, was in a really dark place and was battling voices. He describes it as vivid; as feeling physical half the time. He says he didn’t physically want to be here no matter how hard he was trying for people. The only reason he was getting up in the morning was for A and B.

254. The father reports to the police that he went to his GP on 2<sup>nd</sup> September 2019. He firmly denies saying to the GP he was seeing B going red and blue. It is his case that whilst he was hearing voices telling him to be violent it was violence directed only at himself. He does not challenge the GP’s record of that visit:

“Since January deteriorating. Command auditory hallucinations telling him to be violent. He is managing to ignore them for now but is anxious he may not always. Did have visual hallucinations a few weeks ago – shadow men. Low mood. Recent stress has 6 week old [daughter]. Sounds like he is caring for her appropriately. HV’s aware of his mental health issues. ? emergent psychosis.

The GP referred him straightaway to the Crisis Team because of the things he was seeing or hearing. There was concern he was demonstrating symptoms of psychosis. He met the Crisis Team at CAMHS but they felt it was severe anxiety. He was prescribed Sertraline.

255. His text messages to the mother speak for themselves as to the serious nature of his difficulties at this time:

11<sup>th</sup> September: “just feeling a lot more fucking suicidal than I probably ever have or most days full stop...just that looney problem in my head as everyone calls it...I haven’t been on or off with you ... it just annoys me how you have no idea how to reply to my messages when I text you and there’s always a reason or excuse.”



11<sup>th</sup> September: “I’m not in the best of places today and it’ll be the wrong move if someone pisses me off.”

14<sup>th</sup> September: “And if you really want to know what was up with me last night or why I haven’t slept. Its fact feel unworthy...I don’t want to be here anymore as much as i want to at the same time. I’m struggling to fight my own fucking problems and I won ever get through this shit. You say your proud of me. For what.... All I’ve ever done is run in fucking circles... when I’m not even worthy of a life. I sat and once again I don’t know why I contemplated my suicide. Because I genuinely don’t feel good enough.... I’m not a dad. I’m not a good parent.... My mood hurts everyone else. I destroy everything I come across.... I’ve been in tears all night...I’m always hurting or ruining someone or something....”

15<sup>th</sup> September: “And [the mother’s name] I’m really...really...really sorry...I’ve let you down big time. I fucked up once again.”

15<sup>th</sup> September: “And I’ve fucking hurt myself okay. I can’t take this shit anymore it was either end it or really fucking hurt myself...so I hurt myself. I’m fucking sorry okay.”

15<sup>th</sup> September: “The fact I’ve been feeling so shit lately doesn’t really matter the fact that I’m 24/7 contemplating my to top myself doesn’t fucking matter.... My mood. My thoughts. And my feelings do not matter.”

18<sup>th</sup> September: “I’ve got a crazy urge to hurt myself.”

20<sup>th</sup> September: “I’m in the [shittest] place mentally right now.”

Losing his job was clearly a further significant blow.

25<sup>th</sup> September: “My mental state is collapsing.”

256. He accepted in cross examination that when his mental health is bad, he can do things which are not good. He can be violent and he can’t remember doing those things.

***Relationship with the Mother:***

257. The father describes his relationship with the mother as the best relationship he has had. He denies he was controlling of his former girlfriend or abusive in any way. Indeed, he says that he was the victim of abuse which resulted in his mental health deteriorating and drug taking.

258. In contrast he describes his relationship with the mother as amazing. He says she looks after him and whilst she didn’t realise how bad he was physically and mentally, she got him up and moving. He tells the police the relationship has never crumbled and they have never had an argument. In similar terms to the mother, he describes them as guarding one another; as joined at the hip. He says they don’t leave each other’s sight and are together 24/7 except when the mother is in shower. He says the mother saved him.

259. In his oral evidence he did however accept that the relationship was struggling in the couple of weeks before B’s admission to hospital and they briefly separated at the

mother's instigation at the hospital. He describes them during this period as up and down. They were not as close they had been.

***Relationship with A:***

260. The father described a loving relationship with A. He accepts the incident described by the family friend whereby he wrapped his arms around A who was wound up, distressed and was arching his back. He denies, however, being angry. He also denies ever shouting at A or smacking his hand.

***Knowledge of the Mother's difficulties:***

261. In his response to threshold, the father denied knowing that the mother was not coping with the care of the children. In his oral evidence it was clear that was not true. Again, the text messages speak for themselves. He describes how she didn't want him to go to work and how he wasn't sure how she would cope.

***Explanation for the injuries:***

262. The father, as did the mother, gives a long and detailed response to the police in answer to the question how the injuries to B could have been caused. He refers at length to the possibility of birth trauma. He tells the police B has been cross-eyed since birth and he wasn't checked over properly when discharged.

263. The father also refers to a few occasions when A had been a bit heavy handed with his toys after coming back from a weekend at his dad's. He describes A as quite big for his age and heavy. He says on a couple of occasions he's either put a toy towards B or thrown his hand around. The father asserts that B can come back from his dad quite nasty and with a temper. He has headbutted things and thrown his fists.

264. He also details the incident where A fell from the sofa. He describes how the family friend was on the sofa with A and B was in his Moses basket. A was asleep and the family friend decided to get up to go to the toilet, startling A who jumped off the sofa and landed in the Moses basket on top of B. He says it wasn't a full impact. He managed to get his hand under A's back before the full connection was made and put him on the floor. He says B woke up and cried in pain but then went back to sleep. He thought nothing of it. There was no indication of injury and after that B was perfectly fine.

***Bruises:***

265. In his police interview, the father refers to the bruise on B's cheek as identified by the hospital but otherwise denies seeing any bruises or marks on B. Indeed, he denies any concerns at all. In his response to threshold, he accepts causing a bruise with his ring whilst winding B. He denies telling the paternal grandmother something different.

***Previous breathing incidents:***

266. The father also tells the police about a previous breathing issue. He says it was about a week before B was taken to hospital. B was on the sofa with him. A was in his

highchair. The mother was in the kitchen sorting his bottle out. The father describes how after about half a minute of straight screaming B had gone a bit pale so he picked him up. He says he didn't feel like a dead weight or become unconscious. He was just completely lost for air; gasping. The mother gave him some CPR which he described as two or three light presses to his chest and one or two blows into his mouth and he was completely fine.

267. In his oral evidence when questioned about this breathing incident the father said he could not remember a lot. He did however accept that he had care of B and the mother had nothing to do with it.

268. The father was also questioned about the incident which he describes in a text to his mum on 22<sup>nd</sup> September: that he was downstairs, the mother was upstairs, and B appeared to have had another breathing incident. In his oral evidence he said he didn't remember much of the incident but again accepts he had care of B when this incident happened and the mother had nothing to do with B stopping breathing.

269. The father accepts he should have rung for an ambulance or notified his GP of these incidents and therefore he failed to obtain medical treatment for B. He also accepts he lied to his mother about taking B to the GP following texting her on 22<sup>nd</sup> September.

***Events leading up to B's hospital admission:***

270. The father gives a detailed account of the events of 27<sup>th</sup> September in his police interview. He says it was probably around three or four o'clock and B was due a bottle. The court notes the times must be wrong. The father says that one baby monitor was upstairs and one in the kitchen. He says he had him downstairs for a minute, the mother went for a shower with A and he took him upstairs after making his bottle. The father says that B was whimpering for a bit so he put him on the bed in order to get a bib or a muslin cloth, while his bottle was cooling down. He changed his nappy. He then says B was crying, screeching with anger and throwing a tantrum. He was agitated. In his first statement to the court he describes B as screaming so much that his face went red then blue. He put B in his bouncer for a minute to let him calm down. He describes him as going red and throwing his body and then stiffened himself up. The father says that wasn't working so he picked him up to try to soothe him. That wasn't working either and after about a minute of solid crying B went blue and then he went really red as if he looked constipated.

271. Given the significance of the next passage of his police interview it is cited in full. He says:

“I tried to give him a bottle, as I gave it him because he's crying that much he don't want it he's not taking to the teat he's just kind of gurgled and spat it back so I've put the bottle down, soothe, try and soothe him and that's when the whole situation happened where he's kind of went limp, blue, his eyes rolled, his eyes kind of rolled back a little bit and then after about half a minute of that happening, he went completely dead and he just went completely limp.”

The father goes on to describes how he thought B was dead: there was no breath; his chest wasn't moving; his heart wasn't going; his stomach wasn't moving; his arms completely dropped; his legs dropped; and he went blue and his eyes rolled.

272. The father then goes on to say that he needed to do something to fix it. He was scared and panicking. He describes how he laid B down for a minute, panicked, and then picked him up and ran downstairs. He kicked on the bathroom door at least three or four times in panic and then broke the door open, the mother came out, took B off him and tried to do CPR. They called for an ambulance. As the paramedics arrived B started to come back round. He had lost full colour, having gone from an olive skin tone to completely blue.

273. Notably, the father's oral evidence concerning the events of 27<sup>th</sup> September contrasted sharply with that very detailed account to the police. He was carefully taken through his police interview but simply responded for the most part that he could not remember:

- He said he could not remember why he called the mother twice in quick succession at 7.12 pm and 7.13 pm some 10 minutes before the ambulance was called.
- When asked whether he had hurt B who had collapsed and he was panicking trying to get the mother, he said he could not remember it was all vague.
- When he was asked to respond to the experts saying B was shaken just before he collapsed, he said he could not say, could not remember, he did not know, it was a blur.
- When it was put to him he might have hurt him, he said he did not know.
- When he was asked if he might have shaken him, he said he did not know.
- He said he could not say what his feelings were when B cried.
- He confirmed he did not know if he had done something to B.
- When asked if he was scared that he might have done, he said yes, that he could not really remember anything.
- He said he could not remember or only vaguely remembers running downstairs to get the mother.
- He said he could not remember the 999 call. He said he could not remember being asked about whether B was injured and could not remember passing the phone to the mother. He said he could only vaguely remember the mother doing CPR.
- When asked if his description to the police of B going from crying to limp was the point at which he shook him and B was injured, his response was "possibly".

The father thus now claims that there are significant chunks of 27<sup>th</sup> September that he can't remember. He accepted that he questions whether he has done something and is scared he might have harmed his son. He accepted in cross examination that when his mental health is bad, he could be capable of harming B.

274. In response to the question that no one else but him could have hurt B on 27<sup>th</sup> September, the father responded that he accepts that. He accepted the mother could not have hurt B on 27<sup>th</sup> September and confirmed that he does not believe she would have done. He accepted that 'possibly' the person most likely to have hurt B is him.

275. As regards his current difficulties remembering, the father says that he didn't choose to stop remembering and he has tried thinking back.

***Pool of Perpetrators:***

276. The father has been clear and consistent within his evidence that he had no concerns about the family friend's care of the children and did not believe she had injured B.

277. Within these proceedings the father has suggested that there were grounds for concern about his mother. He describes B as sleepy and lethargic when he returned from her care. But he was clear in his oral evidence that he was not putting forward a positive case that his mother had deliberately caused the injuries in some attempt to frame him and have B placed in her care. He simply said he does not know if she could have harmed him.

***Current relationship with the Mother:***

278. The father accepts the mother's account of the serious incident on 31<sup>st</sup> August 2020. He says he can't remember it having woken up in hospital the next day with no memory of it. In his oral evidence he claimed there had been other times when anxiety caused him to physically black out, sometimes lasting for a few minutes.

279. He gave similar evidence to the mother about the status of their current relationship. He accepted he still has feelings for her and they split up because 'it was the right thing'. He thought at first it may assist her to secure the return of the children but now thinks the relationship shouldn't happen. He also accepts that they have shared a bed and had sex in last few weeks and went shopping last week together to Asda.

***Assessment:***

280. In many ways the father's evidence came across as heartfelt and genuine. He was questioned at great length about his mental health and its impact upon him. He was able to talk about his mental health and his difficulties freely and articulately and without any apparent difficulty. Indeed, whilst quite possibly a feature of his illness, he appeared somewhat self-absorbed by his mental health. That is reflected in the nature and extent of his messages to the mother throughout September and may lie at the root of the paternal family's view that he plays on his difficulties. I note, just as one example, that in his police interview, he complains that at the hospital his family were only interested in B and not him. He observes that they were not there for him. The court also noted a significant change of demeanour when being challenged by counsel for the paternal grandmother about his memory difficulties. He notably became much more hostile and defensive in the face of less sympathetic questioning.

281. There were also inconsistencies in the details of his evidence. With respect to the bruises he now accepts that he caused a bruise to B when winding. He told his mum, as contemporaneously recorded by her, it was caused by a toggle on his top. He now says it was caused by his ring.

282. Some of the evidence did not ring true. His assertion that the voices telling him to be violent meant only violence directed at himself would constitute a strange construction of that phrase; a phrase which is more naturally interpreted to suggest violence against others.

283. As with the family friend and the mother there is, in my judgment, evidence of collusion prior to the police interview. He gives the very same account of apparently innocuous events to explain the injuries as do the mother and the family friend.

284. The father has also lied. He lied to the paramedics about B being cross-eyed since birth and seeking advice from the GP. He lied to the Paediatric Sister about the same thing. He lied to the police about the family friend having overnight care. He did not disclose B being in the care of the family friend's mother and sister. Again, the reason for not being honest about the about the family friends' involvement is not clear.

285. But the most concerning and significant feature of his evidence was his apparent inability to remember key events, simply responding to questions that he could not remember:

- He could not remember the details of the two previous breathing incidents.
- He could not remember discussions with the nurse at the hospital about bruising to B or any account given to the paternal grandmother as to the bruise seen to B's forehead on August 31st. He accepts he should have seen them and should have known how they were caused.
- He could not remember why B was in the care of the family friend over the weekend of 20<sup>th</sup> – 22<sup>nd</sup>. September but accepts there must have been a reason.
- He says he cannot remember the violent incident in parents' home on August 31<sup>st</sup>.
- Most significantly, he says he cannot remember virtually all the events of 27<sup>th</sup> September, despite originally being able to give the police a detailed account of what happened.

286. As regards father's inability to now remember anything about the events of 27<sup>th</sup> September, the court notes it is not suggested by the father that he suffered some form of blackout as he alleges happened on 31<sup>st</sup> August 2020. Indeed, he was able to give a detailed account to the police on 2<sup>nd</sup> October 2019 and never suggested he was having difficulty recalling events. The complete lack of memory demonstrated in his oral evidence is a new development. And with respect to the father, it is simply not credible. I am satisfied he can and does remember events of 27<sup>th</sup> September 2019. And whilst he may have hinted at matters to the court, he chooses not to give a full and candid account.

## **FINDINGS**

### **Injuries:**

287. There were no particular inconsistencies or oddities in the medical evidence in this case. The experts were in agreement as to the injuries, likely mechanism and timings. The parties accepted B's injuries were non-accidental.

288. On the balance of probabilities, I find that B suffered the following injuries:

- 1) An acute head injury dating to 27<sup>th</sup> September just before the 999 call was made. That is agreed by Prof Vloeberghs, Dr Saunders and Dr Austin. The causative mechanism was shaking. It was a non-accidental injury.
- 2) Retinal haemorrhages to the right eye as described by Professor Fielder. I find on the balance of probabilities the injuries dated to the earliest 23<sup>rd</sup>/24<sup>th</sup> September. The causative mechanism was shaking. It was a non-accidental injury. The eye injuries are consistent with a shaking event on 27<sup>th</sup> September.
- 3) A separate infliction of force to the eye causing commotio retinae. This injury could have been caused on 27<sup>th</sup> September but on the balance of probabilities it would have required a different and distinct application of direct force. It was a non-accidental injury.
- 4) An older head injury dating at its earliest to around 15<sup>th</sup> September. I find on the balance of probabilities that this was an abusive, non-accidental, head injury from a non-disclosed event.
- 5) Two rib fractures to the 5<sup>th</sup> and 6<sup>th</sup> posterior ribs. I find on the balance of probabilities that they occurred prior to the acute event on 27<sup>th</sup> September but no earlier than 19<sup>th</sup> September. I find they were caused by a significant compressive force outside normal handling. It was a non-accidental injury.
- 6) Metaphyseal fractures to the knee and ankle. The injuries could have resulted from one incident around 3 weeks prior to B's admission to hospital. I find on the balance of probabilities that they are unlikely to have been caused at the same time as the rib fractures. They could have occurred at the same time as the earlier head injury but I find on the balance of probabilities that the most likely causative mechanism is a pull/twist to the limb outwith normal handling.

289. On the balance of probabilities, I find that B also presented with three bruises:

- 1) On or around 28<sup>th</sup> August, a bruise to the forehead
- 2) On or around 21<sup>st</sup> September, a bruise to the cheek/jawline
- 3) On or around 27<sup>th</sup> September, a bruise to the cheek.

On the evidence of Dr Austin, I find on the balance of probabilities that the bruise to the forehead was caused at the least by neglect due to absence of supervision. I find that the bruising to the jawline and cheek could not have been caused in accordance with the parents' explanations and on the balance of probabilities are finger-tip bruises caused by direct application of considerable force beyond normal handling. The two bruises to the cheek I find were non-accidental.

### **Perpetrator:**

290. The list of possible perpetrators is the father, the mother, the family friend and the paternal grandmother. The first question for the court is whether it is possible to identify the perpetrator to the civil standard of proof.

### **The Father**

#### ***Wider canvas:***

291. The maternal family and the family friends give a wholly positive account of the father's parenting and the role he played in A's care. Nobody had any concerns. The health visitor had no concerns. I note, however, the court's findings regarding the veracity of the maternal family's evidence. The father also accepts that there was at least one concerning incident as to his care of A, witnessed by the family friend, and which she described as shocking. The notion that the father was disciplining or controlling a 9 month old baby by effectively restraining him was wholly inappropriate.
292. The court is satisfied that the father's relationship with his former girlfriend was abusive. I accept the account of the paternal family regarding that relationship supported as it is by the corroborating evidence of the former girlfriend and her mother.
293. I note that nobody reports any concerns about the father's relationship with the mother. All describe a good relationship that was happy and loving. The paternal family did not dispute that. There are many text messages passing between the parents that are loving and supportive.
294. The court notes, however, with concern the tone of text communications between the father and the mother in September 2019 which, in my judgment, evidences controlling behaviours. It is clear the father was insecure and jealous and that the father was subtly seeking to restrict her contact with friends. There are, for example, unpleasant text messages about the family friend on 18<sup>th</sup> September with the father making clear he did not want her around. Similarly, he messages her: "And you don't need friends babe. Life isn't about friends". It is clear to the court that the father demanded the mother's sole attention. He expresses frustration and anger when she does not respond immediately to his texts. This accords with the concern of the family friend's mother that the father 'suffocated' the mother in the relationship and had her on a short leash.
295. Furthermore, it is accepted by both parents that in the two weeks prior to B's admission to hospital the relationship was under strain. Both parents felt the other didn't want to be in the relationship and that they were not as close. Both parents were expressing anxiety and unhappiness.
296. It is clear that throughout September 2019 the father's mental health was very poor and he was experiencing very significant difficulties. He was hearing voices inciting violence, suffering from hallucinations, was experiencing suicidal ideation, depression and anxiety. He was at an exceptionally low point.
297. The father's mental health was unpredictable and although perhaps not a regular and persistent feature he was capable of sudden temper and anger leading to significant acts of physical violence: 1) the incident at school in which seriously injured another pupil; 2) the incident with his brother whereby he punched him and he was knocked over; and 3) the recent incident on August 31<sup>st</sup> 2020 involving serious property damage and an assault on the mother. There is also credible evidence from the paternal family of the father's anger leading to physical outbursts such as damaging walls and throwing phones or controllers. This is corroborated by the evidence of the family friend, accepted by the parents, of the incident in which he threw a games consoler out of frustration when A was in the room. There is further evidence from the paternal family as to the father's abusive behaviours in his relationship with his former girlfriend.



298. It is also evident from the texts passing between the parents in September 2019 that the father's mental health was all encompassing. He was absorbed by it, resulting in little attention being paid to the children and their needs. Within the text messages he speaks abusively and aggressively about the children. In a striking example, in responding to the texts from the mother on 12<sup>th</sup> September when she was struggling he says, "if he carries on wait until I'm back I'll fucking sort the cunts." In my judgment that is indicative of an abusive mindset.

299. The court then has to add to this difficult home environment two children under twelve months old with B a grizzly, somewhat difficult baby, crying and unsettled and with a screechy, high pitched cry. In my judgment the family home was very clearly a dangerous pressure pot.

***The acute injury on 27<sup>th</sup> September:***

300. The father's evidence regarding the events of 27<sup>th</sup> September immediately prior to B's admission to hospital was, in my judgment, significant and compelling.

301. Since the point of B's admission to hospital both parents have been clear and consistent that at the point of collapse B was in the care of the father, and the mother was in the bathroom with A. Although there are points of difficulty regarding the exact detail of events prior to B's collapse, that core position has never changed. The parents' account was reported immediately and consistently to a number of people; family, as well as professionals. I accept that it is an accurate account.

302. In his police interview, just a few days after B's collapse, the father gives a detailed account of the minutes leading up to B's collapse. In my judgment it has the ring of truth and the closest we come to a full and truthful account of what happened.

303. In contrast, the father's oral evidence was plainly deeply unsatisfactory. I am satisfied he does remember what happened that evening but he chooses now not to tell the court. Even so the evidence he did give had some striking features:

- He accepted that he doesn't know if he hurt B but it is possible that he did.
- He accepted that he was scared that he might have hurt B. Implicit within that acceptance is that the father accepts he is capable of doing so.
- He accepts that the mother could not and would not have caused B's acute collapse.
- He accepts that he is the person most likely to have hurt him.

304. On the basis of that evidence, I am satisfied on the balance of probabilities that B's acute head injuries caused very shortly before the 999 call on 27<sup>th</sup> September 2019 were inflicted by the father by means of violent shaking when B was in his care.

305. Having identified the perpetrator of the acute head injuries, the inherent unlikelihood of B suffering abusive injuries over a short 3-4 week period at the hands of two different perpetrators weighs heavily with the court.

***Non-acute injuries:***

306. It needs to be weighed in the overall balance that the father did not have sole care of B away from the family home and without the mother being present. His opportunities to inflict injury were therefore limited. The father did however care for B alone whilst the mother was in a different part of the house. Whilst the opportunities to inflict injuries were limited, it was therefore certainly possible and of course in light of the court's findings on the acute injuries he was able to do so whilst the mother was in the bathroom on 27<sup>th</sup> September.

***Bruising:***

307. It is significant that when asked about the bruises by family and friends, the father did not deny knowledge of the bruise or respond that he did not know how the bruises were caused. On all three occasions he has been asked about bruising he has provided an explanation, either that it has been caused by A or by winding. The court observes that although the family friends gave clear evidence that they were told by the mother that she caused the bruise by winding, it is accepted by the mother and the father that it is quite possible the father sent the text. The father was clear to his mum that he caused the bruise on B's cheek by winding albeit the details differed. Winding is not accepted by Dr Austin as a plausible explanation. In my judgment, the fact that the father seeks to provide explanations for the injuries when asked is highly indicative that he knows how they were caused, and indeed that they were caused by him.

308. In my judgment, there is sufficient evidence on the balance of probabilities to support a finding that the father was responsible for the non-accidental bruises to the cheeks.

309. The father is therefore found to have caused two different types of non-accidental injury, one by shaking and one by direct application of force to the skin. In my judgment that further diminishes the likelihood of a second perpetrator.

***Non-acute head injury:***

310. It is again accepted that on both occasions when B is reported to have presented with breathing difficulties he was in the care of the father. Indeed, during one incident the mother is reported to have been in a different part of the house. The timing of these incidents would seem to accord with the expert evidence as to when the chronic subdural haematomas were caused. On the other hand, I note the evidence of Dr Austin that the incidents as described: a form of apnoea or breath holding, are non-specific for head injury and whilst clearly described by both the mother and the father as scary and alarming may not coincide with the first abusive head trauma.

311. What is perhaps of more significance about those events is the avoidance of medical attention that followed. Despite the father accepting he was panicked and scared, he did not seek medical attention from the hospital, the GP or the health visitor. The failure to raise these breathing episodes with the health visitor is particularly concerning as the parents saw her in clinic shortly after the incidents. Nor did the father tell any friends or family about what on the face of it was a significant and worrying health scare for B other than his mum after she returned B on 22<sup>nd</sup> September. That of course included the family friend who cared for B overnight. Notably, the father also misled his mother about taking

B to the GP to have him checked over following him telling her about the incident on 22<sup>nd</sup> September. His actions in not seeking reasonable medical attention is highly suggestive of the fact that he was concealing injuries.

312. I also note that the father has not sought to make a positive case against anyone else. In response to questions as to whether he thought the mother, the family friend or the paternal grandmother could have harmed him, he simply responded: ‘don’t know’.

### **Other potential perpetrators:**

#### **The Mother:**

313. The court repeats the finding from earlier in this judgment that the mother has not been open and honest about what she knows about the injuries to B. I am satisfied that she has lied to the police and to professionals and that she lies to the court. I remind myself again of the extended *Lucas* direction. People may lie for many different reasons within care proceedings. They may be scared, ashamed, hiding their own guilt, or protecting others they love. The fact a person has lied is not direct proof of the matters that person is accused of. The court must consider what other evidence there may be which is probative of guilt.

#### ***Wider canvas***

314. I remind myself that the mother’s friends and family give a wholly positive account of mother’s parenting of A, describing her as a devoted and attentive mother. Nobody had any concerns. However, until shortly before B’s birth, the mother was living within the protective environment of her mother’s home. B’s discharge from hospital was therefore really the first time the mother was caring on her own without the maternal grandmother being around. It is also notable that A spent a large amount of time in the care of others for such a small baby.
315. There was a consensus amongst the witnesses that B was a very different baby from A. He was described as quiet, grizzly, difficult to feed, often unsettled and had a high-pitched cry.
316. The mother accepted she was not bonded and attached to B in the same way as A. She described parenting B as a very different experience to parenting A.
317. The mother was alone with the children more than anyone else. She had the clearest opportunity to inflict the injuries although in the couple of weeks prior to B’s admission the father was spending a lot of time away from work and in the family home.
318. As described above, the situation within the home was very difficult due to the father’s deteriorating mental health. The parents’ relationship was increasingly unhappy and the couple were under pressure.
319. It is very clear from the contemporaneous text messages, and her own oral evidence, that the mother was struggling very significantly with the care of the children. She spoke of them in a similarly abusive way as the father. She gave striking evidence to the court of being frustrated, angry, crying, at the end of her tether and throwing her phone.

320. It was a toxic environment and a context in which in frustration and anger it is entirely believable that she may have caused the injuries.
321. As is the case with the father, the mother also avoided seeking medical attention for B following the two breathing episodes. She also misled the family friend's mother about taking B to the doctors about the bruise and his chesty breathing and misled her mother about having a health visitor appointment where she could raise the concerns about his eyes.
322. However whilst all of these matters should properly be weighed within the balance and point to the possibility that the mother could have caused these injuries, the Court still has to weigh within the overall balance the inherent improbability that both the father and the mother were engaged in positive acts of physical abuse against B.

### **The Family Friend:**

323. It is particularly important for the court to have the *Lucas* direction firmly in mind with respect to the family friend. The court is very mindful again of the finding from earlier in this judgment that the family friend has not been open and honest about what she knows about the injuries to B. I am satisfied that she has also lied to the police and professionals and lies to the court. It is particularly difficult to discern a reason for that. But the fact a person lied is not direct proof of the matters that person is accused of. Again, the court must consider what other evidence there may be which is probative of guilt.
324. Turning to what other evidence there may be to support the family friend as the perpetrator of the injuries. There is some evidence that she was also struggling at the time with pain from her ankle and poor mental health but her difficulties were not of the nature and degree that the mother and the father were experiencing. There is nothing within her background to suggest a capacity or propensity for violence.
325. The court has also considered the evidence that she clearly had a perception that she may be in trouble very soon after B was admitted to hospital, which is at least suggestive of the fact she had prior knowledge of an injury.
326. However, the court has to balance against those factors that the family friend was never really left alone with B. Whilst she would be responsible for his basic care needs: nappy changes, feeding and dressing and he would be with her in her room alone overnight, there was always somebody else in the house.
327. I also note there were never any concerns about her care of the children. It is clear from the text exchanges with the mother that she was careful and appropriate as regards his needs whilst he was with her. The parents report nothing of concern when B returned from the family friend's care on the morning of 22<sup>nd</sup> September and nothing of concern when they returned from the hospital on 25<sup>th</sup> September.
328. It is also significant that both the father and the mother have been clear and consistent throughout that the family friend did not cause the injuries, despite her having care within

the relevant timeframes for the non-acute injuries. One clear reason for that would be that they both know she was not responsible and do not want her to be held to blame.

329. Finally, and again of weight and significance, for the court to find the family friend was responsible for the non-acute injuries, the court must be satisfied the evidence probative of perpetration outweighs the inherent unlikelihood of B being subject to abuse by two different perpetrators: one of whom is within the home and the other is not. In my judgment, the evidence in support of the family friend as perpetrator is weak.

### **The Paternal Grandmother:**

330. The ‘evidence gathering’ behaviours of the paternal grandmother and her clear animosity towards her own son may be unusual and make somewhat uncomfortable reading. They are however very far from providing an evidential basis to support an allegation that she has deliberately and in cold blood injured B to frame the father and assume his care.

331. The issues which appear to have troubled the parents about the paternal grandmother’s care of B are vague and non-specific: that he slept more after visiting and didn’t feed so well. The mother did not like the fact the paternal grandmother bathed him and put him in different clothes but there was nothing specific she could put her finger on. Neither parent raised any concern about the paternal grandmother’s care of B at the time.

332. The court also considers that such a plot and conspiracy between the paternal family is highly implausible. As argued in closing submissions, there would need to be both motive and opportunity. The opportunity being not only the occasions that the paternal grandmother had care of B and could have inflicted the injuries upon him but also doing so in the knowledge that the injuries would either be noticed, or, resulted in such a concerning reaction that the parents would seek medical attention leading to the injuries being discovered. The court has to agree with counsel’s submissions on behalf of the paternal grandmother that such a scenario is “preposterous”.

333. The medical evidence is that B sustained these injuries on at least three separate occasions. It is accepted that the final incident causing the acute injuries could not have been the paternal grandmother. The non-acute injuries happened at any time from 2<sup>nd</sup> September which means the paternal grandmother could have inflicted the injuries on the 7<sup>th</sup>, 14<sup>th</sup> and 22<sup>nd</sup> September. Notably, however, during the times she cared for B she did not spend very much time on her own with him. She was largely engaged in visiting other family members. The court also notes, in particular, that the window for the rib fractures (within which she had care of B being 22<sup>nd</sup> September) another of her sons was in the house with her. It is highly implausible that she would calmly and coolly break B’s ribs whilst her son was nearby in a different room and knowing her parents would shortly be arriving to visit.

334. Furthermore, there is no suggestion that there were any concerns about B’s presentation on return from the paternal grandmother’s care other than the generic concerns raised by the parents to the police. The paternal grandmother didn’t take him to the GP for the injuries to be ‘discovered’. The parents didn’t. The only reason the injuries were found was the acute collapse suffered by B on 27<sup>th</sup> September which was not caused by the paternal grandmother. If the case put against the paternal grandmother is correct,

her son's independent actions were a considerable piece of chance good fortune for the paternal grandmother.

335. The paternal grandmother was also proactively keeping records of her concerns about B and the care he was receiving. Many of those issues (nappy rash, thrush, bruises) are accepted by the parents. The court is also satisfied there was a solid basis for her concerns as disclosed to the neo-natal unit on B's discharge.

336. The mother accepted that she didn't think the paternal grandmother had hurt B.

337. Although the father has clearly at times suggested concerns about his mother, he was unequivocally clear in his evidence that he was not putting forward a positive case that his mother had deliberately caused the injuries in some attempt to frame him and have B placed in her care.

338. The evidence which would support a finding that the paternal grandmother was the perpetrator of the non-acute injuries is very weak indeed.

339. So balancing all of those matters, particularly:

- the inherent improbabilities of there being more than one perpetrator;
- the clear risks associated with the father's mental health;
- the stressful, difficult home environment;
- the evidence probative of the father as the perpetrator of the injuries is stronger than the evidence suggestive of the mother, the family friend or the paternal grandmother.

I am satisfied on the balance of probabilities that the perpetrator of all the injuries was the father.

### **Failure to Protect**

340. In light of that finding, I turn to whether or not the mother and/or the family friend failed to protect. I am mindful of the need for careful analysis of such a serious finding. It must not be a 'bolt on'.

### **The Mother:**

341. Such a finding must turn on the knowledge the mother had of the injuries to B and/or the specific risks posed by the father as a result of his mental health difficulties.

342. Turning first to the injuries and B's clinical presentation. As regards the metaphyseal fractures, the expert evidence is that whilst B would have been in initial pain and distress, that would settle and he would present with non-specific symptoms such as being grizzly and difficult to settle. There would have been no obvious external sign of injury by way of bruising or swelling. The court notes that the health visitor did not identify any difficulties when she examined B on 20<sup>th</sup> September

343. The rib fractures, similarly, although obvious to the perpetrator can be clinically silent with non-specific clinical presentation.
344. The chronic head injury from an undisclosed event could have presented with much milder external signs of encephalopathy than on 27<sup>th</sup> September with B responding much quicker. Ongoing symptoms would be variable and non-specific.
345. On the basis of B's clinical presentation following the head and bony injuries alone, it cannot therefore be said that the mother would or should have known he was injured.
346. It is also accepted that the paternal grandmother did not tell the mother about her concerns about the father and nor did she share her safeguarding concerns as detailed in her log.
347. The bruising seen to B is however different. I am satisfied the bruising to the forehead and the two bruises to the cheek/jawline were clear and obvious and would have been seen by a primary carer. Whilst the mother is young and relatively inexperienced, the presence of bruising on a non-mobile child is a clear cause for concern. It indicates either the child has been hurt by someone or there may be an underlying medical condition. In either circumstance medical advice should have been sought.
348. Similarly, there was a clear failure to obtain medical advice following the two breathing incidents prior to the 27<sup>th</sup> September. On the basis of Dr Austin's evidence, those two incidents cannot necessarily be causatively linked to the first abusive head injury. It is however significant that medical attention was not sought from either the hospital or the GP. Nor was it raised with the health visitor on 20<sup>th</sup> September despite that providing an obvious opportunity to do so. Nor did the mother raise it with her close family and friends, despite the family friend having overnight care shortly after the reported incidents. That in and of itself constitutes, as is accepted by the mother, a failure to seek medical attention. She was unable to offer a credible explanation as to why she did not.
349. There was a similar avoidance in her responses to the mother of the family friend and the maternal grandmother when they were urging her to seek medical attention for B.
350. This of course raises the important question as to why she was she was avoiding seeking medical attention. It is a reasonable inference for the court to draw that she knew, or at least suspected, B had been injured. The court reminds itself that the mother is capable of lying to professionals to try and shield herself and the children from the interest of Social Services.
351. It is also clear on the evidence before the court that mother was fully aware of the serious nature of the father's mental health difficulties. Whilst she may not have been told all the details, she did know he was hearing voices, hallucinating, was expressing suicidal thoughts and was extremely depressed. That must have been deeply concerning, even frightening for her. Yet she did nothing to safeguard the children or protect them from exposure to the father's difficulties. She did not seek any assistance from the health visitor or any other professional regarding the father's presentation.

352. It is also difficult to conceive how mother could have had no knowledge of the pressures and strains that led to the repeated abuse of B when they were living so closely within the same household. This was a couple who everyone described as joined at the hip. The father was never alone with B without mother being somewhere in the property. It is difficult to conceive how she could not have seen or heard anything of concern. The very short-lived separation after B's admission to hospital and the contents of the messages passing between the parents is indicative that she knew more as to what was happening than she now discloses. Certainly the content of those texts is almost exclusively focused on the parents' needs and their relationship rather than B, their very sick child.

353. The court must consider these factors within the wider context of the parents' relationship and the very revealing oral evidence mother gave about it. It is clear to the court that at the time of B's injuries both parents were completely absorbed by their relationship and, indeed, remain entirely enmeshed. It is striking that mother is able to give a detailed description of why the parents argued at the hospital following B's admission: describing how she felt ignored, excluded, non-existent, over-looked and that B didn't want her, yet struggles to recall key details about the injuries to her son. It illustrates where her focus was and still is.

354. The mother's continuing strong feelings, emotions and loyalty towards the father were abundantly clear in her evidence. It was evident in mother's extreme difficulty and patent distress in accepting that the father injured B. The court has no doubt that were it not for these proceedings, and despite accepting the father has caused the most serious injuries to her children, she would still be in a relationship with him. She describes how she tries to forget about it because it is upsetting; that she doesn't want it to be true. In my judgment that is indicative of her mindset now and during those fatal weeks whilst B was at home. The mother simply did not want to know. She wilfully turned away. In my judgment she has demonstrated a sustained inability to prioritise the needs and safety of the children over her relationship with the father.

355. Finally, the court has to consider and balance its earlier finding that mother has not been fully open and honest within these proceedings. As already noted above, the fact she has lied is not direct proof of guilt on matters on which the Local Authority seek findings. But if the mother does not lie to protect herself as perpetrator of these injuries, it is a reasonable inference to draw that she lies to protect the father.

356. I find that on the balance of probabilities mother has failed to protect the children.

### **The Family Friend:**

357. Finally, the Local Authority seek a finding against the family friend that she failed to protect. Of course, the family friend is not a parent but, in my judgment, that does not mean she did not have a broader responsibility, a safeguarding responsibility, to draw matters of concern to the attention of the parents or indeed professionals.

358. The court repeats the observations made above regarding B's clinical presentation following the head and bony injuries.



359. The bruising is however again different, and I am satisfied that the bruise to B's cheek/jawline was visible over the weekend of 20<sup>th</sup> – 22<sup>nd</sup> September. The family friend should have made reasonable enquiries regarding that bruise; at the very least she should have made enquiries of the parents. That in and of itself however would not in my view justify a serious finding of failure to protect.
360. As regards the family friend's knowledge of the broader issues within the home impacting on the parents, it is clear that the family friend had more regular access to the home environment than other family members. It was however still limited to a handful of occasions and as is clear from her surprise at the father's derogatory comments about her, it was not perhaps apparent to her as to the extent of the tension and difficulties. There is also nothing within the communications between the mother and the family friend that discloses to the family friend the mother's struggle with the children or concerns about the father. Their communication is focused on practical arrangements for the children.
361. However, of great continuing concern to the court is the family friend's ongoing lack of candour concerning what she knew of B's injuries and the situation within the family home at the time, either from direct observations at the time or discussions between herself and the parents in the aftermath of B's admission. That lack of honesty in the face of a child having suffered such very significant injuries is deeply troubling. It is reasonable to infer that the reason for that lack of candour – if not to protect herself – is out of misplaced loyalty to protect the parents at the potential expense of ensuring safe decision making for B and A.
362. The court has balanced these matters very carefully particularly in light of the family friend's own vulnerabilities. There is little direct evidence to support a conclusion that the family friend had sufficient knowledge of the problems and risks within the home to merit a serious finding of failure to protect. I am therefore not satisfied on the balance of probabilities that such a finding is made out. However, in light of the concerns expressed by the court about the family friend's lack of candour in these proceedings and the implications for safeguarding children in her care, I would give permission for my comments to be disclosed to her college so they may consider them in determining whether the family friend can return to her course.

HHJ Sonia Harris  
Designated Family Judge for Stoke on Trent and Staffordshire  
30<sup>th</sup> November 2020