

IN THE FAMILY COURT
SITTING AT LEEDS

Case No: LS19C00037

Coverdale House
13-15 East Parade
Leeds
LS1 2BH

IN THE MATTER OF THE CHILDREN ACT 1989
AND IN THE MATTER OF X (a child)(Finding of fact and Welfare)

Before:

HER HONOUR JUDGE HILLIER

Hearing dates: 8,9,10,14,15,16,17,18,21,22,23,24,25 October 2019, 17 December 2019 and 8
January 2020

Guy Swiffen and William Lindsay for the Local Authority

Aidan Vine QC and Neil Murphy for the Mother

Kama Melly QC and Catherine Mason for the Father

Clare Garnham and Kate McNally for the child

The judge has given permission for this judgment to be published in this anonymised form.

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JUDGMENT

1. This final hearing started on 7 October 2019 and concludes with the handing down of this judgment on 24 February 2020 in respect of proceedings started on 16 January 2019. The fact that it relates to events which took place more than 12 months ago means that X, the child with whom I am concerned, has not been in his parents' care for a significant period of time. Fortunately he has been in a family placement.
2. The delays in this case have been unavoidable, including delays caused by illness and unavailability of advocates and the simple fact that obtaining expert evidence in head injury cases takes months rather than weeks due to the paucity of experts who engage in this type of work.
3. It is now agreed that X was injured in 2018 by one of his parents. Nobody is suggesting that both parents harmed him together. The case has concentrated on whether I can identify which parent hurt him and who should care for him going forward. I have referred to the parents as the mother and the father.

Background

4. The mother is 23 years old, some 3 years younger than the father. They met in 2017 and started living together in 2018. The mother found the father to be charming, confident and funny. She felt that they had a similar sense of humour and liked the same things. The father found the mother to be charismatic and attractive, a woman who didn't take things too seriously and who had a good sense of humour. Both of them described being very much in love. The father described himself as a person who liked to resolve any difficulties "face-to-

face” whereas the mother preferred to avoid direct confrontation and to conduct arguments by text. The father was open with the mother about his past mental health difficulties and the fact that he has what he describes as “OCD” tendencies.

5. In 2018 the father lost his job. He later found new employment, working for the husband of one of the mother’s friends, which he started on the 5th of the month which I am concerned. He continues in that employment. The mother left her employment suddenly, prior to the birth, and had not made an application for benefits.
6. X was born on [date of birth] 2018 and was discharged to his parents care two days later. It was a difficult birth ending in surgery. During the first two weeks the father undertook most of the primary care for X except feeding. The mother had anaemia and was in pain from her stitches. Between the 5th and 8th of the month with which I am concerned the mother stayed with X at her own mother’s home because the father was away training for his new job, but other than that they cared for X in their own home. Their joint care of their son covered a period of less than 30 days.
7. On the 19th of the month, something occurred which caused an “atmosphere” in the home leading to the mother spending the night in the spare room. She says that the cause of this was that the father farted in X’s face, an allegation he denies. The father said that the reason for the ‘atmosphere’ was that the mother was hormonal or attention seeking, and he did not recall any argument.
8. On the 20th, the mother sent a message to the father’s sister. The mother describes the day as “stressful” and the father accepts that there was friction between them. It was around the anniversary of the maternal grandfather’s death. The health visitor visited the home. Nothing of concern was observed and no bruising was observed on X. In the evening, whilst the parents were bathing X and he was being handled by his father an incident occurred during which X ingested some water. The father placed him under the shower. The mother and the father agree that they were not really speaking to each other and that the “atmosphere” continued.
9. During the night of the 20th the mother describes a very disturbed night with X waking every hour from midnight to 6am which was unusual for him. The parents agree that the father slept through most of the night.
10. What happened on the next morning, the 21st, is disputed. The parents agree that when the father woke he took X downstairs. The mother got up and went downstairs at about 9am. The father was in the living room with X. He picked X up and took him upstairs, saying he was going to change him. When he returned downstairs with X, the mother was sitting on the sofa using her phone. The parents agree that the mother did not immediately take X, that the father swore at her and then put X in his bouncy chair. The way this was done is disputed. The father then left the room, slamming the door. Shortly afterwards he gave the mother, with X, a lift into town. The mother met her friend A in Morrisons cafe.
11. During the course of the morning the mother sent the maternal grandmother, C, a photograph of X’s face. C showed the photograph to her sister, D. The mother remained with A until about 5pm at which time A’s boyfriend returned them to the mother’s home, arriving at about 5.20pm. The father returned home from work at about 6pm.
12. The parents agreed that at some point shortly after his return home the mother pointed out to the father a mark on X’s left forearm. The ‘atmosphere’ between them continued and the discussions which then took place are disputed.
13. C took her son to football practice in the evening and she went to her daughter’s home at about 7pm and saw X. He remained asleep during the short visit.
14. The couple were still not on speaking terms. The mother went to bed and texted the father to come and watch TV with her. He did not do so. At about 10.30pm he went up to their

bedroom and got into bed. A short time later the mother took X to the spare room. She contacted the grandmother via her brother and C went to the house and took them both to her home. The father was aware that she had left the home and taken X with her.

15. The mother and C state that they slept together with X in C's room that night and the next night. X was described as unsettled and was being sick after and between feeds. Both his mother and grandmother tried to settle him by walking round with him during the early hours of the morning. Both describe the sickness as progressing to "projectile vomiting".
16. C left X in the care of his mother while she went to work on the 22nd. She advised the mother to take X to a GP if symptoms persisted, and her daughter later told her that X did not seem "*that bad*" during the day. X was sick again during the night and the mother and grandmother agree that the sickness was worse. The mother did not tell the father that X was ill. He told her that they should have a further night apart.
17. The father and the mother took X to the GP on the 23rd when she contacted him to say that X was being sick. Both the mother and the father state that the GP was told about the bruise on X's arm.
18. X was referred to [the local hospital] where bruising was observed on his left shoulder and forearm. A CT scan on the 24th showed bleeding on his brain which was confirmed by an MRI scan on the 29th. The hospital referred X to the Police and Social Care.
19. On 30th C went to the hospital. The conversations she had with the parents during the course of the day are disputed. The following day E, maternal great grandmother spoke to a staff nurse by telephone about her understanding of the conversations which had occurred the day before. The nurse told a social worker about the discussion which prompted a strategy meeting to be held at the hospital.
20. X was discharged on the 1st to the care of his maternal grandmother, C. The father was arrested by the police on 1st, detained overnight and interviewed under caution the following day. He made no comment.
21. The mother lived in the same house as C for the next three months until the care plan was changed. The mother then moved out of the home but had contact for about 30 hours per week in the home, supervised by C. The father had twice weekly contact supervised by his parents. No party has suggested that there is a realistic possibility that C caused the injuries to X.

Relevant Law

22. The advocates helpfully agreed a document (prepared primarily by Mr Vine QC) which set out the relevant cases. Miss Melly QC added the case of ***Vallen International Limited v Lewis & Anor [2012]*** EWHC 85 in her written submissions and Mr Vine QC added a reference to the case of ***Stocker*** during final submissions. I have taken all the cases referred to in that document into account and those referred to below as part of my judicial consideration in this case whether they are referred to in the summary below or not.

Burden and standard of Proof

23. The burden of proof lies on the local authority to prove the matters in respect of the findings sought on the balance of probabilities. The burden of disproving a reasonable explanation put forward by parents is still on the local authority and the fact that a parent cannot explain an event cannot be relied upon to prove an event. As Mostyn J said in ***Lancashire v R [2013]*** EWHC 3064, there is no "*pseudo burden*" upon a parent to come up with alternative explanations.
24. The inherent improbability of an event can be taken into account but care must be taken not to allow the standard to be distorted. In ***BR (Proof of Facts) [2015]*** EWFC Jackson J (as

he then was) gave helpful guidance. Improbable events happen all the time so whilst consideration of inherent improbability is part of a natural process of reasoning neither the fact that something is very common or very uncommon lowers or raises the standard.

25. A binary exercise is engaged, meaning that I can find that something happened or didn't happen. I must not find that it *might* have happened. If there is a doubt then the matter is resolved by stating that the party who bears the burden of proof has not discharged that burden. In **Re M (Children) [2013] EWCA Civ 388** Ryder LJ stated at para 6 that where a court in a fact finding case is faced with the evidence of the parties and little or no corroborating or circumstantial material it is required to make a decision on its assessment of whose evidence it is going to place greater weight on: "*The evidence either will or will not be sufficient to prove the facts in issue to the appropriate standard*".
26. In **Re A (A child) (Fact-Finding; Speculation) [2011] EWCA Civ 12** Munby LJ warned of the dangers of relying on suspicion rather than sound evidence and the inferences which can be properly drawn from that evidence and in **Re Y (Children)(No3) [2016] EWHC 503** as President of the Family Division he specifically endorsed and enlarged upon the legal principles set out by Baker J (as he then was) in **Re L and M (Children)[2013] EWHC 503** which I have borne in mind.
27. The range of facts I can take into account is infinite. Indeed, I can and should take into account all the evidence before me in considering the 'wide canvas' or 'bigger picture' in this case, and I should not confine the evidence to silos but consider it as a whole. Credibility is of the utmost importance but telling lies is not direct proof of guilt (see below under 'lies').

Expert evidence

28. The difference in roles can be summarised thus: '*The expert advises and the judge decides.*' An expert is not in any special position in so far as their evidence is concerned and the judge does not have to accept their opinion. If the judge disagrees with an expert's conclusions or recommendations it is necessary to give the reasons for doing so. In **A County Council v K,D and L [2005] EWHC 144** Charles J stressed that it is open to a court – on the totality of the evidence- to reach a conclusion which does not accord with that of a medical expert. It is also important for a court to be on guard against "*...an over dogmatic expert, the expert whose reputation or amour proper is at stake, or the expert who has developed a scientific prejudice.*" Per Butler-Sloss P in **LU and LB [2004] EWCA Civ 567**.

Hearsay evidence

29. In **R v B County Council ex parte P [1991] 2 All ER 65** (at 72J), Butler-Sloss LJ observed that "*A court presented with hearsay evidence has to look at it anxiously and consider carefully the extent to which it can properly be relied upon.*" When assessing the weight to be placed on hearsay evidence the court may have regard to the matters set out in section 4 of the Civil Evidence Act 1995 even in cases (such as this one) where the Civil Evidence Act does not strictly apply.

Pool of perpetrators

30. **Re B (Children: Uncertain Perpetrator) [2019] EWCA Civ 575** gives useful guidance on the correct approach in fact-finding cases where the identity of the perpetrator of significant harm to a child is uncertain. The case makes it clear that no person should be placed into the 'pool' of possible perpetrators unless there is a real possibility that they had caused the harm. It was made clear that the concept of a "pool" of perpetrators sought to strike a fair balance between the rights of the individual, including those of the child, and the importance of child protection. A decision to place a person within the pool of perpetrators is not a finding of fact in the conventional sense because the person was not a 'proven' perpetrator but a possible

perpetrator. The court had to consider the strength of the possibility that the person was involved as part of the overall circumstances of the case and where there were a number of people who might have caused the harm, it was for the local authority to show that in relation to each of them there was a real possibility that they did cause the harm. No one could be placed into the pool unless that had been shown.

31. Lord Justice Peter Jackson stressed that approaching the matter by considering who could be 'excluded from the pool' risked reversing the burden of proof and he suggested that to guard against that risk, a change of language might be helpful. The guidance suggests that the court should first consider whether there was a "list" of people who had the opportunity to cause the injury. It should then consider whether it could identify the actual perpetrator on the balance of probability and should seek, but not strain, to do so. Only if it could not identify the perpetrator to the civil standard of proof should it go on to ask in respect of each person on the list whether there was a likelihood or real possibility that A or B was the – or a – perpetrator of the inflicted injuries. Only if there was should A or B be placed 'into the pool'.
32. This amplifies the guidance in **B (A Child)[2018] EWCA Civ 2127** and the judgment Jackson LJ gave in that case:

"The law: only two possible perpetrators

19. *The proper approach to cases where injury has undoubtedly been inflicted and where there are several possible perpetrators is clear and applies as much to those cases where there are only two possible candidates as to those where there are more. The court first considers whether there is sufficient evidence to identify any of them as a perpetrator on the balance of probabilities; if there is not, it goes on to consider in relation to each candidate whether there is a real possibility that they might have caused the injury and excludes those of which this cannot be said: **North Yorkshire County Council v SA [2003] EWCA Civ 839**, per Dame Elizabeth Butler-Sloss P at [26].*
20. *Even where there are only two possible perpetrators, there will be cases where a judge remains genuinely uncertain at the end of a fact-finding hearing and cannot identify the person responsible on the balance of probabilities. The court should not strain to identify a perpetrator in such circumstances: **Re D (Care Proceedings: Preliminary Hearing) [2009] EWCA Civ 472** "In what Mr Geekie described as a simple binary case like the present one, the identification of one person as the perpetrator on the balance of probabilities carries the logical corollary that the second person must be excluded. However, the correct legal approach is to survey the evidence as a whole as it relates to each individual in order to arrive at a conclusion about whether the allegation has been made out in relation to one or other on a balance of probability. Evidentially, this will involve considering the individuals separately and together, and no doubt comparing the probabilities in respect of each of them. However, in the end the court must still ask itself the right question, which is not "who is the more likely?" but "does the evidence establish that this individual probably caused this injury?" In a case where there are more than two possible perpetrators, there are clear dangers in identifying an individual simply because they are the likeliest candidate, as this could lead to an identification on evidence that fell short of a probability. Although the danger does not arise in this form where there are only two possible perpetrators, the correct question is the same, if only to avoid the risk of an incorrect identification being made by a linear process of exclusion."*
33. The guidance makes it clear that I must not approach the case in a linear fashion by saying 'If not the mother then it must be the father' nor on the basis of 'Who is most likely'? In each case I must examine the evidence to see whether it establishes that each person has caused the injury on a balance of probability. Indeed, by what is said at para 28 it is obvious that the correct approach is not to exonerate by a process of exclusion or on the basis that one potential perpetrator is less likely than another to have caused an injury. An identification is only possible on the evidence if it is more likely than not that X caused the injury.

34. It is always desirable, and in the public interest, for a court to identify, where possible, the perpetrator of a non-accidental injury. Where it is impossible to find that A rather than B caused injury, I should not strain to make a positive finding (**Re D (Children) [2009]** supra).

Lies

35. The basic 'lies' direction of **R v Lucas [1981]** QB 720 was adopted in the family courts in **A County Council v K, D and L [2005]** EWHC 144. If the court concludes that a witness has lied about one matter it does not follow that he has lied about everything. The judge must bear in mind that a witness may lie for many reasons, for example out of shame, humiliation, misplaced loyalty, panic, fear, distress, confusion and emotional pressure.
36. In the criminal courts a lie can only be used to bolster evidence against a defendant if the fact-finder is satisfied that the lie is deliberate, relates to a material issue and there is no innocent explanation for the lie. It has become standard practice for judges in cases like this to give themselves a so-called **Lucas** direction and I have reminded myself of the relevant principles.
37. The case of **H-C [2016]** EWCA Civ 136 demonstrated the flaws exposed on appeal in the analysis of non-medical evidence which was used by the trial judge to point to a finding of smothering or asphyxiation. The trial judge found that F had lied about having a good night's sleep, he had a propensity to lose control of himself, it was his first time of sole care, he was concerned about an unpaid debt and he had later said that he would have to live with the consequences for the rest of his life.
38. McFarlane LJ reminds all judges [para 102] of the **R v Lucas** approach and states that it can assist in family cases. In **H-C** the trial judge failed to refer directly to **Lucas** or to the conditions set out by that authority. His reasoning demonstrated that he had applied the test by implication rather than explicitly. Further, McFarlane LJ stressed the need to bear fully in mind the fact that in criminal cases a 'lie' is never taken as direct proof of guilt: it is only capable of amounting to corroboration of a primary positive allegation. It is unclear whether the judge had fallen into error in his approach in that respect in this particular instance and there were other reasons on which the appeal was allowed.
39. Lies form a key component in the fact finding in this case and as such I make it clear that I have reminded myself that it is imperative to keep these principles in mind throughout this case and to apply them to the relevant 'lies'.
40. *Miss Melly QC referred me to the case of **Vallen International Limited v Lewis & Anor [2012]** EWHC 85 where – in a civil case- it was suggested that where evidence conflicts it is important to consider the 'internal consistency' of the witnesses evidence, what they have said on other occasions, their credit on other matters and their demeanour. It is acknowledged that memory is fallible and that one should look at all the evidence, paying particular attention to the motives of the witness. The case stresses that the impression given by the witness when giving evidence is but one factor in the overall assessment of the case.*

Memory

41. The events I am concerned with happened nearly a year ago so I have taken time to remind myself of the fallibility of memory. Common errors are that a strong or vivid memory is more likely to be accurate than one which is less clear, or that a confident recollection is more accurate than one which is more hesitant. Memory is not a mental record which is fixed in time and can be replayed accurately at will or on demand. Our memories are often affected by retelling, by the sharing of experience and by the fact that we may have a stake in the outcome of events. As Browne LJ once observed: "*The human capacity for honestly believing*

something which bears no relation to what actually happened is unlimited". The guidance of Leggatt J (as he then was) in the civil case of **Gestmin v Credit Suisse** (UK) Ltd [2013] EWHC 3560 remains relevant to the family court, including the effect of repetition of accounts. That was also discussed by Peter Jackson J (as he then was) in **Lancashire County Council v M and F** [2014] EWHC 3 when he referred to the process of 'story creep' as a person irons out the wrinkles in respect of events where memory is fading and that the significance of discrepancies in repeated accounts must not be assumed to be an attempt at disguising culpability.

Failure to protect

42. I was also referred to the case of **Re L-W (Children)** [2019] EWCA Civ 159. In that case King LJ warns of the danger of the '*bolt on finding*' of failure to protect. It must not be assumed that living in the same household as a perpetrator *per se* means that a person failed to protect a child. A causal link must be made between what was known, or should have been known, to what actually occurred. In closing submissions Mr Swiffen confirmed that the Local Authority does not assert in this case (in the event that I find one of the parents to be the perpetrator) that one parent knew or should have known that an assault causing bruises and head injury was likely to be perpetrated by the other parent on their son.

Social media and texts

43. Mr Vine reminded me of the need to look in context at what is said or shown in texts or social media with the words of Lord Kerr in the social media defamation case **Stocker v Stocker** [2019] UKSC 17 in my mind:

42. *In Monroe v Hopkins [2017] EWHC 433 (QB); [2017] 4 WLR 68, Warby J at para 35 said this about tweets posted on Twitter:*

43. *"The most significant lessons to be drawn from the authorities as applied to a case of this kind seem to be the rather obvious ones, that this is a conversational medium; so it would be wrong to engage in elaborate analysis of a 140 character tweet; that an impressionistic approach is much more fitting and appropriate to the medium; but that this impressionistic approach must take account of the whole tweet and the context in which the ordinary reasonable reader would read that tweet. That context includes (a) matters of ordinary general knowledge; and (b) matters that were put before that reader via Twitter."*

43. *I agree with that, particularly the observation that it is wrong to engage in elaborate analysis of a tweet; it is likewise unwise to peruse a Facebook posting for its theoretically or logically deducible meaning. The imperative is to ascertain how a typical (ie an ordinary reasonable) reader would interpret the message. That search should reflect the circumstance that this is a casual medium; it is in the nature of conversation rather than carefully chosen expression; and that it is pre-eminently one in which the reader reads and passes on."*

44. There are a great many texts in this case, mainly sent by the couple and also some in respect of family and friends which were referred to. I have taken care to put them in context.

The parties' positions at the close of the evidence

Local Authority

45. Mr Swiffen submitted that the evidence was "*insufficiently cogent for the court to establish which of the father and the mother was responsible for X's injuries*". In addition, he suggested that it was impossible to identify when the injuries were inflicted, other than by excluding the period on the 21st when the mother was caring for X and her friend A was present. The local authority conclusion was that the expert evidence is unable to "*anchor [the timing of] the shaking incident*" because the symptoms following a shaking incident can be so variable.

46. Mr Swiffen submitted that there were factors both for and against the incident occurring on the morning of the 21st just as there were in respect of the time later that day when the mother returned home with X at about 5.20pm. In his written submissions he suggested that if the injuries were caused in the morning of the 21st they could have been caused by either the father or the mother because she had sole care of X overnight (when he was awake nearly every hour) and the father remained mainly asleep; the father then had sole care of X when he took him downstairs in the morning and the mother was asleep and later when he took him upstairs to change him; the mother then had sole care when the father left X in the living room with her and left the room in a temper until they both left the house. Similarly, there were opportunities for injury to be inflicted in the evening because the mother had sole care of X before C visited at about 7pm and later in the evening when she went to bed. The father had care of X on his own in the living room when the mother took a shower that evening.
47. At paragraph 43 of his written submissions Mr Swiffen submits: *"It is also likely the bruising to the left arm and shoulder seen on X was caused at the same time as he was shaken. The bruising was first seen by the mother that evening."*
48. Under the heading *"failure to protect"* in his written submissions, Mr Swiffen suggested that since it was likely that X would cry at the time when the incident which caused the bruising occurred, if both parents were present in the home the non-perpetrator would have heard him cry, and: *"When the incident occurred neither went to see what was happening."*
49. In the event that the court is unable to identify which of the parents inflicted the injuries- "a pool finding"- he submitted that X should remain in the care of C under a special guardianship order, coupled with a supervision order. The local authority does not suggest that there should be a separate Child Arrangements 'spend time with' order for either parent on the basis that such matters will be determined by C. During the course of the supervision order the local authority would offer advice and support to her regarding the ongoing contact arrangements, and the issue of the father having unsupervised contact could not in any event be addressed until he had undertaken the parenting work identified by the local authority.
50. In both written and oral submissions Mr Swiffen contended that a *"clear roadmap"* would emerge once my judgement had been considered.
51. In the event that the finding is made that the father is responsible for the injuries to X the local authority submit that X should live with the mother under a child arrangements order, noting that she has indicated that she would wish to continue her college course and would live with C for the time being.

The mother

52. In her threshold response dated 12 September 2019 the mother accepted that X had suffered bruises to his left forearm and shoulder and abusive head trauma which was not caused by accident or birth trauma. She denied that she was responsible for such injuries and suggested that they were caused by the father. She denied knowing X had been hurt and denied *"failing to protect"* him. In her amended threshold dated 3 October 2019 she further admitted that she did not reveal relevant information about the father's handling of X, including what had happened on the morning of the 21st when they were at hospital. She said that at the time she did not think that the father had caused the injuries, nor did she wish to think that. She accepted that these were *"poor decisions"* in which she prioritised her relationship with the father over the needs of her son.
53. Mr Vine QC submitted on her behalf that there is ample evidence for the court to determine that the injuries were probably caused by the father on the morning of the 21st, that the onset of symptoms are consistent with the event having occurred that morning and that the timing of the projectile vomiting, which occurred that night and onwards, was consistent (and certainly not inconsistent) with the event occurring in the morning.

54. The mother's case is that whatever findings are made in respect of the causation of the injuries to X, he should now be returned to her care. Mr Vine QC submits that whatever happened, whether she was identified as the perpetrator or as a real possible perpetrator, it would be wholly out of character for her and would be a momentary error explained by the specific context at the time which would not be repeated.
55. He also stated that in the event that I determine it is in X's best interests to live with his mother, she still intends to resume care of him by returning to her own mother C's home while she completes her college course and therefore having the support of her own mother. It is her position that even if a finding is made that either she or the father was responsible for the injuries she should be able to care for X and that if I find that it is in X's best interests to live with C she should be allowed to return to live with C, X and her brother.
56. Mr Vine QC disputed that the mother should have been "*particularly vigilant*" in respect of the father, even though he had had little sole care of X and she had witnessed him or known that he had behaved inappropriately towards their son, for example in respect of the '*farf*' incident, the "*dancing*" video and the photograph of X in a kitchen cupboard. He submitted that in such circumstances if it were found that the father is responsible for all the injuries there could be no finding of "*failure to protect*", although he acknowledged that there is accepted evidence of suboptimal parenting outlined in the mother's concessions.
57. The mother conceded in her evidence that she put her relationship with the father before the safety and wellbeing of her son by failing to tell the treating team when X was taken to hospital about the possible causes of the injuries, including: (i) the way the father put X into the bouncing baby chair on the 21st, (ii) that she had heard an alarming cry when the father was changing X that morning and that later X had gone floppy in her arms and appeared to have briefly stopped breathing (iii) that she had been concerned about the way the father handled X during the '*dancing*' video. She acknowledges that this was in circumstances where the medical team were trying to ascertain what could have caused the bruises to his body and the bleed on his brain. In her written response to threshold the mother also conceded that she should have sought prompt medical attention for the bruises when they were seen. She further conceded in her oral evidence that the delay in taking X for medical treatment whilst he suffered from projectile vomiting at her mother's home meant that she was not "*protecting*" X or prioritising his needs.

The father

58. Miss Melly QC conceded on behalf of the father that the local authority had proved on the evidence on the balance of probabilities that the injuries to X's arm and the head injury were inflicted injuries that did not arise by way of accidental trauma, disease or birth injury. His position is that he had no knowledge of any illness or of injury to his son until the 23rd of the month. He supports a finding that the mother was the perpetrator of all the injuries.
59. The father does not put himself forward as a full-time carer for his son, and suggests X should remain living with C.
60. The father accepted that medical attention should have been sought for X when the bruising to his arm and shoulder were evident. Put in context, both parents accept that whilst the possibility of treatment was discussed neither did anything at the time. The local authority acknowledges that from the time the mother left the family home with X on the evening of the 21st until the morning of the 23rd she did not communicate X's ongoing symptoms to the father. There is therefore no criticism of him for that period of time save that he should have acted when the bruises were seen on the 21st. Miss Melly QC submits that there can therefore be no finding of '*failure to protect*'.
61. The father concedes that the "*dancing*" video depicts inappropriate handling of X, however he suggests that by videoing the incident the mother tacitly encouraged or colluded with him in what he did, particularly since he alleges that she did not intervene or disapprove of what took

place. He admits that he took the photo of his son in a kitchen cupboard but **denies that X was put at any risk** of harm. The father denies that the 'fart' incident occurred.

62. Miss Garnham submitted that the Children's Guardian had had the opportunity to review the evidence and had concluded that the evidence as a whole does not allow the court to 'safely' identify which of the parents was responsible for the injuries. In her written submissions Miss Garnham suggests that the shaking event is most likely to have occurred on the 21st, commenting: "*At what precise point during that date it occurred is difficult to be certain not least because there are flashpoints throughout the morning, and the evening which implicate both parents. It is an inflicted injury, this is not disputed. The symptoms observed in the aftermath of the shake could equally be attributed to an event which happened in the morning involving either one of the parents.*" She submits that the evidence does demonstrate that there is a likelihood or real possibility that each of the parents was responsible for causing the injuries, and that a "pool" finding should be made.
63. In the event that a pool finding is made the Guardian recommends a special guardianship order in favour of the maternal grandmother C, together with the making of a supervision order, accepting that decisions about the frequency and duration of contact will be a matter for C. Miss Garnham submits that supervision of contact would be left to C's discretion but that the local authority could support the family on the understanding of the findings made: "...following which a relaxation of supervision would appear to be something that could be managed by C and other maternal extended family." The father should be encouraged to attend parenting classes, following which a relaxation in the supervision of contact could be considered by C in consultation with the paternal extended family.
64. In the event that the father is found to be responsible for the injuries and X is returned to the primary care of the mother, the Guardian suggests the mother would have overall responsibility for decisions regarding contact. The Guardian suggests that the mother should be assisted and supported by her family and the local authority to: "... facilitate contact for the father using the paternal family. X should have weekly contact with his father."
65. In the event that the mother is found to be responsible for the injuries she should be "assisted and supported" in her contact with X by the extended family, with final decisions resting with C. The Guardian suggests that weekly contact for both parents would be consistent with X's needs.
66. In her written submissions Miss Garnham concluded: "*What is clear however is that whoever is the perpetrator he/she did not act in a manner in which they meant to deliberately cause X harm; the significant physical harm flowed as a consequence of their action. This allows for a more generous approach on welfare respect in this case.*"

The evidence

67. I heard the oral evidence of 13 witnesses. The witness template can be found at Annex A below. I have also considered the written evidence filed within the bundles and the written [attached as Annex B1 et seq] and oral submissions made by the advocates on 7 January 2020. I have not attempted to summarise the entire evidence but record below the salient features of that evidence and attach the transcripts of the parents' evidence as annexures to this judgment [the mother Annex C, the father Annex D]. The chronology is reproduced at Annex E

The Expert evidence

68. Four jointly instructed independent medical experts reported in the case. Dr Sweet (Consultant Neonatologist), Dr Yadav (Consultant Paediatrician), Dr Stoodley (Consultant Paediatric Radiologist) and Mr Jayamohan (Paediatric neurosurgeon). A summary of their

opinions was provided in the bundle. It was not felt necessary for them to hold an experts' meeting following the initial reports.

69. The medical experts were not required to attend for cross examination. Following the mother's evidence an application was made by Miss Melly QC, supported by all parties, for further written questions to be put to the experts. These were drafted on behalf of all parties. A consensus could not be reached so all questions were sent to the experts. Replies were received, and the necessity for an experts' meeting was raised. This took place, following which no application was made for the factual evidence to be reopened or for any further exploration of medical opinion.
70. Dr Sweet was instructed to consider whether any of X's injuries could have been sustained at birth. He opined that that was "*highly unlikely*" because the birth involved a "*relatively straightforward emergency caesarean section with an infant born in very good condition*". His view as to timing was that the causative event for the abusive head trauma would have occurred "*... within a few days before presentation with projectile vomiting*". Following the further evidence from the mother he stated that vomiting could occur immediately after an injury but could also occur "*sometime afterwards*" if there was an expanding intracranial mass causing raised intracranial pressure. He thought that it was possible that between the injury and the presentation at hospital X could appear "*relatively normal*" if there were a gradually expanding intracranial bleed but he deferred to Mr Jayamohan. He stated: "*... the episode of floppiness may have occurred close to the time of the injury, and X may have recovered sufficiently to appear reasonably okay to his carers, and then for him to deteriorate with symptoms of raised intracranial pressure.*" He commented that it would be unusual for a carer not to have mentioned this on admission to hospital.
71. Dr Yadav reported that the bruising to X's left forearm was likely caused by a "*blunt trauma applied with significant force to the arm...*" and that the bruising to his shoulder was similarly caused by blunt trauma "*finger tip pressure or similar object with significant force*". In his opinion the parent responsible for infliction of the bruising would be aware that the amount of force used was unusual and beyond normal handling. A parent who was not present would in due course see the bruising which would be of concern.
72. Dr Yadav stated that the combination of bleeding in the various parts of the brain without significant external bruising made it less likely that there was an impact causing the injury, and more likely that the injury was caused by shaking. In his opinion the brain injury may have caused distress for a short period. In his view there could be no accurate estimation as to when projectile vomiting might occur following such an injury, although he estimated that it would be within "*24 to 48 hours*" or "*in the period of a few days before presenting with projectile vomiting.*"
73. Following the mother's evidence Dr Yadav's view as to causation remained the same. In his opinion if the mother's account was true it is likely that the head injuries had occurred before she had thought he "*appeared dead*". He also thought that any floppiness would occur very soon after the causative event and said that following a head injury there can be an initial period of symptoms which are related to the injury, for example concussion up to a loss of consciousness, and then sometimes a period of improvement where the child might appear relatively better but then get worse after that. He did not feel that a carer would mistake floppiness and appearing dead for tiredness or overfeeding.
74. Dr Stoodley also concluded that the MRI scan demonstrated injuries which were due to abusive head trauma, including acute subdural bleeds at several different sites, subdural effusions and acute subarachnoid haemorrhage. In his opinion the mechanism was likely to have involved shaking: "*...repetitive backwards and forwards movement of the unsupported infant head pivoting on the neck and that the head position alternates rapidly between full extension and full flexion*". He stated that anyone seeing such an action would be aware that it would be likely to lead to harm and that it was obviously inappropriate. Dr Stoodley commented that the symptoms and signs following abusive head trauma (AHT) are non-specific, ranging from "*.. going quiet for a while to going off feeds, vomiting, reduced levels of*

consciousness, abnormal movements and seizures to frank coma". In his opinion the timing of the injuries was best assessed on the basis of the clinical story: "...*the causative event is likely to have occurred after the last time the court confirmed as a fact that the child was behaving within the bounds of normality.*" He too was of the view that following a shaking episode any change in behaviour occurs around the time of the causative event and is not "... *a delayed phenomenon*".

75. In respect of the questions raised following the mother's evidence, Dr Stoodley clarified that there were no implications for his opinion in respect of the causation of the scan abnormalities. He said: "...*the symptoms and signs seen after a shaking event are not a consequence of the intracranial bleeding but are due to the associated brain injury which is hypoxic – ischaemic in nature, although the degree of brain injury may not be sufficient to show on the scans. Therefore the change in behaviour that occurs after such an event occurs at the time of the causative event and is not a delayed phenomenon. How long these abnormal symptoms and signs last depends on the severity of the injury, with some infants returning to normal quite quickly (and hence never presenting to hospital) while others never regain consciousness.*"
76. Mr Jayamohan reported that there was evidence of multifocal multi-layer acute bleeding. In respect of timing it was his view that the fresh subdural blood was less than 10 days old at the time of the CT scan and the subarachnoid blood was likely to be timed within approximately 48 hours of the CT scan: "...*however the clinical changes on the 21st are also relevant and these are slightly outside of the most likely timings from the CT*". He agreed that the AHT was best explained by a traumatic event which was likely to involve shaking which would cause excessive uncontrolled movement of X's head on his neck.
77. Following the mother's evidence and the questions arising, Mr Jayamohan reported that if X had been so unwell as to appear dead, such an appearance would be likely to have closely followed the traumatic event, occurring "*immediately*" or "*within minutes*". In his opinion improvement followed by a significant deterioration would be unlikely unless there was a further causative event. In his opinion as X improved: "...*he may still have been not back up to his normal 100%, but the carers may have thought he was just being a 'bit off' and he would be expected to continue to then improve.....*". In his view there could be variable symptoms up to a day or two following the trauma. He did not feel that if a baby had appeared dead that they would look normal during the following 24 hours and "... *probably even longer than that*". In addition he commented that a person present to see a sudden change in a child would realise that something serious was occurring and would realise that there was "*something seriously wrong*".
78. I have had the benefit of reading the transcript of the experts meeting which took place following the parents' oral evidence. They were able to discuss the impact, if any, of the mother's description of X on the morning of the 21st as "*floppy*" and that he briefly appeared as if he were dead. Dr Sweet and Dr Yadav deferred in the main to Mr Jayamohan and Dr Stoodley.
79. All the experts were agreed that it is the injury to the brain itself which gives rise to symptoms and signals a traumatic event. They were clear that the injuries seen in X were not of a type where he would remain normal and then suddenly collapse at a later time. In his case it was likely that there would have been a change in his behaviour at the time or shortly after the causative event and that he would not have behaved entirely normally afterwards until he had fully recovered. There was no clue arising from recovery from floppiness because a child can improve from floppiness over a matter of minutes or it can remain for some time.
80. Mr Jayamohan opined that if X was so unwell that he appeared 'dead': "... *floppiness would be in the recovery period rather than after the initial presentation*". The bleeds to the brain are a marker that an injury has occurred rather than the injury itself. He explained that the "*graph of improvement*" can go "*up and down*" : "...*the important bit here is not the minute by minute or hour by hour changes but it's that when they do get better they often get slightly better than*

they did last time, and if they do have a dip a worsening it's usually slightly less severe than it was the last worsening, so the overall graph is it of a better one but it can be variable."

81. Dr Stoodley said that he would expect a change in behaviour of the child "... *at the time of the causative event*". Both Dr Stoodley and Mr Jayamohan said that they would expect variable symptoms over the following hours and days with the possibility of an improvement then a child then getting a bit worse followed by further improvement and a worsening. They were clear that although there might be a degree of fluctuation in the symptoms and signs this would not involve a return to complete normality followed by a further deterioration. Mr Jayamohan said that there was either an episode on the 21st which did not get worse or did not improve or there was one long episode which was not well noted, or there were two episodes. In Dr Stoodley's view a key issue was the court's assessment about how X was at any point and whether he ever got back to being "*normal*".
82. All the experts were in agreement that if the mother had seen her four week-old baby in a state where he was floppy and that she thought *for a time* he might be dead she should have sought immediate medical attention. Both Dr Sweet and Dr Yadav thought that if the mother had witnessed something that gave her a "*quick fright*" and then the baby recovered quickly or if the event was "*very transient*" following which he recovered back to "*relative normality*" it was reasonable not to have sought medical attention. They were both clear that it depended on what the mother actually witnessed. Dr Jayamohan said "*If a reasonable carer thought their child was dead, it is absolutely the answer that they would have sought help and not gone out*".

The video

83. Dr Yadav reviewed the "*dance*" video of X. In his opinion this demonstrated both inappropriate handling of a very young child with poor head control and also that it was unreasonable for the mother to record the events on her phone, concluding that a reasonable carer would have stepped in to stop the activity.
84. Mr Jayamohan said that whilst the recorded event could not explain the injuries to X from a timing point of view in his opinion it demonstrated that the parents had no understanding of how to handle a baby of X's age.

The oral witness evidence

Maternal grandmother, C

85. The maternal grandmother C made a police statement in the month after the events and a statement within these proceedings in 2019. At the outset of her evidence she explained that in her police statement she had said that she slept downstairs on the couch on the evening of the 21st, but that this was a mistake. She stated that she had intended to sleep on the couch but X was unsettled so she had slept upstairs. She denied changing her evidence to protect the mother.
86. C said that prior to these events she had a good relationship with the father, who she described as "... *good with X*". She said that the mother was alone with X when the father was working and struggled with the fact that he would go to the gym after work rather than go home. She described her daughter as '*tired*' but said she did not seem to be depressed or '*down*', and that the mother did not at any time say that she was unable to cope. C said that the father wanted the house to be kept tidy, for example with nappy changing upstairs, and she felt the steps were steep for her daughter who had just had surgery. She therefore asked members of the family to pop in because she thought that her daughter could: "... *do with a hand*".

'Hand over mouth' comment

87. C said that during a conversation about using a dummy, the father had made a comment that you could always put your hand over the baby's mouth. She thought that the mother and her friends A and B were present. She said: "*It was kind of a joke. I just said something like 'You don't do things like that' and he didn't respond. I didn't think he would do anything like that, and if I had we would have had a proper conversation.*"

The 21st

88. C said that she was at work on the 21st. She said that her daughter had sent her a photograph of X which showed that he had a swollen face, with puffy eyes which were "*really weepy*". She said that the mother had told her that she was going to speak to the midwife or health visitor about it, and she thought it was likely that she would have asked the mother later in the day about the eyes. She thought that her daughter had later said that it was conjunctivitis and was nothing to worry about.

89. C visited the couple's home on two occasions that day. The first visit was at about 18.45. C explained that her son plays football at 19.00 and she went to see her daughter after she had dropped her son off. She said that during the visit she held X, who was sleeping. She thought that his eyes looked much better. She believed, but could not be sure, that her daughter showed her a mark on X's arm which she said she had noticed that day. C had not seen the mark before, and she accepted that she may have seen it for the first time later on that day. C commented: "*If I'd come across the bruise on my own I would have said 'What is this?'*"

90. C said that X did not wake up during her visit. She was aware that the mother and the father were not on speaking terms and she had asked her daughter if she needed a break. She said that the father arrived at the home just before she left, and she had said '*Hi*' to him. She said that the mother seemed fine with X, although she was upset because of the row and because of a message from the father who had gone straight to the gym rather than going home.

91. The second visit was at about 23.00. She was asleep and her son came in to wake her. She couldn't remember whether she spoke to the mother on the phone or by text, but she went to the mother's home to collect her. She recalled that the mother had said that she was in the spare room, that she and the father were not speaking to each other and that X was "*grizzling*". The mother had stayed with C when the father was away working but this was the first unplanned stay since X was born. She believed that her daughter had said that she was in the spare room with X and he was being sick. She says that the journey takes 10 to 15 minutes and when she arrived the mother was in the doorway with X. She described the mother as looking tired, but '*okay*'. She said that when they arrived at the house her son went in to help the mother bring X and his Moses basket from the living room.

92. C described her daughter as appearing "*fed up*" and she was aware that the couple had had an argument that morning about the mother being on the phone when the father thought that X needed feeding. She said that the mother did not say anything about the father mishandling X at the time. She recalled that X was asleep and that her daughter said that she wanted to '*go home*', meaning her mother's home. She did not see the father at the house and she couldn't recall much of the conversation in the car. She remembered that she had asked the mother if the father knew that she was leaving and that the mother had told her that she had told him. She said that X remained asleep and that the mother shared her bed with X in his Moses basket at the side of the bed.

93. C described X as "*upset*", and said that he was sick both after feeds and between feeds. She said that the mother told her that X had been sick at home, but she could not remember when the mother had told her. She said that she had had to change her bed twice because he was

sick and had changed his Moses basket. She said: *"It was a huge amount of sickness. Two big vomits at least. I was up [sic] a number of occasions."*

The 22nd

94. C said that she had spoken to her daughter during the course of the day and that the mother had said that X had not been as ill. She advised her daughter to get a GP appointment for him. She said that the mother was slightly worried about the sickness but that X appeared otherwise normal and that the mother stayed in her bed that night and X was in his Moses basket. She described X as both seeming and looking *"fine"*. She said he didn't have a temperature and he was not dehydrated – *"He wasn't that ill. It wasn't an emergency."* C did not know whether the mother had tried to get an appointment, but she was aware that C was not registered with a GP.

95. She said that the sickness during the second night was much worse and she had insisted that X should be seen by a medical professional to get him *"checked over"*. She had not felt overly worried about X because although he was being sick, he wasn't showing any other sign of illness. She said that the father had not contacted the mother.

The 23rd

96. C said that her daughter had contacted her to say that she and the father were taking X to the hospital. She was a little worried, but felt that if it was anything serious her daughter would contact her.

The 30th

97. C said that the MRI scan demonstrated that X had been subject to a traumatic event. She said: *"Until then I believed it was 'medical' as did the mother and the father. My sister said 'They think he's been shaken'. I just thought I needed to ask them both. I wasn't aggressive or accusing, I asked both the same thing. I saw the mother first and I thought it could be either of them. I wanted to know."*

98. C said that she saw the father on the hospital corridor. He demonstrated throwing X up in the air more than once, during which he said he was supporting his head. Challenged by Miss Melly QC, C said that the father had said *"throwing"* rather than *"putting him"* in the chair. She said that what was described was to the effect of a throw. She said that she could not recall exactly what the father had said about putting X into the chair, but that whilst he said that he had held X's head during the incident he had also said he had put him in the chair with force or harder than he should have. She said that she remained calm because it didn't sound like the father had acted maliciously towards X.

99. C said that she told the couple to tell social services about what had happened. She said that the father appeared to be telling the truth, and that he had never said that he had shaken X. She denied telling her mother E about what the father had said, and was emphatic that she had never said that the father had spoken about shaking X. She also said that E had not said anything to her about X being shaken.

PND

100. C agreed that there had been discussion in the family about what had happened. She denied ever suggesting the mother had suffered from postnatal depression, saying that she thought her mother had read online about a baby shaking case where someone had *"got away with it"* due to postnatal depression. She said that she didn't ever feel that the mother had postnatal depression, and she had not mentioned postnatal depression to her daughter or suggested that she *'put it forward'*.

101. C said that it was hard when her daughter had to leave her home in 2019. She said that they had followed the written agreement throughout. Her daughter had since moved six times and had started a university course, but had visited X every day. She described X being unsettled when the mother moved out, because he had a very close bond with his mother. She said that he is delighted to see the mother at contact. In her opinion X is in a well-established routine and if placed with his mother it would be straightforward for her to pick up the routine. She feels that it might be difficult to explain to X in due course why he is living with her and not with his mother or father in the event that the court deems it in X's best interest to remain with her.

The relationship between the parents

102. C said that she was aware that the parents had spoken on occasions since the events I am concerned with but she did not think it was likely that they would get back together. She said that she was aware that the father had visited the mother in hospital in 2019, and that her daughter appeared happy that he had visited. She said that her daughter had told her a couple of months ago that the father had contacted her and that she did not want that contact. She said that she had not discussed her witness statement with her daughter but she was aware that the mother had said to the father that she (C) had lied.

The mother's friend A

103. A is the mother's friend. She said she had known her for about two or three years, they had worked together and are now close friends. When X was born she and her boyfriend had gone for tea at the mother's home to meet the baby. She described the parents' relationship as good during the pregnancy and said that when X was born the couple seemed 'fine'. She recalled that during the pregnancy the mother had been tired, but she did not recall the mother ever saying that she had been in low mood: "*They were happy and looking forward to having a baby*".

104. A said that before the 21st she was unaware of any difficulties between the parents. She said that she wants what's best for her friend and that they still meet up with each other. She had met up with the mother in the week before court, commenting that it was before she found out that she was going to be a witness. She said that she didn't have the messages that they had exchanged since she had found out that she would be a witness. Challenged by Miss Melly QC, A accepted that she was aware that she would be coming to court at the time she met up with the mother but maintained that they had not discussed the evidence. She also accepted that they had had a later discussion about what she was going to say in her evidence, stating that she thought that that conversation was by text. She was asked about phone, text and Snapchat messages pertaining to the 21st. She said that she had sold her phone so she does not have any messages but she has been able to access Snapchat messages. She said that in a break during her evidence she had checked her phone and seen the messages. She hadn't deleted anything, and she had seen the mother hand over her phone which had caused her to check her own Whatsapp messages. She said that nobody had told them not to discuss the evidence, but in hindsight she recognised that they should not have done so.

105. A said that when she met with the mother they had a Chinese meal. They hadn't seen each other for a few weeks and she described the meeting as more of a "catch up" than a discussion about the case. She said that she had seen the mother on two or three occasions following the birth. Their meeting on the 21st was the longest visit. A described the mother telephoning her that morning, which had woken her, to say that she had an appointment in town and asking if A would come and meet her. The mother told her she was getting a lift into town with the father. A said it was a quick call and she could not fully remember whether the mother had said that X was unwell. A said that the mother was upset as she had had an argument with the father and that she had "possibly" said that something was wrong with X. The purpose of them meeting that morning was that she was going to keep the mother company.

106. A said that X had a little sleep in his eyes "*or something*". She said that the mother did not tell her that X had been ill, and did not tell her that he was constipated. She felt that X was "*fast asleep*" all day, stating that he had not woken up. She said that the mother had left to go home at about 5pm and they had given her a lift. She said that there was nothing unusual when the mother got out of the car.
107. A described the mother as "*gentle and tender*" that day. She said that they had discussed the argument with the father for a short time and that she had tried to make the mother feel better. The discussion took place in a cafe. She thought that the mother had tried to call the midwife in order to get an appointment for X.
108. A said that she didn't know what had caused the argument, but commented that the mother had said that the way the father handled X that morning had made her "*feel sick*". A said that she had asked the mother the height from which X had been put in the chair, and the mother had replied that the father had been standing up when he did it. She said that the father had also been "*messing about*" with baby wipes in respect of X's eyes. A said that she thought that the redness to X's eyes had been caused by the baby wipes.
109. A described the mother telling her that X had been crying upstairs at their home, and that the father had come down and thrown him into a chair. She said the most obvious thing about X was that his eyes had sleep in them and as the day progressed there was thicker yellow fluid. She said the eyes were not stuck shut but his eyes and face were swollen. She said that the fluid wiped away, and that she didn't see any marks on his face that day.
110. A said that during the course of the day the mother tried to feed X. She tried in McDonald's: "*He woke up, just had next to nothing, and then went back to sleep.*" A clarified that X was very lethargic and was not wide-awake. She couldn't recall whether X was sick, but said that he did not seem like a child that needed medical treatment. She said that the concern was about his eyes but that he did not seem particularly unwell. They had returned to A's home because the mother's stitches were hurting and she was tired. She said that X appeared to wake later when they got home. A said that when he woke he didn't seem to be looking around, but appeared to be "*staring through*". She said that when she found out what had happened she looked back and: "*It clicked*". At the time she had felt there was nothing abnormal about X, and they put the sleepiness down to the fact that he was in a warm environment. She said that at her home X had opened his eyes and had been changed. She thought that his cry was a normal cry. She didn't think that she had seen X's arms, and she certainly did not see any bruise. She said that her own mother was there and she was not worried about X.
111. A said that during the course of the day the mother purchased a Christmas present for the father, so although she appeared unhappy about the argument, A felt that the mother must have thought that they would make friends again.

Photograph of X in the cupboard.

112. A said that the father had shown her the photograph of X in the kitchen cupboard. She said the kitchen cupboard is at head height and described it as a "*cute*" but "*dangerous*" thing to do. She said that the mother was not happy about the photograph, and that she had described '*feeling sick*' when she first saw the photograph. A said that the mother had said that she could have killed the father for doing it, but she also had said that it was a cute photograph.

Hand over the mouth comment

113. A said that she was present when this comment was made, but that it was a joke. Cross-examined by Ms Melly QC, she said that she couldn't actually remember the father saying it, and she thought that maybe she had been told about it. She recalled an occasion when she was with the mother at C's house and C was present. She said she could remember being told that the father had joked about not using a dummy but putting his hand over a baby's mouth instead. She said that she didn't know whether he'd said it or done it.

114. A said that whilst X was in hospital the mother had texted her to say that she should go to C's house. She said that C told her that X had been injured and that everyone was looking to see what had happened to him. She said that she didn't think about what the mother had said in respect of the chair at the time. She said she was very upset when she heard about X and that it didn't come into her head. She said that a text to the mother "*WTF has [the father] done?*" referred to the description of what had happened in respect of the chair. She assumed that C would have known about the chair incident. She said that she had intended to go to see the mother in hospital but did not get the chance.

The first social worker R

115. R, a social worker, said that she was only involved in the case for a short time, seeing the parents on two occasions. She said that she was with them for between two and three hours on the first occasion and about six or seven hours on the second. She said that she had seen "*appropriate, tender care*" despite the fact that the mother was unwell. She had convened a strategy meeting and had drawn up a written agreement on the basis that X would be at home with his mother and C. She felt that C was a capable carer.

116. The second visit was a police and social work joint visit on the same day (the 24th). She said that the mother had been asked to describe events and that although the police asked some questions it was mainly the mother's narrative. After the mother had told her story the police then took a statement from her whilst R went to speak to C. She said that she had asked the mother in the first meeting about why she had not mentioned the "*throw in the air*" before then. The second visit finished at about 1am and she wrote the notes up the following day.

117. R said that the mother "*...just told the story*". She said that the mother described hearing a cry and that he had been crying harder than normal: "*bloodcurdling scream*". The mother had also said that X was sick before she went to her mother's home. R said that she was not the '*lead*' person in respect of the second visit, but she was clear that nobody had said that the history was wrong. She commented that the mother was exhausted and had said she felt sick. She said that at one point the mother was feeding X and that she had had to lie down: "*She was clearly unwell, dizzy and faint*".

118. R said that the mother's friend B had told her that the father had admitted throwing X and shaking him. She said that the mother initially denied knowing anything about mistreatment, and had said both she and the father had believed that there was a medical reason for X's illness. The mother had said that she didn't want to believe it was anything other than a medical cause, that she had not said anything and was unaware that her grandmother had called social care. The mother said she wanted to tell the paediatrician herself. R said that she asked the mother why she had not said anything sooner. The mother replied that she had not wanted to believe that anything bad had happened. R said that she did not tell the mother that she knew about the 'chair' incident, but that the mother had volunteered the information during the first conversation on the 24th. R said: "*We just said we'd got some information from a family member. She knew what we were talking about.*"

119. R said that B had said there had been some family conflict because family members were trying to do their own investigations. She said that the mother had told her about discussions in Costa coffee that had originated because C wanted to find out what had happened to X. C had gone to get the father and had challenged him by saying that somebody had hurt X. C had been worried that X would be taken into care. R said that the mother was not cross with the father: "*She was more upset than angry. The father had left the hospital and the mother had told her that he had depression and "needed space"*".

The mother's friend B

120. B knew the mother because she had acted as a babysitter for her children. The father now works for her husband. B said that she trusted both young parents and that they had no concerns with the mother: "*She's a great mum. Calm, loving and X is her world.*" She said that although she did not know the father well, in her opinion he handled X in an appropriate way.

121. B said that the mother was “besotted” with the father, it being obvious that she loved him very much and B described them as a really close couple. She said: “*They seemed like the perfect family*”.
122. B said that during the pregnancy the mother was in touch with her on a regular basis and she had gone over to see the mother. She said that when she visited X had been up a lot during the night needing a feed, and the mother was “*shattered*”. She said that she had hoovered the house and that the mother had asked her advice on breastfeeding.

Hand over the mouth comment

123. B said there was a discussion about using a dummy and that she had said that she had used a dummy with her children. She said that the father said he didn’t want to use the dummy with the baby, and that he said in a “*joking way*” that he could put his hand over the baby’s mouth to shut him up. She said she thought that A was present at the time, and the conversation took place at C’s house and C was present. She said that the discussion took place when X was two or three weeks old. She said that the father did not make the comment in a malicious way. She had not put it in her statement but the comment had remained in her head and she had later brought it up because she was worried. She said that she does not know A, and she had not thought to contact the social worker about it. She thought that C had said that she remembered the father saying it.
124. B said she could not specifically remember the text conversations around the 20th and the 21st. She commented that whilst one of the text messages from the mother had said that she felt “*horrendous*” and “*really hormonal*” there were a mixture of messages, and she did not feel the conversations were just about the mother feeling hormonal.
125. B said she had a conversation with the mother who had described an argument with the father. She said that the mother had described a tiring night and said that when she woke up X was not in the bedroom. X and the father were downstairs and when she went downstairs she had told the father that X, who was whingy, needed a feed. the father had said that X needed a nappy change and had taken him upstairs. The mother said she’d heard X “*really cry*” B asked: “*Did you go up?*”. She said that the mother had said X doesn’t like having his nappy changed and she was in pain from the surgery. She said that when the father returned he “*threw*” X into the bouncer. B said that she told the mother to go to the doctors if she was concerned. She clarified that this information had not been given all in one telephone call, and that some of the information the mother had told her about on later occasions. She said that she had had regular conversations with the mother, and although she was not good with time and dates she was clear that the mother had told her about the throw *before* X had been taken to hospital.
126. B said that although the father and the mother “*squabbled*” a lot they also made their differences up and reconciled. She said that she felt that the mother “*Did too much*” and she was aware that the father thought that the mother was lazy. She said that she had reminded him that messiness is not important, and she commented that the father has ‘OCD’. She felt that the couple had had too many visitors and that it was wrong that the mother was out and about on only the second day after she had got home after the birth.
127. B said that when she had spoken to C on the telephone about the fact that the professionals were saying that the injury was a bleed on the brain and was caused by trauma she was at the time out of the house. She described herself as speechless. She said that she thought about the chair incident and said: “*I was really upset and I told my husband. I didn’t say anything to about it to the mother at the time because they had a lot on their plate. The family were all at the hospital. I also believed that the injury might have been caused by the birth.*” She accepted that on the 1st she still did not mention the possibility of the chair causing X’s injuries.

The outreach worker S

128. S is a senior outreach worker who has worked with the mother in respect of her care of X on six or seven occasions. She described the mother as “*very engaged*” with X and in her

assessment there is a good attachment between them. She also assesses that the mother is very good at managing X's behaviour, and she noted that he is settled in his relationships both with his mother and his grandmother.

129. S said that the mother has engaged very well with the children centre, and that the only outstanding work would be for her to engage in some work in respect of domestic abuse in order to ensure she is able to manage future relationships.

130. S said that she was aware that the couple had exchanged texts during the course of the year. She had not seen them but was aware that the father had sent the mother a song and that the mother had been upset.

Visit two months later

131. S said that when she visited two months later, the purpose of the visit was to discuss housing. A note was taken of what was said by a student but the note was not read back to the mother. S could not remember whether the mother had said anything about X crying when the father took him upstairs to change him on the morning of the 21st. S felt that the student had taken quite a detailed note but she had not recorded every word and S had felt the notes were a "*fair reflection*" of what was said. She agreed with Ms Melly QC that if the mother had said something of significance then it should be recorded in the note. Ms Melly QC asked whether she had described a "*bloodcurdling cry*" and S was clear that the mother had not told the story in that manner.

132. S said that C was usually present when she visited and in her assessment C appears to put X first. She takes a backseat and lets the mother take part in the work. In her assessment the mother and C will come to an agreement about X's future care. She said that the mother does get very emotional about X and that she was particularly upset that she had to leave her mother's home earlier this year.

133. S believed that the mother was trying to get across to her that the father was "*controlling*". She said that the mother was finding the split very difficult and S did not feel that she was describing the father's behaviour in order to "*get attention*". S had had far less contact with the father and she had not observed him with X. She had seen the father twice and she had rearranged a further meeting with him but he did not attend and gave no explanation. She said that he wasn't reluctant to do the work that had been identified but had work commitments.

134. S said that either the mother or C had told her that the father would not allow the mother to speak whilst she was in hospital with X and she had been unaware that there were times when the father was not present and the mother would have been free to speak. The mother had not told her that C had asked them both about the injury when it became apparent that the professionals' view was that it had been caused by trauma.

135. S was aware that the mother had been in hospital in 2019. She could not recall that the mother had told her that she had seen the father at the hospital. In June of this year the mother had told S that the father was "*getting into her head*" and she said that the impression that she had been given was that it was the father contacting the mother because she did not say she had sent any messages to him. S said that she did not investigate the contact between the couple.

136. S saw the mother on 4 September for a planned visit. At that visit the mother had told her about the father's behaviour. S was not expecting the information but she took a note of the conversation and passed the information to the social worker. She said that she would have offered the mother the opportunity to attend a domestic abuse course in any event.

The second social worker T

137. T is the social worker who gave evidence about the care plan for X. She said that if the court found that the injuries were inflicted by the father and I made findings that the mother had failed to protect X the local authority would propose that X should live with his mother under a Children Act 1989 section 8 order and that there should be a short supervision

order with a 'written agreement'. The written agreement would provide that the mother was not to be in a relationship with the father, would notify the local authority if the father sought to rekindle the relationship and would require the mother to attend a '*healthy relationships*' course. She said that the local authority would also visit X and his mother on both announced and unannounced occasions.

138. T said that if the court were to find that the injuries were caused by 'either the mother or the father' then the local authority would support a Special Guardianship Order being made in favour of C. In those circumstances both parents' contact would be reduced to 6 times a year. She said that she was confident of C's ability to care for X. During the course of the evidence the Children's Guardian made it clear that her position was that contact could be weekly, and T amended her position to that proposed by the Guardian (who had contacted C to check that she was agreeable).

Visit on the 4th

139. T said that she was present on the 4th at a joint visit with another social worker U. U had told her that the case would be allocated to her. During that visit the mother described a "*massive*" cry on the morning of the 21st, and said that X had been sick at home before she went to her own mother C's home. She was aware that the mother had not given this information to U whilst she was at the hospital.

Visit on the 6th

140. T went to see the father on the 6th but he was unwilling to talk about the events surrounding the injuries on the legal advice of his criminal solicitor. She said that he was willing to discuss other matters and he had talked about the mother. He said that she would leave clothes on the floor and not put things in the dishwasher. He had told her that although he was not diagnosed with OCD he feels that he has the disorder.

141. T commented that the father has a new partner and she had asked him if it was possible to have the new partner's details in order to run checks and to meet her. She said that he had never provided that information. He had consistently denied any wrongdoing so far as the 'kitchen cupboard photograph' was concerned and the allegation that he farted in X's face. She said that he acknowledged the other concerns about his care of X but said that both he and the mother were naive young parents. She said that in the early stages of the assessment the father lacked confidence and was anxious about being observed. She said he appeared to be struggling to "*get it right*". The mother on the other hand appeared to be "*in tune*" with X from the outset.

142. T said that the mother had made it clear that the comment about putting a hand over X's mouth was said as a joke but that she had not found it funny.

Visit two months later

143. T visited the father at home two months later. She said that the father had always described the mother to her as a very gentle mother. He told her that he had '*sacrificed*' himself, and said he had always acknowledged that there was an incident during which he was "*cross*" when putting X into a bouncy chair. She said that the father had been surprised by the reaction of the maternal family and he felt that he had been "*Thrown under a bus*". She said that he felt that he had given an explanation but that the family had not reacted well and he had commented to her that the doctors and professionals at the hospital had not given the same story. She said: "*He said they talked it up to get a confession*".

Further visit two weeks later

144. T saw the father again two weeks later. She described him as very cross that the mother had had to move out of her mother's home, because he felt that X was safe with the

two of them looking after him. She described the father as supportive of the mother during this visit.

145. Mr Vine QC asked T to explain the risk that she perceived in the event of a 'pool' finding in respect of his client. She agreed that the main anxiety was a resumption of the relationship between the parents, and accepted that there were no other "*danger signals*", accepting there is good quality interaction between mother and son. Mr Vine QC suggested that whoever was responsible for the injury must have been under a great deal of stress and that it was hard to foresee it being repeated. She accepted that placement away from his mother would be damaging and emotionally harmful for X, but said that in her assessment the balance fell in favour of a special guardianship order to C in such circumstances.
146. Mr Vine QC suggested that the mother was "*careless*" in respect of her reaction to the videos, the kitchen cupboard photograph and the incident of breaking wind but that such behaviour would not alert a parent to the likelihood of a traumatic head injury. T agreed that the mother would not have foreseen a traumatic head injury but said the social work concern was that the mother had also said that she was worried about saying anything when these things occurred. T also agreed that there was always going to be some contact between the mother and the father because they are X's parents.
147. Mr Vine QC asked what guidance would be given to C in terms of future supervision of contact. T stressed the fact that this was a very significant injury: "*It's a bleed to his brain*" and said that it was very difficult to plan without a clear explanation as to what had happened. T said that she did not believe that the current level of contact was sustainable for anybody and she was confident that C would consult her and abide by any guidance given on behalf of the local authority.
148. Cross examined by Ms Melly QC the social worker accepted that the father did not see X between the 1st and the 18th of the month following the injury whereas the mother had a great deal of contact. She agreed that U had completed a viability assessment of C's brother F and his partner G, but that EDT and the Police had decided that X would be discharged to his mother and grandmother's care. There was nobody assessed to supervise the father's contact, and in her view he had not asked for additional contact due to his work commitments, although he had requested additional contact at Court on 23 January. She acknowledged that the father had been annoyed that he had been '*kept out of the loop*' particularly about the decision that the mother had to leave her mother's home in February.
149. T said she had understood that the father had admitted shaking X but accepted there had been a degree of confusion. She acknowledged that the family denied saying that the father had admitted shaking X. She felt that the father had been aggressive '*in tone*' in a '*personal attack*' on her at the end of a contact session, and said that he had been upset. He had later agreed that he had been aggressive and he had not repeated the behaviour.
150. T said that the mother had told the social workers about the father's comments about a dummy. She was clear that the mother had not said that he actually had put his hand over X's mouth, and that she appeared to struggle telling them about the comment.
151. T did not feel that the mother had been entirely honest with the social work team about the amount of contact she had had with the father. She said that she was concerned that the mother was drawn towards communicating with him, and that she made out at the time that it was him contacting her whereas she had initiated the contact. The mother had contacted the father using a friend's phone, but T did not think that that was "*calculated*" because the mother had explained that her phone battery was flat. She commented that the hospital had told her that the father had visited the mother in hospital during March, and she felt that the mother had spoken openly about it at the next meeting. She did not feel that the mother had tried to avoid speaking about it, and said that the mother had said she was feeling low, in pain and had seen a photograph on social media of the father on a night out. That had triggered her to contact him. She commented that the mother had said that sometimes she could be a "*drama queen*" and that her description of their relationship has fluctuated.

152. T said that the mother told her that the father had said to her to let him do all the talking with the medical professionals at the hospital. She said that the mother was clear that the reason she had not mentioned the baby bouncer chair was not because she did not feel that she could speak up but because she did not think it was relevant. The mother had told her that she did not want to believe that the father could have caused the injuries. She said that the mother had been consistent with her in respect of the descriptions of the 21st, remarking that the mother has always said that X was not himself all that day, and that X was sick at their home before she went to C's. She acknowledged that the hospital recordings referred to sickness "...in the past 24 hours", but said that the mother had described the father behaving in a way she had not previously experienced and that X had been unsettled and sick. The mother said she felt unsupported, and had told her about the sick on the bed.
153. T admitted that she had used the word "*retracted*" in respect of the mother's description of the incidents on the 21st. She said that in fact there had been no retraction, but there had been some difference of emphasis. She commented that on days when the mother was angry with the father it would "*inflame*" what she said but on other days she did not feel that way and had "*retracted her exaggeration*" or "*downplayed*" what had been said. She commented that the mother had admitted that the month after the injury she had wanted things to sound as bad as possible, and later she had similarly exaggerated the "*controlling*" and other behaviour. One example was the description of the "*shower incident*". She said that both the mother and the father referred to the mother as a "*drama queen*".
154. When asked about future risk from either parent, T was concerned that the momentary loss of self-control could occur again. She therefore advocated supervised contact in the event that a "*pool*" finding was made.

The maternal great aunt G

155. The maternal great aunt G said that she had made her statement via a phone call. She described that it had then been sent to her, that she had read it briefly and she had chosen not to return it. On the morning she gave evidence she had made some changes to that statement, commenting that she had changed "*a few words just now*". She said that she had not want to make a statement, but she had been told that she would be summonsed if she did not. G commented that the language of the statement was not hers, and she was adamant that she had not described the mother as "*flat and childlike*".
156. G confirmed that she had heard that the father had thrown X into a chair, but she did not think she had heard it from the mother. She explained that her statement is a mix of what the mother said and what other people had said to her. In response to a question from Mr Vine QC she confirmed that the mother had said that at one point she believed that X was dead: "*My recollection is that this was later in the day*". She said that the mother was very upset at the hospital. The mother and the father had put her forward as a possible carer and on the 29th the father had sent her a text which appeared to be blaming the hospital and the nurses for X's condition. She had sent the text to her sister D. She stayed two nights at the hospital and had noted that the father replied on the mother's phone to texts that she had received from C.
157. G said that she had seen the father and the mother with C in Costa coffee. C had been holding their hands and she believed that C had asked the couple to speak up if they knew anything about X's injuries. She said that C had later come up to the ward and had said that she knew what had happened to X but said that she wanted the couple to tell the authorities. G said that C became agitated and said that it wasn't the mother who had harmed X, but the father who had '*thrown*' him. She had later seen the mother and the father in the corridor. The father left without coming into the room and without saying anything to her, which she described as "*strange*".
158. G said that she had told her partner F about the "*throw*" and he had told the great grandmother E who had in turn rang the hospital. She said they felt that something "*...had to be said*". She said that when she did get chance to ask the mother about what had happened, the mother had described the father taking X upstairs and that she had heard X scream in a way that she had not heard before. When the father had returned downstairs she had thought

that he would pass X to her but he had thrown him into the chair. The mother said she picked X up and that he was crying but that he had not taken his feed and had fallen asleep. She said that she had got dressed and that the father had taken her into town. The mother told her that she had told A, A's mother and B about what had happened with the chair. The mother had described going to C's after she had left the couple's bedroom that night and gone to the spare room. She could not recall the mother telling her that X was ill before she went to C's. G said that she was concerned that the mother had not told professionals or friends the detail of what had happened.

159. G felt that someone in the family or a friend had suggested that the mother could suggest that she was suffering from postnatal depression. She could not remember how many times it had been mentioned, but she was clear that neither C nor the mother had mentioned it. She agreed that the family were unhappy with the mother and that she hadn't spoken to her for a couple of months. She said they had now "*moved on*" and were speaking. She denied telling anyone that X had been shaken, and said that she was unhappy that the maternal family had had to come and give evidence whereas the paternal family had not been involved with the court proceedings.

The maternal great aunt D

160. The maternal great aunt D said that re-reading her statement brought back distressing memories because she had put what had happened to the back of her mind. She said that prior to the hospital admission the mother was coping well with X.
161. D described the couple's behaviour at the hospital. She said that the father was cuddling the mother and they kissed each other as if the hospital admission was not serious. She described the father is going to the mother for cuddles and saying "*love ya*". She said that once it was known that X had suffered trauma she had asked the couple what had happened and that the mother had been annoyed, shouting: "*Are you accusing me?*". She was concerned that the couple did not immediately understand how serious the situation was, and that the father had said that the mother had not hurt X: "*... she wouldn't hurt him*". She said that the couple had kept the incident regarding the chair "*quiet*".
162. She had understood the father to have said that he did not see X on the evening of the 21st but C had later told her that he had. She said that at the hospital C had said that someone had hurt X, demonstrating a throw, but she had not described a shake or a throw. She said that there had also been a demonstration with a teddy being put into a chair, and she could not recall that there had been a description of X being "*dropped*" into the chair. She said that she had asked the mother why she hadn't said anything before, and mother had said that she was hoping for a medical explanation. The father had said that he was concerned that the nurses had not held X properly, but the mother had never said that she felt that any medical professional had mishandled X.
163. D confirmed that the mother had never suggested that she had suffered from postnatal depression, but she recalled that her own mother, the great grandmother E, had discussed the possibility in a conversation with other family members.
164. D commented that the mother used to look after her two children. She described her as "*gentle, kind and loving... She knows how to get on with children. She is lovely with X. His face lights up when she sees him.*" She felt that the father was pleasant and appeared to be caring but she did not really get to know him. She had not been concerned that the father had tried to limit the numbers attending a family gathering when the baby was born or that he had said that the mother should hold X before any family member. She agreed that the mother had been quite upset after the birth and that she had encouraged her to get up and about, to show the baby off or to go to the supermarket. She didn't feel that the father had been critical of the mother.
165. Once the father had returned to work after the birth the mother had told her that she did not feel well, which she had understood to be physical health rather than mental health. C had asked her to pop in to see the mother to support her.

166. D said that she worked at the same place as her sister C and that on the morning of the 21st she had seen photographs of X whose eyes were closed and puffy. C had told her that the mother thought he might have conjunctivitis and was going to raise it with the health visitor. When X had been admitted to hospital she had initially believed there was a possibility of meningitis but by the the 24th she had been told there was a bleed on the brain.
167. D said that the first explanation about what might have occurred had come from C who had said that X had been thrown. She said that C was distressed and that she wanted detail about what had happened but C had said she didn't know. She said that the mother had demonstrated what the father had done in respect of the chair to the doctor at the hospital who had commented that he did not feel that that would have caused the bleed. She said that the doctor had said that trauma would be required from either a shake or a bang to the head. She thought that the father had left the hospital because he was upset and said that he didn't know what was going on. She said that the mother had texted him to say that he had not hurt X by throwing him in the chair so he could return to the hospital.
168. D said that the mother did not tell her anything about a cry on the morning of the 21st, but she had heard that there was a cry from someone else.

The maternal great-grandmother E

169. E is X's maternal great-grandmother. She explained at the outset of her oral evidence that she was unable to recall exact dates and that the statement that she had provided was a 'draft'. She said that she had been unwilling to sign the statement when it was sent for approval because there were some mistakes which she had now changed.
170. X confirmed that she had telephoned the hospital on the 1st to tell them what F had told her about potential explanations that had been given. She thought that G had probably told F what had occurred. She was clear that she had not said that S was shaken, because no one had told her that he had been shaken. She said that she is head of the family and therefore it was her duty to speak up if the couple had not said anything to professionals. She said that the hospital staff were wondering what was wrong with X. She had not asked the mother why they had not told the hospital, commenting: "*Maybe I should have asked her why she didn't tell them*".
171. E confirmed that there had been a conversation about postnatal depression but she recalled that it was something to do with a post on Facebook, or possibly a programme on television about a woman who had '*got away*' with something due to PND. She said that whatever had been said was said in a private conversation and she had never said that the mother had PND, and described her as "*lovely*" with X. She said that the mother is a "*...proper mum - X goes straight to her when he sees her.*"

The maternal great aunt H

172. The maternal great aunt H described the mother as a gentle, caring mother. In her assessment there is a good bond between the mother and X: "*She knows what to do*". She said that her sister had seen the mother and X on the 7th, and had described the mother as "*tired*". She then hadn't seen the mother until C told her on the 23rd that X was hospital. She said that nobody had suggested that the mother was struggling or hormonal, and that no one had mentioned PND to her.
173. H said that on the 25th she had asked the father about how the bruises had occurred. The father had said that X might have hit his arm on a wooden changing cabinet, and he appeared to be describing an event that had happened. She said they were changing X at the time and she does not know why the father said that. She said that she hadn't seen much of the father caring for X, except at the hospital. While she was at the hospital a nurse had made it clear that X may be taken into foster care. She said that the mother was very quiet and was upset. She did not feel that the mother was being prevented from speaking out.
174. She said that the father kept telling the mother she could go home, and she could tell that the mother did not want to go home from the hospital. She said: "*I told her to tell him and she did*". She said that she had been very upset that people had not spoken out about what

had happened, and that she had only recently started speaking to the mother again. She said that she found it very hard to deal with, and she did not know what the family were thinking had happened. She had asked the mother why she had not told professionals about what had happened on the morning of the 21st and that the mother had said that when she was at the hospital she had not believed that the father putting X in the bouncy chair like that could have caused the injuries. She said that she didn't think that B had raised the "throw" when doctors were asking what could have caused it. She described herself as being focused on X.

175. H described being present on the 30th when C had said that something had happened to X and had spoken about a "throw". She described C as shaky, shocked and upset. She said that she had sat on the bed, asking "Who would throw a four week old baby"?

The mother

176. A transcript of the mother's evidence was obtained and can be found at Annex C below

The father

177. A transcript of the father's evidence was obtained and can be found at Annex D below

Analysis

178. The oral evidence in this case concluded on 25 October 2019. In his closing submissions Mr Vine QC – referring to the mother's evidence- commented: "*The emotional content, and evident spontaneity, of her evidence on this incident will hopefully not have been lost in the meantime.*"

179. It was apparent at the end of the oral evidence that there would be a delay before submissions and judgment. I therefore took the time *at that time* to reread all notes of the evidence to be fair to both the father (as the comments apply to his evidence as well) and the mother. I have also spent additional time revisiting the evidence during my reading of the submissions and preparation of this judgment in January 2020. Whilst the delay is not ideal, I have sought to reduce any prejudice it would cause any party.

180. A large amount of time during the hearing was spent dissecting the evidence of the mother's relatives and friends who gave evidence in order to examine any bias and collusion between them. There were issues raised about whether the statements had been taken accurately. For example, Ms Melly QC asked B about paragraph 7 of her statement, which B had said was not a continuation of the previous paragraph but was describing an entirely different day. In my assessment, having considered the way the statement is set out and giving allowance for the fact that B did not seem to have given much attention to the statement when it was sent to her, her oral evidence was in fact accurate i.e. it was describing a different day. The way the statement was taken meant that the paragraph numbers had apparently been changed. B said that she had told the solicitor that she was unsure about the dates of conversations. Miss Melly QC was of course right to explore the apparent difference but accurate statement taking would have avoided the need.

181. The statements were generally taken by telephone and then sent as email drafts. Without the benefit of legal advice or assistance it was obvious that some witnesses hadn't paid much notice to what came in the draft. In addition, they had not formally been told not to discuss the evidence with each other. The local authority needs to look at its statement taking and witness procedures to ensure that statements are accurate, in the words of the deponent, signed and in the witness bundle.

182. Several witnesses are family members and it would have surprised me if they had not discussed what had gone on. It is a natural thing to do and there are no 'bail condition' restrictions on them talking to each other. Similarly, it was obvious that close friends A and the mother must have had some discussion about the evidence they were going to give as they shared a Chinese meal. The family had not been given sufficient guidance about what they should or should not do.

183. Considering the witness evidence from friends and family as a whole I bore in mind the natural inclination to favour a family member or a friend at all stages when I was assessing the evidence. I was satisfied that the witnesses who appeared before me were in fact trying to be as objective as possible and were trying to assist me to find out what had happened to X.
184. I found C to be an honest witness, who wasn't overly 'gushing' about her daughter or deliberately trying to implicate the father. I am satisfied that her evidence was balanced – for example she described him as 'good' with X despite the fact that she believes he may have hurt her grandson. I find that she wanted to get to the bottom of what had happened to X by asking the couple about it at hospital, that she has cooperated with the court and social care and was quite sanguine about her daughter telling the father that she was a liar.
185. It was clear that A's friendship with the mother meant that she 'sided' with her so far as who was responsible for X's injuries and I have been careful to keep that to the forefront of my mind. She clearly intended to give evidence 'for' the mother. She did not however try to exaggerate X's behaviour on the 21st, accepting that his cry at her mum's home was apparently 'normal' and that in McDonalds he had woken, eaten a little and then gone back to sleep. I did not find her to be an overdramatic witness, nor one who was saying what she had been told to- or thought she had to – say.
186. Her description of the cupboard photograph was telling. She acknowledged that the father's photo was 'cute' rather than reacting with faux horror about it, but also described it as 'dangerous'. Equally, she was frank that she could not remember whether she was present at the 'hand over mouth' comment. In my assessment if she was determined to 'do the father down' she could easily have lied, said she was sure she was there and stressed that she heard it said. She didn't and I accept her evidence about what she observed as factually accurate within the constraints of her memory.
187. Similarly, B was balanced in her approach to both the father and the mother. She was clear that the father had made the comment about the dummy but stressed that it was in a 'jokey' way rather than suggesting any malice on his part.
188. G was assessed as an interim carer for X and was, I'm sure, disappointed that she and her partner were not offered the opportunity to care for him. She was frank in her acknowledgment that she had been unable to speak to the mother for some time and her clear belief that both the father and the mother should have spoken up much sooner. Despite that, and the fact that she was a reluctant witness, I'm satisfied that she tried hard to give truthful evidence and to remember what had happened. Again, I accept that the wording used in her draft statement did not accord with what she thought she had said.
189. D was clearly very upset about what had happened to X. She helpfully assisted with the issue of who might have mentioned PND, and acknowledged some confusion as to who had said what and when. I was satisfied that she tried to be of assistance to the court and that she was generally a truthful and consistent witness.
190. E was clearly giving evidence as the 'head' of the maternal family. She had acted on her principles by calling the hospital when she felt the couple had not been upfront about what had happened. I think she was probably the person who raised the issue of PND, not in the context of the mother suffering from it, but as part of a conversation about what people get away with. I don't think it is likely that she suggested to anyone that the mother should say she had PND. Her evidence was at times a little unclear but I am satisfied that she didn't say to anyone that X had been shaken and that she was essentially a truthful witness. My assessment of the father and the mother and the social work evidence is contained in the findings and analysis which follows.

Medical evidence

191. In her closing submissions (page 2 paragraph 3) Miss Melly QC submitted: "*The only proper interpretation of the medical evidence about the morning of the 21st is that there was not, in fact, a floppy episode....The medical evidence does not support the mother's account particularly taking account of Dr Stoodley's emphatic assertion that an injury such as the one suffered by X would not lead to a change in behaviour at the time followed by a period of improvement and then a further deterioration.*"
192. All the experts agreed, and I accept their joint opinion, that this could not be a case where X was shaken, appeared perfectly normal for a period of hours or days and then

collapsed. Their joint evidence does show that there can be a wide variety of symptoms shown after an event causing brain injury and that the history of presentation is key.

193. Miss Melly QC continued at paragraph 6: *“The experts have not wavered in their opinions in respect of timing namely within 48 hours of the scan on the morning of 24th on the medical evidence alone. This is extended to 2 to 3 days only on the basis of mother’s account of the symptoms. It is submitted that the clinical presentation as described by the mother is unreliable and therefore where the two are incompatible the medical evidence should prevail. The purely medical evidence places the time of the shaking injury being squarely within the period that the mother and not father had care of X”*. I explored this submission with Miss Mason during oral submissions. She accepted that the situation may be different if I found the mother to be truthful.
194. The experts can only give guidance as to likely timeframes. The shutters don’t come down at 48 hours and the symptoms can be highly non-specific. Mr Jayamohan used the term ‘*approximately*’ and stressed that the clinical changes to X’s presentation were also relevant even though that may put the incident outside the 48 hour window.
195. Miss Melly QC also submitted (paragraph 9) *“There is no evidence that the bruises identified on X were inflicted at the same time as the shaking injury and as such it may not be appropriate to try to use the appearance of the bruises to try and determine when the shaking injury was inflicted. Of course, that may mean that there was more than one assault on X but the bruises are not of a very serious nature”*.
196. It was clarified by Miss Mason that what was meant was that they were not serious in comparison and she fully accepted that the bruising was serious of itself.
197. Miss Melly QC points to the opinion of Dr Yadav that X would have cried with distress and pain for ‘5 to 10’ minutes after the injuries to his left arm and shoulder, commenting that there is no account of X crying for that length of time on the morning of the 21st and concluding *“... therefore it is unlikely that these bruises were caused at that time.”*
198. I think it would be wrong to be too prescriptive as to the length of time a baby would cry in these circumstances. We don’t have timed experiments – thank goodness- to show how long the crying would be. Put into context I have interpreted Dr Yadav’s opinion as that there would be crying of significance which would be more than momentary. Different babies would cry for different lengths of time. It must also be born in mind that if the bruising was inflicted at the same time as the brain injury the latter may have affected X’s presentation. In fact, there is no time at all where X was reported to cry for 5-10 minutes but there is a report of a significant cry on the morning of the 21st.
199. Miss Melly QC referred to Dr Yadav’s opinion that the bruises could appear within minutes of causation and would certainly appear within 24 hours. She submits: *“The first mention of the bruising is late on 21st when the mother calls the father upstairs to see. It would appear therefore based on the medical evidence that the bruises were not caused that morning.”*
200. I know on the joint evidence of the parents (assuming I accept it) that the bruises were apparent on the early evening of the 21st. If I find that it is more likely than not that the bruises were inflicted at the same time as the brain injury then the event must have happened before that time. Once again, the expert evidence is but one part of the overall puzzle.
201. It is possible that there were two ‘events’ and even that the injuries were caused by different people. Looking at the evidence in this case – and the inherent improbability of there being two perpetrators in the overall circumstances- I have concluded that there was in fact one incident (see below para 399) and have tied this in with my consideration of the last time X was acting as a normal baby.
202. Dr Sweet wondered whether the words the mother used accurately reflected what she was trying to describe and wondered whether the thought that he might be dead was *“... just a very transient thought that went through her head”*. Assessment of that is of course a matter for the court as an expert should not descend into the fact finding process. I am satisfied below (paras 310,313 and 316) on the evidence that the episode itself occurred but was very brief and that what I saw her describing in the witness box was momentary rather than a prolonged episode of thinking he was dead. This is most certainly not a case where a parent actually believes that their baby *is* dead and then does nothing about it. It was most probably a very fleeting thought, a check that he was breathing and a reassurance that he was.

203. I have also considered the mother's evidence in her first statement that during the day X was awake, his usual self and 'playful' I'm satisfied that when she said this she knew it to be untrue. I am also satisfied that the reason for lying was to try to exculpate herself from the guilt of not protecting her son from the consequences of the events of this morning, something she has now come to accept.

Relationship between the mother and the father

204. This was the first time either parent had cohabited, and X was conceived a matter of weeks after they started to see each other. The relationship was in its early stages and they had separated for a short period when the mother told the father that she was pregnant. The separation continued for a couple of weeks before they reconciled when she was around 11 weeks pregnant

205. The mother's best friend B said that so far as the mother was concerned: "*The father was her life*" and she believed the mother was "*besotted*" with him and anxious for the relationship to continue. I am satisfied that this was a very important relationship for the mother, but that it was also important for the father, who saw himself as '*stepping up to the plate*' when he realised that he was going to become a father. I do not find that his early reluctance had any lasting effect, however I find that it is likely that on occasions he was upset about the changes that the pregnancy had made to his life.

206. Miss Melly QC submits that the mother manipulated the father in order to have a child. I accept the father's evidence that he had no intention at the time that the relationship started to either cohabit or have a child. He had a comfortable existence living in an annex to his parents' home which allowed him to both have privacy but also continue to take advantage of the benefits of home life. He had a sports car, a job and disposable income. His own family circumstances had been of children only being considered or conceived within the context of a stable and secure relationship and in my assessment he would be fully aware of the impact that a child would have on his circumstances and he would be deeply affected by the prospect.

207. I find it is likely that one of the reasons why his family were concerned about his mental health deteriorating if the mother were to proceed with the pregnancy was that he was settled into a routine and was financially stable. He is clearly a man to whom financial stability is important, as shown by the effect losing his job had upon him. This also explains his alleged '*overreaction*' to the fact that the mother had left her employment without making arrangements to claim for maternity benefits. She has a very different attitude to finance which was no doubt a cause of frustration for him.

208. I find that the mother saw the relationship with the father as an opportunity to build a family. I accept her evidence that in a previous relationship she had tried to conceive a child, and I find that it is likely that her intention from the outset in this relationship was to have a baby. I am also satisfied that the father had specifically raised contraception with the mother at the outset and that she lied to him by saying that she was taking contraceptive measures. I do not accept her evidence that she had any significant concerns about her fertility nor her explanation that that was why she misled him. In my assessment she was impatient to have a child and I think it unlikely that she gave any thought to the effect on the father of an unplanned pregnancy. Like some of his later treatment of her, I find that her actions were thoughtless, selfish and inconsiderate.

209. The father has been criticised for his own and his family's treatment of the mother when they discovered that she was pregnant. The relationship between the mother and the father had broken down and she sent him a photograph of a positive pregnancy test. That must have been an incredible shock for this young man and it was no doubt shocking for his family as well. He was concerned about the financial implications and the practical implications for the couple. His family were concerned that the mother bringing their grandchild up on her own would potentially mean that the circumstances of that upbringing would be sub optimal. I do not accept that they should be criticised for their views – just as the maternal family which accepted the news much more readily should not be criticised for their different outlook.

210. Mr Vine QC submitted that the father lacked empathy for the mother both as a partner and as a mother because the father described her as "*lazy*" and suggested that she did not "*pull her weight*" despite the fact that she had had a traumatic birth, a caesarean section which was painful and that she had some difficulties establishing and maintaining

breastfeeding for X. In addition, he suggested that the father was intolerant of the mother not having secured benefits before she left her employment to have X and her failure to learn to drive.

211. I am satisfied that the father did make insensitive comments to the mother following the birth about her leaking breastmilk and her failure to shave pubic hair. He is a fastidious man and it is likely that the changes that occurred to her body after the birth were difficult for him to accept. He described the mother as “*hormonal*” on more than one occasion during his evidence and I find that despite his assertion that he understands women he showed very little understanding of his then partner, particularly in the first five weeks after X was born.
212. I am also satisfied that there were significant differences between the two of them in terms of the overall tidiness in the home. The father quite openly refers to what he describes as his “*OCD*” traits and it was clear from the oral evidence that part of the difficulties between them arose from this aspect of his personality. I find that he has very high expectations in terms of the way his home should look and had little comprehension of how disruptive to their modern and tidy home a baby would be. This was his first adult independent home. He initially wanted a wholly unsuitable ‘single person’ type of apartment but had been able to secure an ‘aspirational’ home which the mother felt would be suitable for them and the baby. Nearly everything was new and in my assessment, he was very proud of it. When the landlord’s agent was visiting the property the father ensured the mother wasn’t there. It was clear that he was painting a false picture of a single man renting the home and wanted to hide the reality of a pregnant girlfriend.
213. I’m satisfied that the father generally insisted that X was changed upstairs rather than downstairs even though the mother had had surgery and was struggling with stairs due to her stitches. I don’t think that he was deliberately setting out to make life difficult for her. I do think that he didn’t like the changes to routine that their new baby brought, and the inevitable mess to their ‘showhouse’ lounge.
214. I also find that he simply didn’t very much think about the enormous physical and mental impact on the mother of the traumatic birth during the first month or so when X was in their home. He seems to have had no conception of the fact that whilst he was saying the mother wasn’t “*pulling her weight*” she was- at least initially- virtually immobile after a significant operation and struggling to breastfeed their new baby. Further still, he does not seem to have taken on board the fact that when her stitches were splitting she was in significant pain. I find that he was often inconsiderate and unthinking about these matters.
215. In my assessment the father was also very unrealistic about the changes that he personally needed to make following the birth. He continued going to the gym two or three times a week on the way home from work despite knowing that the mother had been on her own looking after their new baby all day in circumstances where she herself was physically very unwell. Such behaviour was unthinking and selfish, but he was clear that he really needed those sessions in order to try to maintain his mental wellbeing.
216. Overall both the father and the mother had flashes of love and concern for each other, but there is no doubt in my mind that their primary concern was themselves and they both acted on occasions as selfish, spoilt young people. That fact does not assist at all with identification of a potential perpetrator of the injuries, however it is useful to see the ‘*wider canvas*’ of what occurred in their lives and the attitudes they held both at the time and to a large extent subsequently.
217. More pertinently in the context of the case I have considered the question of whether the father was “*controlling*” of the mother during the relationship and afterwards, a matter raised in the social work assessments and which was described by Mr Swiffen as “*a legitimate cause for concern*”. Miss Melly QC directed me to the CPS definition: “*Controlling behaviour is a range of facts designed to make a person subordinate and/all dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour*”.
218. The Social Work evidence outlined ‘*concern*’ about some aspects of the father’s conduct which potentially fell into this category. One example was on an occasion when the couple were going to meet some of his friends for the first time as a couple, the father suggested that the mother change from the sweater that she had selected to wear into one of his shirts. I do not find this isolated aspect of his conduct to have particularly been

“controlling”, however I am satisfied that he had no regard to her feelings when he suggested that she change. There is no evidence that he tried to regulate the way she dressed at any other time. I find that on that occasion he felt she wasn’t smart enough for the occasion rather than he wanted her to look a certain way.

219. It was also suggested that the father restricted the mother’s relationship with her extended family, required her to put his work clothes out in the morning, and was critical of her in respect of her failure to learn to drive and be financially independent. I am satisfied on the evidence that the mother positively enjoyed preparing the father’s clothes for the day and that whilst her failure to learn to drive and to obtain benefit was a source of conflict between them it was nothing more than that. I do not find that there is any evidence contained in those features of their relationship which would suggest that the father was ‘controlling’ the mother or seeking to restrict her. There may have been warning signs but they were still finding their way.
220. The mother and the father have very different personalities and it is evident that she wanted the relationship to succeed. I am satisfied that the father was very aware that the mother had put a lot of store in the relationship and that she wanted it to continue even after X had been harmed. An example can be seen on New Year’s Eve 2018 when he sent her a graphic photograph of himself with bleeding knuckles followed by a later message stating: “I’ll be dead soon”. I find that his motivation was to upset her, cause her to worry for him, and potentially for her to resume the relationship. I’m also satisfied that he did this because he knew how to manipulate her feelings. In my assessment this behaviour towards her, whilst on a spectrum of what could be properly described as controlling behaviour, was infrequent during their relationship and was not in any event at the most extreme extent of the spectrum of such behaviour. The father was very drunk when the text was sent and I noted during his evidence that he could see that it was a very insensitive thing to do.
221. There are also some examples of the father saying things which may have had the effect of undermining the mother’s confidence. Examples raised include the comments about her leaking breastmilk and failure to remove pubic hair. Those comments, whilst unpleasant and unthinking were again occasional rather than a consistent feature of his behaviour and their relationship. I find that the very few examples which the mother gave to the social workers, at a time when she certainly felt the need to portray the father in a negative light, and also later in her oral evidence, actually demonstrated the limited impact of his behaviour on her life. She did not complain to others about him at the time and enjoyed others’ appreciation of their seemingly perfect life. There is no evidence that the father tried to limit or restrict her relationship with her friends or extended family and there is no evidence of him restricting her freedom or encouraging her to depend upon him. In fact, I am satisfied that he wanted her to learn to drive so that she could be more independent and that she was as critical of her family coming round to see the baby unannounced as he was.
222. One area of the couple’s relationship which was examined in some detail was the morning routine of the mother preparing the father’s breakfast and laying his clothes out. I’m satisfied that there was no pressure on her to do so and that it in fact assisted them to function as a couple. I am also satisfied that they shared the house work and that there was nothing of ‘concern’ in respect to the routine they chose to adopt.
223. A further example of the way the father could on occasion treat the mother is in respect of their visit to Bolton Abbey. The father says that he attempted a practical joke by hiding when the mother went to the toilet, that he missed her coming out of the toilet and the joke therefore backfired as they lost each other. Miss Melly QC submitted that at worst this is an example of his immature humour rather than an example of stalking or sinister behaviour.
224. I find that this is an example of his puerile humour and crass behaviour and that he sometimes did not know when to stop. It would have been quite easy for him to telephone her – they both had mobile phones – and put an end to her upset but instead he chose not to. The mother was very upset and she was able to make it quite clear to him that she was cross about this incident.
225. C told the police that she felt that the father had wanted to be in control of the relationship. One of the allegations of controlling behaviour she gave is that whilst X was in hospital the father ‘took over’ in conversations thereby preventing the mother having the opportunity to say what had happened. I am satisfied that the father did use the mother’s

phone to reply to messages from C on her behalf and suggest that she go home. It's not clear to me that his use of the phone was against her wishes. So far as speaking to medical professionals is concerned in my assessment there were several opportunities when the father was not present when the mother could have spoken up had she chosen to do so. I think C quite rightly felt that the mother had more to say but I find that that in fact the mother was at the time choosing not to be forthcoming. On the evidence I find that choice was hers and that she was not being coerced into withholding information.

226. Considering the evidence as a whole I find that there is evidence of both the mother and the father acting selfishly and being manipulative of each other. There are examples of the father saying things and occasionally behaving in a manner which was very unpleasant, rather more than the mother, but not exclusively. This court and this case is not a court of morals or a trial of personalities. I do not in any way condone controlling or unacceptable behavior but I do not find that their behaviour towards each other before the 21st amounts to anything meriting significant '*concern*' in the context of a care proceedings finding of fact hearing. Society accepts a wide variety of relationship behaviour and there was nothing significantly outside 'normal' boundaries going on in the relationship, although there may have been signs for the future. An example of the mother's ability to speak up is the 'fart' incident where the mother spoke up without hesitation.
227. Their relationship after the police became involved on the 1st must be viewed through the prism of a crumbling personal relationship, potential criminal proceedings and these proceedings where X had been removed from their care.
228. The mother's evidence was that in 2019 when the father came to see her in hospital he was very angry that she had handed over the "X dancing" video, calling her "*pathetic, a child and a liar*". She also said that on the same visit he told her that he loved her and that as a result she told him that she loved him too. This is an example of him trying to manipulate her feelings, just as the text on New Year's Eve, but is not uncommon in relationships such as theirs.
229. In a discussion between the mother and the social worker T on 29 August 2019, the mother said that she had sometimes been feeling "*low*" and that she was finding it difficult on occasion to make an emotional separation from the father. She had previously given the impression that there had been no communication between the two after he had visited her in hospital.
230. The mother's feelings towards the father have clearly fluctuated from when X was taken to hospital on the 23rd to date, as have his for her. They saw each other at Christmas and New Year 2018 and no doubt retained feelings for each other at that stage. The mother instigated contact when she was in hospital and she told the family support worker in June 2019 that she was upset by text messages she had received from the father, including a favourite song, because she still loved him.
231. During her oral evidence the mother said that she had tried to keep both care of her son and the relationship with the father. It's not a surprising aspiration for a young woman in her position to adopt. I find that she had not wanted the father to believe that she had thought badly of him and she described in oral evidence that she made poor choices as a result, including lying to children's social care about the extent of their relationship in 2019. She described a situation where her feelings for him did not simply disappear, which I find was accurate and understandable.
232. The couple continued to exchange texts until about August 2019 at which time their communication seems to have stopped. The father is in a new relationship which has been ongoing for some months now.
233. What happened both in hospital and afterwards between the mother and the father must be carefully viewed in the context of them both being immature and rather self-centred. It is hardly surprising to me that they continued to be in contact for some time because their love for each other was not governed by an "*on/ off switch*" and it clearly took time to dissolve. I do not think that there is any evidence that they are currently in a relationship other than as X's parents and I am satisfied that that has been the situation for some months. In my assessment it is unlikely that they will reunite as a couple.
234. Mr Swiffen submitted that the father's attitude towards parenthood could also be called into question because he went clay pigeon shooting whilst X was in hospital and because he has at times demonstrated a somewhat uncommitted approach. The examples he refers to include the father's failure to take up parenting classes and his apparent

disregard for the contact agreement which prohibited him introducing his new partner to X at contact without consent. I am satisfied that these examples are facets of the father's at times arrogant personality, but again, I question their relevance to perpetration or even to welfare. Society accepts many different standards of parenting by people of many personalities.

The mother's parenting of X

235. For the past year the mother's care of X during her extended contact periods has been observed and her understanding of practical and emotional parenting has been explored during the assessment process. S gave evidence, which I accept, that the relationship between the mother and X is very good and that her care of him and attachment to him is similarly very good. The father has throughout made it clear that he did not believe that X was at any risk whilst in the mother's care. In January 2019 the father said that he was '*more than confident*' that she had not harmed him. During the final hearing his position was that despite his positive view of her parenting she must be the perpetrator because he was not. All professionals have described consistent appropriate emotional and practical care by the mother of X and family members – who were able to comment about the time when X was at home with her - had no concerns.
236. During the four or so weeks that X was in their care, there were occasions when the father's care of X should have been called into question by the mother. On one occasion he put X into a kitchen cupboard whilst making himself a drink in the kitchen. He took a photograph of X in the cupboard which he posted on social media on the basis that it was "*a bit of a joke*". A said in her evidence that the mother had told her that she could have killed him for doing this, although the father suggested that she was not upset. On another occasion she filmed him in the "*dancing*" video which was entirely inappropriate. I'm satisfied that any reasonable parent who saw their partner handling such a tiny and fragile baby would have simply told them to stop, take the baby off them and made it clear that such behaviour could cause injury and should not be repeated. I find that the reason for her non intervention was because she didn't want to upset the applecart and cause strife in their relationship rather than that she was intimidated.
237. On the final incident, where I am satisfied (see below para 257) that he farted on X on the 19th thereby causing the tension between them -which he denies (see below para 258) – I find that she did step in and remonstrate with him. I think by this stage she was beginning to question his "*humorous*" conduct with X and felt it was serious enough to intervene. She took the matter sufficiently seriously to sleep in the spare bedroom for the first time in their cohabitation. That meant that she was the one with sole care of their son during what she later described in the text to his sister as a particularly difficult night, and I have weighed that fact into my overall assessment of the dynamics of their relationship.
238. The mother has now accepted that she should have sought prompt medical attention for the bruising she saw on X on the 21st and that she failed to prioritise X's needs between the 21st and the 23rd when he was being sick. C's description of the extent of the vomiting on each of those nights was graphic and demonstrated sickness which would have caused a reasonable parent to do something about it, although I accept that X didn't have a temperature and seemed otherwise alright.
239. I find it is likely that he was less sick during the day than he was overnight, just as he was less sick on the daytime of the 21st, however that does not absolve the mother from the fact that she took no action. In my assessment her evidence in the witness box indicated a genuine recognition of the fact that she had failed X at that time and a genuine remorse that she had not focused on him more. I accept her evidence that whilst she did not seek a medical opinion in respect of the bruises to her son she brought the bruising to the attention of the nurses at the hospital. I do not think that she did so because discovery of them was inevitable but because she was outlining matters of concern in respect of X. It is regrettable that I find below that she did not declare all of what she knew to have happened.

The father's parenting of X

240. During the weeks that X was in their care the father showed some appropriate parenting skills, especially in the first few days. I'm satisfied that he really tried to be a good father to his son, and that he had no difficulty changing him and doing practical tasks. I also

accept that by and large the father would look to the mother the guidance if he was unsure about what to do, providing they were 'on speaking terms'.

241. In my assessment the father's real difficulty came in understanding how fragile his baby was. At times he seems to have treated him as an accessory. The father told me on several occasions during his evidence that he is a humorous person and that he liked the idea of YouTube humour depicting 'hilarious' events when inept fathers are left in charge of their children. Unfortunately, his desire to be seen as a humorous man seems on occasion to have meant that he behaved in a reckless manner towards a very small infant.
242. When X was only four days old the father and his friend took a video referred to as the "boomerang video" which is clear evidence of a lack of appreciation of the fragility of the baby. The purpose was to produce a humorous video which could be shared with others and I'm satisfied that the objective was to boost the father's social standing/ ratings on social media rather than draw attention to his lovely son.
243. A similar event was that he photographed X in a kitchen cabinet, again for a "look what dads do when they left alone with their children" 'amusing' photo. In his oral evidence the father said: "I was naive and thought it was a bit of a joke", accepting that it would have been uncomfortable for his son but falling short of accepting that it was self-centred and unfeeling at the least and potentially dangerous as the cupboard was at head height.
244. In addition to this is the YouTube style "dancing video" which was taken by the mother on the 14th. Again, I am satisfied that this is evidence of reckless handling of X by the father with a view to gaining social cachet which clearly blinded him to the recklessness of his actions. The mother describes being cross about the incident but she did not step in to stop it. Her reaction to demonstrating her unease/upset was by throwing the phone down at the end of the video and it went unnoticed by the father. I am satisfied that even then she knew the video was inappropriate. Finally, there is the "Fart" incident on the 19th, which I deal with below.
245. Taken together, these incidents in the first few weeks of X's life paint a worrying picture as to how much the father appreciated the needs of a newborn. Miss Melly QC points out that there is no evidence at all of the father being aggressive, irritated or violent in his dealings with X. This is of course true of both the father and the mother, but on the circumstances of this case I find it is far more likely that one of them either mishandled X or briefly lost control and harmed him rather than the injuries being caused by a deliberate aggressive or violent act. Neither of them have a history of violence, there was no significant violence in the relationship and neither describes the other as aggressive.
246. One of the allegations made about the father is that he joked, in the context of a discussion about using a dummy, that he would put his hand over X's mouth to stop him crying. I've had to assess whether this was said or not – because the father denies it - although it was given as evidence by the mother, C, B and A. If it was said, was it said by the father in a callous and heartless manner or by a somewhat arrogant and unthinking young man?
247. Miss Melly QC submitted that the father "... did not had [sic] attitude of thinking he knew better". I find the conversation occurred as described by the others who were there, I am satisfied that the father was opinionated about the use of a dummy. I think that he did feel that he knew better, and that the comment was made as part of that conversation.
248. It is important to put the conversation in context. Whilst it is illuminating about the father's personality in that it demonstrates his lack of understanding at that time of the stresses and strains that a screaming baby can bring, I do *not* find that the statement was made on the basis that he would treat a baby in that manner if it was screaming. It is not evidence that he would act in an aggressive or violent way towards a child and I have not taken it as being so.
249. I have taken into account the fact that the father is adamant that this conversation did not take place and that there has been a degree of discussion and potential for "collusion" between the four witnesses who said it did. I find the father was expressing a strong view against the use of a dummy, despite the fact that he had never been a parent. I'm also satisfied that he said words to the effect of putting his hand over a crying baby's mouth. C was taken aback by the comment but did not feel that the father would actually do what he had said.

250. The father is in some respects a very self-confident young man, and he showed himself during the oral evidence and as part of the assessment process to be capable of being self-opinionated and somewhat arrogant. I find it most likely that the comment was made in defiance of the apparent female consensus that X would be given a dummy because at that time he had preconceived notions about childcare. I don't know why he has subsequently lied about making the comment. There is no reason to lie because it was, I'm sure, an attempted joke.
251. In his closing submissions Mr Vine QC submitted that the father has knowingly attempted to blame others for X's injuries. One example is his text on the 26th to X's aunt G where he complained at length about the medical professionals neglecting X, claiming they were incompetent. He took up the theme again with T in January 2019 where he said that her he felt that the doctors had exaggerated the condition in order to obtain a confession. Mr Vine QC suggests that this was a direct attempt to blame medical professionals when the father was fully aware that they were not responsible because he was. In addition to these examples I have also considered what was said at the hospital in respect of "supine" or "vertical" throwing of X. Mr Vine QC, also pointed out that even during the course of these proceedings, on 19 April, the father caused a red mark to X's arm by co-sleeping.
252. It is hardly surprising that since the father has not been a full-time carer for his son that it has been difficult for him to take on board all the advice given to him. I remain concerned however that there may be an element of arrogance in his failure to listen to some advice, for example against co-sleeping. His failure to pursue parenting classes may indicate a belief that he does not need them and his blatant breach of the written agreement which prevented his girlfriend being introduced to X without prior discussion is worrying. His oral evidence on this latter point was particularly unsatisfactory, because I am quite sure that he was fully aware that the restrictions of the written agreement were still operative at the time when he unilaterally introduced his girlfriend into contact.

The marks on X on the 18th

253. Both the father and the mother gave evidence that on the 18th she saw marks on X, which she pointed out.
254. The local authority does not seek a finding that the marks that were seen were either inflicted injury or that they should raise an issue of failure to protect in respect of either the father or the mother.
255. I have reminded myself that there is no pseudo burden upon the parents in respect of any marks that were seen on X on that day. There is no finding I can or should make in respect of the marks. A health visitor had seen X on the 6th, when he was well and no concerns were noticed. A second visit took place on the 20th, when X was weighed undressed. Again, no bruises or marks were noted on him and I am satisfied that the marks seen on the 18th had subsided by that time

The allegation that the father farted on X on the 19th

256. On the 20th the mother texted the father's sister as follows: "*[the father] farted in X's face on purpose and now I'm in the second bedroom cos I had a go at him or it which meant that I'm nasty and X is being a nightmare because he has wind he can't get out so he is not sleeping or settling. Just feel like crying my eyes out. I've been in agony all night with my tummy it's getting worse and I'm so stressed out and tired.*"
257. I'm satisfied on the evidence that some point on the 19th the father picked X up, held him between his legs and deliberately broke wind over him. It's difficult to know why the father did this because he has refused to acknowledge his behaviour and denied his actions throughout. I can see no possible reason for the mother to send the text to his sister if the event had not actually occurred. It is a bizarre thing to invent. It is entirely in character for the father to do such a thing. He prides himself on his 'zany' sense of humour and it is quite possible that he thought it was very funny to do it. I find it demonstrates that he had very little understanding of his son or empathy for him. In my assessment this was more than taking a silly picture or video, particularly because it demonstrates the lack of respect which was shown for this very small child. The mother's behaviour was entirely appropriate in that I find she remonstrated with him and made it entirely clear that such behaviour was not acceptable.

258. Miss Melly QC submits: *“If the court finds it necessary to reach a conclusion on this issue, then it is submitted that it has no real relevance to the fundamental issue the court must determine.”* I have considered why the father has lied throughout about this incident. It seems to me that it is a further example of him being very unwilling to volunteer information which could portray him in a negative light. Such behaviour is entirely understandable because as human beings we don't want others to think badly of us. It is apparent however that he is a man who will only admit to wrongdoing when there is evidence against him, for example the photograph of X in the cupboard (which he denied in the assessment but accepted in his oral evidence) or video of X “dancing” which he did not volunteer and was cross that it had come out. It is notable that his reaction when he found out that the mother had volunteered the recording was to be very angry and critical of her for doing so. His emphatic denial in the witness box of the fart incident ever taking place was striking because on the evidence it was so obvious that it did.

The pressures on the couple around the time between the 19th to the 23rd

259. In his closing submissions Mr Vine QC submitted that the only pressure operating on the mother around this time was the difficulties in her relationship with the father. In my assessment that is a considerable underestimate of the obvious pressures she was under as a first-time mum at home following surgery and living with a partner who was clearly finding it difficult to adjust.

260. On the 14th the mother described the physical pain from her surgery as *“unbelievable”* and it is clear from her later text to the father's sister and others that this pain was ongoing. In addition, she was undertaking quite a lot of the overnight care and was looking after X on her own when the father was at work. She commented in texts that she wasn't getting sleep and that she was *“shattered”*. She accepted that this occasion led to her being moody or hormonal, and there can be no doubt that even at her mother's house she was still significantly tired, commenting on the 23rd that lack of sleep was affecting her to the extent that she kept *“...almost passing out but it's only because I'm tired.”*

261. Miss Melly QC submitted that the mother was reluctant to confide in her family about how she was genuinely feeling because she was concerned that her extended family would *“take over”*. I'm satisfied that the mother was probably worried about her family becoming over involved, but that that did not stop her confiding in them about how she felt. I do not think that there was any consequent pressure on her to remain quiet about how she was feeling.

262. Further, Miss Melly QC submitted that on the morning of the 21st the father had had a full night's sleep whereas the mother, who was already tired from looking after X, had had a particularly difficult night with him. The mother's evidence was that she had got used to the short periods of sleep, and commented that sometimes she stayed awake just to watch her baby son. Sleep deprivation is something which can undoubtedly affect concentration and mood, and I have looked at the evidence as a whole to see whether the mother was at the relevant time significantly affected by the need to wake to attend to her son. In my assessment she is quite a robust young woman who was able to adapt to the new regime of interrupted sleep reasonably well. C would undoubtedly have stepped in had she believed that her daughter was really exhausted or suffering unduly from lack of sleep. As it was, she felt that her daughter was tired, but no more tired than would be expected. I think that she was right in her assessment, and that although from time to time the mother naturally complained of the interruption to her sleep her evidence that it was not operative on her functioning to any large extent was true.

263. Miss Melly QC submitted that on the morning of the 21st the father was not caring for X *“under stress and pressure”*, however in my assessment there were ongoing pressures which would not have simply disappeared because he had had a good night's sleep. Further, Miss Melly QC submits that the father was not under any time pressure in respect of work. It is correct that the meeting was not until 11am, but I'm satisfied that there was some pressure on the father that morning because the meeting was an important one, and I'm sure it was operative on his mind. In fact he was slightly late, although he downplayed the consequences.

264. Miss Melly QC commented *“Mother observed father handled X once she had awoken and saw him take X upstairs. There was nothing indicative of father being under stress or*

- pressure.*” I accept that it may not have been apparent to the mother that the father was particularly angry or feeling particularly stressed that morning. To a certain extent, she had become used to him behaving in a different way over the past two days because they weren’t speaking and there was an ‘atmosphere’ in the house. It would have been natural for her not to pick up on anything other than the ongoing atmosphere. She didn’t know what was going on in his mind about what others had said in terms of his role at that time, because he did not tell her. She did observe him to be flustered but had no reason to know how he may have been feeling.
265. On occasions the father had some difficulty with practical physical tasks, for example he cut X’s fingernails too short causing his fingers to bleed, but at other times the mother was also concerned about her own abilities, for example asking the father to hold X in the bath because she didn’t have confidence in holding a slippery baby. I’m satisfied that it was natural for both of them to lack confidence on occasion because they were new parents, and it is important not to read too much into the fact that they felt that way.
266. Mr Vine QC submitted that the father was frustrated by life with the mother and X because he felt that she was lazy and was not “*pulling her weight*”. The father accepted that around that time he was somewhat irritated by her behaviour. It was also around this time that the medication he was taking in respect of depression ran out and he appears to have shown little haste to renew the prescription. His mother commented on the 22nd in a text to the mother that she would “... *sort out the tablets situation...*”, indicating that his family were concerned about the effect that non-adherence to medication might have upon him.
267. Miss Melly QC pointed out that the employment and financial pressures that had been felt by the father were no longer operative. I am satisfied that it is in fact pertinent that he had not been in his new job for long and that he was conscious of the self-imposed need to be “*the provider*”. The couple had no financial reserves and I find it is likely that there was a feeling of ongoing pressure “*to provide*” which he must have felt at the relevant time. The mother would message him during work time and say that she missed him and that she was urging him to come home rather than go to the gym. He felt that he had to go to the gym in order to maintain his mental health and his physical strength. It was no doubt difficult for him to adjust his work/life balance and his need to be at home more during these first few weeks of X’s life.
268. Miss Melly QC also submitted that there was no “*evidential basis*” to conclude that the father’s depression was in any way relevant to the case. The father was keen to point out to me his depression is caused by a chemical imbalance which is treated by medication. I entirely agree with Miss Melly QC’s submission that “... *under treatment the condition does not manifest itself in low mood*” the fact is that the father’s medication had run out, he had not obtained a repeat prescription and at the relevant period his non-compliance was a relevant factor as part of the overall picture of his mood and functioning. I make it clear that I am in no way associating his depression with a propensity to harm. That would be entirely wrong, but it would be equally wrong to ignore the fact that he was not “*under treatment*” in terms of being medication compliant at the relevant time.
269. During the period of non-communication between the father and the mother she texted both his sister and his mother. On the 20th the mother described X being a “*nightmare*” and said that she felt like crying her eyes out, feeling stressed out and tired. It is interesting to note that the paternal grandmother commented on the 22nd “*You’re both under a lot of pressure*”.
270. I agree with the paternal grandmother’s assessment. The issue for me is how well or otherwise each of them was coping with the pressure. In my assessment The mother was much more robust and resilient, and her periods of low mood were not constant. I find that the father was concerned for his own mental health, but at the same time ignoring it by not renewing his medication.
271. The father’s attitude during the proceedings has at times been perplexing. An example is that he has not attended the parenting classes. The social worker’s assessment was that he did not seem committed to doing the work that he had been advised to do. His explanation is that he has used his annual leave in order to attend court and that he has been unable to attend classes during the working week. I remain concerned that he has given little priority to these classes, but remain open-minded as to the reasons for it. If, as he says, the main reason is due to lack of leave he will no doubt pursue them in the near

future since he knows that they will be essential if he is to move forward to unsupervised contact with his son in the future.

Bath time on the 20th

272. The mother described the 20th as a particularly stressful day for her, partly because of the friction between her and the father and also because it was the anniversary of [P's] death. The health visitor called to see her and X and he appeared to be well. There is some evidence that B popped in to see the mother and to give her some support during the day and the father thought that his parents may have come for a meal that evening.
273. The oral evidence of both the father and the mother was that the father was bathing X in her presence. They both agreed that X slipped and got some water in his mouth. The father said that he finished the bathing by showering X to get shampoo off him. The couple weren't really speaking to each other on this evening but there is no indication that either behaved in an aggressive manner towards X. The mother later tried to reconcile with the father, but he remained aloof. This was no doubt upsetting for her and will have contributed to the fact that she had a difficult night whereas the father mostly slept through. The mother said that she was up with X every hour from midnight to 6am which was unusual.
274. I'm satisfied that what they describe about bath time does not provide an explanation for the subsequent bruising to X's forearm and his shoulder. There is no evidence of a significant "grab" or fall during the bath, and neither adult criticises the other for their conduct. I find that the most this could illustrate is the father's inexperience in handling his son and the reflection that they may not have been working together as a team due to the atmosphere between them caused by the father's conduct the day before.

The morning of the 21st

275. I have borne in mind the fact that the father had had a good night's sleep and therefore was less likely to be affected by sleep deprivation on the morning of the 21st. The mother on the other hand had had a very poor night's sleep but she had had the opportunity for a short "catch up" by remaining in bed until about 9am. In addition, she was no doubt still in pain in respect of her stitches which had come earlier that week.
276. Miss Melly QC submits that I should not accept the mother's evidence about what happened that morning as to do so would involve "*unfair cherry picking*" in respect of her evidence. Mr Vine QC submits that the father has lied about what happened. Both the Local Authority and the Guardian comment that some of the evidence is unsatisfactory. I have taken these positions into account when considering the events of that morning and subsequently, as well as my assessment of the parents as witnesses.
277. The mother said that it wasn't completely unusual for X to have such a broken night, especially if he was having a "*growth spurt*". She said she had coped with broken nights before. The father knew the mother had been up during the night caring for X, as he had woken on at least one occasion. They were in the same room, sharing the same bed and he would no doubt have heard anything that had happened during the night causing X to cry out for any significant period. He does not recall any event that night which caused him any concern.
278. There is in fact no evidence that either of them mishandled X during the course of the night and both of them were clear that when the mother tended to him in the early morning at around 6am and later when the father took him downstairs, X was entirely 'normal'. The father took him out of his Moses basket, carried him downstairs, put him in the bouncy chair and took him out of the chair and settled him on his knee before putting him back into the chair. There was nothing that caused any concern to him about X's presentation, and although he had not handled X as much as the mother he had had considerable amounts of caring from him and was astute enough to know if anything was amiss. Mr Vine QC pointed out in his written submissions that the fact that later on X is described by his father as appearing to want a feed, demonstrates that there was nothing untoward at that time: "*...if X had not been normal at this point, the father would have said so.*" It is a well-made point. The mother also felt that there was nothing unusual in X's cry when she eventually woke. Attuned as she was to her son's needs she thought that what she could hear was a hungry cry rather than anything else.

279. I am satisfied on the evidence that during the period after X had been taken downstairs until the mother got up and came downstairs there was nothing unusual in his behaviour.
280. Both the mother and the father were no doubt affected to a certain extent by the ongoing “*atmosphere*” between them. In my assessment this is likely to have affected the mother in the sense that she was keen to keep the relationship alive but it would also have affected the father who I find was likely to be somewhat irritated by the situation. In addition, I am satisfied that he felt that he was doing “*everything*” that morning in conjunction with preparation for an important meeting.
281. Miss Melly QC suggests that the mother’s text that the problems with her relationship “... *mixed with hormones and the anniversary of [P’s] death coming up has just knocked my head all over the place*” demonstrated that she was suffering ‘*extreme*’ pressure. I have taken into account the fact that the mother had had nightmares about the traumatic delivery, and had borne the brunt of sleepless nights, but seems to me that overall she was coping remarkably well with her situation and I accept her evidence on that point. In addition, I find that her family were supportive but did not think things were at a situation which needed more than ‘*popping in*’. They are a very close-knit family and I am sure that if C was seriously concerned for her daughter she would have stepped in. As it was the family thought that if the father made more of an effort, things would improve significantly.
282. I think it is likely that a further stress which was operative upon the father at the time was his belief that the mother’s family were implying that he needed to do more to assist with X’s care. I am sure that he was right to detect implied or even explicit criticism by them. It was the first time that he had acted in the way he did by taking X downstairs in the early morning to give the mother some respite. I find that his motivation was less based on an understanding of the effect on the mother of caring for X so soon after a traumatic birth and more on proving her family wrong. The mother described the father as being “*a bit stressed*” when she went downstairs, but there was nothing to cause her any alarm.
283. One of the aspects of that morning which I consider to be important is the father’s insistence that he take X upstairs to change his nappy when objectively what X needed was a feed. There was no evidence that he needed a change at that moment, and the fact that he had been somewhat upset would naturally have suggested a routine of feed followed by change. Miss Melly QC submitted that the father wanted to “...*complete his task and change X upstairs so that he didn’t have to sit in a dirty nappy whilst he fed*” and that the fact that he wanted: “...*to complete all the roles that he could and wanting to complete that change was not indicative of father being in a bad mood. Father’s irritation came from events that happened when he came downstairs and not before.*”
284. First of all, there was no reliable evidence that X actually needed a change at that moment, and I am satisfied that the mother was right to feel that the way forward was for him to be fed before he was changed. I find that the father was agitated and irritated, and was focused on doing the change not because it was needed but so that he could demonstrate that he had been “*doing everything*” that morning and to tick it off his list.
285. I find that during the time that the father was looking after X that morning he was without doubt finding it difficult to do his work emails and look after a baby. He had an important meeting that day with a new colleague to discuss his potential use of LinkedIn to improve business, and I am satisfied it is likely that he felt pressured by the situation. By the time he returned downstairs with X he was further irritated by the fact that the mother was on her phone and was ignoring him. I’m satisfied that by that stage, if not before, he was very angry indeed, shouting in her face and he was so angry that he knew he needed to leave the room to cool down.

The change upstairs – was there a ‘cry’? If so, was it of an unusual nature?

286. During their oral evidence both A and B confirmed that the mother had described a scream or cry occurring whilst the father was upstairs alone with X. She also told H on the 25th, G on the 30th and described a cry to the social workers on the 4th of the following month.
287. B thought that the mother had told her over the phone that there had been a “*different kind of cry*” that morning when X was upstairs with his father, however Miss Melly QC points out that it was unclear when this had occurred.

288. When assessing each witness I have taken care to put their evidence in context as to their friendships and natural allegiances. In addition, I have taken care to look at inconsistencies to see whether they stem from fabricated accounts or from natural variances due to an inability to recall events with precision, particularly after a significant length of time. My assessment of them (supra [paras 183-190](#)) was that they were truthful witnesses.
289. The mother did not mention any alarming cry or “floppy” incident to the GP or to any medical professional at the hospital, even where detailed accounts were being taken of history. I am satisfied that she had the opportunity to speak with them alone and could have mentioned these things had she wished to do so. I find that her failure to mention these matters was not because the event did not occur but rather was due to her ongoing feelings for the father and her self-denial that anything could have occurred to X in his care.
290. The mother said in oral evidence that she had expected the father to speak with the police but she was aware that he had not and she had decided to describe the cry to them. She has since accepted that she felt under pressure to ensure X came home, and there was some element of exaggeration but she nonetheless described a cry of significance.
291. When the father found out he about the description “*Bloodcurdling*” he was extremely cross. In my assessment the texts between the parents on the 14th of the month following (see below [para 363](#)) demonstrate that at a time when she thought the relationship still had the potential to continue, the mother was trying to placate the father by saying “...but I explained to them it was because he didn’t like his nappy changed”. Nonetheless, she refers to cry having taken place, a cry which was obviously notable to her. The father does not take issue with her on the three occasions that she says that there was a cry or scream, his objection being to the nature of her description.
292. The mother described the cry to the police as “*bloodcurdling*” and a significant amount of time was spent investigating why she had done so. She now accepts that this was an exaggeration given at a time where deflecting suspicion from herself would mean that X would be released home from hospital to her and C’s care and would not be placed in foster care. I’m satisfied that the simple reason she said that – if in fact she used those words and they were not put in her mouth by the police officer taking the statement because they definitely don’t seem to me to be the sort of words she would have used under normal circumstances – was to stress that the nature of the cry was unusual.
293. In her oral evidence she described the cry as “*alarming*”, and I find that that is exactly what it was. I’m also satisfied that her motivation was to demonstrate to the police that it was safe for X to be placed in her mother’s care with her staying in that home rather than put in foster care. Miss Melly QC submits that this was a false description of events, however I am satisfied that whilst the mother’s intention was to implicate the father at the time she said it, she was describing a real event in an overdramatic way.
294. Miss Melly QC also pointed out that it would be incredible for the mother not to react to a bloodcurdling scream and demand to know what had happened. I’m satisfied that in the circumstances she did not have the opportunity to ask what had happened. When the father came downstairs the interaction between them was very limited because she was ignoring him deliberately and then he shouted at her and stormed out of the room. I find that by the time they got in the car to go to town they were still not on speaking terms and neither of them mentioned the incident.
295. I’m also satisfied that the mother was partially startled by the scream and went as if to go to see what was happening but thought better of it because it started to subside, there was an ongoing argument which she was anxious to stop and also because she was texting a friend. I also find it likely that given the couple’s circumstances she was less likely to react because they were ignoring each other and mainly concentrating on themselves, in the mother’s case being involved on her phone. It was clear to me as part of my overall assessment of the mother’s evidence that she now finds reflection on her behaviour that morning to be very painful. At times during her evidence she minimised the significance of the cry, for example during cross examination by Miss Melly QC.
296. Miss Melly QC suggested that there was nothing really significant about the cry, which the mother accepted, also accepting that if the cry was not significant there would be no reason to mention it to people. Taken on its own the exchange demonstrates a clear inconsistency and a denial that she had told any one of her friends. The mother claims to remember the events of that morning “*as if it were yesterday*”, however I’m satisfied that

she suffers from the same frailty of memory as most people and that her evidence as a whole demonstrated, at times, natural inconsistencies and inaccuracies of recollection. The mother's demeanour, which in my assessment was genuine, demonstrates that just as she now finds her in action in respect of the events on the 21st very painful, at times she tried to paint herself in the best light possible. I'm satisfied that she took the opportunity given to her by Miss Melly QC's expert questioning to do just that and that her evidence as a whole is that there was a cry and that she told friends about it, but not the medical professionals or her mother. I find that she did not tell C because she was concerned as to how her mother would react to the fact that she hadn't done anything or told anyone.

297. Neither the mother nor the father mentioned the 'cry' to U on the 27th, but it would appear that her questioning started with X's projectile vomiting on the 22nd, so it was probably quite natural that it did not come up. Similarly, I have taken into account the fact that on 24 January 2019 the mother did not tell S that there had been an unusual cry on the 21st. In my view it would be wrong to place too much weight on those omissions, as the discussion on 24 January was not intended to be focused on a detailed history of what had happened. Whilst a scream is not mentioned there is little detail about other matters pertinent to the events, however I have of course borne these factors in mind as part of my assessment of the evidence as a whole.

298. The father initially told Ton 15 January 2019 that X *had* cried during the change in contrast to his later written evidence where he describes X as "*fine*". In oral evidence he denied that there was any cry at all. I find that he has sought to retract his earlier account because he is now aware that there is a focus on that cry and what happened during the time upstairs and he is prepared to lie about that to put himself in the best light and deflect attention from that particular time.

299. I am satisfied on the evidence that there was a cry that morning when the father took X upstairs. I'm satisfied that when he went up he looked a little angry because he was angry and stressed. I find that the main reason was that he felt that he was having to do 'everything' to prove her family wrong and that he had found it difficult to prepare for his work interview at 11am. I am satisfied that the cry was not the usual cry X gave when he was being changed. The mother was attuned to that and both parents knew that X would cry because he didn't like being changed. I am satisfied that the cry was 'alarming' and that it was out of the ordinary. I find that the mother was momentarily startled and had there not been an ongoing argument she may very well have called up or gone upstairs to see if X was alright. She did not.

The father putting X in the baby bouncer.

300. Having been upstairs to change X, the father says that he was annoyed with the mother because she was ignoring him. I accept her evidence that she was ignoring eye contact but she did stretch out to take X to feed him. I find that the father in turn ignored her and that he mishandled X as he put him into the baby bouncer rather than his mother's arms.

301. There can be no doubt that there was tension between the couple that morning and the father now accepts that when he put X in the bouncy chair he did not do so in the way that he normally would have done. On 15 January, whilst speaking to T, the father described how frustrated he had been that morning.

302. C described the father telling her that he had put X in the chair: "... *maybe harder than he should have*". She recalled however that he had said that he had been holding X's head when he put him in the chair. On 15 January 2019 T recorded that the father told her that he had put X into the chair much more forcefully than he usually would. In oral evidence he accepted that the chair had rocked and said: "*I wasn't as considerate as I would be when I wasn't rushed and angry*" and that he was not "*as gentle as usual*". I am satisfied that he was both rushed and angry by that stage. In her oral evidence the mother described the movement of the father putting X in the bouncy chair as "*like passing a rugby ball*". In his witness statement the father denied using any more force than normal when he put X back in the baby bouncer.

303. I'm satisfied on all the evidence that at the time the father put X into the baby bouncer he was angry and acting in a reckless manner. He was already feeling aggrieved with the fact that he had had to take care of X that morning, because he felt that he had '*done everything*' – albeit that it was his own idea. He wasn't used to looking after X on his own

and he had a stressful meeting with his new employer at 11am and needed to do some research. He and the mother weren't speaking and there was an 'atmosphere' in the house. There had been a significant cry whilst he was upstairs which would indicate that the nappy change was not going as it should and when he came down the mother ignored him and made a point of continuing to use her phone, simply stretching an arm out for their son. To use his own words (in respect of another time) I'm satisfied that the father was "*boiling over*" and that there was no particular care that he took to ensure that X was placed 'appropriately' into the bouncy chair. I find it is more than likely that the way he put X into the chair was somewhere between a 'place' and a 'throw', and I'm satisfied that the mother's description of it being similar to passing a rugby ball is accurate in that he didn't let go of X for long but his actions were far from appropriate. X was a very small baby who should not have been treated in that way. I am satisfied on the evidence that the way he acted was reckless and that he was well aware that he should not have acted in that way. I find that part of the reason he stormed out of the room was that he knew he needed to calm down from a very agitated state.

304. B said that when she first heard that X's injuries were likely to be inflicted she was with her husband and that her thoughts first turned to what the mother had told her about the events of that morning. I accept her evidence that the mother had told her about the incident, and that the mother had said that X had "*really screamed*" with a "*different*" type of cry whilst he was having his nappy changed by the father, but that she had put it down to the fact that he did not like being changed. In my assessment B was a truthful witness who was trying to help the court with her evidence. She is fully aware of the relevance of the dates, but was frank in the fact that she could not remember precisely when the mother had spoken to her about particular matters.

305. Neither parent told either the GP or the hospital professionals who were investigating why X was ill about the circumstances in which the father put X into his bouncer that morning. In the mother's case, I think it is likely that she did not want people to know that having seen her partner treat X in such a way she did nothing about it. That, taken with the fact that she was still in love with him goes some way to explaining the actions which her family found so inexplicable. Further, I think it is likely that the couple later discussed whether this incident had caused the injuries and that, acknowledging what had happened was wrong, they had convinced each other that it had not caused the bleed to X's brain. In the mother's case I find it is likely that a factor operating strongly against her saying anything was because she did not want to believe that X was later ill because of what had happened and that she had done nothing at the time.

306. In her amended response to threshold, the mother confirmed that she did not tell the doctors about the video of the 14th, did not tell them that she heard an 'alarming cry' when the father was changing X on the morning of the 21st nor that when he came downstairs the father put X in the bouncy chair "*with vigour*". In that document she says that she did not think that the father had injured X on either occasion: "*...nor did she want to think that he could have done. She accepts that, in so doing, she did not look at this from X's perspective and that she prioritised the father over X. These were poor decisions.*"

307. The medical evidence is clear that what happened in respect of the baby bouncer did not cause the injury to X's brain. What happened was entirely inappropriate handling of a very small baby and the actions of both the father and the mother should cause them both to reflect very carefully on what they did or did not do that morning. I'm satisfied that X cried hysterically for a short period of time as his father stormed out of the room and that the mother picked him up from concern.

Did X go floppy/ appear dead when the mother picked him up?

308. The mother said that she took X, who was crying, from the baby bouncer and put him on her shoulder whereupon he went "*floppy*". It would appear that the first time she mentioned this was to her aunt G in hospital on the 30th. G described her saying that at one point she had been so concerned that she thought he was dead because he was not waking even for a feed. G described the mother as "*flat*" when she told her she should have used her brain in response to what had happened. By this she meant that the mother should have done something and should have told people what had happened. I think it is likely that the mother's affect was heavily influenced by the fact that she knew that she had failed to act. D spoke to the mother on the 1st and she records that the mother told her that

at one point she had thought X had stopped breathing but that when she looked he was “just asleep”.

309. Mr Vine QC stressed that both of these accounts arose at a time when the mother had become aware that there was no organic cause for the bleed to X's brain but was well before any expert evidence that she could have read about how he might have presented immediately following a head injury. In her police witness statement, the mother described him ‘falling asleep’ as she picked him up and said that she momentarily asked herself whether he was breathing and was satisfied that he was. Similarly, in her witness statement, she said that she had picked him up to feed him but he had ‘fallen asleep’ on her shoulder.
310. The question for me has been to determine what, if anything, the mother was describing. She was aware that X needed feeding, indeed she had thought that he needed a feed before the father took him upstairs to change him, questioning the need for a change at that moment. Whilst the words that she has used over time are important, the starting point for me has to be to consider whether the evidence demonstrates how X was from the moment he landed in that chair. I'm satisfied that he was very distressed and that when the mother turned to him it was to comfort him and to feed him. I find that he did not behave in his normal way when she tried to feed him, and that for a fleeting time the mother was very concerned as to how he was. I am satisfied that he was indeed “floppy” rather than appearing asleep, and that she did not describe that element of his presentation to her mother and the social worker because she anticipated, quite rightly, that she would be criticised for her failure to act.
311. Miss Melly QC submits that it is hard to reconcile the “variety of accounts” that the mother has given. She posited: “Why, if she wanted to point the finger at the father during her police statement, did she omit the description of floppiness?” The mother gave two explanations as to the reason for this. Firstly, she said that she was “all over the place” and that she must have forgotten and later she said that she did not tell the police because she was still hoping for a medical explanation. I find that both of those are consistent with the way she felt and acted at the time. I'm satisfied that she was conflicted between her need to get X home and her need for her relationship with the father to continue. She was also aware that her own behaviour on the morning of the 21st and subsequently could be significantly called into question and I think it is likely that she was saying as little as possible but enough to secure X's return home.
312. It was obvious to me during her evidence that the mother can now see how significant her failure to raise the issue of floppiness on the morning of the 21st could have been for her son. I find it is likely that she was only too aware at the hospital that the floppiness could have been very relevant but she was hoping that the fact that X was being investigated for natural events might not implicate the father or herself. It is likely that she did in fact feel conflicted about her actions and what she should or should not say, leading to her feeling “all over the place”.
313. I find that she was not describing an event which lasted for more than a fleeting moment. I am satisfied on the evidence that when she picked X up from the bouncy chair to feed him he did indeed ‘flop’ or ‘relax’ onto her shoulder and for a second her instinct meant that it crossed her mind that he had stopped breathing. I find that she checked and was reassured by the fact that he was breathing, and thereafter believed him to be asleep. I also find that it is likely that there was something unusual in the way he moved- or flopped- which caused her momentary concern. I do not think that what she has described was an event where for more than a second she was concerned that her son was dead. Under normal circumstances I think it is likely she would have called for the father in panic and would not have simply sat doing nothing. I also think that if she had been a little less self-absorbed in her ‘partner’ troubles she would have been more concerned that X had gone to sleep when minutes before he had been hungry. Unfortunately, this “perfect storm” of how they were and what had happened meant that no action was taken.
314. In her oral evidence whilst being cross-examined by Ms Melly QC and pressed, quite properly, on the point she was asked what she meant by “floppy”. She replied: “Like obviously, like I can't explain, it were just kind of like his arms kind of dropped and his head just dropped onto my shoulder. Like a rag doll”. In re-examination she clarified that he was breathing “straight away” and that she checked him for a matter of seconds. The mother recalled a conversation with G in hospital about X falling asleep “really suddenly” and that

she had said "... *Oh I thought he was dead at one point, I had to check he was breathing*". G confirmed this conversation. The mother agreed with Ms Melly QC that such a feeling would be "*huge*" and said that she had called his name and – "*for a very short period of time*" – "*thought he was dead*". She commented that he was "*floppy*" and that he had "... *Just gone to sleep*". She said that she found it difficult to explain but that it was "... *just kind of liked his arms kind of dropped and his head just dropped onto my shoulder. Like a ragdoll.*"

315. I have revisited the written evidence and the mother's oral evidence to see whether there was any significant difference between what she had said from the first discussion with her aunts to the time of her cross-examination by Miss Melly QC. Surveying the evidence as a whole, I am not satisfied that there was any real significance between her description of him "*not breathing*" to her later describing a fear that he was "*dead*". A mother who was worried that her baby wasn't breathing would perhaps naturally have that split-second concern that the worst had happened. I find that since he wasn't actually dead and since he seemed to be asleep, and because she was no doubt very upset at the escalation in the argument – with the father shouting in her face and storming out – that the mother did not feel that there was anything to worry about.
316. Had she just shaken him she would of course have known that there may have been a correlation between the shake and him flopping on her shoulder. It seems likely to me however that although she thought the father had put him in the baby chair in a reckless manner she did not think that he had been hurt. Similarly, if X had been shaken by his father upstairs, absent him coming down and telling her what had happened, I do not think it is reasonable to suggest that she should have known or could have known what had occurred, despite the 'alarming' cry. I find that what she felt when he was limp in her arms was a fleeting or transient concern, albeit a significant concern, which went away when she checked that he was breathing. I find she was upset for herself and their situation, rather than actually believing that X was significantly ill.
317. Having surveyed the wide canvas of the evidence I am satisfied that X did not behave in a normal manner when she picked him up that morning from the bouncy chair. He had changed from a baby who had not had a feed for a few hours and who both parents recognised needed a feed- a baby who would have remained alert and behaved in the normal manner when she put him to her breast- to a floppy baby who slept on and off for most of the day. It wasn't normal for him to simply to sleep in those circumstances nor was it normal for her to worry that he'd stopped breathing.
318. I find that this was the time when X stopped being 'normal' for him and started to behave and react in a manner which was not 'normal for him'.
319. The mother spent a considerable amount of time in the witness box and was cross examined in great detail. She gave detailed responses. I was satisfied that her evidence about that morning was compelling. She was very emotional, and emotions are easy to fake, however the way she described her feelings and what happened on that day were in my assessment genuine. I took into account the fact that she has now had the opportunity to read the expert evidence and to Google the effects of a shaking injury, and the fact that she would like to regain care of X. She has motivation to point to the father as the person who is responsible since she knows that a "*poor*" finding may mean that X would not be placed in her care. What she said and the way she said it during evidence was at times quite against her interest. She is fully aware that she lay herself open to significant criticism for not telling the medical professionals about what happened at the time. Her demeanour indicated that she was resigned to such criticism being levelled against her and she subsequently acknowledged that she had significantly failed her son by failing to say or do anything. It is also important to record that the expert evidence obtained following the oral evidence – which she obviously did not know when she gave it – was that her account was consistent with X having been injured shortly before she noted the 'flop'. From that moment, X did not behave in a normal manner. He had been interacting with his father before he was taken up to be changed but rather than take his morning feed he remained asleep and did not wake up again before his parents left the house for town.
320. The local authority submit that if this event had actually happened it is remarkable that the mother did not mention it to her family, to the doctors or to the social work team during the course of this case. I have examined her motivation and the effect that her desperate need for the relationship to rekindle as the reality which, in these circumstances,

mean that she behaved in the way she did. It was, I find, sadly unremarkable that she let her son down in that manner.

Was X 'normal' after the parents left for town?

321. The medical evidence demonstrates that if X had recovered to normality and then deteriorated again there would have had to be another event – or no event during the morning of 21st. It was therefore important to examine how X presented during that day and the subsequent days.
322. The mother sent a photograph of X to her mother on the morning of the 21st. C felt that the photograph showed that there was something wrong with X's eyes and she was concerned that he had conjunctivitis. The mother told C that she would be contacting the midwife or health visitor about it, although she did not. Mr Vine QC submitted that it would be unusual for a perpetrator – if the mother had harmed X before this point – to send her mother a photograph which showed him to have sore or swollen eyes, however there could equally be an explanation that she was trying to deflect attention away from what had occurred to the issue of his eyes being gummed up. The mother told A that the couple had had an argument but did not give her any details. She also told her that the father had been trying to use baby wipes to clean the sticky eyes, but did not elaborate on it.
323. In her first police statement the mother commented that at about 3pm X woke up and was sick, and she recalled that he was “quiet”. C couldn't remember whether the mother had told her that X had been sick during the day, and there was certainly no conversation between the mother and the father about sickness that day.
324. A described X as being asleep for most of the day, commenting that his eyes were swollen and that when the mother did try to feed him he took very little. A did not feel that X was ill, commenting that she thought that he was sleeping but remarking that he was not as alert as when she had seen him before. G also had no recollection of the mother telling her that X had been 'unwell' during that day.
325. The mother, supported by A, states that X remained asleep for most of the day. This was unusual. In addition, he did not take full feeds when the mother tried to feed him in Morrison's cafe at lunchtime and later at about 2.30 in McDonald's. A described X as 'lethargic' in McDonald's. In addition, A was concerned later in the day that X's eyes did not seem to be functioning properly because she felt, albeit on reflection, that he didn't seem to be watching the light or looking around as normal.
326. I find that both the mother and A were concerned about X having conjunctivitis but that the mother put his sleepiness and reluctance to feed down to the fact that he had had a bad night and was warm. A similarly felt that there was something 'amiss' but it was not so obvious as to cause her undue concern.
327. Miss Melly QC stresses that whilst they were A's home, X was not “cranky” or “agitated and in pain” and that A felt that he was “behaving normally”. The mother accepted that X did not seem to be in pain and that at the time she felt at the time he was behaving normally given the warmth and the broken night. The expert evidence did not suggest that he would have been in continuous pain. X was awake and “seemingly alert” at A's, but it was for a short time and I accept A's evidence that he did not seem to be focussing properly.
328. Looking at the evidence of both women overall in respect of that day, I'm satisfied that there was nothing in X's behaviour which would have caused either to believe that he was in pain or unwell, particularly because they thought he was sleepy after a very unsettled night. When the mother tried to feed X at A's home he was alert enough to take some milk, however I find that he was sick. I find that it was likely that he had not taken much milk and that the mother thought that he was bringing up what he had taken. He was alert enough to take the milk and be sick but that was in contrast to the way he had appeared for the rest of the day. In my assessment there was nothing in his behaviour that day from the time the mother and the father left the house which would have caused 'alarm', however that is not to say that he behaved in a 'normal' way. I am satisfied that X's behaviour was not fully normal for him, and he did not at any stage return to the way he had been before his father took him upstairs to change him.
329. During his evidence the father confirmed that if the description given by the mother of how X was during that day is true it would be unusual behaviour for the baby at that time. The mother sent him a text to suggest that X had had his first smile that day. I find that this

was part of her ongoing attempt to provoke reconciliation rather than a confirmation that X was fit and well during the day, just as I have found that her description of X as 'playful' was a lie, designed to minimise her responsibility for the subsequent failure to be honest with professionals as to what had happened.

What happened during the afternoon and evening of the 21st?

330. A said that she and her boyfriend had dropped X and the mother off at their home at about 5.20pm. Neither A nor her mother were concerned about X. I find that it is likely that the mother had not taken X's clothing off to change him until both she and the father were at home, and that when she did remove his clothing she saw the mark on his arm and immediately called the father to look at it. The father thought that the mark on X's forearm looked like a love bite and he thought that they had had a discussion about whether to call 111. He could not remember why they had not done so. He said that other than the mother taking a shower he did not have sole care of X during that evening. C visited later, but X did not wake up during the visit and to C's mind the mother was still upset by the row that she had had with the father that morning. C gave conflicting evidence about whether the mother told her about the bruising to X during that visit or at a later stage. I'm satisfied that she genuinely could not remember when the conversation took place rather than was aiming for any deliberate obfuscation of events.
331. I'm satisfied that the reason there is no description of ill-health during the day is because although objectively X was not himself – and I'm satisfied that he was not normal – he wasn't significantly unwell. There was concern about his eye and there was discussion about him being sleepy but I'm satisfied that the reason there was no description of "*ill-health*" as raised by Miss Melly QC was because he did not appear to his carers to be *unwell*. I am also satisfied that the focus of both the mother and A was on the relationship difficulties.

What happened after the mother and the father had gone to bed?

332. The atmosphere in the house continued. The mother sent a text to the father inviting him to come up to the bedroom to watch television. She said that X was asleep in his Moses basket. The father did not go upstairs and fell asleep on the sofa, going to bed before around 10.30pm. In oral evidence the mother said that X was sick in the couple's bed and sick again when she moved to the spare room.
333. Miss Melly QC submits that the mother was inconsistent because she described X being sick at home to an extent that she felt she could no longer sleep in the spare room on the one hand but also said that the sickness was not as bad as when he was at her mother's home. I have carefully examined the mother's evidence about this and I do not find it to be internally inconsistent. The mother's evidence is that X was sick both in her bed, and later in the spare bedroom when she took him into that room. She does not allege that the sickness was anywhere like the projectile vomiting which took place later on that night at her mother's home. I find that he was sick in the main bedroom, but not to any great extent, and that the mother was able to cover the sickness with a towel and that she could have remained in the spare room had she so wished. I also find that there was some breastmilk leakage at least in the couple's bed which the father had criticised, leading in part to her leaving the bedroom.
334. I do not accept that the sick would have caused her to need to leave the house, and I find it is much more likely that due to the ongoing atmosphere and his rejection of her attempts to reconcile, that the mother was fed up and simply wanted to go home to her mother. C had stressed to her that she was always there for her, and I find it is likely that the mother was very upset. I think she tried to gain the father's attention when he came to bed but he once again ignored her and I think it's likely that she sobbed quite dramatically when she went to the spare room, without any response. I think it's likely that the mother was absorbed in her own feelings of rejection and wanted attention. She didn't get it, so she called her brother and arranged to go home. I'm satisfied she told the father that she was going but that he did nothing and said nothing to stop her. I have considered whether the relationship difficulties had put stress on the mother to the extent that she would have lost control when looking after X in the spare room. I'm satisfied that while she may have been self-absorbed and emotional she was not angry or "*volatile*" at this time. In fact, I think it's

likely that she was paying less attention to the presentation of her son than normal because she was unhappy and needed her mother.

335. The father's evidence was that he did not notice whether there was a towel or blanket on the bed he normally shared with the mother or any sick in the spare bedroom. He had no particular reason to examine the sheets and I find it is likely that they will have been put in the wash in the usual way. Whilst he noticed that the mother was crying loudly while she was in the spare room his evidence was that X appeared to be settled, which would point against any incident occurring during that time which caused X to cry out.
336. Miss Melly QC submits that the mother failed to give any explanation as to why she didn't tell the doctors about X being sick at home. Again, I find it is likely that attention focused on the far more dramatic projectile vomiting which occurred at her mother's home. The focus at her own home was really on the fact that the mother's attempt at reconciliation had failed, the father was not responding to her distress either in their bedroom or when she left and went to the spare bedroom, and the level of sickness at the time was not anything which would cause concern. The projectile vomiting on the other hand made both the mother and C feel that X was poorly and that he needed to be held. I find that the reason the text messages about leaving the home that evening do not refer to sickness are because the main focus of leaving the home was the unsatisfactory nature of the ongoing row.
337. I have no doubt that the mother now understands that it is important for the court to identify if possible the time at which X became unwell. In my assessment she has not manipulated the evidence to indicate an earlier presentation of illness, but has maintained an ongoing honest and accurate portrayal of how X was on that day. She could have manufactured incidents of projectile vomiting at any time during that day or evening when X was in her sole care but she did not do so. I find that her description of her son and the gradually increasing levels of sickness culminating in sickness of real concern – the projectile vomiting at C's home – was accurate and reliable. I do not think there is anything of significance in the fact that during the course of the argument that night and subsequently the mother did not tell the father about X's vomiting. Again, I am satisfied that she was mainly focused on her own feelings and the ongoing disagreement rather than on her son.
338. In a text message from hospital to the paternal grandmother the mother says that X was suffering from constipation and had been projectile vomiting for 24 hours. I think it's important to weigh this evidence in the context of casual text exchange rather than a document which has been composed with the emphasis on precision. I am satisfied that the mother's focus was on the projectile vomiting rather than the build up to it and that the 24 hours that she quoted on several occasions in different settings at different times was an approximation rather than a specific, particularly since C was aware that in fact X had started projectile vomiting on the first night that he was in her home.
339. In his oral evidence the father suggested that perhaps something had occurred that evening after the mother had taken X to the spare room, although he does not allege that he heard any loud cry coming from his son. I find he would have heard an unusual cry or any cry from X had it occurred, because he was aware of the mother's sobbing.

What happened between the mother going to her own mother's house and the presentation at the GP?

340. It was late at night when the mother and X arrived at C's home. I find that X was restless and the mother was upset about the argument that had been ongoing between herself and the father. C told the police that she had slept downstairs, however I accept her explanation as a witness I found to be essentially truthful, that she intended to sleep downstairs but X was unsettled and she therefore shared the bed with the mother and they both tried to settle him as the night progressed. I find that overnight he was sick a number of times and that he continued to be sick the following day. C described X as "*unsettled*" but not "*poorly*". This description supports my finding that during the day X was not "*poorly*" but he was not alert and well. By the early hours of 22nd I find that the sickness became more serious, and was aptly described as projectile vomiting. The mother later described this to U, and I'm satisfied that it was an accurate description of him becoming less and less well with times of being slightly less unwell.

341. I find on the evidence that on the morning of the 22nd C was sufficiently concerned about X before she went to work to advise her daughter to get an appointment for him with the GP. The mother did not take X to the GP that day. The reason she gives now is that the sickness was not as bad during the day as it had been during the night. C's evidence was that she had not been concerned for X at that time.
342. On the night of the 22nd to the 23rd C said that X was similarly ill to the preceding night and that on the morning of the 23rd she had insisted that the mother should get a doctor's appointment.
343. In my assessment the two most realistic possibilities are that either the mother was aware that she had harmed X and was in some way hoping that he would get better the longer she delayed medical treatment or that in fact he wasn't as bad during the day on the 22nd which reassured her that there was no need to disturb him by taking him to the doctor. A further possibility is that she was so focused on the problems in her relationship with the father that X's sickness took second place to her concentrating on that relationship.
344. Miss Melly QC submits that it is more likely that the mother delayed obtaining medical attention because she was aware of what had happened, especially since she was "*ultra-cautious*" in respect of her son and submits that she had manufactured the distinctive cry and later floppiness to deflect attention from her own care. She further submits that the mother was reluctant to "*deal with and confront what she did when she was alone with X*".
345. I have very carefully weighed these submissions in my consideration as to why there was a delay. C is clear that she was concerned about X but was not overly worried. X had previously suffered from colic and without any background information there wasn't any reason for either of them to know why X was being sick. I have also examined whether there is any significance in the text that the mother sent to her mother asking whether the paternal grandparents were still at the hospital. This followed the medical concerns that X may have received a serious injury. The mother asks: "*Why does everyone fucking know*" which Miss Melly QC submits is indicative of her knowledge that something significant had happened. I find it is more likely that the mother was referring to the fact that the wider family had been alerted to the medical professionals' concerns about X and that they were all attending the hospital rather than any unintended or unguarded admission of guilt. I find it is more likely than not that the reason the mother was reticent to describe what had gone on in her home was more down to her desire to promote a picture of a 'golden couple' rather than admit how they had both been behaving from the 19th. I am satisfied that at this stage she still had faith in the rekindling of the relationship.
346. Miss Melly QC raises the issue as to why the mother did not contact the father about the sickness until the 23rd. She submits that the mother contacted him due to pressure from her family rather than because there had been an incident on the morning of the 21st. I do not find that those two things are mutually exclusive. I'm satisfied that the mother sought help for X because C made it clear that she must, thereby pushing her daughter out of a self-absorbed state into action and that the reason she did not immediately associate what had occurred on the morning of the 21st with the deterioration in X towards the 23rd was because he was not significantly unwell as an immediate consequence but rather suffered a progressive deterioration to a state where it was obvious that medical attention was needed.
347. Both the father and the mother state that the mother told the GP about the marks to X when they attended on the morning of the 23rd. There is no note that they said that, but it is for the local authority to prove that they did not. There is no evidence before me to suggest that they are lying about telling the GP and my experience has shown that not every detail of a conversation is recorded in some GP notes, particularly where the focus is on another aspect of the child's presentation. In this case the focus was likely to have been upon his sickness. In addition, the hospital notes demonstrate that both parents brought to the attention of the bruise to the hospital staff. They thought it looked like a "*love bite*" and the mother queried whether it may be related to an issue with vitamins.

Why did the father go shooting on the 24th whilst his son was in hospital?

348. The fact that the father went clay pigeon shooting on the morning of the 24th, the day after X had been admitted to hospital, was the subject of much scrutiny. From 5am he was aware that X was very unwell because the mother had texted him to say so. The mother told him that the hospital staff were concerned about meningitis and that there was to be a

CT scan. During his oral evidence the father explained: "*I just didn't think it was serious*" but acknowledged that he should have been at the hospital. He cannot explain why he went, and it is difficult to see why any father would go in such circumstances.

349. During his evidence he remained focused on the fact that the trip had been paid for and that there would be no refund if he didn't go. I have asked myself why, given that he undoubtedly knew that the hospital was seriously concerned about X, the father chose to go shooting rather than to stay with his partner and their son. I do not accept that he did not feel that it was serious or the fact that it was a pre-existing arrangement was of any significance to him. In fact, in my assessment he either knew that it was very serious but could not face being there and found it easier to attend the event or was behaving in a manner calculated to hurt the mother.
350. His explanation that he was concerned about having to repay the cost of the event was incredible. It had been bought for him as a gift and all he had to do was explain to his best friend that X was very ill in hospital as the honest reason for his non-attendance. It would certainly be a very odd kind of friendship for such a person not only to fail to understand the explanation but to demand or expect a refund of the present.
351. Miss Melly QC also suggested that if the father was aware that he had injured his son he would be loathe to leave the mother at the hospital where she could describe the cry which occurred on the morning of the 21st. I think it is unlikely that he was concentrating on what she might say, and was at that stage focusing on his own feelings. At best, his conduct demonstrates a complete disregard for the plaintive request by the mother for him to come to support her and a lack of empathy with his son who was seriously ill. At worst, it may indicate the behaviour of a man who knew that his baby's illness may be down to what he had done on the morning of the 21st.
352. In addition, Miss Melly QC points out that the mother said that she might have to go home to sleep because she could not sleep in hospital: "*I can't sleep whilst on here, I don't know what to do*". I do not find that there is anything of significance in this. The mother did not go home and did not leave X at the hospital, whereas the father did.
353. Mr Vine QC submits that the father was avoiding the consequences of what had happened, and that this was repeated on the 30th when his family were unable to contact him. Put into the overall context of the case I find that this is the most likely explanation. I'm satisfied that the father absented himself from a situation which he found to be overly stressful. I find that he is a man who is very aware of his emotions and that he was worried about what he might say or do, so he removed himself from the situation to avoid what was going on. I also find it is likely that he was coming to terms with the likely consequences of what he had done. The mother texted the social worker on the 1st of the next month to say that she was worried about the father, and feeling that he must be responsible. The context of both that text and the statement to the police have been examined elsewhere, and the mother has admitted that she was very concerned about getting X home.

Did the father make admissions to C on the 30th at the hospital and if so what did he admit?

354. There was considerable investigation into the discussions which took place between C and the father that morning. It is apparent that the hospital nurse formed the view that the father had admitted to shaking X.
355. I'm satisfied that the father did not say at any stage to any family member that he had shaken X. I think the most likely thing is that the hospital believed that X had been shaken, they were informed that the father had admitted to mishandling him and the nurse/s assumed that he had therefore acknowledged a shaking event. This demonstrates the dangers of hearsay evidence and the changes that can creep in to evidence as it is passed from person to person. The local authority does not seek a finding that the father admitted at any stage to shaking X, and that seems to me to be right on the evidence.
356. In her written evidence C said that she had asked both the father and the mother separately whether they could have caused the injuries. She was clear that the mother denied doing so. She said that the father had nodded and demonstrated throwing X in the air and also said that he had put him in the bouncy chair harder than he should have done. In her oral evidence she demonstrated the father holding X upright with his neck unsupported. This was challenged on the basis that the demonstration was of placing with

the hands under X's back and neck, rather similar in some ways to the mother's description of passing a rugby ball.

357. The father has since denied the content of the conversation, commenting that it was "*outright lies*", although to a certain extent he has resiled from the 'conspiracy theory' because he now supports X remaining in C's care. Shortly after this discussion with C, the father left the hospital. Mr Vine QC submits that that is evidence of him disappearing in order to avoid further enquiry as to what had happened.
358. I have considered whether the father demonstrated a 'reckless throw into the air on a vertical plane with his son's head totally unsupported' or whether what he was describing was the 'rugby pass horizontal placing of the baby into the bouncy chair', albeit on a reckless basis. I'm satisfied that what the father tried to demonstrate was the "rugby pass" rather than a vertical throw.
359. I do not find that this "confession" amounts to much of itself. I am however satisfied that it is an example of the father denying something- that the conversation/demonstration took place - which I am satisfied it did and further seeking to minimise what was said. I'm also satisfied that what he described was not the actions or circumstances where X was injured, but was said in circumstances where he no doubt felt pressure from C's family. The mother has never suggested that the father has confessed to her that he has caused X's injuries, and at its height I think he was describing what happened downstairs when the mother held out her arm for X and ignored him. I am satisfied that he was aware that his conduct was reckless and he was also feeling under pressure to admit causing injury to his son. When the father left the hospital on the 30th he was out of contact for some time. All the family were worried about him, and whilst it is important that I do not read too much into his actions, I nonetheless find that he was really struggling with his emotions and that one interpretation is that he knew that he had harmed his son and was avoiding or trying to avoid the consequences of what had happened.

The texts between the parents the 14th - 16th the following month.

360. Between these dates there are a series of texts between the couple which arise because the father had become aware that the mother had told the police that on the morning of the 21st whilst the father was upstairs changing X she had heard a "*bloodcurdling cry*" and also because he is aware of what members of her family have said. The father was not allowed at this time to see X and he was at times clearly worried about his relationship with the mother.
361. He is clearly angry, commenting that they have "*...thrown me under the bus*" and that, having read her statement, both she and her mother had lied and: "*... all said loads just to fuck me over*". He draws attention to the fact that the statement describes a '*bloodcurdling cry*', to which the mother replies: "*Yeah you did take him upstairs to change him!! And he did cry. But I explained to them that it was because he didn't like his nappy changed*". The mother says that she was not present when C made her statement. I anticipate that she was somewhat surprised that he had become aware of the detail of her statement.
362. Neither of the parents had any reason to suspect that there would be a detailed examination of the texts that they sent to each other over those few days. I have borne in mind that these were messages that were sent without detailed consideration and were in a particular social context. I am satisfied that the mother was still hoping that the relationship would continue and that she was prepared to lie to the father if necessary to persuade him that she was on his side. In my assessment this led to her saying that she did not want to be with C and commenting that C had lied, whereas I am satisfied those were not her true feelings. Throughout the exchange she does not waver from the position that there was an unusual cry on that morning and he does not challenge the fact of the cry itself, concentrating on the nature of that cry. Despite the fact that at the time she was clearly trying to placate the father, for example by stressing that she had told the police that the cry was in the context of a nappy change, the mother nonetheless starts and finishes from a position of there having been a cry as though that was a 'given' between the two of them because it had happened. I have found (para 299) that it did occur.
363. The father asks the mother why her family don't want to see him and she tells him that the reason is down to what he has said to C at the hospital. He comments that he didn't say anything to C to which she replies: "*She says you told her you did it putting him in the*

chair" and he says that that is a lie. He describes C as "*thick*" and he tells the mother that she needs to do something to change the situation: "*You need to sort this out*".

364. I have considered whether these are the words of someone who is entirely innocent asking their partner to speak with family members or someone who is putting pressure on their partner to firstly disbelieve what the family have said and secondly to get them to change their evidence or to challenge it. In the overall circumstances of this case rather than simply looking at the text in isolation I find that he was desperately trying to put pressure on the mother to get him out of a situation where he felt the walls were closing in. I find that he was shocked to discover that she had described not only the cry that used a term such as bloodcurdling to suggest something had happened upstairs that morning. He was fully aware of the mother's feelings for him and I think he was trying to ensure if at all possible that there would be a retraction from what had been said.
365. The father describes a feeling of upset and betrayal, suggesting that there is a plan on behalf of the mother or her own mother against him because of the use of the words "*bloodcurdling*". The mother strenuously denied that she had lied to the police commenting: "*... It's not a lie, he was screaming, but I told them he was crying and then crying more because he doesn't like his nappy changed...*" The father's position in the exchanges that follow is that he can't understand why the mother has described the cry as bloodcurdling and he suggests that C has a motive to get the mother to go home so that she can have X to herself. The mother repeats that she has told the truth, commenting: "*...he was screaming and it wasn't nice*". She says that she is "*pissed off*" that C has lied in her statement and says that she doesn't trust her either. She says that she doesn't want to be in the house but since social care believe that X is safe there: "*so what can I do?*" He responds "*understood*". In my assessment these things were said by her to keep the relationship alive.
366. She later says that she has: "*...told her solicitor that it's a load of lies and over exaggeration.*" Again, I find that the reason she said this was not that she was confessing to "a load of lies" but that she was trying to reassure him that she would not speak out against him. On the 16th the mother was suggesting that they meet up.
367. The father's position is that he had been trying to get to the bottom of what had been said, although it is striking that during this lengthy exchange he did not at any stage deny the fact that X had cried that morning. In his evidence he said that he was still in love with the mother and felt very much alone, believing the maternal family to have turned against him. He asked the mother to meet him on Christmas Eve.

The texts between the parents 21-31 December.

368. The father and the mother met on 30 December. He later sent her a photograph of himself with a cut hand. He states that he did not send it to cause her any anxiety, although he acknowledges that he was very drunk when it was sent. He described the period as being immensely difficult for him.
369. Whilst I fully understand how difficult it must have been for the father during this period of time, away from his partner and in circumstances where her family appeared to be blaming him for the injuries to their son, and I take into account the effect of alcohol on his judgment, there can be no doubt that this was a text sent with the clear intention that she would fear for his well-being and would be concerned that he may seriously harm himself. During most of the evidence it was the mother who was pursuing the relationship, but clearly at that time the father appears to have been taking extreme steps to gain her attention, possibly with the intention of rekindling the relationship.

The allegation that the father grabbed the mother in the car on 24 December

370. In her oral evidence the mother said that the couple met up on Christmas Eve for about half an hour. The discussion between them centred upon him asking her why her family were so against him and why she hadn't told them that she had exaggerated her evidence to the police. She stated that they began to argue and that he grabbed her by the wrist as she tried to get out of the car. The father denies grabbing the mother on this or any other occasion.
371. I find that it is likely that during an emotional and highly charged conversation that the father took hold of the mother's wrist to gain her attention or to stop her leaving. Whilst I find it likely that there was an element of roughness in his actions I do not find that he grabbed

her particularly hard or that he held her for very long. The incident does not in any way assist me in terms of identification of perpetrator. This is the only occasion where the mother says the father mishandled her physically, and it was at time of acute stress. In terms of what Mr Vine QC described as “*physical dysregulation*” whilst inappropriate – and I stress that I do not condone this behaviour -it is at the very lowest end of the scale.

Withheld accounts

372. The mother accepts that she did not tell anybody about the incident with the bouncy chair for some days and she did not tell the doctors at the hospital that X had screamed when he was upstairs with the father and later had briefly stopped breathing when she picked him up. She also took some time to disclose the ‘YouTube’ style video. When she did so the father was angry, and I’m satisfied that she didn’t discuss the fact that she was going to give the recording to social care with him.

Inconsistency and Retraction

373. It was inevitable that there would be investigation of T’s description in her written evidence that the mother had ‘retracted’ evidence. In my assessment T was very careless with the language she used. I do not find that the mother retracted any of what she had said. She was variable in her description of the relationship with the father, but I don’t accept that the key features of her description were retracted. As T recognised, the mother would change her emphasis according to how she felt about the father. I find that she had fluctuating feelings for him which reflected on what she said. I also find that nobody spoke directly to T about a shake, and it is likely her carelessness with language which led to the issue being litigated.

Lies

374. There are many examples in this case of both the father and the mother telling lies. The mother lied to the father early in their relationship by telling him that she was using birth control when in fact she was not and she wanted to have a baby. I am satisfied that she was prepared to manipulate him and the situation in order to achieve her own goals regardless of his wishes and feelings. I think it is likely that she gave little thought to the consequences of her actions, particularly about the effect on a future child of it being conceived by deception.

375. During his oral evidence the father admitted that he had thought about giving a fabricated account of falling downstairs while carrying X in order to explain away the injuries. He didn’t do so, and I have experience of parents who have lied in such a way causing immense problems. I give him credit for his candour in saying that he something that he thought about. He has however been found to have lied in respect of the ‘Fart’ incident and has withheld information such as the video of X.

376. In addition to withholding information, the mother has accepted that her description of a bloodcurdling yell was an exaggeration, stating that what she heard was an alarming scream. She has also accepted that she told lies to the social worker about her ongoing relationship with the father during 2019.

377. In this case both the local authority and the Guardian submits that the evidence is insufficient to show that one or other of the parents was responsible for the injuries. In both cases the focus has been on the reliability or otherwise of each. If this case were to be determined simply on the basis of who had lied or not lied or who had lied least or most I would agree that it would not be possible or proper to identify a perpetrator. I have not however confined myself to the issue of credibility. The fact that a person has lied does not mean that they are responsible for an injury, although of course what they have said and what they have lied about is relevant to the assessment of what is often referred to as ‘the bigger picture’ or the ‘wider canvas’. It is this evidence as a whole which I must examine to ask the question does the evidence show that the mother is responsible for the injury on a balance of probabilities and does the evidence show that the father is responsible for the injury on a balance of probabilities? I have found that approaching the evidence on this basis allows me to identify a perpetrator without strain.

378. During her excellent oral submissions Miss Mason submitted that the mother had given many different accounts about X's presentation and if I am unable to say 'what is true' then I cannot accept her oral descriptions of X's behaviour on the 21st, particularly given that it is outside the 48 hour 'window' from a CT scan. I have carefully considered that submission when assessing how X presented on that day. Having accepted the evidence of A and C I am able to establish some significant corroboration to the mother's evidence and I have found her to be truthful in her descriptions as to his presentation and what happened on that day. Sadly, I have found that the father has been less truthful and less forthcoming. It was striking that he could tell me the colour and designer of his shirt as he walked down the stairs after changing X but was unable to discuss any detail of what had happened upstairs.

Conspiracy/collusion

379. The local authority does not seek a finding that the maternal family conspired against the father in order to suggest to social care in the police that he was responsible for X's injuries.

380. I have of course taken into account the fact that the maternal family are inevitably going to have bias towards a member of their family. It is clear to me that this is a matriarchal family, strong and tightknit, therefore they are likely to be both concerned as to what had happened to X but also as to who was responsible. Interestingly, C said in her oral evidence that she felt that she needed to ask both parents as to whether they were responsible. That indicates to me that she had no pre-conception as to which of these parents might be responsible, whereas members of the father's family were perhaps a little quicker to wonder whether he had injured X. I'm satisfied that her primary motivation was to investigate what had gone on so that the medical professions who were treating X could be aware as to what had happened. She was right to do so in the respect that it was vital if possible that they were aware of the factual scenario in order to direct treatment to their patient in the light of what had happened to him. Even in the witness box as she gave evidence within care proceedings where the father and the mother are accusing the other of responsibility, I have found she gave evidence which was balanced, in my assessment truthful, and was not seeking to portray the father in a bad light. A part of her evidence which supports this is that she said that the father told her he had thrown X in the air whilst supporting his head. It would have been easy for her to lie and say the father had told her that he had thrown X in the air totally unsupported.

381. A further aspect of the evidence which points away from a "maternal family conspiracy" is the fact that the maternal family were very unhappy with the mother because she had not given a full account of what had happened on the 21st. In his closing submissions Mr Swiffen suggested that overall the evidence of members of the maternal family demonstrated that they were very child focused, and in addition were upset about what had happened to a very young and vulnerable member of the family. I am satisfied that the enquiries C made were made with an open mind rather than a preconceived notion that the father must be responsible.

Perpetrator

382. The local authority position is that the evidence is insufficiently cogent for me to identify which of the father and the mother was responsible for X's injuries. Mr Swiffen submits that the evidence of both was "*wholly unsatisfactory*" and that it is impossible to identify when on the 21st X was injured.

383. Mr Swiffen points out that although the descriptions of X by the mother and A would indicate that he slept for longer than usual on the 21st and was not feeding as normal, together with slight sickness, that could be attributed to the disturbed night he had had or equally to him being shaken that morning.

384. In his written submissions Mr Swiffen stated "*...if it was in the morning it could very well have been the mother who was responsible, just as much as the father.*" Having looked at the evidence as a whole I do not accept his reasoning in this respect. Firstly, I am satisfied that before the father took X up to change him the mother did not handle X at all. I have found that when the father took X downstairs that morning when he got up X was wholly well and exhibiting no abnormal features whatsoever. I am also satisfied that it is

likely that X was absolutely fine during the time that the father was caring for him in the lounge.

385. The only realistic opportunity for the mother to injure her son that morning would have been during the period just after the father stormed out of the room having put X roughly in the baby bouncer to the time when they set off for [a town]. Neither of them suggest that anything untoward occurred during that period or that X cried in a very loud manner as if being injured. On the contrary, the mother's evidence is that he became unwell at that time.
386. Mr Swiffen submits that it is "*plausible*" that the mother was frustrated because she was interrupted in sending messages to her friend on the phone and therefore shook her son. I am satisfied on the evidence and on my assessment of the mother's evidence overall that she was in no way frustrated by the father trying to pass X to her, and I find that she was feigning absorption in her phone in order to enable her to ignore the father when he came downstairs. Her description of holding her arm out to receive X without looking at the father was in my assessment entirely truthful, going against her interest because it shows her in a poor light. First of all, it demonstrates her acting in a less than child focused manner, and is therefore a statement against her interest. Secondly, her behaving in that manner was entirely in line with the immature behaviour that both were exhibiting during the course of the argument and in particular on that morning. What is important is whether she was angry and frustrated at that time and I do not find that she was. If anything, her behaviour demonstrates that she was composed.
387. I have found on the evidence that when the mother got up that morning X was well and I therefore do not accept the local authority submission that these injuries could be likely have occurred during the night when the mother was looking after X or during the period downstairs before she got up when the father was working on his laptop. I'm satisfied that during the course of the night had anything occurred that would cause X to cry out, the father would have woken up and would have been able to recall the event. He did not.
388. I'm also satisfied that when the mother last tended to her son at about 6.30am he was well and she had no cause to be concerned about him. There are however two identified events relating to the father's care of his son that morning, and there can be no doubt that he was frustrated and angry that day.
389. The mother was more emotional during her oral evidence than the father and I have reminded myself that the fact that an individual sheds tears or appears distressed has to be treated with caution. They may be exhibiting genuine remorse or acting in a calculated way in order to bolster their story. Having had the opportunity to evaluate her evidence throughout evidence in chief and cross examination I was entirely satisfied that the emotion she displayed when she was describing the events of the 21st, in particular her distress when she described how picking X up he had gone floppy and appeared dead for a short period, was entirely genuine. She did not at any stage seek to exaggerate the evidence against the father and as her story unfolded it demonstrated her coming to terms with the significant inadequacies in her own behaviour on that day and subsequently. She admitted that she had not put her son before her own needs, an admission which was clearly very painful for her, and her distress seemed to be focused on the effect on X rather than on her for the first time. I assessed all this to be the case whilst acknowledging that it is said the mother can be a 'drama queen'.
390. I have been satisfied (supra) that when the mother exaggerated the scream by referring to it as 'bloodcurdling' she was not doing so in order to conceal her guilt. Indeed, her inaction by not reacting to such a cry paints her in a very poor light. I accept her explanation that the primary purpose for the lie was to ensure that she could stay with X at C's home. I am also satisfied that her lack of candour with the medical professionals was not to conceal her own wrongdoing but because she desperately wanted there to be an alternative explanation to X being harmed by the man with whom she was besotted.
391. My assessment of the father was that during the course of his evidence he was less than straightforward. He maintained the obvious lies about farting on his son and commenting about putting his hand over X's mouth but also failed to take any genuine responsibility for the way he had treated X in the 'boomerang' video, the 'dancing' video and by photographing him in a kitchen cabinet. I've considered why, having reluctantly accepted the ill-advised actions of the photograph and the video – denying the former and being very cross when the mother disclosed the latter – and having maintained to me that he is a

“jokey” type of person he didn’t simply admit what I find had happened and ask me to put it into context of him as a social media influenced immature new father. He is of course entitled to say: “*prove it*” in respect of any allegation made against him, and to paint himself in the best light possible, however his evidence overall demonstrated to me that the lies he told were to exculpate himself from what had happened and on occasion to point the finger elsewhere. My overall assessment of his evidence was that he sought to push the blame away from himself at all stages, blaming the doctors at the hospital, raising the question as to whether C could be in the pool of perpetrators and finally suggesting that the mother must be responsible for the injuries.

392. I have considered the expert medical evidence to see whether it is consistent with my factual findings that the most likely time for X to be injured on the morning of the 21st was when the father took him upstairs to change him and I am satisfied that what I have found is consistent with the medical expert evidence.
393. I have found that despite the fact that she was very cross with the father on the 19th for farting on X, the mother’s focus was on maintaining her relationship with the father. She sent him a photograph of X on the 20th with her love, and a photograph of the present A had bought for X on the 21st. She tried to encourage him to come to bed with her to watch ‘I’m a celebrity’ that night and texted him on the 22nd in a loving manner. Taken in isolation, her focus on the relationship and the consequent lack of focus on X, would appear to be unlikely for a mother who others observed to be attentive and caring. I am satisfied that the relationship with the father was so important to the mother, providing as it did an attractive partner who was committed to providing for her and their son and giving her the family life which she craved, that she put that relationship before everything else and was focused mainly on the effect on herself of the potential loss of that status rather than on X.
394. It is inherently unlikely that an adult will shake a baby with sufficient force to cause brain injury but in this case the accepted medical expert evidence is that either the father or the mother shook X in that manner and also caused bruising to his left arm and shoulder. I have examined the evidence against each, in the context of the overall evidence, to determine whether the local authority has proved that either the mother or the father is responsible, or, if I cannot, whether there is a realistic possibility that each of them could be responsible.
395. I have considered the evidence in context (see supra the individual headings) including the unchallenged expert opinion and the whole of the background evidence about these two young parents in order to ensure that I balance the features which may point to each of them being responsible for the injuries and against. I have re-examined the individual topics or incidents identified by the advocates and the evidence relating to each against the evidence as a whole. I have taken care not to ‘stack up’ the evidence against both and compare it.
396. In relation to each I have asked myself: Does the evidence establish that the mother probably caused this injury? Does the evidence establish that the father probably caused this injury? If the answer in respect of any injury is ‘yes’ then the perpetrator is identified and the other is excluded. If the answer in relation to each of them is ‘no’ then in relation to each adult and each injury is there a real possibility that they may have caused the injury? That is not the end of my task. I must also look at X’s future and determine whether he should live in the primary care of his mother or his grandmother. In that respect his welfare is my paramount consideration and I must look at all the circumstances of the case, including what has happened since the commencement of proceedings a year ago.
397. There are of course pointers to the mother being a potential perpetrator of the injuries, and (see below) I am satisfied on the evidence that there was a real possibility that she may have caused the injuries so she was properly placed ‘on the list’.
398. I have taken time to step back and review the evidence as a whole. Looking at the overall picture, without straining the evidence, which would be entirely wrong and unfair, I have concluded that the evidence demonstrates that it is likely, on a balance of probabilities, that the father shook X on the morning of the 21st when he took him upstairs to change him and thereby caused all the recorded injuries. I am satisfied that things didn’t go as to plan, possibly because X was hungry and less compliant than usual, possibly because it was taking more time than usual and the father was in a rush, possibly because the ‘perfect storm’ of a combination of factors led the father to lose self control for just a

moment. I am also satisfied that it was more likely than not that the bruising occurred at the same time and was seen later that day by the mother and pointed out to the father.

Failure to protect

399. I have not made any findings of 'failure to protect' against the mother. She accepts that she failed to prioritise her son's needs and I have made the following findings on the evidence as a whole, namely:

- Failure to act during the reckless handling of X during the video taken on the 13th
- Failing to respond to the "alarming cry" when the father changed X on the morning of the 21st
- Failing to act following the "bouncy chair" incident on the morning of the 21st and the 'floppy' incident
- Failing to tell medical professionals about what had happened on the morning of 21st
- Prioritisation of her relationship over the needs of her son.

Welfare outcome

400. Both the local authority and the Children's Guardian have approached the issue of welfare outcome on the basis of findings being either "pool" or where one party is found to be responsible. It seems to me that the appropriate approach in order to determine where and with whom X should live and how often he should see his parents cannot be approached in such an "either/or" manner. My approach to the question has been based on the application of the seven criteria set out in the welfare checklist under section 1(3) of the Children Act 1989.

401. X is too young to express his wishes and feelings, but I have no doubt that he is significantly attached to both C and the mother, and also to his father. He has the same physical needs as any child of his age, and I am pleased that he has not suffered any adverse consequences as a result of his injuries. His main emotional attachment is naturally to C because she has been his primary carer for about a year, and her home has been his home for most of X's short life. It is more likely than not that he will need to keep that emotional attachment on an ongoing basis, and I'm satisfied that it would not be in his welfare interests for him to be suddenly removed from her care. He has thrived in C's care, but has also had extensive contact with the mother. That has extended to around 30 hours per week, and she is clear that she would like to move back into her mother's home to care for X whatever the outcome of my findings of fact.

402. X is very lucky in that none of the adults in this case propose that he circumstances will be significantly changed as a result of my decision. He will remain in C's home as part of a wide maternal family, and have ongoing contact with paternal relatives. He is lucky in that despite everything C has managed to keep a generally civil relationship with the paternal grandparents and I hope that that will continue going forward.

403. X is 15 months old and he will not recall the first month of his life when he lived at home with his parents. For him, his background during the first few weeks of his life has had no obvious consequence. He is a very attractive little boy, who appears to be meeting all his milestones and who is bright and bubbly. He is a much loved child by both maternal and paternal relatives. Whilst he is too young for formal education it is nonetheless very important for him that his informal, emotional and physical education continues within that loving family context.

404. X has not suffered any ongoing consequences as a result of the injuries inflicted by his father. The episode on the 21st was very serious but has had no lasting effect. The general circumstances in which the father lost control and harmed X have been examined in great detail and are to a large extent known and identified by my findings. The specifics of what happened that morning when the father took X upstairs are unknown because the father denies that anything occurred. I've described the general circumstances as a perfect storm, and I found that the most likely thing to have happened is that in circumstances where the father was frustrated, stressed, rushed and angry – changing a baby who everyone agrees used to scream when he was changed – the father momentarily lost control and shook X perhaps to make him comply with the nappy change, stop screaming or simply because it was all too much for the father at that moment.

405. I am satisfied that the father did not understand how fragile his son was, and that he had some difficulty in seeing X as a person rather than as an accessory who could be videoed for “funny” YouTube style videos of ‘Dads dancing with babies’ or photographs of ‘Dads doing silly things when left alone with their babies’. I think there has been a discernible change in his understanding since those early days, and that he has shown a more mature attitude towards X. I am however satisfied that he does need to undertake a parenting course in order to reinforce the level of care both physical and emotional that a young child needs in order to ensure that he does not lose control whilst caring for his son in the future. In addition, his behaviour demonstrates that he may need psychological or other assistance in order to regulate his behaviour, and compliance with his depression medication will be an obvious condition of his ongoing contact.
406. All parties are agreed that I should make a supervision order for a period of 12 months in this case. It is clear to me that in order to “advise, assist and befriend” the father the local authority care plan should contain some provision to address his psychological needs in addition to addressing his basic parenting skills. The current level of risk to X is unassessed, but will remain at a significant level requiring supervision of contact until the father’s current understanding of his son’s needs and his current psychological functioning is understood.
407. The father would like to have unsupervised contact with his son, and I would hope that in time supervision would not be needed. It is important that the local authority set out what progress they say needs to be made by the father before the risk will be reassessed towards the end of the supervision order. I require them to make a formal decision as to whether an extension to the supervision order is required by no later than January 8, 2021 in order to give opportunity for an application to extend to be made if needed. I anticipate that it will also be necessary to provide support for both sides of the family moving forward following receipt of my judgement.
408. It will no doubt be very difficult for the father’s family to accept my finding that he is responsible for the injuries to X. They must be reassured that I have not found that this was a deliberate infliction of pain towards a four week old baby, and they must be given sufficient detail of this judgment to understand what was going on in this young couple’s life at the relevant time.
409. I have not made findings of “failure to protect” in this case because I do not think there is any evidence to suggest that the mother could or should have known that the father would harm their son. She has made admissions, and I have made findings about her conduct which show that her parenting of X was suboptimal on several occasions, primarily because she put her relationship with the father before everything including her baby. It is likely that in the past year the mother has matured, particularly since she has started at college but also because she has had to participate in these proceedings which have inevitably been painful for her. At times during her oral evidence she demonstrated an appropriate emotional intelligence and an acknowledgement of her failure to act in the best interests of her son. She also sought at times to minimise what had happened, demonstrating that she still has some growing up to do. In my assessment she is still a young woman who has unrealistic expectations of both motherhood and relationships and were she to be proposing that she care for X on her own in the community I would have significant reservations about her ability to do that. She has never cared for a child on her own, and it is difficult to know whether she will make the same mistakes again. There are without doubt risks of her repeating her past selfish conduct and putting her own needs before those of X. Fortunately, the mother has made it clear that she wishes to care for X in her mother’s home and with her mother’s help. C is in my assessment a woman who understands how important it is to ensure that X comes first in any lifestyle or relationship choices her daughter may make in future. I find that she is likely to be a significant protective factor towards reducing the likelihood of any harm.
410. The father does not put himself forward to care for X on a full-time basis, and he has consistently praised C’s care of X over the past 12 months. Similarly, he felt that the mother was an instinctively good mother towards their baby, albeit he falsely claimed that she was responsible for his injuries. I’m satisfied that he can meet X’s needs during contact in a supported environment where the paternal family can ensure that he is emotionally stable during the time he has contact with his son. I would urge the local authority to assess the father’s partner as a potential supervisor so that in the future X can be part of their

relationship. The mother has shown herself to be a generally good mother towards her son, capable of giving excellent physical and emotional care to him provided she is able to prioritise his needs.

411. The options available to me are to make a special guardianship order in favour of C, a "live with" Child arrangements order in respect of the mother, a "visit" child arrangements order in respect of the father and a supervision order in favour of the local authority.

412. Having considered the findings that I have made and the in-depth scrutiny that I have seen and heard during the proceedings I am satisfied that the appropriate order to make is a child arrangements order which provides that X will live with the mother. I attach a specific condition that he will reside at [C's address]. I also find it is in X's welfare interests for him to have visiting contact to his father. Such contact could for example be arranged over a month to provide for two midweek "teatime" visits for a couple of hours and a full day visit on two weekends per month (on a Saturday or Sunday). I'm not going to specify a particular number of visits other than to make the observations above, which I make to reinforce the fact that the father and his family must not be marginalised in X's life. I make a 12 month supervision order in favour of the local authority in order to assist the two families in coming together to ensure that X continues to see his father in a supervised and safe family environment.

Summary of findings:

At the time proceedings were issued X (dob) had suffered and was at risk of suffering significant physical and consequent significant emotional harm attributable to the care given to him by his parents in satisfaction of the threshold criteria under section 31 of the Children Act, his parents not providing him with the level of care a reasonable parent should give.

External injuries

1. On presentation at hospital on the 23rd the following bruising was identified:
 - (a) 2 bruises to the left forearm, 1.5 x 0.5 cm and 0.5 x 0.5 cm
 - (b) 1 bruise to the left shoulder 1 x 0.5 cm
2. These bruises were inflicted injuries by the use of blunt trauma involving significant and excessive force beyond the bounds of normal parenting.
3. These bruises were sustained whilst X was in the care of his parents.
4. His father was the perpetrator of these bruises.

Head injuries

5. In a CT scan on the 24th and an MRI scan on the 29th X was found to have suffered acute subdural bleeds at several different sites (multifocal and multi-layered), subdural effusions, and acute subarachnoid haemorrhage.
6. These injuries were caused by abusive head trauma involving X being shaken such as to cause excessive uncontrolled movement of his unsupported head. This event went beyond

normal handling of an infant and would have been obviously inappropriate to any adult present.

7. These injuries were sustained by X whilst in the care of his parents.
8. His father was the perpetrator of these injuries when he was upstairs with X changing his nappy on the morning of the 21st. The bruising set out above was inflicted at the same time.
9. On 2 occasions the mother has taken a video of inappropriate handling of X by his father, including showing the father enacting a dance involving X which involves him having no neck control, his right hand and whole body being jerked around with his head shaking forwards, backwards and sideways. The videos demonstrate inappropriate handling of a very young child with poor head control

The mother failed to intervene to stop it happening, instead recording the events on her camera. A reasonable carer would have stopped the father conducting this activity with X.

10. The mother failed to prioritise the needs of her son (instead prioritising her relationship with the father) as follows :

- (a) The mother did not reveal the following to the doctors when X was admitted to hospital on the 21st:
 - i. The Second Respondent's handling of X during the video taken on the 14th ;
And that she did not initially reveal the following to the doctors either:
 - ii. That she heard an alarming cry when the Second Respondent changed X upstairs on the morning of the 21st;
 - iii. That the Second Respondent then put X in his bouncy chair with vigour when he came back downstairs that morning.
- (b) The mother failed to respond to the "alarming cry" when the father changed X's nappy on the morning of the 21st .
- (c) The mother failed to act following the incident involving the bouncy chair and afterwards when he went floppy.

For the avoidance of doubt the court did not find the mother was the perpetrator of any of the injuries or that she failed to protect X from sustaining them.

ORDER

I make a Child Arrangements Order as follows:

X shall live with his mother. It shall be a condition of the order that he shall reside at [address] with his mother and C.

X shall have supervised contact with his father on dates and times to be agreed with the mother. The supervisors shall be approved members of the paternal family and/or the father's partner once approved by the local authority.

I make a 12 month supervision order in favour of the local authority, on the basis that there will be a formal, minuted consideration as to whether the authority should apply to extend the order by no later than 8 January 2021

I reserve any future applications in respect of X to myself if available

HHJ Hillier

24 February 2020

Annex A Witness template
Annex B Written submissions:
B1 Local Authority
B2 Mother
B3 Father
B4 Guardian
Annex C Transcript of mother's evidence
Annex D Transcript of father's evidence
Annex E Chronology