

THE FAMILY COURT
SITTING AT EAST LONDON

Case No: ZE19C000567

11, Westferry Circus,
LONDON,
E14 4HD

Date: 18.03.2021

Before :

HER HONOUR JUDGE MADELEINE REARDON

Between :

The London Borough of Waltham Forest

Applicant

- and -

Respondents

The mother

The father

A, by her children's guardian

-and-

Interveners

XY (the father's partner)

XX (the mother's former partner)

Ms Badejo and Ms Allison for the local authority
Mr Ekaney QC and Mr Ashworth for the mother
Ms Verity and Mr Schmitt for the father
Ms Warner and Ms Bertoni for the child through her guardian
Mr Momtaz QC and Ms Fisher for XY
Ms Momoh for XX

Hearing dates: 30 November – 14 December 2020, 7, 8, 12, 13 January 2021, 25 January 2021,
18 March 2021

JUDGMENT

HER HONOUR JUDGE MADELEINE REARDON :

Introduction

1. This is my judgment following a fact-finding hearing in care proceedings brought by LB Waltham Forest in respect of A, born 23.11.15 and aged 5 years and 3 months.
2. The respondents to the application are A's parents, the mother and the father, and A herself through her children's guardian.
3. The local authority seeks findings in relation to a range of bruising injuries sustained by A over a period of about 15 months in 2018/2019.
4. The mother has made an allegation of rape against the father. This allegation does not form part of the local authority's case in relation to the s31 threshold criteria, but it is agreed that it is appropriate for the court to make a finding in respect of this allegation in order to inform the court's decision as to the future care arrangements for A.
5. At a hearing on 3.7.20 the court joined the father's partner, XY, and the mother's former partner, XX, as interveners within the fact-finding stage of the proceedings.
6. The hearing was listed to take place over 10 days. In fact, this time estimate proved inadequate and a further five days of court time were required in order to complete the evidence. Written submissions were filed on 25.1.21 and responses on 28.1.21. This judgment was circulated in draft on 3.3.21 and is being handed down on 18.3.21.
7. Throughout the hearing the mother, who has a level of learning difficulty, had the assistance of a Triangle intermediary. The hearing was conducted in accordance with ground rules approved by the court. The mother's intermediary assisted the advocates in the formulation of their questions and accompanied the mother in the witness box. Regular breaks were taken throughout the hearing to allow the mother to digest the evidence.
8. I am extremely grateful to both intermediaries who assisted the mother during the course of this hearing, particularly when she was giving her evidence.
9. The hearing was a hybrid hearing. The mother, father and XX attended court to give their evidence but otherwise participated remotely. All other participants attended remotely. For the parts of the hearing when the mother was not giving evidence she attended remotely from her counsel's chambers, together with her intermediary and junior counsel.

Background

10. This is the second set of care proceedings for A, and both of her parents have relevant previous history.

The father

11. In October 2012 the father was convicted of an offence of wounding after an argument in a pub during the course of which he hit an adult with a pint glass. He was sentenced to 12 months' imprisonment of which he served five. He was released in 2013.
12. In February 2013 the father's former partner made an allegation of rape against him. She declined to give a statement to the police and the father was not arrested; nor it seems was he informed of the allegation at the time.
13. The father has an older child, B, aged 10. The father and B's mother separated in 2010; B remained living with his mother and had contact with his father.

14. In 2014 B's mother alleged that B returned from contact with his father with bruising. B told his school that his father slapped him and hit him with a stick. The local authority carried out a child and family assessment but concluded that the allegations were unsubstantiated.
15. In September 2015 B's mother made further allegations that B had returned from spending time with his father with extensive bruising. A joint police and local authority s47 investigation was initiated. B underwent an ABE interview but did not make any allegations.
16. The investigation concluded with a recommendation that the father should not have any unsupervised contact with B and that the parents should formalise arrangements for B throughout private law proceedings.
17. In early 2016 B's school made further reports of bruising to B's leg on two separate occasions. A further joint s47 investigation was carried out. On 18.2.16 B was made subject to a child protection plan under the category of physical abuse.
18. The father's contact with B ceased in late 2015/ early 2016. Neither parent applied to the court in respect of contact arrangements and so no findings have been made as to the cause of B's injuries.

The mother

19. The mother has two older children, C (10) and D (8). The father of C is V and the father of D, with whom the mother was in a relationship from about 2010 to 2013, is U.
20. The local authority became involved with the family in 2012 and the children were placed on child in need plans. The concerns included neglect of the children and drug and alcohol abuse on the part of U. In October 2012, at the mother's request, C moved to live with her maternal grandmother.
21. In January 2013, at the age of eight months, D suffered a fracture to his skull. The mother and U were unable to provide an explanation for the injury and the local authority issued care proceedings. On 27 September 2013 HHJ Gillian Brasse found that D's injury had been caused non-accidentally and that both the mother and U remained in the pool of possible perpetrators.
22. The outcome of the proceedings was that C and D were placed with their maternal grandmother under residence orders. She has subsequently found herself unable to care for them and during the course of these proceedings they moved to live with their maternal grandfather, in the placement where A also is currently living.

A's birth and the first set of care proceedings

23. The parents' relationship began in 2014. A was born during the period when the local authority was carrying out its second s47 investigation in respect of B. On discharge from hospital A was accommodated in foster care with her parents' consent. The local authority issued proceedings on 2.12.15, relying on both parents' history.
24. During the proceedings a number of assessments were carried out of the parents' capacity to care for A. Those assessments were positive and the proceedings concluded on 1.6.16 with a 12-month supervision order, made by consent. The agreed threshold criteria summarised both parents' history, as set out above.

Events since the supervision order in 2016

25. In July/Aug 2017 the parents separated. A remaining living with the mother but spent time with the father, as agreed on an ad hoc basis between the parents.
26. On 22 September 2017 the mother made an allegation to the police that the father had raped her. The police carried out an investigation which concluded on 20.10.17 with a decision to take no further action. Thereafter the father's contact with A stopped for a period of about eight months.
27. In late 2017 the father formed a relationship with XY. She has a child of her own, E, now aged seven. The father and XY cohabited from early 2018. Their son, F, was born in 2018 and is now aged two.
28. In January 2018 A joined nursery one.
29. In June 2018 the mother formed a relationship with XX. They did not cohabit but XX stayed with the mother on three or four nights each week.
30. A's contact with the father resumed in April 2018. She saw him intermittently until June when the mother agreed, after meeting XY, that A should visit her father's home on a regularly basis and stay overnight. Thereafter A spent time with her father at the home he shared with XY. Contact took place most weekends from Friday afternoon until Sunday afternoon, or occasionally Monday morning when the father would return her to nursery. There was additional contact in holiday periods.
31. From June 2018 onwards, on a number of the occasions when A came to stay with her father, XY took photographs of bruises she had observed on A's body. Aside from the father, no other person was aware of these photographs until they were provided to the local authority in September 2019.
32. On 30.10.18 A's nursery made a referral to the local authority. The mother had reported to nursery staff that she was worried something had happened to A while she was having contact with her father. The mother said that A's vaginal area was sore and there appeared to be a small tear. She said that A had said 'daddy touched me'. On the local authority's advice the mother took A to hospital. The hospital initially diagnosed thrush but recommended a full medical examination. After discussions between the local authority, medical professionals and the mother this did not take place. The father's contact with A was suspended for a short period of time but resumed in December 2018.
33. In January 2019 A started at nursery two. On 7.2.19 the nursery made a referral to the local authority setting out a range of concerns, including bruising to A's head and suspicions of neglect. On one occasion when nursery staff asked A how she had sustained a red mark to her head A said 'mummy door'; the mother said that A had walked into a door. The mother told the nursery that A often came back from her father's home with bruises.

The first child protection medical examination (27 June 2019)

34. On 26 June 2019 the local authority received a further referral from the nursery. A had presented with bruising to her back and leg. When asked how it had happened A said, 'mummy hurt me' followed by something that staff were unable to hear but sounded like 'kick'. The local authority carried out a joint visit to the nursery with police. The mother was spoken to and with her agreement A was placed in the care of her paternal aunt overnight.
35. A child protection medical was arranged for the following day. A was brought by her paternal aunt and the mother and the social worker W attended. The mother said that she had not noticed the bruising to A's back but gave a possible explanation of a fall the previous week. The examining doctor took into account the history given by the mother of frequent falls and a

referral to physiotherapy in May 2019 for clumsiness and 'in-toeing'. He concluded that while non-accidental injury could not be ruled out, the injuries were more likely to be due to accidental causes.

The second child protection medical examination (5 September 2019)

36. On 3.9.19 the mother telephoned the social worker to report that A had returned from her father's house with a black eye. The father and XY had explained that A had been hit accidentally by a box which XY had thrown into the bedroom while tidying up. The social worker advised the mother to take A to the GP, which she did. In addition to the black eye, the GP recorded further bruising to A's buttocks and raised a concern about possible non-accidental injury.
37. A child protection medical took place the following day. The conclusion of the examining doctor was that the bruising to A's eye was consistent with the explanation given. However, she had three bruises on her right buttock which were considered to be possible grab marks.
38. An initial child protection conference was planned for 20.9.19.
39. The social worker spoke to the father. During the course of the conversation the father said he had seen a number of bruises on A during the periods she spent with him. He did not at that stage mention the photographs taken by XY.
40. Following this the father took the decision not to have any unsupervised contact with A, in order to protect himself, as he later explained, from being accused of perpetrating the injuries. He did not see A at all between 5.9.19 and 18.9.19.

The third child protection medical examination (19 September 2019)

41. On 18.9.19 the social worker W visited A at nursery. She observed that A had a number of bruises on her shins. When asked how this happened A said 'mummy did it' and added something that the social worker thought at the time was 'she kicked me'. A was taken to the GP with the mother. The GP ordered blood tests and recommended a further child protection medical. In the meantime A was placed with her maternal grandfather, with both parents' agreement.
42. On the evening of 18.9.19 the father sent W some of the photographs taken by XY of the bruises they had observed on A over the previous year.
43. The third child protection medical took place on 19.9.19. The conclusion of the examining doctor was that A had an 'excessive' number of bruises which could have been caused accidentally or non-accidentally; two of the injuries, a 'very suspicious' linear bruise on the right thigh and a cluster of bruises on the right arm, described in the report as 'finger-tip marks', were 'felt to be more indicative of non-accidental injury'.
44. On 26.9.19 the local authority initiated care proceedings.

The proceedings

45. On 3.10.19 DJ Hammond made an interim care order in respect of A on the basis of the local authority's plan that she should remain living with her maternal grandfather and his wife S. Despite some initial concerns about the condition of the home and other adults living there, the local authority subsequently approved them as connected persons foster carers. A positive special guardianship assessment has since been carried out, albeit that the assessing social

worker acknowledged the concerns and recommended a supervision order if A were to remain in the placement in the long term.

46. The parents have had supervised contact with A since her removal.
47. Shortly before the first hearing the mother informed the local authority that her relationship with XX had ended. She has subsequently admitted that their sexual relationship continued until the summer of 2020.
48. On 31.10.19 the local authority received a further referral from A's nursery. A had presented with bruises to her bottom and back which nursery staff saw when getting her changed. A child protection medical was carried out. S, who attended the medical with A, was able to explain some of the bruises as the result of falls. The examining doctor concluded that the location and nature of the bruising indicated that they were likely to be accidental, and recommended that A would benefit from close supervision, especially when out playing.
49. On 3.2.20 the nursery made a further referral. A had told her teacher 'my auntie hurts me' and pointed to her heel, and then her arm. A child protection medical was carried out. The examining doctor concluded that marks on A's feet were likely to have been caused by unsuitable footwear. Further bruising to her legs were typical of accidental knocks sustained by children of her age.
50. The proceedings have been delayed, firstly because of delays in obtaining expert medical evidence and then because the mother's learning difficulties meant that her solicitors required additional time to prepare her evidence. These delays were exacerbated by the pandemic.
51. The proceedings were re-allocated to me on 9.4.20. On 3.7.20 at a case management hearing I joined XY and XX as parties to the proceedings and listed the fact-finding hearing to commence on 30.11.20 with a time estimate of 10 days.

The law

52. The advocates have provided me with a comprehensive document setting out the agreed position as to the relevant law, for which I am extremely grateful. I cannot do full justice to it within this judgment but I have read it with care.

The threshold criteria

53. The issue for the court is whether the criteria set out in CA 1989, s31(2) are met. s31(2) reads as follows:

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

54. In *Re J (A Child)* [2015] EWCA Civ 222 Aikens LJ said as follows:

'It is for the local authority to prove that there is the necessary link between the facts upon which it relies and its case on Threshold. The local authority must demonstrate why certain facts, if proved, "justify the conclusion that the child has suffered or is at the risk of suffering significant harm" of the type asserted by the local authority. "The local authority's evidence and submissions must set out the arguments and explain explicitly why it is said that, in the particular case, the conclusion [that the child has suffered or is at the risk of suffering significant harm] indeed follows from the facts [proved]".'

55. In considering the significance of the harm that is alleged the court must be careful not to set the bar too low. The threshold for state intervention will not be met in every case where a child is suffering harm. The formulation of Hedley J in *Re L (Care: Threshold Criteria)* [2007] 1 FLR 1050 has been endorsed by courts at all levels including the Supreme Court. At paragraph 50 of his judgment Hedley J said:

"What about the Court's approach, in the light of all that, to the issue of significant harm? In order to understand this concept and the range of harm that it's intended to encompass, it is right to begin with issues of policy. Basically it is the tradition of the United Kingdom, recognised in law, that children are best brought up within natural families. Lord Templeman, in Re: KD (a minor ward) (termination of access) [1988] 1AC806, at page 812 said this:

"The best person to bring up a child is the natural parent. It matters not whether the parent is wise or foolish, rich or poor, educated or illiterate, provided the child's moral and physical health are not in danger. Public authorities cannot improve on nature."

There are those who may regard that last sentence as controversial but undoubtedly it represents the present state of the law in determining the starting point. It follows inexorably from that, that society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent. It follows too that children will inevitably have both very different experiences of parenting and very unequal consequences flowing from it. It means that some children will experience disadvantage and harm, whilst others flourish in atmospheres of loving security and emotional stability. These are the consequences of our fallible humanity and it is not the provenance of the State to spare children all the consequences of defective parenting. In any event, it simply could not be done.

Fact-finding

56. I have been referred to a number of authorities setting out the court's approach to the fact-finding process in Children Act proceedings. I hope the parties will forgive me for offering yet another formulation of the relevant principles. I do so not for any wider purpose but simply because every case is different, and the present case involves both a set of threshold findings sought by a local authority and a separate finding sought by one parent on an allegation against the other.

- a. The burden of proof is on the party which makes the allegation.
- b. The standard of proof is the balance of probabilities.

- c. The court may find only that something happened or that it did not happen. The law operates a binary system and there is no room for a finding that something ‘might have’ happened: *Re B* [2008] UKHL 35.
 - d. The court must not reverse the burden of proof. If a respondent fails to prove an affirmative case they have set up by way of a defence, that does not of itself establish the applicant’s case. In such circumstances the question for the court is not ‘has the alternative explanation been proved?’, but ‘in the light of the possible alternative explanation, can the court be satisfied that the applicant has proved its case on the balance of probabilities?’: *Re X (Children) (no 3)* [2015] EWHC 3651.
 - e. A finding that a particular event did not happen is not the same as a finding that the allegation was false (in the sense that the person making it knew it to be untrue): *Re M* [2013] EWCA Civ 388.
 - f. Findings must be based on evidence, including inferences that can properly be drawn from the evidence, and not on suspicion or speculation. The court may take into account the inherent probabilities of an allegation.
 - g. The court surveys a wide canvas. It must take into account all of the evidence, and consider each piece of evidence in the context of all the other evidence.
 - h. Expert evidence must be considered in the context of all the evidence. Experts must confine their evidence to their own discipline. The role of the court is different from that of the expert. It is the judge and not the expert who makes the final decision.
 - i. It is essential that the court forms a clear assessment of the credibility and reliability of the lay witnesses. Their evidence is extremely significant and the court is likely to place considerable weight on their evidence and the impression it forms of them.
 - j. The approach to fact-finding in the public and private law context is the same. However the court must bear in mind that in private law proceedings (which these are not, but in the case of the mother’s rape allegation the situations is analogous) the allegations of abuse are not being made by a neutral and expert local authority which has nothing to gain by making them, but by a parent who is (or may be) seeking to gain an advantage in the battle against the other parent. This does not mean that they are false but it does increase the risk of misinterpretation, exaggeration or downright fabrication: *Re B* [2008] UKHL 35.
 - k. It is common for lay witnesses to tell lies during the course of the investigation and hearing. A witness may lie for many reasons, such as shame, misplaced loyalty, fear and distress. The fact that a witness has lied about some matters does not mean that he or she has lied about everything: *R v Lucas* [1981] QB 720.
57. The applicability of the *Lucas* direction in family proceedings has been considered in a number of cases. In *Re A (A Child) (Fact-finding hearing: Speculation)* [2011] EWCA Civ 12 Munby LJ observed:

“Any judge who has had to conduct a fact-finding hearing such as this is likely to have had experience of a witness – as here a woman deposing to serious domestic violence and grave sexual abuse – whose evidence, although shot through with unreliability as to details, with gross exaggeration and even with lies, is nonetheless compelling and convincing as to the central core. It is trite that there are all kinds of reasons why witnesses lie, but where the issues relate, as here, to failed marital relationships and the strong emotions and passions that the court process itself releases and brings into prominence in such a case, the reasons why someone in the mother’s position may lie, even lie repeatedly, are more than usually difficult to decipher. Yet through all the lies, as experience teaches, one may nonetheless be

left with a powerful conviction that on the essentials the witness is telling the truth, perhaps because of the way in which she gives her evidence, perhaps because of a number of small points which, although trivial in themselves, nonetheless suddenly illuminate the underlying realities.”

Causation of injuries

58. There is a particular difficulty in this case, in that the local authority’s case as to the causation of A’s injuries does not map neatly onto the evidence, in particular the expert evidence. During the course of the child protection medical examinations, and in Dr Ojo’s reports and her oral evidence, the distinction was inevitably drawn between ‘accidental’ and ‘non-accidental,’ or ‘abusive’ and ‘non-abusive,’ injuries. In fact the local authority’s case is more nuanced: it alleges that many of the injuries were caused, unintentionally but nevertheless culpably, by rough play, over-forceful restraint, or a lack of supervision.
59. This difficulty means that I must take care, when evaluating the evidence, not to be distracted or misled by terms of art: instead I must focus, first, on the mechanism or circumstances of an injury and then (for threshold purposes) on culpability of the relevant adult. As Ryder LJ said in *Re S (Split Hearing)* [2014] EWCA Civ 25:

“19. The term ‘non-accidental injury’ may be a term of art used by clinicians as a shorthand and I make no criticism of its use but it is a ‘catch-all’ for everything that is not an accident. It is also a tautology: the true distinction is between an accident which is unexpected and unintentional and an injury which involves an element of wrong. That element of wrong may involve a lack of care and/or an intent of a greater or lesser degree that may amount to negligence, recklessness or deliberate infliction. While an analysis of that kind may be helpful to distinguish deliberate infliction from, say, negligence, it is unnecessary in any consideration of whether the threshold criteria are satisfied because what the statute requires is something different namely, findings of fact that at least satisfy the significant harm, attributability and objective standard of care elements of s 31(2) of the CA 1989.

20. The court’s function is to make the findings of fact that it is able on the evidence and then analyse those findings against the statutory formulation. The gloss imported by the use of unexplained legal, clinical or colloquial terms is not helpful to that exercise nor is it necessary for the purposes of section 31(2) to characterise the fact of what happened as negligence, recklessness or in any other way.”

60. The only comment I would make in respect of this passage is that it is quite difficult to think of a word other than ‘injury’ for the bruises, abrasions and other marks that A sustained. I have therefore continued to use the word without intending to imply the ‘element of wrong’ that Ryder LJ considers it to include.
61. In this as in all other cases where the cause of an injury is in dispute the court must factor into its consideration of the evidence the possibility that the cause is unknown: *Re R (Care Proceedings: Causation)* [2011] EWHC 1715 Fam.

Uncertain perpetrator cases

62. The threshold criteria may be met on the basis of a finding that one of a finite 'pool' of persons has caused significant harm to a child, in circumstances where the court is unable to make a finding as to which of them has done so: *Re S-B* [2009] UKSC 17.
63. However, in such a case the court must take care not to reverse the burden of proof by considering in turn whether each member of the identified pool of perpetrators can be excluded. The burden of proof remains on the local authority at all times and it is for the local authority to show in the case of each potential perpetrator that there is a 'likelihood or real possibility' that he or she is responsible for the injuries.
64. The correct approach was summarised by Peter Jackson LJ in *Re B (Children: Uncertain Perpetrator)* [2019] EWCA Civ 575 as follows:

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

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

The positions of the parties

The local authority's case

65. The local authority has revised its schedule of findings following the conclusion of the evidence.
66. The local authority accepts that some of the bruises A sustained over the relevant period are likely to have been caused accidentally in the course of normal activities. It alleges however that some of A's injuries were inflicted by one of her parents or carers, through over-forceful handling or rough play.
67. Alternatively or in addition, the local authority says that the parents and carers together or separately have failed to take sufficient care to supervise A so as to ensure that she did not suffer unnecessary injuries.
68. The local authority's case is that the background of the previous proceedings, which concluded in a supervision order and a written agreement, provided the parents with a 'safeguarding blueprint' so that A should not come to harm. Despite this knowledge, the local authority says, 'A has suffered too many bruises and injuries in the care of her parents.'
69. The local authority says that whichever parent is responsible for the injuries, the other has failed to protect A: in view of the number and type of injuries, a reasonable parent would at the very least have sought medical advice.

70. The local authority does not seek to make submissions on the mother's allegation of rape.

The mother's case

71. The mother strongly denies that she has ever deliberately inflicted any injury on A. She accepted in her oral evidence that she could have done more to supervise A, and that she should have been more alert to the bruises A had sustained. During the course of her evidence she accepted that there may have been occasions when she held A too forcefully: for example, on occasion she had 'grabbed' A to stop her from running into the road or otherwise hurting herself.
72. On that basis, the mother says that the threshold criteria are not met.
73. The mother also seeks a finding that on the night of 18.9.17 the father raped her.

The father's case

74. The father denies causing any of the injuries to A. He does not accept that these could have been caused during the course of rough handling or rough play. The father originally accepted that the threshold criteria were met on the basis of his failure to protect A by reporting the bruising that he knew she had sustained, although in their final submissions Ms Verity and Mr Schmitt urge me to look carefully at this issue, particularly if I do not find that any of the injuries were deliberately inflicted.
75. The father denies that he raped the mother. It is his case that the sexual intercourse which he accepts took place on 18.9.17 was consensual.

The position of the guardian

76. The guardian has drawn my attention to some aspects of the evidence which he considers to be relevant to my decision. He does not seek to put forward a positive case in respect of the local authority's allegations, but at the conclusion of the evidence Ms Warner informed me that his provisional view, subject to my findings, was that 'many of the injuries to A may be a combination of (i) poor supervision and (ii) A's clumsiness and active presentation'.

The positions of the intervenors

77. XY denies causing any of the injuries to A, save for one injury to her eye for which an explanation was provided at the time of the incident, and denies also that they were sustained as a result of rough handling or a lack of supervision when A was in her or the father's care. Her case, which the father accepts, is that she was concerned about A's injuries and urged the father on a number of occasions to take action in response to them; he was unwilling to do so.
78. XX denies causing any of A's injuries. His case is that his role in A's day to day care was limited and so he could not have been expected to be aware of the full extent of the bruising she had suffered.

The evidence

79. The evidence in the bundle is wide-ranging and comes from a number of different sources. It includes the documentary evidence gathered during the course of these proceedings as well as documents relating to the past history of both parents. I have read all of the evidence in the bundle.
80. I heard oral evidence from the following witnesses:
- a. W, A's former social worker;
 - b. Z, the current allocated social worker;
 - c. B's social worker, the social worker who carried out investigations into the bruising sustained by the father's son B;
 - d. Manager at the Nursery one (A's first nursery);
 - e. the Deputy Head Teacher and Designated Safeguarding Lead at A's second nursery (nursery two);
 - f. Dr Corinna O'Neill, who carried out the child protection medical on 19.9.19;
 - g. Dr Melanie Smartt-Williams, who carried out the child protection medicals on 5.9.19 and 31.10.19;
 - h. Dr Ide Ojo, the consultant paediatrician instructed as an expert witness;
 - i. the mother's brother;
 - j. the mother;
 - k. the father;
 - l. XY;
 - m. XX.
81. I intend to summarise the evidence by category, including where appropriate my observations as to credibility and reliability.

Evidence relating to A herself

82. A at the relevant time was between 2 years and 7 months and 3 years and 9 months old.
83. All of the lay witnesses, and some of the professional witnesses, have referred to A as being both an active and a 'clumsy' child. In March 2019 she was referred for physiotherapy, and seen in May 2019, after the mother consulted nursery staff and then her GP about frequent falls. The outcome of that referral was that she presented with flat feet and 'in-toeing' but that this did not affect her gross motor skills; she was discharged with a recommendation that she wear supportive shoes. The physiotherapist described her as 'very energetic and active... she climbed up on and off a plinth'.
84. The Deputy Head Teacher and Designated Safeguarding lead at Nursery two, said that nursery staff had described A as 'clumsy', falling frequently and unsteady on her feet. The previous social worker W observed in her first statement that the mother had told her that A 'has no sense of spatial awareness and will often fall over items on the floor'; W said that she had seen this herself at visits to the home and in the child protection medical examination.
85. Dr Smartt-Williams, who carried out the child protection medical on 31.10.19, described A as very active and 'all over the place' compared to other children of her age.
86. Both the mother and nursery witnesses said that there were occasions when A sustained injuries, both at home and at nursery, but did not cry and simply picked herself up and carried on.
87. A's speech over the relevant period was noted by her nursery to be slightly delayed and not very clear. She was referred for speech and language therapy in 2018.

88. A has not been ABE interviewed. Nor has any formal 'direct work' been undertaken with her to explore her experiences.
89. There are, however, some recorded occasions when A has made comments that could be interpreted as identifying a person as having caused her injury. These are as follows:
- a. In or around February 2019 A said 'mummy door' when asked by nursery staff about a bruise on her head;
 - b. On 26.6.19 A said to nursery staff, 'mummy hurt me', and later to W, 'XX' and something that sounded like 'kicked me' but was not entirely clear;
 - c. On 3.9.19 A told nursery staff that XY had caused the bruising to her eye;
 - d. On 18.9.19 A told W when she asked about bruising, 'mummy did it' and 'XX'; The Deputy Head Teacher and Designated Safeguarding lead at nursery two said that she had said something like 'mummy' and 'kicked';
 - e. On 5.11.19 A was asked by nursery staff about a red mark to her neck; she said 'S', 'G' [G is S son] and 'handbag';
 - f. In February 2020 A said to nursery staff, 'my auntie hurt me'.
90. A was very young when the events that are the subject of this hearing took place. She had speech delay and those to whom she spoke have reported that her words and meaning were unclear. The evidence on this issue was unsatisfactory, in that I did not hear directly from any nursery staff other than the Deputy Head Teacher and Designated Safeguarding lead at nursery two, and W did not have a full recollection of what A had said. In some cases the report of what A said does not disclose the question she was asked. It is possible that on some of these occasions A was simply identifying who was present when the injury took place; it is likely that this was the case on 5.11.19 at least.

The social work evidence

91. The evidence of both social workers involved in these proceedings was largely unchallenged. W, who has not worked on the case since the local authority initiated proceedings in September 2019, had only a limited recollection of events: for example, she was unable to remember the broader concerns that had been raised by A's first nursery about the mother's care, although these were detailed in the statement that she herself had prepared. It is not intended as a criticism of W to say that I consider her contemporaneous notes and the written evidence she prepared at the outset of the proceedings to be a more accurate representation of events than her oral evidence.
92. Z's evidence related to the period after these proceedings were commenced and so was of limited direct relevance to the fact-finding hearing. She described a warm and loving relationship between A and the mother from her observations.
93. Although it is not of direct relevance for the purposes of the fact-finding hearing, Z's evidence gave me some cause for concern about the stability of A's current placement, particularly since C and D have joined the household. Z did not seem to be completely clear about the adults who are living in the home or the risks that they might pose. This reinforces the importance of making final decisions for A sooner rather than later, particularly after the delay that these proceedings have already experienced.
94. B's social worker's evidence was not challenged by any of the parties but she was called to give oral evidence by the local authority in order to clarify aspects of her written evidence. She was clear that during her investigation into B's bruising the father had admitted responsibility for causing some of B's injuries: he had told her that he said to her that on one occasion at the

Natural History Museum he had pulled B by the arm when he was scared by an exhibit. He had accepted that some of the bruising to B could have been caused by rough play when he grabbed him round the neck, and when B fell off a bed. Although the father was reluctant to confirm these admissions in his oral evidence he did not seek to challenge B's social worker's account and I accept her evidence.

The evidence from A's nurseries

95. The manager at nursery one gave evidence about A's attendance at nursery one from January to December 2018. Her evidence was largely unchallenged. She described A as a lovely and active little girl with some delay in her language and communication. A had sustained a number of bruises during the course of ordinary play at nursery; she liked to explore and experiment, and was a little clumsy, but the manager at nursery one thought that the injuries she sustained in this manner at nursery were part of natural learning and play. She said that the mother's relationship with A was warm and A was always happy to see her mother. She would be surprised to hear that the mother had harmed A.
96. The Deputy Head Teacher and Designated Safeguarding lead of nursery two, whose nursery A attended from January 2019 until she transferred into the reception class in September 2020. The Deputy Head Teacher and Designated Safeguarding lead started work at the school in September 2019 so did not have direct knowledge of the matters reported by the nursery prior to that date.
97. The Deputy Head Teacher and Designated Safeguarding lead said she was present when W visited the nursery and spoke to A on 18.9.19, and heard A say 'mummy' and 'kicked'. W did not remember The Deputy Head Teacher and Designated Safeguarding lead being present. Although it has limited relevance, given the limited weight I attach to what A has said, I prefer the Deputy Head Teacher and Designated Safeguarding lead's evidence to that of W on this point.

Body maps and photographs of A's injuries

98. The bundle contains pictorial representations of A's injuries from two main sources. The first is the bodymap diagrams completed by the doctors who carried out the five child protection medicals which A has had: three prior to her removal and two since the outset of these proceedings.
99. The second source of evidence are the photographs taken by lay persons, primarily XY but also in the case of a limited number of photographs by the mother and A's paternal aunt.
100. There are advantages and disadvantages to each source of evidence. The advantage of a photograph is that, subject to lighting and distance, it is likely to record with reasonable accuracy. The disadvantage is that an amateur photograph is often less clear than a professionally-taken photograph and the size and colour of marks, in particular, may be distorted.
101. The advantage of a bodymap diagram prepared during the course of a child protection medical is that it is a contemporaneous record of what the examining doctor sees. The diagram is completed by a trained professional who is carrying out a detailed examination specifically for child protection purposes. The court can be reasonably confident that if an injury is recorded by a doctor on a body map that is reliable evidence that the injury was present. The disadvantage is

that the format does not allow for an accurate representation of each injury, particularly when multiple bruises have to be recorded.

102. There are no professional photographs available of any of A's injuries. Dr Smartt-Williams told me that there are no facilities in Waltham Forest for professional photographs to be taken during the course of a routine child protection medical; in most cases where non-accidental injury is suspected it is the police in conjunction with the local authority who will arrange for professional photographs to be taken if they require them.
103. The mother argues that in view of the circumstances in which the photographs in this case were taken it is 'unsafe' to rely on them. In my view, that goes too far. I accept that I must bear in mind the limitations of this form of evidence and should, for example, be alert to the possibility that what appears to be a bruise may in fact be simply a shadow. However, the times and dates of the majority of the photographs have been independently verified by a specialist digital forensics firm and this evidence is unchallenged. In most instances, in my view, at least the location and approximate size of the bruises can be discerned with reasonable confidence.

The medical evidence

104. Evidence of medical research as to bruising in children, on which all parties jointly rely, has been put before the court in the form of a research article¹ and the RCPCH Child Protection Companion, incorporating RCPCH systematic reviews. The following summary of this evidence is, I hope, uncontroversial:
- a. Bruising is very common in pre-school mobile children;
 - b. Bruising is the most common injury suffered by children who have been physically abused;
 - c. Accidental bruising occurs predominantly over bony prominences, such as the shins, knees, and the 'T-shape' of the face (forehead, nose and chin);
 - d. Abusive bruises are often located away from bony prominences and found predominantly over soft tissue areas such as the ear, neck, cheeks, buttocks, back, chest, abdomen, arms, hands and posterior thigh;
 - e. Abusive bruises are often multiple and occur in clusters; these may occur on the upper arm, outside of thigh, or trunk;
 - f. It is not possible to 'date' bruises by their appearance or colour. This is because there is considerable variation in the length of time it takes following an injury for a bruise to appear, and in the subsequent aging of the bruise. Therefore, terms such as 'fresh' or 'old' bruising should be avoided.
105. It is necessary in all cases involving suspected non-accidental bruising to exclude bleeding disorders or other conditions that may lead to bruising. Within these proceedings a paediatric haematologist, Dr Russell Keenan, has prepared a report following consideration of A's medical records and blood test results. He identified no abnormality of the blood clotting system and concluded that the bruising seen in A should be considered to have occurred in a child with a normal blood clotting system. That evidence is accepted and Dr Keenan was not required to give oral evidence.
106. Dr Smartt-Williams carried out the child protection medicals on 5.9.19, 31.10.19 and 5.2.20 (the latter two occasions being after A's removal from her parents' care). She gave clear

¹ *Bruising in children who are assessed for suspected physical abuse*, Kemp et al, Arch Dis Child 2014; 99:108-113

evidence, expressed in careful terms. There were only limited challenges to what she had observed or to her conclusions, which were expressed moderately.

107. Dr O'Neill undertook the child protection medical on 19.9.19. As well as her own observations of A she had available to her some of the photographs taken by XY which had been provided to the social worker by the father and were viewed on the social worker's phone. It was the outcome of this medical examination that led to the local authority's decision to initiate care proceedings.
108. Dr O'Neill's evidence was also measured and careful. She explained why she considered some of the bruises to A to be indicative of non-accidental injury, and why she thought that the number of bruises on A's legs, although in areas where an accidental cause was likely, to be excessive in number and thus indicative of a lack of supervision.
109. Dr Ojo is a consultant community paediatrician who was instructed jointly by the parties to carry out an expert paper-based paediatric assessment. Her reports are based on the reports of the child protection medical examinations, evidence of the parties and the photographs taken by XY; although her task in this respect was made much more difficult by the fact that there was, until a very late stage in these proceedings, a lack of clarity as to when each photograph had been taken.
110. Dr Ojo's conclusion overall, which she maintained in oral evidence, was that although it is possible that any one of A's injuries could have an accidental cause, when one takes into account the total number of injuries, their location and their nature, non-accidental injury is the more likely explanation. In that context Dr Ojo's use of the terms 'accidental' and 'non-accidental' were used to distinguish between an injury that is inflicted, deliberately or recklessly, by a carer, and an injury that is not.
111. It was put to Dr Ojo that her conclusions, and those of the doctors who undertook the child protection medicals, had been affected by their knowledge of where A was placed at the time the injuries occurred. For example, Dr Ojo formed the view that the injuries A sustained in October 2019 and February 2020 were likely to be accidental, but that apparently similar bruises, which had been sustained during the earlier period when she was in the care of her parents, were likely to have been caused non-accidentally.
112. In my judgement, there is some force in this point. As paediatricians, Dr Ojo and those who examined A properly took into account her overall circumstances when drawing their conclusions, and were entitled to give weight to the fact that on the two later occasions when injuries were observed, A was in a placement which the local authority had determined was safe. However, I must be alert to the risk of unfairness to the parents in this approach, and so when considering the medical evidence in respect of each injury I intend to bear in mind the extent to which their knowledge of the context may have influenced the experts' opinions.
113. Considering the medical evidence as a whole I make the following observations:
 - a) The doctors who carried out the child protection medicals had the advantage over Dr Ojo of seeing the injuries they were recording. On the other hand, Dr Ojo had the advantage, particularly in the case of the first child protection medical on 26.6.19, of being able to survey the whole picture of A's injuries over a period of time. Those differing perspectives have the potential to explain the difference of opinion between Dr Ojo, who considered some of the injuries with which A presented on 26.6.19 to have been likely non-accidental injuries, and the examining doctor who formed the view that those injuries could have been sustained accidentally.
 - b) Dr Ojo faced a particularly difficult task in this case in that she was asked to give her opinion on the injuries sustained by A on the basis of a range of evidence sourced in

different ways and at different times; these problems were exacerbated by the lack of clarity, certainly when Dr Ojo produced her written reports, about the date on which each of the photographs produced by the family had been taken and even the part of the body which they were said to show.

c) Dr Ojo did not have access to the full range of the lay evidence, including importantly the oral evidence of the lay parties and intervenors which frequently differed from, or expanded on, their written statements. That gives me the overall advantage in terms of perspective.

114. Taking all of those factors into account, I have formed the view that it is particularly important in this case to view the medical evidence as just one part of the evidential canvas, and to step back and survey the full range of evidence from all sources before reaching my conclusions.

The results of drug and alcohol testing of the parents

115. Hair strand testing of both parents has been carried out during the proceedings.

116. In October 2019 the mother tested positive for cannabis at a low level over the previous six months. The mother accepts these results; she told me she used the drug only for the relief of sciatica, but told the guardian early in these proceedings that she used it recreationally at weekends when A was not in her care. The nursery referral in February 2019 included a concern that A's clothes sometimes smelt of cannabis. I note that when the mother saw Dr Latif in December 2019 she was attending a drug recovery service.

117. The father tested negative for drugs but his liver function test results, received in November 2019, indicated heavy alcohol consumption. The father does not challenge the accuracy of those results; I set out his case in respect of his drinking below.

The historical evidence

118. The historical evidence includes:

- a. Documents from the 2013/2014 proceedings relating to the mother's older children, including the judgment of HHJ Brasse at the conclusion of the fact-finding hearing.
- b. Local authority records relating to the three s47 investigations into injuries to B, the father's older son, in December 2014, December 2015 and January 2016.
- c. Documents from the first set of care proceedings relating to A, including a parenting assessment of both parents during the course of which the historical concerns about both parents were explored.

The evidence of the lay parties, witnesses and intervenors

119. Before considering the evidence of each of the lay witnesses I make the preliminary observation that all witnesses were describing events that had taken place at least a year prior to their evidence, and in some cases up to three years previously. Some of those events (for example contact handovers, trips to nursery and visits to family members) were not inherently memorable and took place frequently over the relevant period, increasing the scope for confusion between different occasions.

120. It is not surprising therefore that there were many inconsistencies between the lay witnesses' accounts, and internal inconsistencies between the written and oral evidence of some of the witnesses. It is my view that the majority of the inconsistencies on issues such as the people who were present on a particular occasion, or the detail of a conversation, are attributable to the fallibility of memory and the lapse of time and have little relevance to my assessment of credibility.

The mother

121. The evidence in this case is voluminous and complex; in particular, the photographs of A's injuries are numerous and sometimes difficult to distinguish from each other, and the dates attributed to some of them were initially inaccurate and not corrected until the fourth day of the trial. The trial was therefore evidentially complex even for the legal representatives; more so for the lay parties, and particularly so for the mother. She required frequent breaks and from time to time the intermediary advised me that she would be unable to manage any further evidence that day. As a result her evidence spanned four days of the hearing.

122. The mother's evidence needs to be considered in the light of the expert evidence in relation to her cognitive functioning. In that respect I have an unchallenged cognitive assessment and psychological report prepared by Dr Latif in December 2019. The results of cognitive testing placed the mother within the borderline range of intellectual functioning. Her verbal comprehension and working memory were particularly weak, while processing speed and perceptual reasoning were in the low average range.

123. I am satisfied that the mother's cognitive difficulties made it much more difficult for her (a) to comprehend the evidence presented during the hearing and (b) to give a detailed, coherent and time-specific account of past events. Dr Latif's evidence is that the mother's verbal comprehension scores '*indicate that she may have only a surface level approach at times, which means that understanding at a deeper level, gaining inference and understanding abstract issues and concepts and being able to reason may not always be possible.*' She added that the mother's functioning was likely to be further impaired by emotional distress.

124. My assessment of the mother's credibility and reliability takes into account Dr Latif's evidence.

125. The mother's credibility was clearly in issue during the proceedings and I have reached the conclusion that there were occasions when she lied during the course of her evidence, in the sense that she told me something she knew to be untrue. It has, however, been relatively straightforward to discern the motivation behind many of the mother's lies, most of which were naïve (in the sense that a more calculating person would easily foresee the likelihood of being caught out). For example:

- a. The mother adamantly rejected the suggestion that her own father (maternal grandfather) had threatened the father, although the maternal grandfather had accepted a police caution for doing so. I formed the view that the mother's motivation, in this instance, was what is termed in *Lucas* 'misplaced loyalty': in the mother's mind, to accept fault on the part of her father, who is clearly a significant and supportive figure in her life, would be disloyal to him and that feeling overrode her motivation to tell the truth.
- b. The mother initially told the court that her relationship with XX had ended in October 2019, although she was forced to admit, after evidence had been filed by the father exhibiting relevant messages between the mother and XX, that they had an ongoing

sexual relationship until the summer of 2020. In this instance, the mother lied out of shame and embarrassment: she knew that at the outset of the proceedings the local authority were suspicious of XX and that she would be seen in a more positive light if she said that the relationship had ended. I do not consider that the mother really understood why the local authority were disapproving of her relationship with XX (and indeed, as the evidence at this hearing has demonstrated, the relationship was for the most part a positive and mutually supportive one).

126. The mother's suggestibility was also apparent during her evidence, despite the hard work of both intermediaries. On occasion, particularly towards the end of her evidence when she was tired, the mother gave new answers to questions which she had been unable to answer earlier in her evidence, and I was not convinced that the mother was really speaking from her own memory. I am satisfied that she did this out of a desire to be helpful, but this tendency gave me a further reason to be cautious about some of her evidence.
127. Despite these features of her evidence, I formed the view that the mother was fundamentally an honest witness, particularly when it came to the key issues with which the court is concerned. I formed the view that she took these issues seriously and was doing her best, within her limitations, to give me a full and honest answer. Her admission that, without meaning to, she might at times have handled A so forcefully as to leave a bruise was the most obvious example of this. Despite all her difficulties, I consider that the mother was motivated to be honest and to assist the court.
128. The mother's evidence also demonstrated the difficulties that she faces in everyday life, and particularly in foreseeing the consequences of events. An example was her account of bruising which A sustained to her eye in January 2018, after banging her head on a metal pole when jumping up and down on the bed. The mother told me that she had been in the room while A was jumping up and down but did not think there was any risk: as she explained, 'It's a bed so I didn't think it was dangerous'. Similarly, in October 2018 A fell on the way to nursery because she wanted to walk down some stairs; it was clear from the mother's evidence that she had not foreseen the need to hold A securely as she went down the stairs.
129. The mother accepted in her oral evidence that at times she struggled to manage A's behaviour. Her evidence was that A frequently had tantrums, up to four times a week. The nursery did not find A's behaviour unusually challenging for a three-year-old, and the social worker observed the mother struggling to communicate effectively with A. The mother said that sometimes when A wanted to run off or was having a tantrum, she would pick her up to restrain her; on these occasions A would 'wriggle' and try to get down. The mother said she found this behaviour embarrassing and difficult to deal with.
130. The mother's evidence suggested that while she was devoted to A and well-motivated to care for her to the best of her ability, she sometimes struggled to adapt her parenting strategies to manage A's changing needs.

The father

131. The father was a poor historian generally, telling me that he often had difficulty remembering things. Although I accept that the father was genuinely unable to remember whether or not he had seen each of the individual bruises with which A had presented, I was not convinced that the father's memory was always to blame for his failure to give a full account of

events. I noted that it was particularly when challenged about inconsistencies in his account that he became evasive and had a tendency to blame his poor memory.

132. There is a substantial and unchallenged history of the father causing injury to others, whether deliberately or not. In summary:
- a. in July 2011 he smashed a pint glass over another man's head in a pub and was subsequently convicted of wounding;
 - b. he has accepted that in a previous relationship he became frustrated with his partner and pushed her to the floor; in this and in the previous incident the father accepted that alcohol had been a factor;
 - c. he has accepted causing bruises to his older son B on several occasions during rough play;
 - d. he has accepted causing bruises to two former partners during "playfighting"; in her own evidence XY confirmed that he had done so to her as well, although the father has never volunteered this.
133. The father also has a history of excessive alcohol use, as demonstrated by his liver function test results. In his evidence the father accepted that his usual pattern when drinking was to drink up to 6 cans of beer two or three times a week.
134. There is therefore a history which indicates that the father has at times posed a risk of physical harm to those around him including children in his care; and that alcohol has been a relevant factor in some of his past behaviour. I acknowledge that the father has not been convicted of any violent offence since 2012 and there are no reports of abuse in his current relationship. It is also important to record that the father's unchallenged evidence is that the results of his liver function tests (received during the course of these proceedings) operated as a wake-up call and that he has barely drunk alcohol since.
135. Despite this unchallenged history, I found the father very reluctant to acknowledge the harmful aspects of his past behaviour. He was anxious to characterise his drinking as making him "tipsy" as distinct from "paralytic", and described himself as becoming "silly" after drinking when the evidence indicates that when drinking he could be aggressive. He said to me, when speaking of his former levels of drinking, " I don't drink more than your average person; if anything I drink less". He was, in my judgement, strongly motivated to excuse himself and even when apparently accepting responsibility (for example for failing to act on his knowledge of A's injuries) his account was vague and, in my judgement, unconvincing.
136. The father's tendency to minimise his own behaviour, combined with his general unreliability as a historian, mean that I must be cautious in relying on his uncorroborated evidence.
137. The father denied ever 'play fighting' with A, although he accepted regularly doing so with both B and XY's son, E. He said he would not play in that way with A because she was a girl and 'tiny'. Given that physical play forms a significant part of the father's relationships with family members, and that A is said to be an active child who enjoys physical play, I find it difficult to accept this part of the father's evidence.
138. The father's explanation for his failure to report A's injuries, even when urged by XY to do so, was that he was concerned that this would result in the mother stopping his contact with A. I found it difficult to understand this explanation, given that the father failed to tell the local authority about the photographs even after the first child protection medical, when he knew that the local authority was concerned about bruising to A, and the second when he had voluntarily ceased contact with A in any event. Even if the father's explanation is correct it displays a remarkable level of self-interest, in that the father, on his own case, was apparently

prepared to allow his child to continue to suffer regular bruising injuries so that he could maintain contact with her.

XY

139. XY's evidence, supported by that of the father, was that she was very concerned about the multiple injuries she observed on A's body during her contact visits. She said that she repeatedly urged the father to take steps to protect A, either by seeking medical help or by reporting the injuries to the local authority, but that he was extremely reluctant to do so until September 2019.
140. There is evidence in the bundle in relation to XY's own parenting which appears to be of a good standard. No concerns have been raised about the care of either of her two children. The parenting assessment carried out of XY and the father as a couple includes positive observations of XY as a parent. She is, I am satisfied, a competent and conscientious mother who was anxious to do her best for A.
141. XY's evidence was that she had taken photographs on each occasion when she observed injuries to A that she believed had been caused in the mother's home. She said that on the one occasion when A sustained an injury in her home (the occasion when A was hit by the box) she knew what had happened and so there was no need to take a photograph.
142. XY denied that A had sustained any other injuries (aside from the injury to her eye) in her home. It transpired during the course of the evidence, as I set out below, that there was at least one occasion (the weekend of 31 August – 3 September 2019) when other injuries were sustained at the father's home. It would be unlikely if that were the only occasion, given the general evidence as to A's clumsiness. Even accepting that XY was alert to the possibility of A injuring herself and took steps to prevent it, it is highly unlikely given the considerable amount of time which A spent at the father's home that she never tripped and fell or otherwise injured herself. It is more likely, in my view, that XY was alert to evidence of injury sustained in the mother's home but did not seek to record or document, and possibly did not notice, injuries sustained elsewhere.
143. XY admitted when asked that the father had caused her bruises during the course of play fighting. She denied having seen him play fight with A.
144. Overall I found XY to be an honest witness and someone who was strongly motivated to provide a good standard of care to A. She was, however, too inclined in my judgement to follow the father's lead in minimising his drinking and its effect on him, and his physically boisterous behaviour. Although I do not consider it likely, if she had directly observed A sustaining a significant injury at her father's hands, that she would lie about this, she was in my view predisposed to put a positive spin on the father's behaviour and as a result did not recognise the risks that it posed.

XX

145. As the evidence emerged it became clear that XX's role in A's life was limited. He did not fully cohabit with the mother, although he stayed regularly at her home, and during the week he was working and out of the house for most of the day. He did play a role in communicating with the father about contact arrangements on the mother's behalf, and in the contact handovers, but was rarely ever alone with A himself and undertook almost none of her day to day care.

146. The mother made some allegations during the course of her parenting assessment about some low-level controlling behaviour by XX towards her. Having heard both parties' evidence I am satisfied that this was not the case. I do not consider that the mother really had concerns about XX at the time (and she was of course in an ongoing intimate relationship with him) and I suspect that she said what she did in order to convince the assessor that the relationship was at an end. XX's comment about this was perceptive and, in my view, generous: he said, 'I think she's scared about how people might perceive it... she didn't want to be perceived as putting a man before her daughter.'
147. There are some suggestions in the mother's written evidence that XX may on occasion have tickled A too hard, or otherwise handled her in such a way that might have caused bruising. That evidence was not supported by the oral evidence of any of the parties, including the mother herself. I am satisfied that the mother included those suggestions in her written evidence because she was trying to come up with possible explanations for A's injuries. She did not maintain them with much conviction in her oral evidence.
148. XX was, on the whole, a reliable witness. He initially denied that the mother smoked cannabis, which I am satisfied he did in order to protect her. He was positive about A's relationship with the mother, describing her as 'almost like A's happy place if that makes sense.'
149. XX gave some relevant evidence about the rape allegation which I set out later in this judgment.

The mother's brother

150. The mother's brother gave evidence in respect of the rape allegation made by the mother against the father in 2017. The mother's brother was aware of the allegation at the time and accompanied the mother to the police station to report it.
151. The mother's brother's memory of the events of 2017 was not complete, although as he was asked questions he was able to remember a little more. I am satisfied that the mother's brother was, on the whole, an honest witness who was doing his best to assist the court, although the lapse of time means that it is likely that the witness statement he gave to the police in 2017 represents the most accurate statement of his evidence. His evidence broadly corroborated, but was not identical to, the mother's.

Injuries to A: preliminary discussion of the evidence

152. It is accepted that any one of the injuries to A is capable, particularly when considered in isolation, of being explained as an accidental injury.
153. The first injury on which the local authority seeks a finding is recorded in a photograph taken on 13.7.18. A was removed from her parents' care on 19.9.19, which is the relevant date for threshold purposes. The findings sought by the local authority span a period of fourteen months.
154. Evidentially, the following injuries, on which the local authority does not seek findings, are also relevant:
- a) a series of bruises and similar marks observed by nursery staff between January 2018 and October 2019 at the two nurseries which A attended over that period. Some of these were sustained in accidents which were witnessed by staff. The local authority does not seek findings in relation to any of these injuries, but their prevalence is relevant to the question of whether other bruising, in respect of which findings are sought, was caused accidentally or non-accidentally.

b) injuries which were the subject of two further child protection medicals which took place on 31.10.19 and 5.2.20, after A was taken into care and placed with her grandfather.

155. From the start of A's time at nursery (January 2018), each professional with whom she came into contact was alert to the possibility of neglect or non-accidental injury, as a result of what was known about her parents' history and, as time went by, about the ongoing concerns about bruising. The manager at nursery one told me that Nursery one knew about A's older siblings' history, and so were aware of her as a potentially vulnerable child from the time when she started at nursery. The Deputy Head Teacher and Designated Safeguarding lead said that nursery two staff knew there had been concerns at nursery one. After the first child protection medical was carried out in June 2019, the Deputy Head Teacher and Designated Safeguarding lead said that she asked the nursery staff to inform her of every incident relating to A and every mark, however minor, that they noticed on her.
156. It was therefore the case, in my judgement, that injuries to A were more likely to be noticed, and once noticed were more likely to be given significance, than the same injuries to a different child. I emphasise that it was of course entirely appropriate for all professionals to take into account the history when raising concerns about the possibility that A may have been injured non-accidentally.
157. In considering the likelihood of any particular injury having been caused non-accidentally, I must of course take into account the inherent probabilities. As a general rule, when a child presents on multiple occasions with injuries which are highly suggestive of non-accidental injury, and for which the parents have no explanation, the probability that some or all of those injuries were caused non-accidentally is greater than if a similar injury were observed on only one occasion. There is also a greater probability of injuries being non-accidental where the parents both have a history of involvement with child protection services, particularly in the context of physical abuse, than where this is not the case.
158. However I must also bear in mind, particularly when analysing the expert evidence, that there is a risk of compounding or overweighting the inherent improbability factor. In other words, if Dr Ojo has already factored in the inherent improbability of A sustaining accidental bruising to (for example) the buttocks on several different occasions, and this has contributed to her overall conclusion that each incident of buttock bruising is more likely than not to be non-accidental, I should not add the inherent improbability of an accidental cause as a further factor, in addition to the expert evidence, supporting a conclusion of non-accidental injury.
159. It is therefore particularly important in this case that I should carry out a wide-ranging survey of the entirety of the evidence, both lay and professional, before coming to conclusions as to the causation of the injuries in the local authority's schedule of findings.

A's injuries

160. I intend to summarise the evidence in relation to each injury and then to review the evidence as a whole before I turn to my findings. I include within this summary those injuries on which the local authority does not seek findings. The purpose of this is to give a comprehensive overview of the injuries that A is recorded to have suffered over the relevant period.
161. When the local authority drew up its initial schedule of allegations during the course of these proceedings, the evidence was incomplete and in particular the dates of the photographs provided by the father and XY were not always known; in some cases the dates suggested have proved not to be accurate. As the evidence was collated further versions of the schedule were

prepared, resulting in a situation where the final composite schedule produced by the local authority (dated 18.1.21) lists A's injuries in a non-chronological order.

162. In an attempt to make this judgment more easily comprehensible I have set out the injuries A sustained in chronological order. I have included references to the local authority's numbering from the composite schedule. I hope this makes this judgement easier to understand, rather than adding to the confusion.
163. Where injuries were sustained at the same time and in similar areas of the body, I have generally grouped these together.

Injuries sustained at or reported to nursery, January – July 2018 (no findings sought)

164. These injuries are recorded in the records kept by nursery one. They are as follows. None were considered at the time to be a cause for concern and none resulted in any further action being taken by the nursery.
- a. 22.1.18 – bruise to eye after banging head on metal pole (reported to nursery by M);
 - b. 13.3.18 – graze to forehead after a fall (reported to nursery by M);
 - c. 16.5.18 – bump to head and graze to nose (sustained at nursery but injury not observed);
 - d. 11.6.18 – cut to left forehead after running into a table (reported to nursery by M);
 - e. 5.7.18 – bump to forehead after hitting head on the way into nursery (reported to nursery by M).

Injury recorded on 13 July 2018 (composite schedule 25)

165. This is a bruising injury photographed by XY on the train during the journey from the mother's home to the father's.
166. The site of the bruising was originally said by the father and XY to be A's arm. They have both however said in their oral evidence that in fact the photograph shows A's shin.
167. The bruising is in a cluster and Dr Ojo's original evidence, when told that the limb was A's arm, was that it looked like a grab mark. When put to her that it was in fact the shin, her evidence was that this would mean the injury was much more likely to have been caused accidentally, the shin being a common site for such bruising in children of A's age.
168. The evolution of the evidence in respect of this injury has puzzled me a little. My own first impression (to which I give little weight) was that the limb looked more like an arm than a leg; and it was originally identified as an arm by the father and XY, in a schedule of photographs prepared on their behalf during the proceedings. This was the first occasion when a photograph was taken, shortly after staying contact commenced, and so at that point I assume the level of suspicion on the father and XY's part was fairly low; it would therefore require something out of the ordinary for them to notice and to take a photograph, and they would in my judgement have been unlikely to be concerned if they had seen this bruising on A's shin.
169. However, it is now accepted by the local authority that the location of this bruise is A's leg and as a consequence the local authority simply pleads this injury as part of its overall allegation of inadequate supervision of A by (in this instance) the mother.

Injuries recorded on 31 August 2018

170. The evidence in respect of injuries sustained on or prior to this date consists of photographs taken by XY at about 7.30pm on 31.8.18. This was the start of a contact period. The evidence of the parents was that A was usually collected for contact by her father in the afternoon, and arrived at his home (the journey taking about two hours) in the early evening.

171. It is possible that the injuries recorded on this occasion occurred on the journey to the father's home or while A was in the father's and XY's care, but more likely they were present when A was picked up from the mother's home.

a) Injuries to the back and buttocks (composite schedule 26)

172. The photographs show three injuries: a large bruise on left side of the lower back; a bright red mark at the upper aspect of gluteal cleft; and small red spots on the central aspect of the left buttock.

173. Dr Ojo's evidence was that these injuries were 'highly specific for non-accidental injury' as a result of their location.

174. None of the lay parties has given an explanation for these injuries. The mother says that she was told by XY at the time that A had said down hard on a potty. XY denies having said that and in any event Dr Ojo did not consider that this would provide a feasible explanation. I do not consider that the mother is fabricating the conversation with XY; she has not otherwise sought to fabricate an explanation for A's injuries but has said simply that she does not know how they were sustained. It is more likely in my view that the mother has misunderstood or misremembered a conversation.

175. The lack of explanation for these injuries is concerning. The parents have suggested that the red mark at the upper gluteal cleft may be dermatological, but Dr Ojo considered such an explanation to be unlikely: if it were, she would have expected the surrounding skin to be inflamed.

b) A bruise/faint brown area on the inner left thigh (composite schedule 29).

176. The shaded area of skin shown in this photograph is faint and it is not clear whether this is a bruise or simply shadowing. XY told me she remembered seeing a bruise in this area and it is likely that she did see something which prompted her to take the photograph.

177. The inner thigh is an unusual location for a bruise although I bear in mind children do injure themselves in a variety of different ways (and on a separate occasion A sustained an injury to her genital area when she fell straddling a bar of a climbing frame at nursery).

c) bruising to the shins (composite schedule 29)

178. As with other shin bruising, the local authority does not allege that this bruising was deliberately inflicted but suggests that these injuries form part of the body of evidence supporting its allegation of a lack of supervision by one or both parents.

d) red mark on the right side of the forehead (composite schedule 28)

179. This mark is in a common location for accidental injury to children of A's age. None of the lay parties are able to give an explanation for how it occurred, although the mother made a tentative suggestion in her written evidence that this injury might have been sustained when A tripped and hit her head on a concrete path. In her oral evidence the mother struggled (understandably) to distinguish this incident from others when A had tripped and fallen.
180. The local authority relies on this injury in support of its general allegation of a lack of supervision. It points out that there are a number of different occasions on which A has presented with head injuries, including the injuries reported to the nursery. While acknowledging that young children frequently bump their heads, the local authority alleges that the number of head injuries sustained by A over this period was excessive.
181. The mother gave evidence that on one occasion, although she was not sure of the date, she had accidentally opened a door when A was on the other side, hitting her head. It is not possible to know whether this injury relates to that occasion, although the fact that the mother spoke to XY about the 'door' incident suggests that the bruising caused on that occasion was observed, and presumably recorded, by XY.
182. The local authority invites me to find that whenever it took place, the occasion when the mother opened a door on A was an example of the mother acting recklessly and/or failing to supervise A (in the sense that the mother was not aware of where A was in the flat). I decline to do so. This is, in my judgement, the kind of accident that can happen in any home and it is not reasonable to expect the parent of a three-year-old to keep them in eyesight within the home at all times.

Injuries sustained at or reported to nursery, August – December 2018 (no findings sought)

183. On 19.10.18 the nursery recorded redness to A's nose after a fall on the way to nursery, reported by the mother on arrival at nursery.
184. On 6.11.18 the mother reported to the nursery that she was concerned the father may have sexually abused A. A's genital area was sore and she was seen at hospital.
185. On 12.11.18 A fell across a bar of a climbing frame at nursery, hurting her genital area. The nursery called the mother who took her to hospital.

Injuries recorded on 26 December 2018

186. The following injuries are recorded in photographs taken by XY at about 2pm on Boxing Day, 26.12.18. The parties agree that A had spent Christmas with the mother and had gone to her father shortly after lunch time on Boxing Day. It is not clear exactly when, prior to Christmas, A last spent time with her father; although it is agreed that if contact was suspended after the allegation of sexual abuse (which is not clear), it was not for any lengthy period of time and had resumed well before Christmas.

a) bruise to the right side of the forehead (composite schedule 47)

187. It is possible that this bruise, which is another forehead injury, is the bruise which was sustained when the mother opened a door and hit A. The local authority alleges that this bruise, together with the other head injuries, supports its case in respect of a lack of supervision.

b) bruising to right and left arms (composite schedule 30)

188. The photographs show a cluster of small bruises on each of A's arms, around the elbows. Dr Ojo considered that the marks were likely to be grab marks. That was also the view of Dr O'Neill, who was shown these photographs by the social worker at the child protection medical in September 2019.
189. Dr Ojo's evidence was that in a child without an underlying medical condition, any hold forceful enough to leave a bruise would be considered significant and over and above normal handling.
190. The mother accepted that it was possible she had caused these bruises when trying to restrain A. She admitted that there had been occasions when A was having a tantrum when she would pick her up to restrain her and would hold her tightly because she was 'wriggling'. She had also, on occasion, grabbed A to stop her from running off. In her oral evidence the mother described at least one occasion when she had apologised to A for squeezing her too tightly.
191. The local authority says therefore that these bruises were inflicted on A by the mother grabbing her by both arms with considerable and excessive force.

Injuries sustained at or reported to nursery, January – July 2019 (no findings sought)

192. The following injuries were recorded by nursery two between A's start there in January 2019 and June 2019:
- a. 21.1.19 – bruise to left cheek; the mother told nursery it happened in the father's home.
 - b. 4.2.19 – scratches to forehead caused by dog at grandfather's home (reported by the mother to nursery)
 - c. January or February 2019 – red mark to forehead; when asked by nursery staff how it happened A said 'mummy door'; the mother told the nursery A had walked into a door. It is possible that this is the bruise photographed by XY on 26.12.18; if so, the mother's explanation to the nursery appears to have been a little less than frank, but the evidence overall on this issue is too vague for me to make any finding.
 - d. 19.6.19 – cut to lip after bumped on a bench at nursery garden.
 - e. 2.7.19 – cold compress applied after A poked her cheek with a doll at nursery.
 - f. 15.7.19 – red mark and bump to right arm, sustained during outdoor play at nursery (mechanism not recorded).

Injuries observed at nursery on 26 June and at the child protection medical on 27 June 2019

193. A stayed with her father and XY, as usual, over the weekend of 21 – 24 June 2019. She was cared for by her mother between 24 and 26 June.
194. On 26.6.19 the nursery observed two thin yellow lines and a fresh red line on the lower right side of A's back, above the knicker line. When asked by nursery staff what had happened, A is recorded to have said, 'mummy did it' or 'mummy kicked' (the records indicate that the staff member was unable to distinguish clearly what exactly was said).
195. A child protection medical took place on 27.6.19. The following injuries were recorded.

a) bruising to the left arm, left shoulder and lower back (composite schedule 1 – 3)

196. The shoulder and arm injuries were observed at the child protection medical. They are described as a fading light brown bruise over the left deltoid, approximately 4mm in diameter; and a bruise measuring 1 x 1.5cm on the back of the left elbow.
197. The examining doctor recorded an ill-defined bruise on the right lower back, measuring about 3cm x 1cm. This is presumably the same mark as noted by nursery staff the previous day, although the description differs.
198. The mother has given an explanation for this group of injuries. She has said that the previous week A had tripped over a bag in the hall near the stairs in her grandfather's home. At the child protection medical she said that she did not see the fall but when she went to pick A up she saw reddening to her left cheek and shoulder. She had not noticed the bruising to the back.
199. In her witness statement the mother said that she had found A with her back against the stairs and so assumed she had hit her back on the staircase.
200. The mother gave a fuller account of this incident in her oral evidence and it is right to say, as the local authority points out, that there are some inconsistencies between the different accounts she has given; the most significant being that in her oral evidence for the first time the mother said that A had 'twisted' during the fall, and that she had seen an injury to A's back shortly after the fall and had noticed a bruise the next day.
201. The local authority accepts that the shoulder and elbow injury were caused during the fall, and alleges that they are attributable to a lack of supervision by the mother. As for the back injury, the local authority alleges that this was inflicted by the mother, relying on the inconsistencies in the mother's evidence and also the apparent allegation made by A to nursery staff that her mother had caused this injury.

b) bruising to the left thigh (composite schedule 4)

202. At the child protection medical, Dr Dipali recorded four bruises on the upper left thigh, between 0.3cm and 1cm in diameter. The explanation given by the mother during the examination was that these had been caused accidentally when A bumped into things; the examining doctor noted that although the bruises were in an atypical location for accidental injury the mother's explanation was possible given the history of frequent falls.
203. The local authority alleges, in the light of the subsequent evidence, that these bruises were caused by the mother during rough handling; alternatively, they were caused due to lack of supervision by a parent or carer.

c) bruising to shins and knees (composite schedule 5)

204. The local authority accepts the medical evidence that the location of these bruises makes it more likely than not that they were caused accidentally; but alleges that the high number of bruises sustained on this and other occasions points to a conclusion that many of the injuries are attributable to a lack of supervision on the part of the person caring for A.

d) bruise to the dorsum of the right foot (composite schedule 6)

205. The mother suggests that this injury was caused the night before the child protection medical when A was staying with her paternal aunt. She says that the paternal aunt told her that

A had kicked the table while at her home. The mother did not give this explanation at the child protection medical.

206. Dr Ojo said that the location of the bruise made an accidental cause from a fall unlikely. Blunt force trauma was a possible cause, as was ill-fitting footwear.
207. Similar bruises have been observed on A's feet on other occasions. At the child protection medical in February 2020 (referred to later in this judgment) A was recorded as having bruises to the dorsum of both feet. On that occasion the examining doctor considered that the most likely cause was the 'bobbles' on A's shoes.
208. The local authority does not suggest that ill-fitting footwear is a plausible explanation on this occasion, pointing to the fact that none of the lay parties raise this as a possible cause. The local authority alleges that this bruise was sustained as a result of a lack of supervision by the person caring for A.

Injuries recorded on 5 July 2019

209. The photographs taken of A's injuries on this occasion were taken by XY just after 4pm on 5.7.19, shortly after A arrived at the father's home at the start of a contact visit. A had been with her father on the weekend immediately after the child protection medical (28 – 30 June) and then with her mother from 30 June – 5 July.
210. As I have already observed, the father's failure to notify the local authority of the bruises with which A presented on this occasion, just a week after the child protection medical, is difficult to explain.

a) Large bruise to the shin; diagonal bruise across the right upper thigh (composite schedule 31, 32)

211. It appears that neither of these bruises were present at the child protection medical on 27.6.19. Both are of a significant size. The examining doctor observed a number of bruises to the shin on 27.6.19, but none is recorded as being of a significant size. Similarly, the thigh bruise is not recorded as having been present during the child protection medical and it is unlikely, given its size and location, that it would have been missed.
212. The local authority seeks a finding that both of these bruises were inflicted; it is the local authority's case that this is the more likely explanation, given the nature of the injuries and the absence of any explanation from A's carers. Alternatively, the local authority pleads a lack of supervision. It alleges that the injuries could have been sustained in either home.
213. The bruise to A's thigh in particular is very concerning. Dr O'Neill (who was shown the photograph on 18.9.19) described it as 'very suspicious', explaining that a bruise of this nature indicated a blunt linear trauma. Dr Ojo considered it likely to have required significant force, such as that involved in a fall from a significant height onto a hard object with a blunt edge. Her view was that this was an injury which demanded an explanation from the carers.
214. The mother suggests that a possible explanation for this bruise is that A may have fallen off, or onto, her scooter. This was an explanation offered during the course of the mother's oral evidence, and she did not initially suggest it as an explanation for this bruise. Her initial response when asked about the bruise was that she could not remember how or when it had happened; she then said that she had seen it after A returned to her care from the father's home.
215. The father was also vague about whether or not he remembered seeing the bruise. He acknowledged that the photograph indicated a large and significant bruise.

216. In her oral evidence XY suggested that she had phoned the mother to ask for an explanation of this bruise and that the mother had said A had walked into a table at nursery. As this evidence was given for the first time in XY's oral evidence it was not put to the mother, who had given her evidence first. I give little weight to this suggestion.
217. It is important to record that in my view this injury was of a size and significance to have raised real and serious concerns in the mind of any responsible carer who observed it.

Injury recorded on 8 July 2019 (composite schedule 34)

218. On 8 July 2019 XY took a photograph of a bruise to the dorsum of A's left foot. A had remained with her father and XY from 5 to 8 July; XY explained that she had not noticed the bruise to the foot until shortly before A left to return to nursery on the morning of 8 July.
219. The appearance (size and location) of this bruise is similar to that of the bruise observed on the right foot at the child protection medical on 27 June, and the bruising later observed to both feet in February 2020, after A had been removed from her parents' care.
220. Dr Ojo's evidence in respect of the likely cause of this injury was in line with her evidence in respect of the right foot injury observed at the child protection medical on 27.6.19.
221. The local authority seeks a finding that this injury was inflicted, in line with the finding sought in respect of the earlier injury to the right foot; or, alternatively, that it was caused by a lack of supervision.

Injuries recorded on 19 July 2019

222. These injuries are evidenced by photographs taken by XY on 19 July 2019 at about 8pm.

a) injuries to A's right hand (composite schedule 35 and 37)

223. The photographs show injuries to the fingers of A's right hand. There is no dispute as to the mechanism of these injuries. They were caused when A's hand was shut in a door at the maternal grandfather's home. The local authority alleges that the mother is responsible for the injuries because she failed to supervise A or to take appropriate care.
224. The mother has consistently said that A's hand was shut in a door, but has given different accounts of exactly how the injury happened. XY says that at the time the mother told her that G (S' son) had shut A's hand in the door. In her written evidence the mother gave only a brief explanation that A's hand was shut in a door. In her oral evidence the mother said for the first time that it was she herself who closed the door on A's hand because she did not see that she was there. It seems most likely that the mother's account in oral evidence is true, and the mother lied to XY at the time the incident happened because she was ashamed and embarrassed to have caused the injury herself.
225. The local authority says that, assuming the mother's account in oral evidence is correct, she was responsible for A's injuries because if she was not aware that A was behind the door she could not have been supervising her adequately.

b) bruising to the right wrist (composite schedule 36)

226. The photograph shows a thin circular bruise running around A's right wrist.

227. The mother has given an explanation for this injury. She says that it is likely that she caused it while holding A's hand under the cold tap immediately after her fingers were shut in the door. A was pulling away and the mother explained she was trying to keep her hand under the tap for as long as possible.
228. It did not seem to occur to the mother that if A was resisting there might have been other ways of managing her injury aside from forcefully holding her hand under the tap.
229. Dr Ojo's evidence was that she would not have expected a parent trying to comfort an injured child to hold them with such force that this would itself cause another injury.
230. The local authority seeks a finding that this injury was inflicted by the mother who used excessive force.

c) bruising to the outer aspect of the right lower leg (composite schedule 38)

231. Dr Ojo described this as a mark on a part of the leg where one would not normally expect to see a bruise. She characterised it as a 'linear' bruise and so suggestive, in the absence of an explanation, of a non-accidental injury.
232. I intend to deal with the evidence relating to this and the following two injuries together.

d) bruising to the left and right hip/ buttocks (composite schedule 40 and 41)

233. The photographs show similar-sized bruises on A's right and left hip/ buttocks.
234. The local authority relies on the medical evidence to the effect that bruising to the buttocks without any explanation is strongly suggestive of non-accidental injury.

e) bruising to the lower spine (composite schedule 42)

235. The photograph of this injury shows a spreading bruise over the coccyx. The local authority relies on the medical evidence to the effect that bruising in this area is rarely seen in non-abused children.
236. There is no clear explanation from any of the lay parties for the injuries to A's leg, buttocks or lower back. The mother said that the father had told her that XX said A had fallen in the bath. The father denied this but said that he had had a conversation with XX, on a different occasion, about how A got in and out of the bath. XX said that he had never bathed A himself but he remembered the mother saying something to him about a bump in the bath and that he had passed that on to the father.
237. The local authority seeks a finding that injuries (c), (d) and (e) were inflicted by one of the lay parties or intervenors or, in the alternative, caused as a result of inadequate supervision. It points out that these photographs were taken relatively late in the evening on 19 July and so it is possible that the injuries were sustained earlier in the day at the father's home.

f) bruise to the left forearm (composite schedule 43)

238. The mother gave an early explanation for this injury. In her original response to the local authority's schedule of findings she said that she had caused this injury by grabbing A. In her oral evidence she appeared not to remember this injury. The local authority says that the mother's

written response is more likely to be accurate and seeks a finding that this injury was inflicted by the mother as a result of over-forceful handling.

Injuries recorded on 30 August 2019

239. The photographs taken on this occasion were taken by XY at about 2pm on 30.8.19. XY's evidence was that this was shortly after A arrived at the father's home.
240. Prior to 30 August A had not spent time with her father since 28 July. It appears that at the handover she was reluctant to go with him and he picked her up. In her written evidence the mother suggested that this might have caused some of the bruises which were observed on this occasion, but the description that the father, the mother and XX (who was also present) all gave in their oral evidence of how the father did so did not suggest that he used unusual force.

a) bruising to the right and left thigh (composite schedule 27 and 45)

241. The photographs show a number of bruises on the upper part of both the right and left thighs. The medical evidence is that this is an unusual area for accidental bruising. Dr Ojo observed that one of the bruises on the left thigh appeared 'irregular... like round bruises that have merged' and suggested a blunt injury from a forceful hand grip or a forceful injury with a fist as a likely mechanism.
242. The bruises on both thighs appear in a cluster; on the right thigh there are four round bruises. The medical evidence is that clustering of bruises is more likely to be seen in physically abused than in non-abused children.
243. Dr Ojo suggested that if A had not spent time with her father for a month before the bruising was observed it was unlikely to have occurred in his care, although she could not rule out the possibility that the bruising was a month or more old.
244. The mother suggested for the first time in her oral evidence that these bruises could have been caused when A was lifted into or out of a paddling pool where she had been playing earlier in the day. She denied grabbing A forcefully and said she had not seen the bruises before A left to go to her father's.

b) red marks and scabbing to the knee (composite schedule 46)

245. The medical evidence is that the location of these injuries makes it likely that they were caused in an accidental fall or falls. The mother said that this was the case, although she said that A fell so often that she could not remember the details.
246. The local authority seeks a finding that these marks were caused as a result of a failure on the mother's part to supervise A. It acknowledges that children of A's age frequently present with grazing to the knee but argues that the frequency with this occurred to A indicates that the mother was unable to provide her with the level of supervision that she required.

Injury caused on 31 August 2019

a) scar and bruise to the right eye (composite schedule 7 and 8)

247. This injury was recorded at the child protection medical on 5.9.19. There is no dispute that it actually occurred on 31.8.19.
248. There is a detailed explanation for this injury, which happened in the father's home. XY says that she was clearing up at home and threw a cardboard box into the bedroom as A came running towards her. She and the father put a cold compress on the injury and telephoned the mother to inform her of what had happened. When A returned to her mother the father provided her with a letter to give to the nursery (written by XY but signed by him) which explained the incident.
249. The medical witnesses were invited to comment on this injury and did so, but on this occasion I do not rely on their evidence: the issue is not the force required to cause the injury (it is accepted that a cardboard box thrown by an adult would cause the injury A sustained) but whether or not XY was unduly careless or reckless in her behaviour. That is not an issue on which medical expertise is required.
250. The local authority says that it is 'not acceptable' to throw objects across a room when children are running around. It seeks a finding that XY 'failed to protect A from physical harm' and was 'reckless'.
251. XY and the father say that this was a simple accident.

Injuries observed at the child protection medical on 5 September 2019

252. A returned to her mother's home on 3.9.17, at about 2.15pm, having spent the weekend (30 August to 3 September) with the father and XY. The mother spoke to the social worker to report the injury to A's eye and the social worker advised her to take A to the GP.
253. At 6pm that day the mother took A to the GP. As well as the black eye the mother reported that A had a rash. The GP observed a number of bruises to the right thigh and buttock, and raised a concern about possible non-accidental injury.
254. On 4 September A returned to nursery. A child protection medical took place on 5 September. The following injuries were observed.

a) bruising to the left and right arms (composite schedule 10)

255. The doctor carrying out the child protection medical observed two small bruises (0.5cm diameter) on the back of the left elbow, and one similar bruise on the right lower arm. I will deal with the evidence in respect of these injuries and the following two injuries together.

b) bruising to the buttocks and hip (composite schedule 11 – 14)

256. There were three similar bruises (up to 1cm in diameter) close together on the right buttock, and one a little apart on the right hip.

c) bruising to the right thigh (composite schedule 15)

257. There was a large (5cm x 0.3cm) linear bruise on the outer aspect of A's right thigh.
258. Dr Smartt-Williams, who carried out the child protection medical, recorded that the bruising to A's buttocks was 'highly suggestive of forceful grabbing by adult fingers'. In her oral evidence

she said that it was unlikely this bruising would have been caused by a fall onto a toy. The bruise to the front of the thigh was also unusual.

259. Dr Ojo considered that the clustering of bruises on the buttock/ right hip, an area that is rarely bruised accidentally, was more likely to have a non-accidental cause. As to the arm and elbow bruising, she acknowledged that this is an area that is not highly specific for child abuse, but observed that the cluster of injuries (two on the left elbow) was concerning and in the absence of a clear history these injuries were likely to be forceful grab marks.
260. The local authority says that it is unlikely that these bruises were present when A arrived at the father's home on 30 August; if they had been, XY would have photographed them and the photographs she did take, some of which were of areas close to the buttock and thigh, do not show any bruising. The local authority also says that it unlikely this bruising was caused in the short interval between A arriving back at her mother's home on 3 September and visiting the GP that evening. Therefore the local authority's case is that the bruising observed to A's arms and buttocks was caused in the father's home.
261. The local authority points to the evidence of the father participating in rough play and playfighting, including when he had been drinking. It does not suggest that the bruises were maliciously inflicted but alleges that they were caused by the father during rough play; it argues that in playing in this way with A despite knowing that his actions have caused bruising to others in the past, the father acted recklessly.
262. The local authority also alleges that the father and XY must have been aware of the bruising and that in failing to record it or to inform the mother or the local authority (in a period when there was already concern about A's injuries) they failed to protect A from harm.
263. Both the father and XY said that they had not seen the bruises and were not aware of how they had been sustained. XY was, in my judgment, a little evasive when asked about the level of the father's drinking at that time and the possibility that he might have injured A during the course of rough play.

d) a linear abrasion on the front of the left knee (composite schedule 9)

264. It seems likely that this is the same 'graze' that appears in the photograph taken by XY on 30 August 2019, and in respect of which the local authority says that the mother failed to ensure that A was adequately supervised.
265. The mother initially said in her written evidence that this graze was caused when A fell off her scooter. In her oral evidence it was apparent that she did not have a clear recollection of this injury (as was the case when she answered questions about the photograph taken on 30 August) and instead was recalling the many occasions when A had fallen from her scooter or injured herself while carrying it as she liked to do.
266. The local authority says that the mother's evidence supports its case that she was unable properly to supervise A, and allowed her to continue to use her scooter despite repeated falls and injuries.

Injuries observed at the child protection medical on 19 September 2019

267. Between 3 and 19 September 2019 A was in her mother's care and did not see her father or XY.

268. The child protection medical on 19.9.19 was arranged following the nursery referral and W's visit to the nursery the previous day.

a) abrasions to right and left knee (composite schedule 16 and 18)

269. These injuries were sustained in a fall when A left the GP surgery. The social worker W was present at the time.

270. The local authority says that these injuries form part of the wider allegation of failing to protect/ lack of supervision. Although of course the primary responsibility for supervising A on this occasion lay with the mother and not with W, W was present at the time and has not suggested that there was anything the mother could have done to prevent this fall.

b) Bruising to shins and thigh (composite schedule 19 – 21)

271. There were 6 bruises to A's right shin, two bruises on the right lower thigh, and one bruise on the left shin.

272. Despite A's comments to the nursery staff, the local authority does not allege that either the mother or XX deliberately inflicted these injuries. Instead it pleads these injuries within the broader allegation of a lack of adequate supervision.

c) bruising to both arms (composite schedule 17 and 23)

273. A had three linear abrasions and two small bruises, approximately 0.5cm in diameter, on the posterior side of her left elbow. There were also three small circular brown bruises, of a similar size, on the posterior aspect of the right forearm.

274. The medical evidence is that the location and size of these bruises is characteristic of non-accidental injury.

275. The mother gave an explanation for the bruises to A's arms. She said that she had caused them when grabbing A to prevent her from running across the road.

276. The local authority says that the mother failed to protect A by ensuring she held her hand tightly and did not run away; had she done so there would be no need to grab her.

d) bruising to right hip and lower back (composite schedule 22 and 24)

277. There was a small circular yellow bruise on A's right hip and a circular bruise, 0.5cm in diameter, on the right side of her lower back. Dr Ojo said that the location of this bruise was 'concerning'.

278. The mother told the GP on 18 September that A 'hit her back with a tree'. She told Dr O'Neill at the child protection medical the next day that A had fallen off a wall. In her written and oral evidence she maintained this account. The local authority points out that there are inconsistencies in the mother's evidence. It does not suggest that the mother inflicted the injury but seeks a finding that the mother failed to provide A with adequate supervision.

The child protection medical on 31 October 2019 (no findings sought)

279. The injuries recorded at the child protection medical on 31.10.19 were:
- a. Two bruises to the back;
 - b. One abrasion to the right foot;
 - c. One abrasion on the right upper leg;
 - d. One scratch to the right knee;
 - e. Three bruises to the right shin/ lower leg;
 - f. A scratch and bruise on the left knee;
 - g. Four scratches on the left shin.

The child protection medical on 5 February 2020 (no findings sought)

280. The injuries recorded on this occasion were:
- h. A bruise on the outer left thigh;
 - i. A bruise on the outer right thigh;
 - j. A bruise on the left shin;
 - k. A bruise on the right shin;
 - l. A bruise to the dorsum of the right foot;
 - m. Superficial abrasions to the left heel.

My findings on the disputed allegations: A's injuries

281. I remind myself that the burden of proof is on the local authority.
282. I must consider the entirety of the evidence, including the medical evidence, the historical documentary evidence produced by the local authority, the evidence from the nurseries A attended and the evidence of the lay parties. I must also consider the inherent probability or otherwise of the local authority's allegations.
283. I note in particular the following aspects of the evidence:
- a. Dr Ojo's evidence that while any one of the injuries, considered separately, was capable of being explained accidentally, considered as a whole it was much more likely that some of them had a non-accidental cause than that all of the injuries were caused accidentally.
 - b. The fact that of those injuries that in Dr Ojo's view were likely or very likely to have been caused non-accidentally, several had the appearance of 'grab marks', likely to have been caused by an adult hand grabbing A's body with excessive force. Cluster bruising of this type was present on 26.12.18 (both arms); 19.7.19 (left arm); 30.8.19 (thigh); 5.9.19 (buttock and left elbow); 19.9.19 (buttock and both arms).
 - c. The division of A's time between her parents over the relevant period, which makes it likely that the greater proportion of the injuries (particularly in 2019) occurred while A was in her mother's care.
 - d. The evidence of all the lay parties, supported by W and Dr Smartt-Williams, that A was a 'clumsy' child who frequently tripped and fell.
 - e. The evidence of both nurseries that A was a child who suffered relatively frequent falls and other accidental injuries at nursery, some of which were unobserved.
 - f. The mother's own evidence that she struggled to manage A's behaviour at times, and the surrounding evidence to suggest that others did not experience the same behaviour

- (tantrums etc) from A, and therefore that the difficulties that the mother experienced are more likely to be linked to her own cognitive and communicative limitations.
- g. The mother's admission that on occasion she grabbed A to restrain her, sometimes holding her too firmly.
 - h. The evidence of the nursery, supported by the social work evidence, that the mother's relationship with A was observed to be warm and affectionate, and the evidence that the mother was a loving and concerned parent: when A hurt herself in the presence of third parties, the mother was anxious to console her. I emphasise that the comparative lack of similar reports in relation to the father's relationship with A is due simply to the fact that his interactions with her were less frequently observed.
 - i. The absence of any evidence that A presented as fearful of her mother².
 - j. The evidence that the father has a propensity for violent and physically aggressive behaviour, which has been linked to excessive drinking;
 - k. The evidence that the father regularly engages in rough play with his partners and children and that on several occasions this has caused them injury.
284. The following aspects of the evidence, in my view, carry relatively little weight:
- a. A's own reports, for the reasons identified above (paragraph 90).
 - b. The evidence as to the mother's use of cannabis. On the expert evidence the mother's use over the relevant period was at a low level. The mother was adamant that she only used cannabis on the weekends when A was with her father; even if that is not true, there is insufficient evidence to find that the mother's cannabis use affected her parenting capacity, particularly when set against the absence of any concerns from either nursery to that effect.
 - c. Observations by some of the parties and witnesses to the effect that some of the photographs taken by XY of A were inappropriate, in the sense that A was sometimes photographed in the bath or otherwise without clothes on. Whether or not XY showed poor judgement in taking these photographs is, in my judgement, completely irrelevant to the allegations on which findings are sought at this fact-finding hearing.
 - d. Given the length of time elapsed and nature of injuries, I give less weight than might otherwise have been the case to the parents' inability to give an explanation for every injury. That said, there are a number of injuries (as highlighted above) that were significant enough for a parent reasonably to be expected both to raise the alarm at the time when the injury was observed, and to remember later how it had been caused.
285. Having considered the evidence in respect of each allegation individually and as a whole, I find as follows. In this part of my judgment I use the term 'non-accidental' to include injuries caused as a result of a culpable³ lack of supervision, and the term 'perpetrator' to include an adult responsible for failing to supervise.

² Against the weight of this evidence there are two references in the bundle to a slightly different presentation by A. The first is the observation by the previous guardian in her initial analysis that when she observed contact, A flinched and backed away from her mother; the guardian noted that A was fragile and tearful during this early contact and the mother was nervous. The second is the observation by Nursery two that the mother occasionally spoke harshly to A and that on an occasion when an adult drew back A's hair to look at a bruise on her head, she flinched; this may have of course have been because the bruise was sore. Neither the local authority nor the (present) guardian seeks to rely on either of these two pieces of evidence and I give them little weight.

³ In threshold terms.

286. The injury to A's eye on 31.8.19 is the only injury for which a clear and consistent explanation has been provided. I find that this injury was caused accidentally. It was foreseeable in the way that many accidents in the home are foreseeable; but it resulted from a momentary lapse in attention on XY's part, and there is no parent who has never made a similar mistake. This incident, in my view, is irrelevant to these proceedings.
287. It is possible to make some limited findings as to the circumstances in which some, but by no means all, of the other injuries were caused. The findings I make are as follows (by date on which they were recorded, as the simplest means of identification):
- a. 19.7.19: injury to fingers. I find that the injury to A's fingers observed on this occasion was caused when her hand was trapped in a door, as the mother says. There is no suggestion that the mother deliberately shut A's fingers in the door to hurt her; the issue is whether or not A was adequately supervised. The mother has given different accounts of this incident and I consider it likely that although she was in the near vicinity when this incident happened she does not in fact have a clear memory of exactly how the door closed or where A was. A was in a busy house with a number of adults present; in such circumstances it is not reasonable to expect that a parent will be watching the child closely every minute of the time. This was an accident and I do not find, on the balance of probabilities, that the mother was culpable.
 - b. 19.7.19: injury to A's wrist on the same occasion. I find that the mother used excessive force to hold A's hand under the tap, when another parent would have found a different way of treating the injury. I am satisfied that the mother was doing what she thought was best for A in the circumstances, but in doing so she caused A further and unnecessary pain.
 - c. 5.9.19: bruising to A's arms, buttocks/ hip, and thigh observed at the child protection medical. I find that this bruising was caused in the father's home and not the mother's, for the reasons given by the local authority. The injuries are relatively extensive (seven separate bruises) and so it is unlikely that they were all sustained through a trip or fall; in any event, there is no record of any such event. I am unable to make a finding as to how these injuries were sustained.
 - a. 19.9.19: bruising to A's arms, legs and back observed at the child protection medical on this date. I find that this bruising was caused while A was in the mother's care; she had not seen her father since the weekend of 31 August – 3 September, and the bruising was not present at the child protection medical on 5.9.19. I am not able to make a finding as to how these injuries were sustained.
288. Although the mother has suggested explanations for some of the other injuries, the evidence is insufficiently clear, and/or I was not sufficiently convinced that the mother was recalling the specific incident in question, for me to be able to make a finding.
289. I accept that in most cases it will be inherently unlikely that both parents will have caused injuries to the same child at different times. In this case, however, such a conclusion is much less improbable, given that one parent has admitted forceful handling of the subject child that could have caused her injury, and the other has admitted rough play with another child which did cause injury.
290. As to the injuries as a whole, I make the following findings.
291. The local authority has not proven, on the balance of probabilities, that any of the injuries were deliberately inflicted by any person. In making that finding I take into account the entirety of the evidence, including the lay evidence and expert evidence. I also take into account the lack of explanation even for some of the more serious and concerning injuries, and the parents' past history of involvement with child protection services. However I must weigh in the balance

against those factors the many observations of a warm and loving relationship between A and her mother, and the mother's devotion to A. In the father's case, although there is evidence that he has behaved in physically aggressive manner towards adults, that is an insufficient basis in my view for a finding that he would act in an angry and/ or aggressive way towards A. As for XY and XX, there is no evidence that either of them has ever acted aggressively to A or any other child, or indeed any other person.

292. The local authority has proven, on the balance of probabilities, that at least some of the injuries were incurred as a result of either rough handling or a lack of supervision, or a combination of both factors. In making this finding again I take into account all of the evidence, including the medical evidence in relation to the extensive number of injuries and their characteristics. I acknowledge that it is likely that at least some of the injuries on which the local authority seeks findings were caused accidentally: it is not possible for any carer to prevent a child of A's age from incurring any bruises at all. However, in my view, A's injuries over the relevant period are too extensive and significant to be explained as the result of ordinary activities of an active mobile and reasonably supervised pre-school child, even one who is 'clumsy' and lacks spatial awareness.
293. Other than in respect of the injuries listed in paragraph 287 above, I am not able to identify, on the balance of probabilities, one or more perpetrators of A's injuries. That is because there is insufficient evidence as to the circumstances in which the injuries were sustained.
294. That means that I must consider, in respect of each of the lay parties and interveners, whether the local authority has proved that there is a 'real possibility' that the person in question was responsible.
295. I do not consider that there is a real possibility that XX was a perpetrator of any of the injuries. The independent and documentary evidence (including that provided by the nurseries) supports the evidence of the lay parties to the effect that XX was not playing a significant role in A's day to day care, rarely if ever cared for her alone, and throughout the relevant period was working and was not living full time with the mother. I have dealt above with the suggestions made by the mother of rough handling by XX. Aside from A's comments, to which I give little weight, there is no evidence at all that points towards XX as being responsible for any of the injuries.
296. I also consider that there is no likelihood or real possibility that XY was responsible for any of the injuries. Again, there is no evidence that suggests a propensity to behave in such a way as might cause injury to a child, even unintentionally. All the evidence suggests that she is a competent and careful parent. She was clearly aware of A's active nature and propensity to fall, and took reasonable and appropriate steps to safeguard her.
297. I have already found (paragraph 287) that on one occasion the mother injured A by holding her wrist too forcefully, and the mother has accepted that there were other occasions when she 'grabbed' A to restrain her and may have done so forcefully enough to cause a bruise. She has also conceded, and I find, that there were times when she did not supervise A closely enough. I conclude on the basis of that evidence that there is a real possibility that the mother was responsible for at least some of the remaining injuries.
298. In the father's case I take into account my finding (paragraph 287) that at least some of A's injuries were sustained in her father's home; the evidence in relation to the father's propensity to playfight and engage in other forms of rough play; and the father's otherwise inexplicable reluctance to disclose the photographs of A's injuries until a very late stage. I conclude that there is a real possibility that some of A's injuries were caused by the father.
299. I need to make a finding as to the parents' knowledge or otherwise of A's injuries, to the extent that they were not caused by them.

300. In the father's case there is no dispute that he was aware of the injuries and that he took no action to obtain help or support. In doing so I am satisfied that he culpably failed to protect A.
301. I am also satisfied that the mother was aware of A's injuries. She was her primary carer and carried out the majority of her day to day care. It is correct that there were occasions when the mother took some steps to bring A's injuries to the attention of professionals. On several occasions she informed the nursery about an injury, and her actions in seeking help from her GP in early 2019, and taking A to the subsequent physiotherapy referral, suggest that the mother had some capacity to recognise when professional support might be required. However many of the injuries which A suffered, including the more significant bruises, were not brought to the attention of any professional. Overall I find that the mother did not recognise the significance of A's injuries: she saw A as a clumsy child who suffered frequent falls and did not realise that many of her injuries should have been preventable. I am satisfied that the mother also failed to take the steps that were reasonably required to protect A.
302. Strictly speaking I do not need, for threshold purposes, to make any such finding in relation to XY or XX, but it is appropriate that I should do so. I find that XX was not aware of the full extent of A's injuries as he did not play a significant role in her care; in those circumstances he could not reasonably have been expected to take any steps to prevent further injury. As to XY, I find that she did not have direct knowledge of how any of the relevant injuries were caused. She was aware of the injuries, of course, and in my view she did all that could reasonably have been expected of her, in the circumstances, to persuade the father to report them.
303. I summarise my findings as follows:
- a. Some of the injuries which A sustained over the relevant period were caused by rough handling/ rough play, a lack of supervision, or a combination of these factors. Save in the case of the injury to the wrist on 19.7.19, is not possible to identify exactly which.
 - b. I have made a specific finding that the mother caused the bruising to A's wrist on 19.7.19 by holding her with excessive force.
 - c. There is a real possibility that either the mother or the father or both of them (on separate occasions) were responsible for causing the remaining injuries.
 - d. There is no real possibility that either XY or XX was responsible for A's injuries.
 - e. Both parents were aware of A's injuries and failed to seek appropriate support or medical treatment. In acting in this manner they failed to protect her.

The rape allegation

304. The evidence in relation to this allegation is as follows.
305. The parents agree that the mother took the decision to end their relationship in July/ August 2017. The father believes now that she did so because she had begun a relationship with another man, T. He accepts that he did not want the relationship to end. The mother says that her relationship did not begin until after she had left the father. She had, however, started her relationship with T by the time that the alleged rape took place.
306. The father said for the first time in the witness box that after the mother ended the relationship the parents had (consensual) sex on two or three occasions before the night of this allegation. He has not said this before, including in his police interview, and I am satisfied that if it were true he would have said so well before now. I find that the father was attempting to bolster his case in his oral evidence.
307. On 18.9.19 the father went to the mother's home at around midnight, after finishing his shift at Tesco's (which is near to the mother's flat). It is common ground between the parents that it

was the father who telephoned the mother asking to come round; he was due to spend time with A the next morning and the mother agreed, or at least acquiesced, to him staying the night. The father does not dispute that he wanted to have sex; he told the police that he was 'horny', and said in his oral evidence that at that stage he was still upset that the mother had ended the relationship and that he still had feelings for her.

308. When the father arrived the parents sat together on the sofa and had a conversation. The father had brought beers and they were both drinking. The father says that the mother was flirting with him and that when he gave her some money for A she put it down her bra and said to him, 'come and get it'. The mother denies having said that but accepts that the parents were flirting 'a little bit'. Both parents told the police that they were play fighting. Eventually the mother decided to go to bed and the father followed her into the bedroom.
309. Thereafter it is common ground that the parents had penetrative sex. The father says that the sexual intercourse was consensual; the mother says it was not. Her account is that before intercourse started the father asked, 'can we have sex?' and she said no. She says therefore that the father knew that she did not want to have sex with him, and that he penetrated her without her consent. It is agreed that the father put on a condom, but took it off during the course of intercourse; and that he withdrew before ejaculation and ejaculated onto the bed.
310. The father says that the mother told him to get a condom from her bedroom and he did so, but took it off during intercourse because it was uncomfortable. He says that he did not use any physical force on the mother and that the mother did nothing to indicate that she was not fully consenting to sex.
311. The father did not sleep in the mother's bed but returned to the sofa. In the morning he remained in the flat for a period of time and played with A, before leaving.
312. This incident took place on the Monday night. On the Wednesday, A spent the night with her paternal aunt. On Thursday morning the mother had a meeting with the health visitor and social worker at her home. She said initially in her oral evidence that she had told them about the rape, but there is no record of her doing so and I am satisfied the mother was confused about this; there is no reason in my view for her to lie about it.
313. On Thursday evening a chance meeting took place between the father and T in Tesco's. T (who did not give evidence before me) told the police that he had told the mother after that meeting that the father had said the mother was flirting with him. The father's case is that the mother's guilt about having had sex with him, and her anxiety about the impact on her relationship with T, motivated her to tell T that she had been raped.
314. At some point between Monday and Friday there was an exchange of text messages between the parents. Those messages are no longer available but both parents accept that the mother accused the father of raping her.
315. On Friday the father telephoned the maternal grandfather (the mother's father). He told him that the mother had sent a text alleging that he had raped her and asked 'if it's normal for women to say something like that once you've had sex with them'. Maternal grandfather telephoned the mother, who was at the maternal grandfather's home with her brother and T. She told him that the father had raped her.
316. Later on the Friday the mother telephoned the police and alleged that the father had raped her. Her brother accompanied her to the police station to make a report.
317. The parents both say that the mother had a bruise on her arm on the Friday which was seen by her brother and T. The mother says that the father caused this during sexual intercourse. The father says that it happened when the parents were play fighting on a separate occasion, a few days before the incident.

318. The mother initially gave the wrong date of this incident to the police. Given that there is no dispute about the broad outline of the events on this occasion, the mother's mistake about the date is irrelevant to my assessment of credibility. There are some other inconsistencies between the account given by the mother to the police and her account within these proceedings. The majority of these (such as which door the father came to, what the mother was wearing, and the time that the parents went to bed) are, in my judgement, largely explained by the mother's distress both when speaking to the police (as is recorded in the police records) and while giving evidence in these proceedings, and do not significantly undermine the mother's credibility – particularly as the broad outline of events on the night in question is not disputed.
319. There are other aspects of the mother's account that have remained consistent from the time when she reported the allegation to the police until she gave evidence. These are:
- a. That the father asked her before intercourse if they could have sex, and that she said no;
 - b. That the father physically turned or 'flipped' her over before having sex with her;
 - c. That during intercourse the mother did not say anything further to the father, but just 'gave up'.
320. Both parents accept that there were text messages passing between them in the aftermath of the rape allegation. Those messages are no longer available. The police were able to view the mother's phone (no longer in her possession); it appears that some material on there was relevant to the police decision not to charge the father with rape. The father did not provide his phone to the police: he told the police at the time that he had deleted the messages because he wanted to get over the mother, and told me in the witness box that he had to delete his messages because otherwise his phone would 'lag'.
321. I do not accept, as is suggested on behalf of the father, that he suffers a substantial disadvantage as a result of the unavailability of the text messages, although I take into account and give some weight to the police evidence which suggests that the text messages were of a nature to weaken the prosecution case in the context of contemplated criminal proceedings.
322. After the incident the father's contact with A stopped. It does not seem that there was any formal communication from the mother to this effect, but the father did not make contact with the mother or take any other steps to arrange contact and the mother agrees that she did not want anything to do with him at this time. Contact resumed, as I have said, in April 2018.
323. During the course of his oral evidence XX said, for the first time, that the mother had admitted to him during the course of their relationship that the rape did not happen. This allegation was not contained in his written evidence, but I do not consider that to be significant: XX's role in these proceedings was as an intervener in relation to the injuries to A and he obtained legal representation only in the week prior to the hearing. The evidence emerged in answer to an open question put on behalf of the father as to whether the mother had ever discussed the rape allegation with him.
324. As XX's evidence on this point was explored in cross-examination it became clear (and was ultimately accepted by both XX and the mother) that XX had found it very difficult to accept that the mother's allegation was true, although she had told him she was raped by the father, because he had seen the mother and father having a drink together in the mother's home, early in his relationship with the mother (so in mid-2018) and, in his words, 'it seemed as if there were still feelings there.' He said to me, 'I got on about it. I kept going on about it. I kind of felt like well if this happened why was this man in your house?' He admitted that he was persistent in challenging the mother about her account over a period of about six months: 'when I get hold of something I don't let go'. Eventually the mother said to him that the allegation was untrue.
325. XX told me that he himself had been accused of a sexual assault in the past, and it was clear that this experience was still very raw. He said to me that he knew what a rape allegation could

do to a man's life and that he 'did not think [the father] was that kind of bloke... the idea that he might be falsely accused and I might be able to stop it'. 'It was personal to me'. He told me that he thought a typical rapist would be someone who 'talked about sex 24/7' and was aggressive, but the father came across as 'placid'. He could not believe, if the father had raped the mother, that she would subsequently allow him into her home and share a drink with him.

326. The mother's evidence was complete by the time this evidence emerged and there was no application for her to be recalled; appropriately so, given that XX's evidence was not challenged. On her behalf Mr Ashworth (standing in for Mr Ekaney who was not present for this part of the evidence) put to XX that he had badgered the mother repeatedly until she agreed with him just to make him stop. XX effectively accepted this. He said, 'she did at one point say yes it didn't happen but she was a bit ambiguous about it, we would go backwards and forwards – I think she just wanted me to shut up to be fair. I think she said what she said [ie withdrawing the allegation of rape] to shut me up.'
327. My view, having heard this evidence, is that the mother's behaviour in persisting with the rape allegation in the face of what I am satisfied was significant emotional pressure from XX is a factor pointing towards the truth of the allegation. I give no weight at all to her withdrawal of the allegation in these circumstances.
328. In considering the allegation I have taken into account my assessment of both parents' evidence as well as the evidence of their behaviour around the time of the allegation and subsequently.
329. I do not accept the father's case that the mother was motivated to make or to pursue this allegation by a desire to restrict his contact with A. Contact did cease for a period of about seven months after the allegation, but it is not surprising that it should do so if the allegation is true. The mother's explanation for resuming contact in April 2018 is that A missed her father; she gave a vivid description of A's requests to see him (A would point to the door and say, 'daddy'.) Her explanation for allowing overnight stays to take place from June is that after she met up with XY in a park with all of their children she felt reassured. Both explanations in my judgement are credible. The mother has not otherwise shown any sign of wanting to interfere with the father's relationship with A and after regular contact commenced in June 2018 it took place at a generous level until these proceedings were issued.
330. Unlike XX, I do not find the mother's behaviour in allowing the father into her home and drinking with him to be inconsistent with her allegation of rape. I bear in mind the mother's vulnerabilities and her wish for A to continue to maintain the relationship with her father that A clearly wanted.
331. The mother's feelings about the father are clearly ambivalent: she feels angry towards him and recognises that his behaviour towards her poses a risk to A; but she also takes seriously his role as A's father and she knows that A loves him and enjoys spending time with him. She is a vulnerable young woman who lacks confidence. It is not surprising if her behaviour towards the father has not always been consistent.
332. The burden of proof in respect of this allegation is on the mother. I have found that the mother's evidence in general is not always credible or reliable. However the lies that the mother has told are, for the most part, naïve and easily identifiable. They are motivated not by malice but by embarrassment and a sense of loyalty. I do not consider that the mother has either the cognitive capacity or the inclination to invent and sustain a malicious fabrication.
333. There are, in my judgement, some compelling and interlinked arguments in support of the mother's case on this allegation.
334. First, the mother has repeated this allegation on several occasions in circumstances where it has not been necessary or advantageous for her to do so. She spoke of it to staff at A's nursery in

November 2018, when she was concerned that A had a sore vagina and may have been sexually abused by the father. As I have said, the evidence does not suggest that the mother was looking for reasons to stop A's contact. Perhaps most significantly, she told XX about it, and maintained the allegation for several months in the face of substantial pressure from him.

335. Secondly, the mother does not, in my judgment, have a credible reason to lie about this incident. Even if the father were right to say that the mother was anxious to protect her relationship with T at the time when the allegation was first made, any such motivation disappeared with the end of that relationship (which lasted only a few months). The mother has maintained and repeated her allegation on multiple occasions since then.

336. I have already said that I do not find the suggestion that the mother wished to prevent the father from having contact with A to be credible or consistent with her actions. Similarly, the suggestion that she has maintained the rape allegation in order to strengthen her case in respect of the other aspects of this hearing is not credible. The mother has not in fact sought to build a case against the father within these proceedings in respect of A's injuries; the points that have been made against him on her behalf have been appropriately raised by her legal representatives, and only put to the extent necessary to support her own defence. The mother's primary case is that the threshold criteria are not met at all.

337. Thirdly, the making of this allegation within these proceedings and the process of giving evidence about it has, I am satisfied, been highly distressing for the mother. It is not a process that I consider she would have put herself through if the allegation were untrue. The local authority made it clear that it would not be seeking a finding on this allegation and the mother did not need to seek a finding herself. I am satisfied that she did so only because she is worried about A's safety in the father's care.

338. There is, in my judgment, a core of truth running through the mother's accounts of this incident. In particular, the fact that the key features of the mother's account have been consistent, and that she has repeated allegation on several occasions, and in contexts where she could gain no possible advantage from doing so, is a factor weighing in favour of its truth.

339. I give very little weight to the fact that a previous allegation of rape has been made by a former partner of the father. It would, in my judgement, be unsafe to rely on this evidence when the person who made the allegation cannot be challenged on it.

340. I make the following findings as to the events of 18.9.17.

341. I find that the mother did put the money that the father gave her into her bra and said to the father, 'come and get it'. She admitted to the police that she had done so. She has denied it within these proceedings, I find, because she is ashamed and believes that by acting in this way she encouraged the father to believe she wanted to have sex with him.

342. I am unable to make a finding in respect of the bruise to the mother's arm. The mother's original account was that this was sustained during the course of playfighting with the father on the night of the incident, and I am satisfied that this is more likely to be accurate than her later account that it occurred during forcible sexual intercourse. However, the father said that the mother already had the bruise on the night of 18.9.19 and it was sustained in playfighting some days earlier.

343. I find that the mother did not want to have sex with the father and that when she went into the bedroom she did so with the intention that she would sleep there and the father would sleep on the sofa. The father followed her in and asked if they could have sex, but the mother said no. The father overbore the mother's will initially through physical force ('flipping' her over). After that the mother realised that there was no point in resisting and submitted to the father's actions. The father could not reasonably have been mistaken as to the absence of consent.

344. For those reasons I find the mother's allegation that the father raped her on 18.9.17 proved.

The threshold criteria

345. The local authority has taken the decision not to include the father's rape of the mother within its threshold allegations.

346. There is a need to consider, in the light of my findings as to the causation of A's injuries, whether and if so on what basis the threshold criteria are met. In order to do so it is necessary to answer the following questions:

- a. Was the harm which A suffered (or which she was at risk of suffering) significant?
- b. If so, the focus is on attributability and reasonableness. In this context it is only the actions of A's parents that are relevant.

347. On the first issue, I take into account the nature of some of the injuries, particularly the larger bruises and those in soft tissue injuries where the medical evidence is to the effect that considerable force would have been required to cause bruising. These injuries would, I am satisfied, have caused A pain both at the time that they were incurred and for some time afterwards. I take into account also the number of injuries sustained over the relevant period, which indicates that A was hurt very frequently. In my judgment, the harm which A was suffering at the relevant date was significant.

348. On the second question, the combination of the following findings:

- a. A was suffering significant harm as a result of her injuries;
- b. at least some of A's injuries were caused by rough handling, a lack of supervision, or a combination of both;
- c. both parents are in the pool of potential perpetrators;
- d. both parents failed to protect A by failing to seek appropriate support for her injuries;

means that the care being given to A at the relevant date was not that which it would be reasonable to expect a parent to give.

349. The threshold criteria under CA 1989, s31 are met on that basis.

350. I make some final observations as to parental culpability, which I hope will be of some assistance to those working with the parents throughout the remainder of these proceedings. I have found that the injuries inflicted by the mother (through rough handling) were caused when she was trying, albeit misguidedly, to calm A down or protect her from harming herself. It is also likely that some of the injuries were caused to the mother's failure adequately to supervise A. The mother's actions in reporting the incidents she did observe and remember to the nursery, seeking help from her GP in early 2019 with A's clumsiness and falls, and attending the physiotherapy appointment for A, are indications that she had some capacity to recognise when A was being injured and to seek help; on many other occasions, however, she failed to protect A by seeking help from authorities because she did not see the significance of A's injuries and was unable to link them to her own parenting.

351. The father knew that at least one person (XY) thought that A's injuries were excessive and worrying. His reason for failing to report them was far more culpable than the mother's: he did not want to cause trouble for himself and was burying his head in the sand. The father knew beyond any doubt that his behaviour with both adults and children was sometimes too rough and had caused harm: even if he saw the bruising to his partners as a harmless consequence of playfighting, the investigation into B's bruising should have told him that injuries caused to a child through rough play were likely to have much more serious consequences. The father's

behaviour was linked to his drinking and he minimised this. In doing so he showed a culpable lack of insight and a reluctance to accept responsibility when he could and should have done so.

352. The implications in terms of A's welfare of my finding of rape against the father will of course need to be considered carefully, notwithstanding that this allegation did not form part of the local authority's threshold pleadings.

End of judgment