

IMPORTANT NOTICE

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

IN THE FAMILY COURT

Neutral Citation Number [2023] EWFC 143 (B)

Case No: LN22C50052

SITTING AT LINCOLN

Lincoln Family Court
360 High Street
Lincoln

IN THE MATTER OF THE CHILDREN ACT 1989

AND IN THE MATTER OF:

'T' DOB 2011

'R' DOB 2022

Date: 13.7.23

Before:

HER HONOUR JUDGE CARTER

Counsel for the Local Authority: Ms Gordhandas
Counsel for the Mother: Ms Mall.
Counsel for the Children: Mr Hodges
Counsel for the intervenor: Mr Burden

JUDGMENT

Introduction:

1. In this case I am concerned with two children, T and R. T was born in 2011 and E was born in 2022.

Parties and their positions:

2. M is the mother of both children. The father's of T and R have played no role in these proceedings.
3. The application before the court is for public law orders in relation to R and T.
4. This is an unusual application, as the local authority are content with the care that the mother can give T and R, and do not seek to remove either of them from her care. The issue in the case, is to what extent the court is able to ascertain how R sustained the serious injuries he did, who caused those injuries, the risk analysis flowing from that, and the necessary orders.
5. The intervenor is N. He is the mother's oldest son, born in 2004, and so now 18.
6. The Guardian supports the applications made by the local authority.

History:

7. There is some history to this case, and for obvious reasons it will be necessary to consider a little of the history of the family.
8. There has been involvement when the children were younger with the mother and the children and various social care agencies, however it has never been thought the children should be removed from her care, rather that she was in need of support and assistance. It seems there was some substantive involvement in relation to N when he was younger, but much less in relation to T. It would be right to say that the mother in general does not consider those interventions have been helpful.

9. R was born in 2022, and remained at home with his mother, T, and N for the first 4 weeks of his life.
10. On the 25th of March 2022 R was taken to hospital by his mother appearing to have carpet burns on his face, and a swelling to his head.
11. The essential history given was that the mother was at home with R, T and N. R was in a bouncy chair in the sitting room on the evening of the 25th. The mother went into the kitchen to make up a bottle, and when she returned R was instead of being in his baby bouncer, face down on the floor carpet of that room, with N crouching near him.
12. The mother was angry with N and told him to leave. She says that she did not notice the swelling to Rs head at that time, although she saw some marks to his face. She sought medical attention at 8.30pm and then went to the hospital.
13. The hospital were concerned that the injuries were not consistent with the explanation given by the mother, and it was confirmed relatively quickly that R had a fractured skull and a bleed on his brain, as well as significant facial injuries. A police investigation started, and N was arrested and bailed to his maternal grandmother's house.
14. Since then, it was agreed that the mother and the two younger children would move into the home of the maternal grandmother, so that the grandmother could supervise the mother with the children, and N has lived on his own in the family house.

These proceedings.

15. The mother signed a section 20 agreement on the 1st of April 2022. The local authority issued proceedings on the 12th of April 2022 seeking interim care orders in respect of R and T, but for them to remain with their mother, and living with the maternal grandmother.
16. N then returned to the family home, and as I understand it has been living there effectively alone since that date.

17. Expert reports were commissioned in relation to this matter.
18. A paediatric neuroradiologist, Dr S, reported on the 14th of July 2022. A paediatric neurosurgeon Dr H reported on the 27th of July 2022. A paediatrician Dr D filed his expert paediatric report on the 18th of August 2022, and addendums on the 20th of February 2023 of this year, and the 19th of June 2023.
19. There was a meeting of the experts and we have the minutes from that, dated 15 Sept 2022.
20. There has been a very significant shortage of judges at this court, and the matter was listed in October 2022, then for an IRH on the 21st of February, and then a composite final hearing for seven days in March 2023
21. The case was timetabled through to those dates, with assessments being undertaken of the mother, statements and expert evidence to be filed, and the case being ready for that composite hearing.
22. There was some complication as Dr D had postulated a possibility of there being an endocrinologist reporting, but when further blood testing was undertaken he was satisfied there was no need for any further reports. That was not challenged by any party.
23. Due to judicial absence, this case was then listed for a case management hearing on the 28th of February 2023. It was hoped at that point that the listing on the 9th of March 2023 would remain, although it would be right to say it seems no proper analysis was undertaken of what evidence was necessary. An addendum report from Dr D was ordered. The next order in the bundle is dated the 31st of March 2023, and appears to have been made without a hearing and there is no name of any judge on it. It records that the hearing was not able to proceed on the 9th of March 2023, and re timetables the case to a final composite hearing starting on the 6th July 2023 before myself.
24. Once I had started work as the Designated Family Judge here I conducted a review all the hearings that had been listed for lengthy time estimates. I ordered a hearing on the 2nd June 2023 to consider the case.

25. On that date it was confirmed that no party sought to ask questions of Dr H, or Dr S. I allowed further questions to be asked of Dr D, allowed some very limited clarification evidence to be filed, and directed that if anyone sought for Dr D to give evidence they would need to make an application. No such application was made.

Evidence on the issues in the case and threshold.

26. The evidence is set out within the court bundle which is over 1000 pages long.
27. Within the bundle are of course statements from the social worker, including an initial social work statement, and a final social work statement. There are statements from the mother, and also from N. There are a number of assessments of the mother and also the maternal grandmother.
28. There was an initial threshold filed and then a final threshold filed which the mother and N had both responded to. There is also police evidence from their investigation, and medical evidence. I have read the entire bundle.
29. There is a substantial quantity of evidence that is agreed in relation to this matter.
30. The injuries that R suffered are as follows:
- a. Right side temple acute skull fracture
 - b. 6 mm acute convexity Subdural hematoma
 - c. Right sided scalp haematoma
 - d. Bruising to the right side of the forehead measuring approximately 0.5 cm by 1 cm
 - e. Tender swelling on the right parietal-occipital area measuring 10 cm by 10 cm
 - f. Bruising to the tip of his nose together with swelling, the swelling measured 0.5cm by 0.5 cm
 - g. Bruising to the right angle of his mouth measuring 0.5 cm by 0.5 cm
 - h. Bruising to his upper lip measuring 0.5 by 0.5 cm and bruising to his upper frenulum
- And that there is no organic explanation.
31. I heard evidence over 3 days. I heard from Nurse D who was with the mother at the hospital, and the allocated social worker. Then the previous social worker. Then on the second day the mother, and N, and the guardian and submissions on the third day, handing down judgment on the 4th day.

The law relating to factual matters:

32. In considering my findings in this case I remind myself of the burden of proof. It is for the person making the allegation or assertion to prove that allegation or assertion. In this case, that burden falls on the Local Authority.
33. I remind myself of the standard of proof. Baroness Hale in *Re B (Care Proceedings: Standard of Proof)* [2008] UKHL 3 [2009] AC 11 made plain that, in relation to the applicable standard of proof:

“I would...announce loud and clear that the standard of proof in finding the facts necessary to establish the threshold under section 31(2) or the welfare considerations in section 1 of the 1989 Act is the simple balance of probabilities, neither more nor less.”

34. Findings of fact must be based on evidence. Munby LJ revisited this point in a case called *Re A (A Child) (Fact-finding hearing: Speculation)* [2011] EWCA Civ 12 in which he said it is:

“[an] elementary proposition that findings of fact must be based on evidence (including inferences that can properly be drawn from the evidence) and not on suspicion or speculation.”

35. In determining whether the Local Authority has satisfied the burden upon it, the court must bear in mind the wider context of the evidence, *Re U (Serious Injury: Standard of Proof)*; *Re B* [2004] 2 FLR 263. In *Re B (Threshold Criteria: Fabricated Illness)* [2002] EWHC 20 (Fam), [2004] 2 FLR 200 it was held that:

“Judges... are guided by many things, including the inherent probabilities, any contemporaneous documentation or records, any circumstantial evidence tending to support one account rather than the other and their overall impression of the characters and motivation of the witnesses.”

36. And in *Re T* [2004] EWCA Civ 558 the then President of the Family Division Butler-Sloss LJ stated:-

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

conclusion whether the case put forward by the Local Authority has been made out to the appropriate standard of proof.”

37. She went on to say that each piece of evidence has to be weighed against the others and that the court should revisit the strands as it seeks to determine, where possible, a coherent picture, consistent with the totality of the evidence.

38. It is right to observe that parents are not required to extricate themselves, or prove their innocence of the allegations. The local authority’s burden continues throughout the evidence and the local authority must prove, weighing all of the evidence, that the facts do, indeed, support the findings sought. It is not for the parents to provide an explanation for the injuries to the child. In *Re M (A Child)* [2012] EWCA Civ 1580 Ward LJ stated:-

“That, too [The expert’s opinion] was the effect of the Judge’s view of the case: that absent a parental explanation, there was no satisfactory benign explanation, ergo there must be a malevolent explanation. And it is a leap which troubles me. It does not seem to me that the conclusion necessarily follows unless, wrongly, the burden of proof has been reversed and the parents are being required to satisfy the Court that it is not a non-accidental injury.”

39. In *Re Y (Children)(No.3)*[2016] EWHC 503 (Fam) the President of the Family Division Munby LJ endorsed the legal principles set out in the judgment of Baker J in *Re L and M (Children)* [2013] EWHC 1569 (Fam) at paragraphs 20-24 and then stated:-

“...the fact, if fact it be, that the respondents (here, the parents) fail to prove on a balance of probabilities an affirmative case that they have chosen to set up by way of defence, does not of itself establish the local authority’s case”.

40. Lord Nicholls made reference to the wide canvas of evidence that needs to be considered in his speech in *Re H and R (Child Sexual Abuse: Standard of Proof)* [1996] 1 FLR 80 and he said that:

“The range of facts which may properly be taken into account is infinite. Facts include the history of members of the family, the state of relationships within a family, proposed changes within the membership of a family, parental attitudes, and omissions which might not reasonably have been expected, just as much as actual physical assaults. They include threats, and abnormal behaviour by a child, and unsatisfactory parental responses to complaints or allegations. And facts, which are

minor or even trivial if considered in isolation, when taken together may suffice to satisfy the court of the likelihood of future harm. The court will attach to all the relevant facts the appropriate weight when coming to an overall conclusion on the crucial issue.”

41. Therefore, the court must consider the wide canvas of evidence and place into context each element of that evidence judged against the rest.
42. I also remind myself of the direction given that is commonly referred to as a Lucas Direction that a lie told by a witness can only strengthen or support evidence against that witness if I am satisfied that the lie was deliberate, that it relates to a material issue, and that there is no innocent explanation for it, as sometimes people lie for reasons that they do not wish to disclose. The Court should first determine if the witness has deliberately lied. Then, if such a finding is made, consider why the person lied. *R v Lucas [1981] QB 720.*
43. In *A, B and C (Children) 2021 EWCA Civ 451* Macur J set out that a formulaic version of the Lucas direction:

“leaves open the question: how and when is a witness’s lack of credibility to be factored into the equation of determining an issue of fact? In my view, the answer is provided by the terms of the entire Lucas direction as given, when necessary, in criminal trials.

55. *Chapter 16-3, paragraphs 1 and 2 of the December 2020 Crown Court Compendium, provides a useful legal summary:*

“1. A defendant’s lie, whether made before the trial or in the course of evidence or both, may be probative of guilt. A lie is only capable of supporting other evidence against D if the jury are sure that: (1) it is shown, by other evidence in the case, to be a deliberate untruth; i.e. it did not arise from confusion or mistake; (2) it relates to a significant issue; (3) it was not told for a reason advanced by or on behalf of D, or for some other reason arising from the evidence, which does not point to D’s guilt. 2. The direction should be tailored to the circumstances of the case, but the jury must be directed that only if they are sure that these criteria are satisfied can D’s lie be used as some support for the prosecution case, but that the lie itself cannot prove guilt. ...”

She then suggested:

“That a tribunal’s Lucas self-direction is formulaic, and incomplete is unlikely to determine an appeal, but the danger lies in its potential to distract from the proper application of its principles. In these circumstances, I venture to suggest that it would be good practice when the tribunal is invited to proceed on the basis , or itself determines, that such a direction is called for, to seek Counsel’s submissions to identify: (i) the deliberate lie(s) upon which they seek to rely; (ii) the significant issue to which it/they relate(s), and (iii) on what basis it can be determined that the only explanation for the lie(s) is guilt”

44. In relation to the possible pool of perpetrators, I am mindful as per King LJ in Re A (children) (Pool of perpetrators) [2022] EWCA Civ 1348 that:

“ The unvarnished test is clear: following a consideration of all the available evidence and applying the simple balance of probabilities, a judge either can, or cannot, identify a perpetrator. If he or she cannot do so, then, in accordance with Re B (2019), he or she should consider whether there is a real possibility that each individual on the list inflicted the injury in question.

45. I remind myself then that in Re B (a child) [2018] EWCA Civ 2127, Jackson LJ set out

19. The proper approach to cases where injury has undoubtedly been inflicted and where there are several possible perpetrators is clear and applies as much to those cases where there are only two possible candidates as to those where there are more. The court first considers whether there is sufficient evidence to identify a perpetrator on the balance of probabilities; if there is not, it goes on to consider in relation to each candidate whether there is a real possibility that they might have caused the injury and excludes those of which this cannot be said: North Yorkshire County Council v SA [2003] EWCA Civ 839, per Dame Elizabeth Butler-Sloss P at [26].

21. In ... a simple binary case like the present one, the identification of one person as the perpetrator on the balance of probabilities carries the logical corollary that the second person must be excluded. However, the correct legal approach is to survey the evidence as a whole as it relates to each individual in order to arrive at a conclusion about whether the allegation has been made out in relation to one or other on a balance of probability. Evidentially, this will involve considering the individuals separately and together, and no doubt comparing the probabilities in respect of each

of them. However, in the end the court must still ask itself the right question, which is not “who is the more likely?” but “does the evidence establish that this individual probably caused this injury?” In a case where there are more than two possible perpetrators, there are clear dangers in identifying an individual simply because they are the likeliest candidate, as this could lead to an identification on evidence that fell short of a probability. Although the danger does not arise in this form where there are only two possible perpetrators, the correct question is the same, if only to avoid the risk of an incorrect identification being made by a linear process of exclusion.

46. In relation to expert evidence a witness provides an opinion to the court, they do not determine the case.

“The expert advises but the Judge decides. The Judge decides on the evidence. If there is nothing before the court, no facts or no circumstances shown to the court which throw doubt on the expert evidence, then, if that is all with which the court is left, the court must accept it. There is, however, no rule that the Judge suspends judicial belief simply because the evidence is given by an expert.” Re B (Care: Expert Witnesses) [1996] 1 FLR 667, per Ward LJ

Findings on threshold.

47. I shall firstly set out the evidence in relation to the findings sought in this case, and then my analysis and findings:

The medical evidence:

48. Dr S in her report says as follows:

“ the imaging is in keeping with a high force impact injury to the right side of the skull vault. There is a large acute (hyperdense/bright) superficial scalp haematoma. A complex widened and displaced right Parietal skull vault fracture is seen running into each coronial and lamboid suture. There is sutral diastasis. there is an acute subdural hematoma over the right cerebral convexity”

49. Later in the report it says:

“The two key points in relation to skull vault fractures are that they require considerable force to occur and they are painful, not asymptomatic. The bones of the infant skull are not weak and brittle. Instead they are pliable and resilient.... this means that the bones of the infant skull require considerable force in order to break (fracture) . Skull vault fractures do not occur in minor domestic impacts and low level falls. Skull vault fractures become increasingly unlikely in falls below 0.9 to 1 metres height, especially if the fall is onto a cushioned surface such as a carpeted floor or item of soft furniture. Skull vault fractures are extremely painful. When they happen the child will react accordingly. They will cry, often hysterically and for prolonged periods of time. They will be extremely difficult to comfort and console, and attempts at calming will be prolonged”

50. She goes on to discuss the pattern of the skull vault fracture, setting out that complex fractures:

“ones which are wide and, displaced, depressed and run into and under cross sutures with or without sutural widening are typically seen in cases where higher degrees of force are experienced. Accidental examples include falls from great heights, and high speed impacts”.

51. When she is discussing the possibility of accidental trauma, Dr S says this:

“the type of accidental trauma necessary to cause the injuries seen on Rs imaging would need to be high force. This high force is necessary to explain the massive soft tissue injury in the right scalp and large scalp haematoma, as well as the widened, displaced fracture causing sutural diastasis”

52. She adds that R would have been in extreme pain and discomfort when he suffered this injury. He would have cried inconsolably.

53. At page E31 Dr S sets out how she cannot reconcile that what is described to her would cause that sort of injury. She says that if those facts had taken place, a fall from adult standing height on a carpeted floor is unlikely to cause any fracture. Even if it did, that would be a simple linear vault fracture. She points out that a regular scenario seen with a

clear history is parents dropping newborn babies in hospital, onto hard hospital floors. That does not always cause a fracture, but when it does the fracture is linear, not widened and displaced, and not associated with massive soft tissue injuries as in this case.

54. She points out that the right convexity acute subdural hematoma is yet another marker of high force impact injury. She points out that in her view the options were either an accidental episode which is not being truthfully declared, or the injuries being inflicted in a deliberate act.
55. Dr H, is a very experienced paediatric neurosurgeon who regularly reports before these courts. He set out as follows:

“I refer to my brief notes after seeing the MP4 video and also my review of the mechanism of injury.

A skull fracture requires an impact and in R’s case this impact needs to have been in the right parieto-temporal area and is a linear fracture as opposed to a comminuted fracture (multiple fragments). Comminuted fractures imply a substantial impact force. Linear fractures are commonly accepted to be the result of ‘low level falls’ ie fall from adult waist height. R presents with a delayed swelling of the area of impact which is common in trauma of this type. A limited right sided subdural haematoma is found over the right parietal brain lobe ie under the fracture area.

Subdural haematomas, in the absence of any underlying cause, as I understand is R’s case, are the result of trauma whereby a bridging vein (blood vessel from the surface of the brain to the large collecting veins over the top of the skull) is breached. R was irritable after the event which is the common clinical presentation and which led to his review in hospital.

R has bruising to his face which is variably described in the medical records. Reviewing the undated MP4 videos file I saw marks over the left peri-orbital area as well as R’s nose. I am aware Dr X describes a bruise to R’s upper frenulum (inside area of the upper lip) as well as marks to R’s nose. Only having seen the video it is

not possible for me to confirm the marks on R's face are 'carpet burns' or bruises but the location of either is not compatible with the skull fracture site.

In my opinion the facial marking/bruising is not part of the same dynamic and is a separate, possibly simultaneous injury. Based on my experience with trauma of 30+ years, I cannot see R's facial bruising in the context of a low level fall which caused a right parieto-occipital skull fracture. This opinion is preliminary as I need to see representative images of the 3D reconstructed CT scan or X-ray of R's skull and see the expert Neuroradiology and Paediatric report.

In summary:

Although R's skull fracture, subdural haematoma and clinical presentation can be accepted to be the result of a low level fall, the facial marking/bruising does not correlate with the clinical and imaging appearance. Although the facial marking/bruising can be part of the same event, this implies a separate mechanism of injury to the skull fracture, subdural haematoma. From my clinical perspective, two separate mechanisms of injury in a same event casts doubt on an accidental cause of either injury. Because of the discrepancy described above, in my opinion, on balance of probabilities, R's injuries are inflicted i.e. non-accidental"

56. It was later clarified that one of the images/videos sent to Dr H had been reversed, hence the reference to the left of the head at one point.

Dr D

57. Dr D was concerned initially that the clinical assessment carried out by the treating doctor and consultant paediatrician Dr X was not carried out to the standard recommended by the Royal College of Paediatrics and Child Health.
58. In Dr D's initial report he suggested that he considered the explanation provided by the mother and N to be consistent with the skull fracture. In relation to the facial bruising, his view was that a single fall was unlikely to cause a significant injury in more than one place, then potentially one bruise to the face could have been caused as part of a single incident

with the skull fracture, he did not consider the other injuries to the face could be caused in that way.

59. An experts meeting took place on the 15th of September 2022, attended by all three experts.
60. The experts agreed in summary that the marks to the face look like excoriations, the skin had gone and therefore they were not bruises, and as a consensus there are friction burns on the nose and the forehead. They agreed that although it was conjecture, the only thing you can imagine is that R was dragged with his face down. A fall would not cause a carpet burn, you would have to move his face over the carpet to have the burn.
61. In relation to the radiology, Dr D deferred to the other experts, and was content that if Dr. S was saying that this is a complex fracture, then he would say that is more likely to be non-accidental. Dr S clarified that the mechanism is blunt force impact trauma. It would have to be high force to cause these injuries. That is the mechanism that would cause the soft-tissue swelling, the complex skull vault fracture, and the subdural haematoma. The head has struck a hard, unyielding surface or object, or has been struck by a similar hard object. Dr H was in agreement, setting out that there are two different sites, and to have the parietal fracture, you need an impact on the parietal fracture, on the parietal side of the head. The marks that they considered were burn marks, are over the right orbit and nose, and that is so remote from the skull fracture site, that cannot make sense. It may be the same event, but the skull fracture and the marks on the face are not simultaneous.
62. In relation to the frenulum, it was agreed that the impact to the face could have caused the bruising to the frenulum, as the upper lip can be injured if there is a direct fall, and that can cause bruising, and theoretically it can cause bruising to the frenulum.

The family and surrounding information about the family.

63. Within the papers is information from Local Authority B, which details some of the difficulties the mother has had in relation to particularly parenting of N.

64. There is a particular recording which sets out that in 2013, the mother was reporting some very serious difficulties in relation to N's relationship with T. N at that time was of course only 7 or 8.

28.02.2012- School:

Mother reported the following concerns to the school: N has punched T in the face and stomach, he has threatened both mum and T with a hammer, N has pulled a knife on his uncle and T, N has threatened to kill both mum and T, he pulled the radiator off the wall in anger (weekend of 26.02.12), he was in the bath with T when N punched T in the face, spat at her, kicked her and tried to drown her. She also said that N put cotton around T's neck and tried to 'strangle' her. Mother is suffering with depression and feels suicidal as she cannot cope with N's behaviour. School reported that although they do not experience such behaviour at school, N's behaviour has deteriorated recently. Mum has expressed that she is thinking of taking her own life as T would be better off with her dad and N with her mother.

24.11.2011 Referral received from the Mental Health Initial Assessment Team. The referral stated that M informed her Community Psychiatric Nurse (CPN) that N is violent towards her and that he often reduces her to tears. M expressed concerns around N's aggression and that this has increased since T has been born. M explained that N can be aggressive towards T friendly play turns into punching and hitting her. M stated that she has little control over his behaviour and that he has threatened her with a knife. She is worried to leave the younger child in the company of N unsupervised. Havering CYPS completed an Initial Assessment and a referral was subsequently made to the Children Centre and a Family Support Worker (FSW) to undertake parenting work with M.

65. The local authority had become aware of these historic matters relatively early on in the proceedings, and had therefore paused and further assessed the contact that was taking place between N and T and R.
66. In the mother's statement, she had said that it was true that N was jealous of T when she was born, but he was only eight years of age at the time. The mother said he never hurt T he just acted up for her by displaying challenging behaviour, and trying to get her attention.
67. The mother was asked about this in her cross examination on behalf of the local authority. She was asked whether she was concerned about telling N about her pregnancy. She said she was not concerned about his reaction, although he was shocked when she told him. It was suggested to her that she was concerned about his behaviour to T, and she said that what happened was a number of years ago and she could not recall exactly. She was pressed in relation to this, and she said that N had said he wanted to hurt T but he never did. That is also what she has written in her statement for this court.

68. The mother was therefore taken to the records from Local Authority B, and taken through them. She said she did not recall N hitting T, or pulling her under the water, and that he did not strangle her with cotton. She was very clear that she did not recall any of those instances, but did not dispute the recording.
69. She was asked whether, considering the history, she was concerned about leaving N with R, but said she was not. She went on to say, “that is always at the back of my mind, but N was only seven when that happened with T, he is now 17 years old and that is a big difference and he has grown up a lot”.
70. On behalf of the children, the mother was pressed as to why she had told the court in her statement that N had never hurt T when that appeared to be wrong from the records. It was suggested to her that the descriptions of what had happened were very shocking, they were from her own observations, and that she had reported it to the school. She agreed that was all accurate. It was therefore suggested to her that these things were memorable, and she would have remembered them, but she responded that “you try and move things on and try not to remember”. She then went on to suggest that some of the incidents they had written down were not written down how they happened, although she had of course previously said she could not remember them.
71. In the mother's first statement she set out that N has suffered with his mental health over the years, and he had had support from CAMHS when he was 14, and had struggled when her father died in 2021. She said he had been much better recently, and she had no reason to think that he was a risk to himself or anyone else.
72. On behalf of the children, it was suggested to the mother that she had a closed mind to the fact that N could have done this, and she said that she didn't believe he could have done it. By that she was meaning that she did not believe he had done it deliberately or that he had done more than he had described to her.
73. The medical evidence was therefore put to her, and she was reminded that it did not fit in with what N had said. She said, “I have questioned it a few times and trying to guess how it happened and it is upsetting”. She repeated again that she did not believe that N had done

anything other than a simple drop as he described. She was asked what risk she thought N posed. She said the risk would be if N had another ‘episode’ although R was 16 months old now and so at less risk, but she would be more wary. It was put to her that it seemed her view was that she had no question in her mind that N is not really a risk as long as she was careful, and he was not having blackouts. She agreed with that, saying for four weeks N had been brilliant with R.

74. N was asked about what had happened when T was little. He said that he did act up a bit, he accepted he had dunked her head under the water, but said he felt differently towards R, and he was of course 17 when R was born. He described being fully involved with R in a loving way

The events of that evening

75. The mother has filed several statements. Her first statement is dated the 4th May 2022. In that statement she set out that at about 7:45pm on 25 March 2022 she had put R into his bouncer and gone into the kitchen to make his bottle. She heard R start to cry and N shouted to tell her “I’ll get him”. She said the bottle was too hot, and therefore she ran the cold tap and had the bottle under the tap cooling it down. She said she did not hear anything more than that as she was running the tap and stood next to it. She said she walked back into the lounge with the bottle to give to R, and saw him lying on his front on the floor. She went straight over to pick up R. She said that N was “lying over the bouncer with his arm on the sofa to steady himself. He looked a bit dazed”. She goes on to say “I did not take much notice as my main concern was R who was on the floor. As I picked him up off the floor I noticed that he had a graze on his head which at the time was very pink”. She said that she was upset and crying. In relation to R and how he was crying, it was more of a distressed or hurt cry than a hungry cry and said that the cry “just seemed a bit different to how he had been grizzling in hunger when I left the room”.
76. She said “I shouted at N what have you done and why is my fucking baby on the floor. He said that he was really sorry and he had passed out. At this point I asked him to leave as I was really stressed and panicked and worried about R. I could not deal with N as well at that time”.

77. The mother goes on to say that she tried to calm R down, and gave him his bottle as he had been hungry and he took it straight away. She said he seemed to be OK, but was difficult to settle and kept nodding off and then a few minutes later waking up crying again. She said she had called her mother to tell her that she found R on the floor, and assumed that N had dropped him. She said that at that point she'd only seen a red mark on his face, but then moved R onto her other arm and at that point she saw the swelling on the right side of his head and called 111 at about 8:20 that evening.
78. In her oral evidence the mother said that she had heard N get up off the sofa, but she did not see him get up. She said she could hear R grizzling, and then she said that she had heard his crying had changed. She said she did not hear anyone fall or hit the floor.
79. She said that when she picked up R from the floor she did not see the friction burn to his nose, and that that came out later on.
80. The mother was questioned again on behalf of the children about the events of that evening. She said she had heard N get up, she had not heard him get off the sofa but she heard what he said. She was asked when she heard a different cry, and said that she had got the milk and was about to walk in when she heard a different pitch type of cry. She said it was different to his normal hungry cry, she had not heard it before and it had worried her
81. N has filed several statements, and been interviewed by the police.
82. In his police interview which took place on 27th March 2022 he said that he had been asleep, and gone for a cuddle with R. He said this:
- “I've had a dizzy spell and my eyes have started to go black. Everything else ends up being a blur for a couple of seconds. Next thing I know, I'm waking up, I'm on the floor, my brother's on the floor and my mum comes into the front room and she's obviously shouting and screaming, she wants to know what's happened. I'm trying to put two and two together and realise what's happened myself at this point. She kicks me out of the house, so I end up going and staying at my nan's house, where I was then arrested at 19.19 last night. It's just, when I picked him up, I, I didn't, I didn't see me passing out, I didn't feel anything until I'd like already lifted him out of the chair and then apart from

that everything in between me waking up, with him in front of me, and picking him up is a blur. N clarified that he bent from the waist to pick up R”.

83. N’s statement within these proceedings is essentially the same as his police interview.
84. In his oral evidence, N said that he told his mother he was going to pick up R, she responded that he did not have to, he insisted he would anyway, saying “I love giving him that attention”. N was challenged that he had never described that exchange previously in his police evidence or his statements filed in these proceedings. His response to that was that he “did not think that that snippet of conversation was relevant”. He continued to assert in his oral evidence that his mother had said he did not have to pick R up, although in fact neither he nor his mother had ever said that before.
85. In his oral evidence N said that he got out of the chair and he was completely fine. He took R out of his chair, and that was when he felt dizzy, and the next thing he knew he was waking up on the floor. He was asked in some detail about that and again asserted he thought he was fine when he got out of the chair, and it was only moments after that that he got dizzy, suggesting that was under 30 seconds.
86. He said that he picked R up, adding that he was not certain that he remembered picking him up, but said he was getting ready to take R to the kitchen to his mum so he could have his bottle. N added he cannot recall if he was stood up or hunched over. He then said that he could only recall going to pick R up and him then R being on the floor beside him. He said he was not aware at the time that R had facial injuries.
87. It was put to him that the medical experts were clear the facial injuries were a drag on the carpet, and there were therefore two separate incidents. He said that he took full responsibility for any injuries. He was asked what explanation he had then for there being two separate mechanisms, and said that he could not, as much as he wanted to, he could not give an answer. He again accepted that he'd caused everything, but denied when it was explicitly put to him that he had caused these injuries deliberately.
88. N went on to say that he remembered seeing his mum coming into the room, saying that he was facing the sofa, but when he heard her coming into the room, he saw her coming in. He

then said that he could not have been blacked out for too long, suggesting perhaps about 20 seconds.

89. On behalf of the children N was challenged again about the events of that evening. He again repeated that R, was grizzling, but he said he would get him, and that his mother said he did not have to.
90. N said he woke up on his hands and knees, and that he turned behind him and his mother was coming in screaming and shouting. He said she sent him out of the house, and he was apologising profusely. He said his mother told him to get out, he went outside, and the door was locked on him. He said he gave it a minute or two and went to open the door and discovered it was locked, but his sister unlocked the door, and his mother was on the phone to the maternal grandmother.
91. N was asked in a little bit more detail what his mother had said to him when she came into the room. He said that she was saying to him ‘what had he done, what has happened, get away’. He said he was on the floor, looking at his mum in tears. He said he was telling her that he had blacked out, and she was telling him to leave and go to his grandmother’s house.
92. He went on to say that he did not see R's face after he came around and before he left. He said however that just before he left he saw a bump on R's head, and she said ‘look what you did’.
93. At the end of the mother's evidence I asked her about the obvious difficulty in this case, if I were to accept the medical evidence. I asked her what she suggested the court should make of the fact that the medical evidence was clear there were two incidents. She was not able to answer that, and clearly did not change her views.

The mothers reaction:

94. In N’s police interview, he said that his mother had picked R up straight away, and she had told him to leave the house, saying “get out just get out of the house”, “just leave”. He described how he left the house, and then he sat outside of the house for about a minute, and he had knocked on the door and his sister had come downstairs and opened the door for him,

he had put his shoes on, his jacket, his bag and then he walked to his grandmother's house. He said his mother was on the phone to his grandmother when he was getting his bag.

95. He described his mother as crying, "bawling her eyes out, she sounded like she was going to start to throw up from like how much she was crying".
96. N was asked by the police officers about his mother's reaction as he had described it. He was asked why he thought his mother was angry with him. He responded saying that "everyone in the family knows how mum can be" and suggested that they had all advised her that she should probably get diagnosed because they didn't know whether she had 'bipolar' or not. He said she can get a bit "shouty", and that although all of this was accidental, he said that he understood that his mother had "seen her baby on the floor".
97. In her oral evidence the mother was asked about her reaction to N after the incident. She accepted that she did not ring an ambulance for N, and did not seek any medical treatment for him. She accepted she had shouted and sworn at him and asked him to leave the house. It was suggested to her that she believed he had harmed R and she responded "I don't know what I believed". It was suggested to her that she didn't believe N's explanation. It was suggested to the mother that although R was on the floor, her teenage son was also on the floor, and that her reaction must surely mean that she believed N had hurt R. Mother denied that was the case.
98. Within the papers there are a number of pieces of information about the mother and her reactions to things when she is challenged. The mother told the local authority that she received a warning letter about her behaviour at the hospital with R in January 2023. Similarly, the school have given the mother a warning letter in relation to her behaviour towards them. In relation to both of these occasions the mother says she had lost her temper, but that she was frustrated at various things taking place.
99. In the mother's evidence, she was challenged both by the local authority and on behalf of the children in relation to what she believed or accepted had happened to R. She was asked on behalf of N whether any part of her could bring herself to believe that N did this. She responded that she was "bound to have doubt, but that she knows, as N's mother, he was not capable of that".

100. The evidence of the mother was that she made approximately 8 telephone calls to her mother, before she called an ambulance.

N's explanation of dizzy spells:

101. In his police interview, N stated that if he got up too quickly from lying down for too long, or he quickly rushed to his feet, he had before the incident become dizzy, saying "I basically black out because I'd lose a couple of seconds of what's happening". He was asked whether he had fallen to the ground previously, and he said he's "normally been able to grab himself and put himself onto a wall or hold himself onto something", adding "but in this situation I just gone straight to the floor on all fours". He said it only happened three times in the last two or three years so he had never been worried about it. He said he had told his mum about it before.

102. In N's oral evidence, he said that before the incident with R he had not blacked out but he had had dizzy spells. He said that since that incident he had had another one which was significant where he had fallen over and hit his head on a toilet. He suggested that he had gone to see a doctor in June or July 2022.

103. It was suggested to N that the GP record said he had gone to see the GP in August 2022, and it certainly appears from the description of that consultation, that that was the first consultation about that with a doctor. Photos were apparently produced on the last day of the hearing showing N lying on some form of hospital trolley in perhaps June or July, but with no other context.

104. When he was challenged N said thought the difficulty had escalated into episodes of blackouts. He said that he had told his mother prior to the 25th of March 2022 that he had had some dizzy spells, and she had advised him to go to the doctors, but he had told her there was no point and he was fine, and she had accepted that.

105. The mother was asked about N having dizzy spells in her evidence. She said that she was aware he had had dizzy spells before, but they were only rare and every now and again, and she had never understood he had blacked out before. She said these had been ongoing since about the beginning of lockdown, but she did not take him to seek any medical attention.

106. I also heard some evidence in relation to N suffering with some mental health problems, including struggling with eating.

N's drug use.

107. In his police interview N told the police officers that he had had a joint of cannabis in the morning, and then half a joint at about 12 midday. He confirmed that in his written statement and again in his oral evidence.

108. The mother accepted that she was aware N did smoke cannabis at times, but said on the 25th of March 2023 she was not aware of him being under the influence of cannabis, she had not seen him smoke any, and was not aware of him smoking it.

The events at the hospital.

109. Although I heard some evidence about what happened at the hospital, in my view nothing that was said there assists me in trying to understand what happened that evening.

110. There is an element of dispute about whether the mother said to anyone at the hospital that R should not be picked up by N, or whether she was simply telling N that R does not need in general to be picked up just because he is grizzling a little bit. The mother has never said in any of her evidence that she had that conversation with N that night. It seems to me those two options could easily be misunderstood in how they're written down, as to whether it had been said that night, or in general, and whether that was a mother who did not want N to pick up his brother at all, or a mother reminding others she did not want them picking up the baby every time he grizzled. Given the other evidence that N did assist and help out with R, it does not seem to me necessary to determine that.

111. Similarly, given that the medical evidence is that it would make no difference whether N was standing up or crouched over, any discrepancies in relation to that, when the mother has always stated she did not see what happened again does not seem to assist me.

Analysis and conclusions in relation to the disputed matters of fact.

112. I am careful of course to weigh all of the evidence in this case when reaching my conclusions. I have set out above what appears to me to be particular relevant aspects of the written evidence and the oral evidence, I cannot of course set out all evidence in the case that I have read.
113. The reality of this matter is that the medical evidence has not been challenged by the mother or indeed by N. That does not of course mean that necessarily I simply accept it all, but I must consider it bearing in mind the case law in relation to expert evidence, and considering everything that is said within it, and the conclusions reached.
114. There have been three extremely experienced doctors considering this matter, who have reached consensus in relation to the questions they have been asked to consider, at an experts meeting when they had questions posed to them by all parties. Inevitably, the medics will defer to those who have greater expertise in a particular field. Having considered the medical evidence in conjunction with all of the other evidence in this case, I am quite satisfied that the expert consensus in terms of the severity of the skull fracture and the force needed for that and the bleeding is correct. Similarly, I am satisfied that the facial injuries are some form of contact burn marks with R's face being moved over a rough surface. Given the point of contact that must have caused the skull fracture, and associated bleeding, it is impossible to imagine a scenario where one single application of force created both of those injuries, and again, I accept the expert evidence that whilst this might have been one event, there were two separate applications of force to R to cause those injuries.
115. That was the clear evidence of all of the medical experts, it has not been challenged, and there seems to be no grounds for me not to accept the expert evidence, and indeed the common sense assessment in relation to the two separate injuries to the head and to the face.
116. I turn then to consider the explanation given by N. When I do that, I bear in mind of course that he is only now 18, and that he was 17 when these events took place. He has clearly had in various ways a troubled childhood, and difficulties with his mental health. I bear in mind as well the length of time that it has taken for this matter to be heard by the court, and the impact of that upon everyone's memories.

117. I bear in mind that he has been relatively consistent from an early point in relation to this incident, and indeed consistent with his mother. She was from an early stage in reporting this consistent as to the fact that she came into the room and found R on the floor. I accept of course that there were always likely to be some minor inconsistencies in accounts, particularly as memories fade, and if a history has been given many times.
118. I also bear in mind that it is an essential part of N's case that he does not actually remember what happened, although he is quite sure that he blacked out, and woke up on the floor. I must factor in when considering that suggestion, that this was a relatively small property that the family lived within, the kitchen leads straight off the sitting room, and the mother was therefore very close to N and R. She would only need to take a couple of steps and would have a clear view of the sitting room.
119. I have carefully considered whether there was any prospect that based on the medical evidence, the simple dropping of R by N as he passed out could cause at least the skull fracture as set out within the medical evidence. The reality is that I cannot accept those injuries were caused by that mechanism. I remind myself particularly of the extremely clear evidence of Dr S of the necessity of there being some form of high impact blow. Any drop, even from a standing height would simply not cause that complex skull fracture, as all of the experts agree. I am mindful of course of the vagaries of modern science, and that strange and unusual things do happen. Even balancing those matters, I am quite satisfied that the mechanism for the skull fracture is not that N simply dropped R as he passed out.
120. One of the significant problems in this case of course, is that even if I could conclude that the skull fracture had been caused by an accidental drop, that simply cannot explain the facial injuries. I have expert evidence in relation to those, which is that they could not be caused by the same impact, and indeed as was pointed out to me in closing submissions that would genuinely appear to be a matter of common sense as well.
121. In reaching that conclusion in relation to the injuries, I have weighed and considered the evidence both from N and his mother. I have borne in mind that they have both been relatively consistent in what they say happened. I have borne in mind N has consistently accepted that he has caused the injuries, and also that he has said he does not know the exact mechanism.

122. It seems to me however that the first step I must take is to conclude that the injuries were not caused in the way that N suggests they were. I must then consider what other evidence assists me as to whether I can reach any further conclusions about those injuries.
123. I consider in particular the timeline as set out by the mother and N. They both agree that R was in his bouncy chair when the mother went into the kitchen to make a bottle. They both agree that N had been asleep on the other sofa. N asserts that he got up, and the mother says that she heard him speak to her. The mother was then in the kitchen and there was certainly some background noise for her as she asserted but she was standing in front of a sink running cold water onto a bottle to cool it down. The mother suggests in general making up the bottle she could have been out of the room for as much as 5 minutes. As I have set out above, it was very apparent from the photos that she was merely steps away from being able to see what was happening in the sitting room. A relevant matter that I must bear in mind is that given I have concluded there were two injuries, R would have cried at the point immediately of any of those injuries being sustained, and that cry would immediately have alerted the mother. The mother did not suggest at any point in her evidence that when she turned the tap off R was already crying. Instead, she says that as she went to come into the room she heard R crying in an unusual way, and N said that he saw her come into the room. As the mother said that R was already on the floor, and she had heard the cry as she took the few steps into the room, most of these accounts is inconsistent and simply makes no sense.
124. It seems to me that the injuries sustained by R could have occurred in a very short period of time, but that would not be simply a couple of seconds. The medical evidence is such that R has either been hit with an object very hard on his head, or he has been hit against a hard surface such as a wall or the floor. He would immediately scream or cry out in an entirely obvious fashion that he had been significantly injured. Similarly, if his face is dragged along a rough surface such as the carpet at some force he is immediately going to be crying out.
125. I have thought very carefully about whether it is possible both of these injuries were inflicted by N with the mother not witnessing either of them, and her then entering the room to see R not being held in any way by N, but N crouched over in the way that she describes. I simply cannot accept that given how close she was, and the time needed for these two injuries, and the way that R would have reacted to that.

126. I therefore reject as untruthful N's version of what took place, as that is not consistent with the injuries, and I also reject as untruthful the mother's version that she was in the kitchen and as she was about to come into the sitting room heard R cry for the first time.
127. I then need to consider what other evidence there is that may enable me to ascertain what did happen to R, and who the perpetrator of his injuries is. I am mindful of the case law as I set it out above. It seems to me there are a number of relevant matters that I must weigh and analyse.
128. These are as follows:
- a) the mother is reported to be a loving and attentive parent to each of her children. There does not appear to be any suggestion that she has ever injured or threatened a child. Professionals in fact comment upon how loving she is towards her children, that she shows affection and meets their needs.
 - b) she does clearly however have a temper, and can react certainly verbally inappropriately to professionals and on the description of her children, verbally angrily to the family at times, seemingly out of proportion to the event.
 - c) The mother is clearly intelligent enough to be able to understand the medical evidence. Although in her statements she sets out that she will keep an open mind in relation to what N has done, her evidence to this court was very much that she asserted what happened to R was an accident, and she did not believe that N could have caused these injuries. I bear in mind how challenging it is for a mother when faced with this situation in relation to two of her children. Although N is now an adult, he is still her son, and she is undoubtedly protective towards him. She must be mindful of the potential for criminal proceedings in relation to him, and the impact of any conviction and sentence for such a serious offence. She is also however aware of the need for a proper understanding of what happened to R, so that professionals can assist the family going forwards and most importantly to ensure that R and T are properly safe.
 - d) The mother's reaction to N such that at the conclusion of whatever happened, she threw him out of the house, to the extent that he did not even have shoes on, and locked the

door on him is very troubling. Whilst I accept that none of us know how we would react in very stressful situations, if the rest of her evidence were true, that she found both of her sons in a distressed state with some form of accident having taken place, I simply cannot accept that she would show so little care for N that she would throw him out of the property. That is particularly because on her evidence at that point she did not think the injuries to R were particularly significant, merely that he had some kind of mark to his face. On her description of entering the room, she would have perceived N to be in some distress if he were in some way just waking up from having passed out. I bear in mind the other evidence of the mother at times overreacting and lashing out verbally, but I still cannot reconcile that with a loving mother who genuinely believes N has in some way passed out causing an accident, as she asserted to this court, and that she would quite literally then throw her child who had just passed out, out of the house.

- e) I am also troubled by the contradictory evidence in relation to what the mother had seen of R's injuries at the time that N left the house. The mother has been clear that she initially just saw a facial injury, and even the mark on the nose was not properly showing. N told the court in his evidence that he saw a bump on R's head, and that his mother had brought that to his attention saying that he should 'look at what he had done'. The mother's evidence of course is that she only saw a bump at the time she called for help at about 8.20pm.
- f) Another aspect which causes me concern was N suggesting in his oral evidence that there was in fact a conversation between himself and his mother about whether he was going to pick up R, and whether he was going to take him into the kitchen to be fed, which would seem a strange thing to do, or just because he was grizzling. In my view this very recent evidence was a fabrication by N to try and resolve this issue of whether he had been told not to pick up R or not given it had never been mentioned previously.
- g) In relation to N, there is evidence that he has acted angrily and violently to a sibling of his, but that was over 10 years ago, when he was a young child. However, there is no other evidence to suggest that for many years he has been violent towards either T or R since he has been born.

- h) He is clearly a young man with some mental health difficulties, who uses cannabis in a way that will obviously exacerbate those.
- i) Although he asserts that he suffered some form of dizzy spell, there was no evidence that he had said that to anyone prior to this incident, apart from his mother supporting him in that. In relation to that, although N appears to have subsequently received some medical attention for that, at the earliest that was several months after this incident. Neither the mother nor N were able to explain why, if that significant medical event had indeed taken place, they had not sought medical attention far sooner. It seems to me that the only possible explanation for that is that neither the mother nor N considered he genuinely needed any medical treatment, as they would surely have thought if their version of events were true.
- j) I bear in mind that N has always accepted that he caused these injuries, and whilst it would be a possibility that he is simply covering up for his mother having inflicted the injuries, there is no evidence at all to support that other than the findings I make that the versions given by the mother and N are not true. The overwhelming weight of evidence in relation to this mother is that she is torn between her children, but not that she would herself physically injure any child of hers.

129. I therefore balance all of those matters in accordance with the case law.

130. In relation to lies, I do believe the mother was lying when she asserted she could not remember the details in relation to what happened with N when T was a baby. Each of the advocates addressed me in relation to this. It of course relates to the issue of whether N has behaved in an aggressive way towards a child before. I'm quite satisfied that the mother lied in relation to her knowledge of this as she was worried it might make the court think that it was more likely that N has in some way deliberately harmed R out of anger towards him. The fact that the mother has lied about that, does not in my view go very much further. It does not seem to me that enables me to consider everything else the mother has said is untruthful, as there is a very logical and rational explanation for her anxiety about that evidence and why she would lie.

131. I then must consider in accordance with Re A (above) and Re B (above) if I am able to ascertain the perpetrator of the injuries upon R. I am careful to consider the mother and N

separately and together and to compare the probabilities in respect of each of them. I must ask myself whether the evidence establishes that this individual probably caused this injury. I am careful not to ask myself who is the more likely, or exclude one person and therefore make an incorrect identification by any linear process of exclusion.

132. In my view the weight of the evidence as I analyse it above in this case does enable me to say that on the balance of probabilities N caused these injuries to R, and for the avoidance of doubt they were caused as two separate injuries where N hit R's head with a significant degree of force against or with a hard object, and that he then dragged him in some way face down across the carpet. I do exclude the mother from having caused the injuries to R.
133. However, I must of course then consider what role the mother has played in this. I am quite satisfied that she has overall been untruthful to this court as to what took place that evening. I do not stray into speculation as to what took place, but it seems to me that on the weight of the evidence the mother would never have permitted N to cause those injuries, and on the balance of probabilities N caused those injuries at least to start with whilst the mother was out of the room. She then became aware of what was happening, and was aware that N had acted in a seriously violent way towards R, although she may not have witnessed all of the attack. I am quite satisfied that is why she reacted in the way that she did to N to throw him out of the property.
134. There was then ample time for the mother to have further discussions with her mother and N and to think of how she would explain this to the hospital and professionals as I set out above. It is apparent from N's police interview that he had had communication with his mother before that. This court has no mobile phone analysis, which may not assist in any event as any conversation could have been done orally.
135. It does not appear to me that I can speculate anymore as to why this took place, or exactly how the injuries were caused.

I shall then put my findings in to the threshold set out, which I have amended in the light of my findings:

1. On the 25 March 2022 R was presented at hospital and subsequent medical investigations determined that he had the following injuries:
 - a. Right side temple acute skull fracture (F30)
 - b. 6 mm acute convexity Subdural hematoma (F30)
 - c. Right sided scalp haematoma (F30)
 - d. Bruising to the right side of the forehead measuring approximately 0.5 cm by 1cm (F30)
 - e. Tender swelling on the right parietal-occipital area measuring 10 cm by 10 cm (F30)
 - f. Bruising to the tip of his nose together with swelling, the swelling measured 0.5cm by 0.5 cm
 - g. Bruising to the right angle of his mouth measuring 0.5 cm by 0.5 cm (F30)
 - h. Bruising to his upper lip measuring 0.5 by 0.5 cm and bruising to his upper frenulum (F30)
 2. There is no organic explanation for the injuries described at 1(b)-1(e) above.
 3. These injuries were inflicted in two separate actions or incidents, and were sustained close together on the evening of 25 March 2022.
 4. R would have been extremely distressed at the time the fracture and facial injuries were sustained.
 5. These injuries were caused by a blow or impact, onto R's head, or a fall with force behind it. He was also dragged across a rough surface. These injuries were caused intentionally by N. The mother did not inflict the injuries.
 6. The mother however has not been truthful about her knowledge of the incident or what she saw, and I find that she is aware that N inflicted these injuries, and has more information that she could have given to assist both the treating doctors, the local authority in their planning and the Court.
 7. I do not make a separate finding of failure to protect. Although there are concerns that the mother was aware of drug misuse, and poor mental health, there is no evidence to support a finding that these matters should have led her to not allow N to be around R or to be unsupervised by her.
136. Those findings clearly cross the threshold. However, if the threshold is met is that of course is just a gateway through which the whole range of orders under the Children Act becomes available to the court. In determining whether in this case whether I should make care or supervision orders, if any order, I must assess the welfare matters.

Options available to the court;

137. The court effectively has before it different options depending on the findings that I have made. These are helpfully set out in table form by the local authority, although they have been the subject of some amendment at the conclusion of the evidence. The local authority and guardian are in agreement as to what orders the court should make, simply dependent upon the findings.
138. The mother makes it clear she will co operate with any order, but of course urges the court to make the least interventionist orders. The different options pt the court are as follows:

Accidental Injury.

There will be a Child in Need plan for 12 weeks and R and T will return to their mother's sole care within two weeks. N would be able to return home, however, would not be able to have unsupervised contact with R.

Non-accidental injuries - no findings against mother.

There will be a 12 month supervision order for both children and N would be expected to move out of the family home. N could have fully supervised contact with R.

Non-accidental injuries – findings made against mother [failure to protect or being untruthful with the court].

There will be a 12-month supervision order for T and a care order in respect of R. N would be required to move out of the family home. N could have fully supervised contact with R.

The Law in relation to welfare:

139. In looking at the appropriate order, I consider the relevant law laid down by the case of Re BS (Children) [2013] EWCA Civ 1146, and surrounding case law of the need to properly balance the options. In considering all the options I must take into account the assistance and support that the local authority could offer.
140. I bear in mind also the clear need for the least interventionist approach, as set out within Re B (A Child) (Care Proceedings Threshold Criteria) [2013] UKSC 33.
141. It also seems to me to be helpful to remind myself of *Re F (A Child: Placement Order: Proportionality)* [\[2018\] EWCA Civ 2761](#) where Jackson LJ attempted to set out the questions that the court should ask itself when assessing risk of future harm and setting it in context:

(1) What is the type of harm that might arise?

(2) What is the likelihood of it arising?

(3) What consequences would there be for the child if it arose?

(4) What steps could be taken to reduce the likelihood of harm arising or to mitigate the effects on the child if it did?

The answers are then placed alongside other factors in the welfare equation so that the court can ask itself:

(5) How do the overall welfare advantages and disadvantages of the realistic options compare, one with another?

142. In considering the applications before me, I must have regard to the Article 6 and Article 8 rights of all those concerned under the European Convention of Human Rights. I must be satisfied that any interference with the Article 8 rights of the parties is in accordance with the law, necessary in a democratic society and proportionate. In the event that the Article 8 rights of the parent conflict with the Article 8 rights of the child, then it is the child's rights that must be given priority.

Analysis of the welfare Issues

143. In considering the application for a supervision order or care order the welfare of the children is my paramount consideration. I have given particular attention to the matters contained in the welfare checklist at **s1(3) of the Children Act 1989**. I have considered the no order principle, that is, whether it is better for the child to make no order at all. I must of course within this consider R and T separately, as they have different needs and considerations given their ages.

144. Considering the welfare checklist under s.1(3).

(a) **the ascertainable wishes and feelings of the children concerned (considered in the light of their age and understanding);**

- i. T would wish to have as little involvement with the local authority as possible. I am sure she wishes her life to go back to how it was before, where she does not have to be supervised with her mother, and she would wish to be sure that she is safe living within her family. T loves N, and wants to spend time with him.

- ii. R would no doubt want to remain with his mother, and to have a relationship with all of his wider family. He would however want to be sure that he was safe and not at risk of being injured again.

(b) their physical, emotional and educational needs;

- i. It is accepted that the mother is able to meet children's needs in general. T has a desperate need for her life to become more normal and part of that is her not being subject to a care order and the intrusion that that brings with it.
- ii. T will also find the findings of this court no doubt difficult to understand and accept, and she will have particular emotional needs in relation to that.
- iii. R will have no memory of being harmed by his brother, but there will be a need as he grows older for there to be some proper life story work with him, which the mother is likely to need substantial help with.
- iv. given the mother's inability to be honest with the court, or what she knows about R's injuries, the children both have a need for a level of local authority involvement to ensure their physical and emotional needs are met in the future.

(c) the likely effect on them of any change in his circumstances;

- i. The only change proposed in relation to another child is that they are able to go home with the mother and not be supervised by their grandmother. That appears to be a positive change for both of them, and despite the findings I have made against the mother, I am satisfied that change is in their welfare interests as long as the mother cooperates properly with orders that are in place.

(d) Their age, sex, background and any characteristics of theirs which the court considers relevant;

- i) T has now been subjected to proceedings for far too long, which has impacted negatively upon her, and given her age that has been particularly difficult for her.
- ii) R is still very young and vulnerable, he appears to have suffered no long term ill effects from his injuries.

(e) any harm which they have suffered or are at risk of suffering;

- i) I have set this out in full above. My focus here is of course is upon the harm caused by a parent, or that a parent has not protected them from. The mother's actions have caused R harm, because I am quite satisfied that when she was at the hospital and afterwards she was able to give substantially more detail as to what has happened in relation to R.
- ii) her lack of honesty has also meant these court proceedings have taken a substantial amount of time, and has led to the disruption for the family with the need for supervision.
- iii) N's actions caused very significant harm to R, and harm to T as well in the impact upon the family.

(f) how capable the mother is, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;

- i) Again, I have set this out in full above. The mother is capable of caring for both children, but she has substantial work to do before the local authority will be confident that the children can remain in her care and not be subject to some form of public law order.

(g) the range of powers available to the court under this Act in the proceedings in question.

I could make no orders, or public law orders to include any combination of supervision orders or care orders.

Conclusion:

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145. I queried with the guardian, given her evidence, as to what order she now thought was most appropriate in relation to R. It was apparent she was very troubled about this, whilst being clear that of course it was dependent upon what findings I would make. The guardian told me that in her view in relation to R a care order was the more appropriate order so that the

local authority could share parental responsibility and that would allow access to greater scrutiny of the family, a statutory responsibility for visits, an IRO to be working with the family, and greater oversight. It would also enable the local authority to bring the matter back to court in a way that a supervision order simply would not.

146. All the advocates have had an opportunity to address me in relation to the appropriate orders. As I have set out above, in the event that I made finding such as I have, the local authority and the guardian suggests that the appropriate orders to meet the children's welfare needs are a supervision order in relation to T and a care order in relation to R.
147. I am of course mindful of the length of time that these proceedings have been ongoing, and the impact from the family of intrusive orders such as a care order being made in relation to R. given the findings that I have made. However, as the mother has not been open and honest, it seems to be inevitable that in these unusual circumstances the local authority must share parental responsibility with her to ensure that she works properly with them going forwards, and that they can ensure that Rs needs are met by way of insistence upon certain matters.
148. I would very much hope that in the future the mother is able to reflect and be honest with the local authority, which is likely it seems to me to result in the local authority then seeking to step down their involvement. That is a matter for her.
149. I therefore make a supervision order in relation to T. I make a care order in relation to R, with a plan that he remains in his mother's care, and a full care plan being filed within seven days.
150. I make no order as to costs, save for detailed public funding assessment of the publicly funded parties.

END OF JUDGMENT