



Neutral Citation Number: [2019] EWHC 3581 (Fam)

Case No: LS19C00209

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/12/2019

Before :

MRS JUSTICE LIEVEN DBE

Between :

**WAKEFIELD METROPOLITAN DISTRICT
COUNCIL**

Applicant

- and -

R

1st Respondent

-and-

T

2nd Respondent

-and-

**THE CHILDREN
(Through the Children's Guardian)**

**3rd - 6th
Respondents**

Charlotte Worsley (instructed by **Sara Townend of Wakefield MDC**) for the **Applicant**
Sugan Praisoody (instructed by **Eva Cofie of EH Dawson Solicitors**) for the **1st Respondent**
David Orbaum (instructed by **Rebecca Shenton of King Street Solicitors**) for the **2nd
Respondent**
Iain Hutchinson (instructed by **Jennifer Heckingbottom of Switalskis Solicitors**) for the **3rd -
6th Respondents**

Hearing dates: 2,3,4,5,6,9,10 December 2019

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MRS JUSTICE LIEVEN DBE

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.

Mrs Justice Lieven DBE :

1. This is an application by Wakefield Metropolitan District Council for a care order in respect of four children, the names are redacted and shall be referred to as Child 1 ; Child 2 , Child 3 and Child 4. All four children were under the age of 5. The parents are ‘R’, (hereafter ‘the Mother’) and ‘T’, (hereafter ‘the Father’). In March 2019 Child 4 was taken by ambulance to a local hospital with a report that she had been suffering fits for an hour. It was rapidly established that Child 4 was seriously unwell and was treated on an emergency basis. It was the view of the treating team that her condition might well have been the result of a non-accidental injury, in the absence of any other explanation from her parents.
2. The local authority commenced care proceedings on 27 March 2019. An interim care order was made by HHJ Murden in respect of Child 4 and her three siblings on 28 March 2019. The case was initially allocated to HHJ Hayes QC and then reallocated it to me. I note at this point that the three older children have been placed throughout separately from Child 4. The first foster carer of the three children found that she could not cope with them, and they were moved to a second foster carer in early June.
3. The local authority was represented before me by Ms Worsley; the Mother by Ms Praisoody; the Father by Mr Orbaum and the Guardian by Mr Hutchinson.
4. The LA seek findings as to the nature of the brain injuries, which I will set out below under the medical evidence; and that the most likely cause of those injuries is that she had been recently forcibly shaken on one occasion and the force was greater than that encountered in normal handling or from minor domestic accidents; that the handling was inappropriate and would be described as violent; that the injuries were caused by the Mother and/or the Father; that both parents failed to protect Child 4, and that either or both of them failed to obtain timely medical treatment for Child 4. The LA argue that the children are likely to suffer future physical harm if they were to be placed in the care of a person(s) who are found to have inflicted the injuries.
5. The injuries the LA seeks to make findings on are:
 - a) *Acute subdural haemorrhages at multiple locations overlying her brain, between the two halves of her brain, beneath her brain and in her posterior fossa.*
 - b) *Acute traumatic effusions overlying her brain.*
 - c) *Acute subarachnoid haemorrhage overlying her brain*
 - d) *Hypoxic ischaemic change within the brain substance*

I will refer to these below as “the injuries”.

6. The hearing proceeded before me primarily as a fact-finding hearing. The LA accepted that if I did not find that either of the parents had inflicted the injuries then they would not pursue a care order. Equally, the parents’ advocates accepted during the hearing, that if I found the parents had inflicted the injuries then they were not arguing that the children should return to the parents. The outstanding issue is whether if the LA’s case is made out, the children should go to live with a paternal aunt, who lives in a country in Europe, (‘Country 2’) pursuant to a care order. It was agreed by all parties that that

issue would need to be dealt with at a separate hearing, once further information was received in respect of a placement in that country

Child 4's medical history

7. Both parents are from Country 2 and are citizens of Country 2 as are all the children. Child 4 was born at 38 + 1 week gestation. She was born by normal vaginal delivery and had normal APGAR scores at birth. She did not require any special or intensive care at birth. She was reported by her parents as being a normal baby who fed normally. GP records show that neonatal screening showed no abnormalities and no health visitor concerns were documented, the last visit being recorded as a home visit on in February 2019
8. She presented by ambulance at a local hospital at 10.44 on Sunday 24 March, with a report that she had been fitting for one hour. Her parents had told the ambulance staff that she had been well until the day before when she had two episodes of what the Mother described as seizures lasting about 20 minutes.
9. She was immediately treated with anticonvulsants and antibiotics. Dr Y, a paediatric consultant on the treating team, confirmed that in his view all the relevant tests had been carried out, and the care she had received was entirely appropriate. Mr Richards, whose expertise and experience I will set out below and who acted as an independent medical expert and reviewed the medical notes, gave evidence that all the treatment she received was in line with good clinical practice, and normal for the condition in which she presented. Once she had been stabilised Child 4 was transferred for a CT scan. This showed abnormalities around the brain which would account for the clinical presentation. There was no abnormality of the skull joints and no abnormal scalp swelling or skull fracture. A series of blood tests were performed which showed normal metabolic parameters, other than features associated with acute illness.
10. Following the CT scan Child 4's condition deteriorated in that she appeared to be having further seizures with intermittent periods of apnoea (stopping breathing). A further anti-convulsant was given and she was intubated and ventilated. She was transferred to the paediatric intensive care unit and was entered into a neuroprotective intensive care regime.
11. An MRI scan was carried out on 26 March 2019 and Dr Y (Paediatric Consultant) filed a report. A series of investigations were carried out looking for features of pre-existing infection, metabolic disorder or blood clotting abnormality. Dr Y discounted sepsis or meningitis and concluded that the most likely cause was of abusive head trauma.
12. An ophthalmological assessment was undertaken of Child 4 on 26 March. Dr W (Consultant Paediatric Ophthalmologist) provided a report on 13 June 2019 saying that the ophthalmology findings for Child 4 were normal. Mr Richards in his subsequent report said he could identify no abnormality and none has been noted or treated by the caring doctors.
13. A senior social worker employed by the local authority met the parents at the hospital and recorded that neither parent gave any explanation for the injuries. The LA considered the situation with the treating team at the hospital. Dr E sent an updated referral to the LA Children's Services stating that based on the scan report, with no

history of trauma, non-accidental injury is “much more likely”. A strategy meeting was held on 25 March and the view was taken that there were significant concerns about the older children being left in the care of the Father, given that he could be in the pool of perpetrators. The Mother was at this point staying in hospital with Child 4. the LA identified a family friend who could stay overnight and supervise the children, with the Father. The next day the friend had to go to work and the maternal grandmother agreed to stay. However, the LA visited and discovered that the children had been left in the sole charge of the Father. In those circumstances they decided to commence the care proceedings.

Family background

14. The Mother says that she and the Father started their relationship when she was nearly 17 years old and they were both living in Country 2. They came to the UK in 2015. They initially lived with the Mother’s parents in what she describes as a very small house, and moved into their own flat in June 2018. This is a two bedroom flat; the Mother and Father slept in the living room/kitchen with Child 4 in a cradle; the two older girls slept in one bedroom and Child 3 in the other smaller bedroom. The Mother said the flat was not small, but the Father accepted that it was small for four children and two adults, he also accepted that it was possible to hear what was happening in one room in the rest of the flat. I have no doubt that the living conditions were cramped, particularly given four such young children. The parents very recently moved out of the flat, in part due to rent arrears, and are now living with the maternal grandmother.
15. All the children were born in the UK, and the Mother initially said that Child 3 and Child 4 were not planned pregnancies, although she later said Child 4 was planned. The Father had a number of manual jobs but had an injury at work in October 2018 and has not been able to work since then. The Mother has not worked since she had the children. Therefore, throughout the material time the Father was not working and both parents say that they shared the care of the children.
16. The Mother says there were no complications with Child 4’s birth. Although the Father did say that the Mother had some back problems during the pregnancy. Child 4 slept in a Moses basket next to the parents’ bed. The parents said the daily routine was as follows. Child 4 would normally wake between 5-6am and one of the parents would feed her (Child 4 was always bottle fed). She would then go back to sleep and feed again at around 9am and then about every 3 hours. The Mother says that Child 4 was generally a quiet baby. She would be put down around 9pm and wake once in the night to feed. The pattern on the night of Saturday 23 March was somewhat different to this, but that factor alone carries little significance, as Child 4 was only 5 weeks old and patterns inevitably change somewhat.
17. The Mother describes the home as being a “very busy and often loud home to live in”. It was extremely difficult to get a sense of the family life before the 24 March as both parents sought to diminish any problems they had, and suggest that the children were effectively no trouble at all. As I say below, I find this extremely difficult to accept.
18. I will set out both parents’ evidence of the days before Child 4’s admission to hospital in some detail. This is a case where there is no third-party evidence on the key events, and no relevant documentary or electronic evidence, save for a video I will refer to. I therefore only have the accounts of the two parents with which to try to understand

what happened and to make findings of fact upon. As I will explain below, the medical evidence does not ultimately assist in trying to determine who caused the injuries.

19. There was one prior incident upon which the LA sought to place some weight. In 2017 the Mother had called the police saying the Father was being violent to her and the police attended the flat. The police record that the Mother had said that there had been pushing and shoving and the Father had tried to strangle her. However, both parents in their evidence before the Court very much sought to play down this incident.

The Mother's evidence

20. The Mother made two written statements in the proceedings. She had also given an account of Child 4's condition and the immediate history to the medical staff at the hospital; an account to Ms K, (the independent social worker appointed during proceedings) and an interview to the police. There are significant inconsistencies about key points in those statements which I will refer to below. Given that she had only given two fairly short written statements, and that they did not cover much of the detail that was essential to understanding her case, I encouraged her to give a full oral account in her evidence in chief. The Mother had changed her solicitors very close to the hearing, and Ms Praisoody had only been instructed shortly before the hearing. I was therefore very concerned to ensure that the Mother had every opportunity to tell the Court as full a version of events as possible. Ms Worsley and Mr Hutchinson did not object to her expanding her oral evidence in this way. I took the Mother through much of her evidence in chief, again so that I could be satisfied that there was nothing she wanted to say that she did not have a full opportunity to say, particularly as there was initially some confusion with Ms Praisoody over which precise days the Mother was describing. I was satisfied by the end of evidence in chief that the Mother had given as full and as clear an account as she wished to do.
21. I was also very conscious that she was pregnant and that giving evidence, including being cross examined was necessarily a very stressful process. We therefore had a number of breaks, both during evidence in chief and cross examination. The Mother and Father's evidence was given through interpreters, their English being very limited. Both interpreters were excellent, and I am confident that both parents had a full opportunity to give their account of all relevant matters.
22. The Mother accepted that it was not always easy with four children under the age of four in a fairly small flat and with limited help beyond the Father. However, she was adamant that she and her partner coped with the situation, and that they never harmed the children. She said that Child 4 was not a planned baby and that she had only realised she was pregnant at about 16 weeks.
23. In relation to the incident of the domestic violence in 2017 she said that she and the Father had been arguing and he took hold of her, but she denied that he had pulled and pushed her. She said that she called the police because she wanted to show him that a man should not treat his partner in that way, but she strongly suggested that the incident was not a serious one. I note that although when it came to the night of 23/24 March one of the reasons the parents give for not calling an ambulance was their difficulties with English, the Mother had called the police during this incident in 2017 and been able to make herself understood.

24. I will set out in some detail her account of the relevant events between Friday 22nd March and Sunday 24th March when Child 4 was admitted to hospital. She said that Child 4's milk formula had been changed to a brand from Country 2 on 22nd and therefore the Mother gave her slightly less milk than usual, but she drank it as normal. On 22nd (Friday) for the rest of the day Child 4 fed normally about every 3 hours.
25. On Saturday 23rd Child 4 woke, as usual about 8am and was fed, and had her second feed at about 11.30am/12pm again with everything being normal. Ms Worsley took the Mother through the routine of the day, and it appeared that she did not leave the flat between at least Friday 22nd and going to hospital on the Sunday morning. For the vast majority of that time it appears that all the children were also in the flat. Both parents accept that it was not possible for one of them to go out with all four children, and the impression I got was that the Mother spent a great deal of time in the flat with most, if not all, of the children.
26. The Mother fed Child 4 again at about 2pm and again this was normal. The Mother described Child 4 "spilling" a little milk, and I understand that this was not her vomiting, but rather just having too much milk in her mouth. Child 4 was then put back in her cot. During their oral evidence both parents said that the maternal great-grandmother had come round to the flat at around lunchtime for about an hour. However, there was no suggestion that she was alone with Child 4, or that she could have harmed her and at the time she was there Child 4 was behaving entirely normally, so there was no need to call her as a witness or consider that matter any further.
27. The Mother prepared the older children's supper at about 6pm. It is around this point that the various accounts become inconsistent, and it is difficult to establish precisely what happened. In evidence in chief the Mother said that after the children's supper, and after she had fed Child 4 at around 6pm, she had picked Child 4 up to change her nappy and it was at that stage that the baby looked at her "in a strange way" and the Mother said, "I didn't like the way she looked". The Mother put her on the parent's bed and it was at that point the Mother took the video of the baby. The Mother said her head was turning around and her right hand and right leg started to shake a little, for 30-35 seconds. She gave the baby a cuddle and she stopped shaking and fell asleep.
28. In evidence in chief she said that she did not know where the Father was when she took the video. She said she did not know whether he was in the flat or not, but she took the video to show him later. She was initially very clear that she did not know whether the Father was in the flat or not, and said that when she was concentrating on a task she was oblivious (my word) to what was going on around her. She said she could not call out to him because it might have woken, or perhaps just disturbed, the other children. However, a little later she said that there was a period when the Father was not in the flat because he went to the shop. She said she could not remember at what time he left or returned, and she did not know how long he was out for. She had not said in either of her statements that the Father had gone out. I will return to this matter below.
29. The Mother said that she showed the Father the video straight away as he came back into the house. Her evidence was that it seemed to him that something was wrong and the baby might have been cold. He put a blanket on the baby. This is in direct contradiction to the Father's evidence, as I will explain.

30. It has not been possible to establish with certainty the timing of the video. The Mother said in evidence in chief she suggested it was around 7pm after the other children had had supper. The nurse at the hospital recorded in her notes that the video was taken at 8.09pm, the precision of which strongly suggests that she saw the time on the Mother's phone. On the last day of the hearing Ms Worsley had obtained a screenshot from the police, who hold the phone, that indicated the video was timed at 20.10.
31. The Mother said that the next feed was at 11pm. She said the baby took the bottle and sucked, but she was somewhat reluctant and took the feed in separate parts, but the Mother did not describe this as abnormal.
32. I should say that it was extremely difficult to get any sense from the Mother through her evidence of Child 4's behaviour during the day, or indeed that of the other children. Her evidence made it sound as if Child 4 simply woke up to be fed every 3 hours, then went back to sleep (day and night) and lay in her cot. This is more than a little difficult to accept, as it is to accept that the other three children simply went to their two rooms, played and caused little or no trouble. But the Mother was exceedingly reluctant to accept any problems during the day with the children or to give what would seem to be a realistic account of what was happening in the flat that evening.
33. The next key time is the feed at 2am, when again the Mother's evidence has not been consistent. In her evidence in chief she said that she and the Father got up, she made the bottle and the Father picked up Child 4 to feed her. As he was feeding her he noticed that her body was frozen and she was holding out her hand and leg "in a stiff way". She said she saw the Father holding Child 4 in a blanket. She said the Father had said to her that Child 4 had a stiff leg and hand, but she then started to eat normally. She was put back in bed and went back to sleep.
34. The baby woke again at 5am but she didn't really want to eat and did not feed. Her body was shaking or vibrating, but it wasn't strong, she then fell back asleep. The Mother said that the Father was not properly awake during this feed, but she gave the impression that he was "aware that I got up".
35. The Mother said she woke up with Child 3 at about 7am. Child 4 woke at 8am and she needed her nappy changing. By 9am she "started to behave in a strange way". She started crying and at some point her breathing did not seem stable. The mother rang her brother, who speaks good English and at about the same time she noticed that Child 4 was changing colour. The brother called the ambulance at 10.14am, and the ambulance arrived about 5 minutes later.
36. The Mother in her evidence in chief that she had concerns about the way that Child 4 was treated in hospital. When this was raised by Ms Praisoody in questioning her client, I raised the concern that this had not been put to Mr Richards, the Consultant Paediatric Neurosurgeon, in cross examination, nor was there any suggestion in the Mother's evidence that she thought the hospital care was inappropriate. To fully understand the Mother's case, I allowed her to explain, and she said she had noticed that the soft spot on the baby's head was swollen and was pulsating. As far as I could understand the point, she was referring to the fontanelle. Given that the treating doctors and Mr Richards all considered the treatment to be entirely appropriate, and there is nothing in

the medical notes to suggest swelling, I took the view this matter could go no further. There was absolutely no evidence, in whatever form, to support a finding or even the possibility, that Child 4's injuries had occurred at the hospital.

37. The Mother accompanied Child 4 to hospital while the Father stayed at home with the other children. On 26th March the Mother had a conversation with a Nurse who spoke the language of Country 2 at the hospital. The Mother referred to the baby waking and shaking at 2am, but said nothing about the previous evening. She did show the nurse the video, and the notes record the video being taken at 8.09pm. As I have said, it has not been possible to establish the precise time the video was taken, but the notes, made only two days after the incident, seem to suggest that it was as late as 8.09pm.
38. On the same day Dr Y carried out a child protection medical of Child 4. He talked to the Mother with the benefit of an interpreter. Again, the Mother referred to 2am, but not the previous evening.
39. The Mother was interviewed by the police on 28th March. She said in relation to 5am;

"I was woken by a different noise, she was shaking, staring with her eyes, eyes directing to the right, left side body shaking. I woke 'the Father' - he took her from cot and cuddled her - she stopped - she wouldn't eat. We fell back to sleep together"
[This is at 2am]

"Sunday woke up started behaving strange way, but more severely way" [This is at 6am]

The Father

40. The Father had made two statements in the Family proceedings, dated 4 April and 14 November 2019, the factual account of events being contained in the earlier statement. The Father also gave a statement to the police and spoke to Ms K. The Father's evidence contained some important inconsistencies, so I will try to set out here the accounts he gave, highlighting any important inconsistencies.
41. The Father was clear that no-one apart from he and Mother were alone with Child 4, and that they were always careful not to allow the older children to be alone with her. There is therefore no suggestion from the Father that anyone other than he or the Mother caused the injuries.
42. The Father, like the Mother, was extremely reluctant to accept that there were any difficulties looking after four children under the age of four in a relatively small two bedroom flat. By his evidence the three older children effectively put themselves to bed, and Child 4 and Child 3 were no trouble at all, all of which I found very difficult to believe.
43. In his statement he said that Child 4 was normal at her 2pm feed on Saturday 23 March. He said that he put Child 4 to bed between 5-6pm and she "was well when I put her to bed". He said repeatedly in oral evidence and cross examination that he was the one who put her to be bed between 5-6pm. He was not sure who had fed her but that he put

her to bed. He said that he was not sure where the Mother was in the flat or what she was doing when he was feeding the baby.

44. In his statement dated 4 April (i.e. two weeks after the events) he said; “*I do not remember specifically leaving the house*”. However, in oral evidence in chief he said that he had left the house, after putting Child 4 to bed, for about an hour. He said the other children were still awake when he left. It was not at all clear why he had gone out leaving the Mother to put the other children to bed and no explanation was given as to why he had not made this clear in his written statements. I note here that nobody in the parents’ position could have failed to realise the importance of the parents’ precise movements on the Saturday late afternoon and evening. The failure to refer in the statements to the fact the Father went out appears to me to be an important omission and one that cannot be explained either by a simple failure of recollection or not realising the importance of the matter. The Father said that he had gone to the shop to buy a non-alcoholic drink and had been out for about one hour. He initially said that the shop was 15 minutes away, but then accepted it was only 4-5 minutes away. He said that he went to the shop and happened to meet a friend who he chatted to for a few minutes. I note here that it was difficult to work out how the Father could have been out for as long as an hour on his account of what had happened. He also said in cross examination that he could have been out for longer, but then a little later said that it was only an hour. My strong impression was that the Father was not being truthful about how long he was out, and I simply cannot tell whether he did only go to the shop, or whether he was out for longer and went somewhere else. I note that if the Father had mentioned the friend in his statements, as opposed to in cross examination it might have been possible to get a statement from that friend. However, given that the precise time the Father was out would not ultimately help me in determining what happened to Child 4, there was no benefit in pursuing this course at such a late stage of proceedings, and no one suggested that I should do so.
45. It was also extremely difficult to establish whether the Father often went out at bedtime or this was the first occasion. In evidence in chief he suggested that this was the first time he had gone out at that time, but in cross examination he denied that it was unusual for him to go out.
46. The Father said that when he got back to the flat the Mother asked him to watch the video that she had taken, but he went to put one of the girls back to bed and didn’t watch it. Again, there was no mention of the Mother wanting to show him the video in his written statements. He then checked on Child 4 and thought she looked fine, so didn’t think it was necessary to watch the video. He denied watching the video at all until he saw it outside Court on the morning he gave evidence.
47. On 24 March the Father said that the Mother woke him at 2am when Child 4 woke, and the Mother was worried about her and suggested calling an ambulance. He again thought the baby was alright, and only a bit cold. He wrapped her in a blanket and held her, at which point she stopped trembling and he laid her down. He thought she was going to vomit and turned her over quickly, but she was still sick. He then changed her clothes and she went back to sleep. He said he sat and watched her for a while to check she was alright.
48. He said that he remembered nothing about the 5am feed, and must have been asleep.

49. In the morning when Child 4 woke up the Father said she looked “sad” and wasn’t her normal self. Shortly thereafter she started shaking and her left hand went stiff. It was at this point that the parents decided to call the Mother’s brother and get him to call an ambulance.
50. The Father was adamant that he had not shaken the baby, and he said that he did not believe the Mother had done so either.

Dr Y

51. Dr Y’s evidence was not challenged and was therefore taken as read. He is a paediatric consultant with a lengthy period of senior child protection experience. He performed a child protection medical on Child 4 at 14.15 on 26 March 2019, at the local hospital, the Mother was present with an interpreter.
52. The baby was too unwell for a physical examination. Dr Y’s report says;

“Features of AHT are extra-axial bleeding, subdural collections, brain injury, retinal haemorrhages in 70-80%, external head or scalp injuries may be present, skull fracture maybe present, but the latter two not if shaken without impact. Both the CT scan and MRI scan of the head and brain both confirm multiple areas of extra axial bleeding and collections, and brain injury. There is no skull fracture. There are no retinal haemorrhages. The child remains encephalopathic which is also a feature of AHT

a. Summary of the MRI: In the absence of significant witnessed high velocity trauma, the combination of multicompartmental subdural haematomas, convexity subarachnoid haemorrhage and hypoxic ischaemic injury is strongly suggestive of abusive head trauma. Correlation with ophthalmological examination and a skeletal survey is required.”

53. He then goes through a series of potential causations and rejects them, as follows – no evidence of major accidental trauma; no evidence of cranial malformation; no history of a bleeding disorder, or family history of such; no evidence of hypernatremia; nothing to suggest sepsis or meningitis, including no history of fevers; no risk factors connected with the pregnancy. He concludes by saying “*I believe the most likely cause to be AHT [Abusive Head Trauma].*”

Professor Stivaros

54. Professor Stivaros is the head of Paediatric Neurology at Royal Manchester Children’s Hospital and is the clinical lead for the North of England Children’s Epilepsy Surgery. He is a professor of paediatric neuroradiology and Translational Imaging at Manchester University. He reports on some 2,500 paediatric brain and spine scans per year.

Professor Stivaros is therefore very highly qualified in the field of paediatric neurology, as well as being highly experienced in interpreting the imaging that is created. I found him to be a highly expert, careful and extremely knowledgeable expert.

55. The images that he had considered were from the CT brain scan undertaken at the local hospital on 24 March, and the MRI scan undertaken at a different regional hospital on 26 March. He identified the injuries as set out above from the two scans.
56. Multiple location subdural bleedings were seen. He explained that bleeding of this nature in multiple locations does not happen if a child's head is struck or hits something hard. Further there was no evidence of impact on the head such as soft tissue swelling or fractures to the skull. What is shown is an acceleration/deceleration injury, which is commonly referred to as shaking.
57. There was subarachnoid bleeding overlying the brain. This is again commonly seen in children as a result of traumatic brain injury, assuming that other causes are excluded. There was hypoxic ischaemic injury (HII) where the brain itself is injured and this occurred in multiple locations. This occurs when the brain itself moves back and forth and the cells of the brain become damaged. There were subdural effusions where the linings on the surface of the brain had become torn. These multiple injuries to the brain and the multi-compartmental bleeds overlying the brain can all be explained by a shaking injury.
58. Professor Stivaros said that he could not specify the exact force undertaken from the imaging, but by comparing Child 4's injuries with those that he had seen in accident injuries with a known cause, he said it was injury commensurate with a high energy traumatic head injury such as a high-speed road traffic accident, or a child being knocked off a bike at 40mph. The known mechanism of a shaking injury of this nature would mean that the shaking would be completely outside what would be normal handling of a baby.
59. On timing, Professor Stivaros said that the MRI indicated that the injuries occurred between 19th and 26th March and that given the extensive imaging changes of HII he would not expect a child to behave normally in any way following the index injury. If there had been an impact injury then swelling would normally occur within minutes or an hour, occasionally up to 24 hours later, and the swelling would persist for up to two weeks.
60. He said both in writing and orally that he could not come up with a unifying diagnosis that would explain all these injuries other than trauma. He said there was nothing organic in his expertise that would account for these injuries.
61. Ms Praisoody, for the Mother, asked questions around whether if the Mother had been holding the baby when she had a fit and not supporting the head, the shaking of the head during the fit could account for the injuries. Professor Stivaros was completely clear that it could not do so. He said he had extensive experience of watching videos of parents and carers holding babies when they had seizures and he had no experience of a baby sustaining the type of injuries seen here, and neither was there anything in the published cases which would support such a narrative. He explained that when a baby had a fit the head moved from side to side, whereas the injuries here showed

acceleration/deceleration of the head, which the baby could not achieve through its own movements.

62. Mr Orbaum, for the Father, asked whether Professor Stivaros was concerned about the lack of evidence of any retinal haemorrhages. He said that that did not affect his interpretation of the imaging.

Mr Richards

63. Mr Peter Richards is a highly experienced consultant paediatric neurosurgeon. He is a Fellow of the Royal College of Surgeons and the Royal College of Paediatrics and Child Health. He headed the department of paediatric neurosurgery at the Oxford University NHS Trust. He has a particular professional interest in infant head trauma. He was instructed to consider from the paediatric neurosurgical perspective the likely cause of Child 4's illness.
64. He said he concurred with the evidence of Professor Stivaros. He explained that there is no specific test to confirm the diagnosis of head injury and it is (of course) impossible to carry out experiments on children. The history provided by the parents did not describe any event likely to cause a significant head injury such as that shown on the relevant scans. He said that there were, from his neurosurgical perspective, only four possible explanations:
- a. Firstly, that it was not a head injury and the doctors are mistaken. However, he said there was nothing in the evidence that would suggest this was the case, unless there was some disease process currently unknown to the medical profession. He was absolutely clear that every relevant test had been carried out, and that the relevant clinical protocol had been fully followed.
 - b. Secondly, that Child 4 was vulnerable such that she would suffer such an injury from handling that would not have had the same impact on a normal baby of her age. However, investigation has not shown any of the known vulnerabilities that infants can suffer from and those investigations have been thorough and complete.
 - c. Thirdly, that from cognitive facts, alcohol or drug ingestion the parents have failed to appreciate or remember the causative event. He noted that this is a matter for the Court and not the medical expert.
 - d. Fourthly that the parents have chosen not to report the event.
65. He gave evidence that the nature of the handling that could give rise to the type and severity of the injuries seen on Child 4 would involve more than rough handling and would involve what would be recognised to be inappropriate or violent handling. Again, he explained that it is not possible to experiment on infants to establish the level of shaking that would be needed to cause this type of injury, but he said from his extensive observation of infants in hospital, even when they must be turned or moved very quickly if having a seizure, such handling has never in his experience produced injuries of this type. In answer to questions in cross examination he was clear that the

parents moving Child 4 rapidly, or even roughly, on the bed if she was having a seizure, would be highly unlikely to cause such injuries.

66. He accepted that there were no other signs of assault, such as bruising or swelling on the body or head. The absence of retinal haemorrhages did not mean that shaking had not occurred, but would indicate the extent of the force. The fact that Child 4 appears to have recovered well also seems to indicate that the incident was not at the high end of such an assault.
67. In terms of timing, Mr Richards said that he thought that the video that the Mother recorded on the evening of 23 March probably showed that Child 4 was not behaving normally at that time. He said that “she didn’t look right to me” and did not appear to be fully alert or fully interactive. The right arm is waving around but the left arm is not, which is unusual in a baby of that age. He thought it was probable that she had suffered the injuries at that time. However, he did emphasise that the video is short (about 45 seconds) and Child 4’s presentation is not particularly clear. He also said that once she had suffered this scale of injury to her brain he would not expect her to behave normally, and she would not be likely to suck milk normally, although some milk could go into her mouth. He said that if the feeding was normal that is one of the clearest indicators that all was well with the baby at that point. He did suggest that her condition could well have deteriorated over time, so she could have suffered the injuries on the Saturday, but not shown the more severe symptoms until the next morning. Mr Richards explained that Child 4 was not showing catastrophic change, such that she would have needed emergency treatment and that was consistent with a change over time.
68. He was asked whether in his view it was necessary that the court should have evidence from a paediatrician. He said that in some cases the court found that was needed, but here all the relevant tests had been carried out by the clinical paediatric team at a leading children’s hospital. He said he had seen nothing to suggest that that team had done anything wrong, or not wholly in accordance with best practice.

Ms K

69. Ms K was appointed as an independent social worker to carry out a parenting assessment of the parents. She has worked as a qualified social worker in the UK since July 2004, and has carried out many court instructed assessments of birth parents and connected persons. The Father sought an assessment by a culturally appropriate social worker, which on the facts of this case meant someone who was fluent in the language of Country 2 and had experience of social work there and in England. She was a measured and careful witness, who answered questions frankly and honestly. I note at this point that as both sides in the case accepted the position in respect of threshold, (as set out above at paragraph 6), much of her evidence did not go to the matters I have to decide at this stage of the matter. However, the parents did give her an account of what had happened leading up to Child A’s admission to hospital, and her evidence was very useful in respect of the risk factors that I have to consider when determining the factual issues. She also gave relevant, albeit second hand, evidence as to the children’s behaviour in foster care.
70. Ms K met both parents on five occasions (both parents together three times, and each parent separately twice), and spoke to the social workers at the LA; the second foster

carer; the maternal grandmother and the paternal aunt. She did not observe contact with the children, but she did have a report of contact from the contact centre workers.

71. She was clear that the parents had shown warmth and affection for the children, and there was no doubt that they loved their children. She agreed that mainly, the contact was of good quality and the parents had made an effort to attend.
72. She recorded the fact that the Mother herself had had an unhappy and troubled childhood including a number of periods in residential institutions when she was a teenager. She recorded that the Mother had a difficult relationship with her mother, the Maternal Grandmother. Ms K was concerned that the Mother did not talk openly about her childhood and felt the Mother struggled to understand how her early experiences of poor parenting had affected her own parenting skills.
73. The Father told Ms K that he came from a home where his own father drank heavily and perpetrated severe physical abuse both towards his mother and children. The Father had had incidents with the law between the ages of 15 and 18, including theft, assault and battery. She felt that the Father was more open and more insightful about his childhood experiences than the Mother had been.
74. The Father told her that he had drunk heavily before the birth of Child 1, and has not drunk excessively since then. I note at this point that the Father told the Court that he did not drink alcohol. He worked when he came to the UK in a number of jobs. However, in October 2018 he suffered a serious injury to his hand and has not been able to work since. The parents have been living on state benefits since that date.
75. Ms K asked both parents about the incident of domestic violence in 2017 when the Mother called the police. The Mother said she did not really know what was in her head when she called the police. The Father said that it was the mother's "stupidity" which led to the incident. The Father spent some 9 hours at the police station. Ms K commented on the inconsistency of the Mother not being able to explain why she called the police.
76. Ms K raised a number of what she described as 'risk factors'. These included their housing position; the Mother's parenting skills; and the history of the injury to Child 4.
77. On housing, the couple live in a two bedroom privately rented flat which they moved to in 2016 after being evicted from their previous property for rent arrears. The parents accepted that they are in rent arrears on the present flat, and have not paid rent since December 2018. During the hearing Mr Orbaum told the court that the parents had now left that flat, being in arrears and were living with the maternal grandmother. Ms K's concern was that the parents did not seem particularly concerned about the rent arrears, and this had been the second time they had fallen into arrears.
78. She felt that the Mother did not take responsibility for her parenting, and did not prioritise the children's needs over her own. The second foster carer had described to Ms K the very difficult behaviour the children had been exhibiting when they moved to her. This included being violent to each other, biting and appearing to have very few clear boundaries. Apparently, the foster carer described the children as being "wild". The children seem to have now calmed down with the second foster placement, but the

experience of the first foster carer, who Ms K had not spoken to, but the social worker had spoken to, had described the children as being very difficult and having no boundaries. The Mother was quick to blame this behaviour on the foster carers and not to appreciate that it was the parents' conduct which must have led to this situation.

79. Ms K was asked by counsel for the Mother whether this behaviour was likely to be a response to the children's separation from their parents, and Ms K rejected this suggestion. She said that if the parents had provided a structure and boundaries, in a secure environment, for the children then this type of behaviour would not have occurred, even though they might have been upset and disorientated to start with.
80. Ms K referred to the notes of the contact meetings. She recorded that there were clear positives – the parents had made effort to attend the sessions and had only missed them due to solicitors' appointments or ill-health. There were positive interactions playing with the children, and showing warmth and affection to them. She raised concerns from the contact notes about the parents not taking the contact workers feedback on board and the Mother in particular being resistant to professional guidance. There was a wider concern about the parents not taking on board professional advice and working with professionals.
81. The parents appear to be fairly isolated. The Mother has a difficult relationship with the Maternal Grandmother and did not feel that she helped much. The Mother said that Child 1 only attended nursery for one week, because it was very difficult for her to get the child to nursery when she had two other children and was pregnant with Child 4. She did not appear to have any active family support at this point.
82. The parents are in some contact with the paternal aunt in Country 2 and she had visited them once when Child 1 was born.
83. The third area of risk that Ms K raised was the issues around the injury. Her specific concern was that taking the parents evidence at face value, that they did not contact the emergency services when they first thought Child 4 was unwell or during the night. In particular, Ms K said that she thought it was very unusual for the Mother to have taken the video of Child 4 on the Saturday afternoon if she thought the baby was unwell, rather than just taking her to hospital. She also said that she found it concerning that the parents did not ring the emergency services first thing in the morning. The Mother had said this was because she did not speak English and did not want to wake her brother early, but Ms K said she found this concerning.
84. Ms K did say that she thought the Father was more open and relaxed with her than the Mother. The Father had been quicker when prompted to say that he would with hindsight have called the ambulance sooner.
85. Ms K's conclusion was that even if the court made no findings against the parents in respect of Child 4's injury she still did not believe that they could look after the children.
86. The social worker also gave evidence. She agreed with Ms K's evidence and assessment. She explained that very happily Child 4 is now doing well and appears to be meeting her developmental milestones. She said that when the three older children

were in the first foster placement, the carer struggled to manage them and found their behaviour very difficult and unmanageable. She would expect some distress when children are removed from their parents, but this behaviour went well beyond that. The second foster carer found them very difficult to start with but their behaviour has now improved and they are in good routines.

The law

87. The law in this case is agreed, and what I set out below is largely from an agreed note on the law produced by Ms Worsley and agreed by the other counsel. I am very grateful to Ms Worsley for the production of this note.
88. The burden of proof is on the Local Authority. It is for the Local Authority to satisfy the court, on the balance of probabilities, that it has made out its case in relation to disputed facts. The parents/intervenor have to prove nothing and the court must be careful to ensure that it does not reverse the burden of proof. As Mostyn J said in Lancashire v R [2013] EWHC 3064 (Fam), there is no pseudo-burden upon a parent to come up with alternative explanations.
89. The standard to which the Local Authority must satisfy the court is the simple balance of probabilities. There is no room for a finding by the court that something might have happened. The court must decide that it did or that it did not [Re B at paragraph 2]. If a matter is not proved to have happened the court must approach the case on the basis that it did not happen.
90. A Court embarking upon a fact-finding hearing should remind itself of the guidance by the House of Lords on the meaning of “balance of probabilities” as it relates to cases involving the welfare of children in the case of Re B (Children) [2008] UKHL 35. In that case Lord Hoffman stated:

“I think that the time has come to say, once and for all, that there is only one civil standard of proof and that is proof that the fact in issue more probably occurred than not... There is only one rule of law, namely that the occurrence of the fact in issue must be proved to have been more probable than not. Common sense, not law, requires that in deciding this question, regard should be had, to whatever extent appropriate, to inherent probabilities.

91. As Lord Hoffmann further observed in Re B:

“If a legal rule requires the facts to be proved (a 'fact in issue') a judge must decide if it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are 0 and 1. The fact either happened or it did not. If a Tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, the value of nought is returned and the fact is treated as not having happened. If it does discharge it, the

value of one is returned and the fact is treated as having happened."

92. Baroness Hale stated:

"the standard of proof in finding the facts necessary to establish the threshold under section 31(2) or the welfare consideration in section 1 of the 1989 Act is the simple balance of probabilities, neither more nor less. Neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts. The inherent probabilities are simply something to be taken into account, where relevant, in deciding where the truth lies..."

93. Further assistance is found in Re H (Minors) (Sexual Abuse: Standard of Proof) [1996] AC 563 in which Lord Nicholls held that when considering, whether on the balance of probabilities, an event had occurred, the inherent probability or improbability of that event is a factor to be taken into account by the court in determining whether it is more likely than not that the event occurred. Lord Nicholls stated:

"The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities, the court will have in mind as a factor, to whatever extent is appropriate in the particular case that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability..... Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation. Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, an event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established."

94. In Re Y (Children) (No.3) [2016] EWHC 503 Fam the President of the Family Division Sir James Munby (as he then was) endorsed at paragraph 16 the legal principles set out in the judgment of Baker J (as he then was) in Re L and M (Children) [2013] EWHC 1569 (Fam) at paragraphs 45-53.

95. The President then added the following points to Baker J's summary of the principles to be applied, namely:

“First, that the legal concept of the proof on the balance of probabilities ‘must be applied with common sense’ as Lord Brandon said in The Popi M, Rhesa Shipping Co SA v Edmunds, Rhesa Shipping Co Sa v Fenton Insurance Co Ltd [1985] 1WLR at 956.

Secondly, that the court can have regard to the inherent probabilities:

Thirdly, that 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. As to the width of the range of facts which may be relevant when the court is considering the threshold conditions: “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”
(per Lord Nicholls in *Re H*).

96. In evaluating whether significant harm has occurred, and if so who the perpetrator was, the roles of the medical expert and of the court are different. The judge must look at all the evidence in the case, both medical and non-medical, and come to an overall conclusion on the question of significant harm raised in s 31. *Re B (Non-Accidental Injury)* [2002] EWCA Civ 752; [2002] 2 FLR 1133; *Re T (Abuse: Standard of Proof)* [2004] EWCA Civ 558, [2004] 2 FLR 838.

97. The logic of the approach of the House of Lords in *Re B* is that it is impossible to find, on the balance of possibilities, that X is the perpetrator but that Y nevertheless remains in the pool of possible perpetrators. *Re M (Fact-Finding Hearing: Burden of Proof)* [2008] EWCA Civ 1261, [2009] 1 FLR 1177. It is in the public interest that those who cause non-accidental injuries be identified (*Re K (Non-accidental Injuries: Perpetrator: New Evidence)* [2005] 1 FLR 285). The court should not, however, ‘strain’ the evidence before it to identify on the simple balance of probabilities the individual who inflicted the injuries.

98. There does appear to me to be some tensions and shifts within the caselaw on the correct approach to the identification of the perpetrator and the use of the concept of

the pool. The position was recently clarified in Re B (Uncertain Perpetrator) [2019] EWCA Civ 575 at Paragraph 46:

“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’.”

99. Where the court is satisfied that the child has suffered significant harm, the threshold conditions under CA 1989, s 31(2)(b)(i) will be met in relation to that child even though the court is unable to identify who within the pool of possible perpetrators inflicted the harm: Lancashire County Council v B [2000] 1 FLR 583. In determining whether a person is properly included in the pool of potential perpetrators, it is essential that the court weighs any lies told by that person against any evidence that points away from them having been responsible for the injuries (H v City and Council of Swansea and Others [2011] EWCA Civ 195).
100. The role of, and approach to, expert evidence was considered in Re B (Care: Expert Witnesses) [1996] 1 FLR 667 where Ward LJ held as follows in respect of the evidence of expert witnesses:

“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.”

101. Butler-Sloss LJ continued:

“An expert is not in any special position and there is no presumption of belief in a doctor however distinguished he or she may be. It is, however, necessary for the judge to give reasons for disagreeing with experts’ conclusions or recommendations. That, this judge did. A judge cannot substitute his own views for the views of the experts without some evidence to support what he concludes.”

102. In A County Council v K, D and L [2005] EWHC 144 Charles J indicated that (a) it was the role of the Court to take into account and weigh the expertise and speciality of expert witnesses; (b) in a case where the medical evidence was that the likely cause of an injury was “non-accidental” the Court was entitled to find that the injury had a natural cause or was accidental or that the Local Authority had not established the threshold criteria to the required standard; (c) in a case where the medical evidence was

that there was nothing diagnostic of a “*non-accidental injury*”, the Court could nonetheless reach a finding on the totality of the evidence that there had been a “*non-accidental injury*” and the threshold was satisfied; and (d) it was open to the Court, on the basis of the totality of the evidence, to reach a conclusion as to the cause of the injury that was different to, and did not accord with, the conclusion reached by the medical experts.

103. In LU & LB [2004] EWCA Civ 567 Butler-Sloss P set out the following: -

23. *In the brief summary of the submissions set out above there is a broad measure of agreement as to some of the considerations emphasised by the judgment in R v Cannings that are of direct application in care proceedings. We adopt the following: -*

...

iv) The Court must always be on guard against the over-dogmatic expert, the expert whose reputation or amour propre is at stake, or the expert who has developed a scientific prejudice.

104. The dicta of the Court of Appeal in R v Henderson; Butler; Oyediran 2010 EWCA Crim 1269 and of Hedley J in Re R (Care Proceedings): [Causation] 2011 EWHC 1715 (Fam) are relevant, namely;

There are limits to the extent of knowledge and no conclusion should be reached without acknowledging the possibility of an unknown cause emerging in the light of medical perception (Moses LJ Paragraph 21 R v Henderson);

The mere exclusion of every known cause, does not prove the deliberate infliction of violence (Paragraph 21 Henderson above);

The temptation to conclude, when the defence cannot identify an alternative cause of non-accidental injury, that the prosecution has proved the case, must be resisted, in family as well as criminal cases (Paragraph 10, Re R, Hedley J);

A conclusion of unknown aetiology in respect of an infant represents neither professional nor forensic failure. It simply recognises that we still have much to learn and it is also recognised that it is dangerous and wrong to infer a non-accidental injury merely from the absence of any other understood mechanism. Maybe it simply represents a general acknowledgement that we are fearfully and wonderfully made (Paragraph 19, Re R Hedley J).

105. In relation to lies, the so-called ‘Lucas direction’ has a particular and important place in family proceedings. As Baker J put it in *Devon County Council v EB & Ors (Minors)* [2013] EWHC 968 (Fam):

‘[...] [I]t is not uncommon for witnesses in these cases to tell lies in the course of the investigation and the hearing. The Court must be careful to bear in mind that the witness may lie for various reasons, such as shame, misplaced loyalty, panic, fear, distress and the fact that the witness has lied about some matters does not mean that he or she has lied about everything: See R v Lucas [1981] QB 720.’

106. McFarlane LJ dealt with the question of the relevance of lies comprehensively in *Re H-C (Children)* [2016] EWCA Civ 136, [2016] 4 WLR 85:

[97] [...] A family court, in common with a criminal court, can rely upon a finding that a witness has lied as evidence in support of a primary positive allegation. The well known authority is the case of R v Lucas (Ruth) [1981] QB 720; [1981] 3 WLR 120 in which the Court of Appeal Criminal Division, after stressing that people sometimes tell lies for reasons other than a belief that the lie is necessary to conceal guilt, held that four conditions must be satisfied before a defendant’s lie could be seen as supporting the prosecution case as explained in the judgment of the court given by Lord Lane CJ at p 123:

“To be capable of amounting to corroboration the lie told out of court must first of all be deliberate. Secondly it must relate to a material issue. Thirdly the motive for the lie must be a realisation of guilt and a fear of the truth. The jury should in appropriate cases be reminded that people sometimes lie, for example, in an attempt to bolster up a just cause, or out of shame or out of a wish to conceal disgraceful behaviour from their family. Fourthly the statement must be clearly shown to be a lie by evidence other than that of the accomplice who is to be corroborated, that is to say by admission or by evidence from an independent witness.”

[98] The decision in Lucas has been the subject of a number of further decisions of the Court of Appeal Criminal Division over the years, however the core conditions set out by Lord Lane remain authoritative. The approach in R v Lucas is not confined, as it was on the facts of Lucas itself, to a statement made out of court and can apply to a “lie” made in the course of the court proceedings and the approach is not limited solely to evidence concerning accomplices.

[99] In the Family Court in an appropriate case a judge will not infrequently directly refer to the authority of Lucas in giving a judicial self-direction as to the approach to be taken to an

apparent lie. Where the “lie” has a prominent or central relevance to the case such a self-direction is plainly sensible and good practice.

[100] One highly important aspect of the Lucas decision, and indeed the approach to lies generally in the criminal jurisdiction, needs to be borne fully in mind by family judges. It is this: in the criminal jurisdiction the “lie” is never taken, of itself, as direct proof of guilt. As is plain from the passage quoted from Lord Lane’s judgment in Lucas, where the relevant conditions are satisfied the lie is “capable of amounting to a corroboration”. In recent times the point has been most clearly made in the Court of Appeal Criminal Division in the case of R v Middleton (Ronald) [2001] Crim LR 251. In my view there should be no distinction between the approach taken by the criminal court on the issue of lies to that adopted in the family court. Judges should therefore take care to ensure that they do not rely upon a conclusion that an individual has lied on a material issue as direct proof of guilt.[...]

*[102] I have taken the opportunity to refer to **Lucas** in the hope that a reminder of the relevant approach taken in the criminal jurisdiction will be of assistance generally in family cases. [...]*

107. In Lancashire County Council v The Children and Others [2014] EWHC 3 (Fam) at paragraph 9 of his judgment and having directed himself on the relevant law, Jackson J (as he then was) said: -

‘...where repeated accounts are given the court must think carefully about the significance or otherwise of any reported discrepancies. They may arise for a number of reasons. One possibility is of course that they are lies designed to hide culpability. Another is that they are lies told for other reasons. Further possibilities include faulty recollection or confusion at the time of stress or where the importance of accuracy is not fully appreciated, or there may be inaccuracy or mistake in the record-keeping or recollection of the person hearing and relaying the account. The possible effect of delay and repeated questioning upon memory should also be considered, as should the effect of one person on hearing accounts given by another. As memory fades, a desire to iron out wrinkles may not be unnatural; a process that might inelegantly be described as “story-creep” may occur without any necessary inferences of bad faith.’

108. In short, the mere fact that a witness has lied to the Court does not establish the primary case against that witness or party.

109. Therefore, the approach to be taken in such a case is clear. The Court should first determine if the alleged perpetrator has deliberately lied. Then, if such a finding is made, consider why the party lied. The Court should caution itself that the mere fact an alleged perpetrator tells a lie is not evidence that they are culpable of the incident alleged. The Court should remind itself that a person may lie for many reasons, including “*innocent*” explanations in the sense that they do not denote culpability of the incident alleged.

110. In determining whether the Local Authority has satisfied the burden upon it, the court must bear in mind the wider context of the evidence. In Re B (Threshold Criteria: Fabricated Illness) [2002] EWHC 20 (Fam), [2004] 2 FLR 2000 it was held that: -

“Although the medical evidence is of very great importance, it is not the only evidence in the case. Explanations given by carers and the credibility of those involved with the child concerned are of great significance. All the evidence, both medical and non-medical, has to be considered in assessing whether the pieces of the jigsaw form into a clear convincing picture of what happened...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.”

111. Further, in A County Council v A Mother and Others [2005] 2 FLR 129 Ryder J, as he then was, held that: -

“... I remind myself that a factual decision must be based on all available materials, i.e. be judged in context and not just upon medical or scientific materials, no matter how cogent they may in isolation seem to be. Just as best interests are not defined only by medical or scientific best interests ... likewise, investigations of fact should have regard to the wide context of social, emotional, ethical and moral factors”.

112. The evidence of the parents and of any other carers is of the utmost importance. It is essential that the court forms a clear assessment of their credibility and reliability. They must have the fullest opportunity to take part in the hearing and the court is likely to place considerable weight on the evidence and the impression it forms of them [Re W and Another (Non-Accidental Injury) [2003] FCR 346]. Ryder LJ in Re M (Children) [2013] EWCA Civ 388 indicated:

6. When any fact-finding court is faced with the evidence of the parties and little or no corroborating or circumstantial material, it is required to make a decision based on its assessment of whose evidence it is going to place greater weight upon. The evidence either will or will not be sufficient to prove the facts in issue to the appropriate standard.

113. By virtue of section 6(1) of the Human Rights Act 1998 it is unlawful for a public body, such as a Court, to act in a way which is incompatible with a convention right established by the European Convention on Human Rights and Freedoms 1950 and enshrined into English Law by the Human Rights Act, 1998. Article 6 of the Convention establishes the right to a fair trial and Article 8 establishes the right to respect for family and private life. Both Article 6 and 8 are engaged by the applications before the Court.
114. Respect for family and private life means that any interference with the same has to be legitimate, for a legitimate aim and proportionate to the objective to be secured. In Re G (A Child) [2013] EWCA Civ 965, at paragraph 56 McFarlane LJ stated: -

“I should make reference to those occasions when judges may use a phrase such as ‘first consideration’ when referring to the weight that is to be given to the relationship between a child and her parents and natural family. In the light of Re B (a child) [2013] UKSC 33, with the repeated use in their Lordships’ judgment of phrases such as ‘high degree of justification’, ‘necessary’, ‘required’, ‘a very extreme thing’, ‘a last resort’ and ‘nothing else will do’, it is clear that the importance of a child either living with, or maintaining a relationship with, her parents and natural family has certainly not been reduced.”

115. As Jackson J (as he then was) noted in Re BR (Proof of Facts) [2015] EWFC 41, the exercise of the judicial function also involves considering a wide range of different types of evidence placed before the Court:

“Evidence comes in many forms. It can be live, written, direct, hearsay, electronic, photographic, circumstantial, factual, or by way of expert opinion. It can concern major topics and small details, things that are important and things that are trivial”.

116. At paragraph 19 (Re BR) : Jackson J sets out,

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

Submissions

117. The LA’s case is as set out in their proposed findings, and does not require much repeating. Ms Worsley relied on the medical evidence, and said there was no grounds to disagree with it. She said it followed from this that the parents were not telling the truth and have been dishonest to the Court. She relied on the risk factors outlined by Ms K.
118. She argued that the parents’ credibility had been undermined on the following issues; who put the children to bed in the evening of March 23rd; whether the Father went out of the house; whether the Mother showed the Father the video; why the parents did not call an ambulance earlier. She argued that the parents had failed to protect Child 4 and

the other children by choosing to protect their partner over the children and she argued that they had failed to call an ambulance at the appropriate time. She adopted the assessment carried out by Ms K.

119. Mr Hutchinson's case was in all material particulars the same as the LA. Neither he nor Ms Worsley argued that I should exclude one of the parents from the pool of perpetrators. Mr Hutchinson submitted that there can be a strong suspicion both parents know what took place, and there is a realistic opportunity for both parents to have caused the injuries.
120. Ms Praisoody's case for the Mother was that there could be an unknown cause and that Mr Richards had accepted that theoretically the child could have been suffering from a disease currently unknown to medical science. She also submitted that it was not unreasonable for the parents not to have called an ambulance sooner as the child's symptoms were progressing. She said no weight should be given to the Mother's failure to recollect events, as this was simply the product of an extremely hellish period when she was very worried about Child 4. She said that the Mother had consistently denied she had caused the injuries.
121. It was not entirely clear from her written submissions whether she was arguing that if the parents did cause the injuries the children should be returned to them. However, she clarified in oral submissions that this was not her case.
122. Mr Orbaum did not challenge the medical evidence but submitted that it showed injuries at the lower end of the spectrum. He agreed with Ms Praisoody that one cannot exclude the possibility of an unknown cause. He suggested that the injury could have occurred before the video was taken. The Father had been observed to be a calming influence on the Mother. She was alone in the house with four young children whilst the Father went out.
123. He said that the Father's evidence on leaving the house and not watching the video is not necessarily untrue just because it came later, and he relies on the principle in *Lucas*. He argued that the Father should be excluded from the pool because it is probable that the baby became unwell after the Father left the house. If the Father had been in the house then there would have been no purpose in recording Child 4's condition. He relied on the fact that the Mother had said different things about the 2am feed. The Father didn't realise what had happened to Child 4 and it was therefore reasonable for him not to take the baby to hospital earlier.
124. Mr Orbaum argued that the fact that the Father does not accuse the Mother of injuring the child is not in itself a reason to include him in the pool, there needs to be evidence that shows a likelihood or real possibility that he could have done so, see *Re B*.

Conclusions

125. I will start with the medical evidence, and then consider the factual evidence, but fully conscious of the caselaw set out above, and the importance of considering and judging the case as a whole, in a holistic manner and taking a broad overview of the evidence.

126. The court had the benefit of two experts, both of whom had a very high level of qualification and experience. Neither expert deviated in their oral evidence from their written evidence.
127. Professor Stivaros was eminently well qualified to give the evidence and said that he considered a very large number of scan images of brain injuries every year. He was a thorough and careful witness, who showed no signs of being overly dogmatic or not fully considering all potential scenarios. In my view his evidence should be accorded full weight, and I have no grounds not to accept it in its entirety. I also note that his evidence was not challenged in any material respect.
128. I accept his evidence that the injuries that he saw were those set out in the LA's proposed findings and I do so find. These injuries are:

- “a) Acute subdural haemorrhages at multiple locations overlying her brain, between the two halves of her brain, beneath her brain and in her posterior fossa.*
b) Acute traumatic effusions overlying her brain.
c) Acute subarachnoid haemorrhage overlying her brain
d) Hypoxic ischaemic change within the brain substance”

He was clear that the nature of the injuries that he saw in the scans were highly unlikely to be caused other than by some form of traumatic event. The scans all showed a consistent picture of such a traumatic injury. There was no evidence of any impact injury to the brain. He deferred to Mr Richards as to whether there was any other possible cause, but he said that he could see no evidence on the material before him, of any other cause.

129. Mr Richards's evidence was wholly consistent with that of Professor Stivaros. Mr Richards had considered all alternative known conditions which could either have led to the symptoms which Child 4 exhibited, or which could have given her a susceptibility to brain damage of this type, which might have meant that some lesser action by her carers could have led to the injuries. He said that all the relevant scans, and tests had been carried out and there was no indication of any other condition which could have led to or exacerbated Child 4's condition. No counsel suggested to Mr Richards that there was any other known cause or condition for the injuries.
130. I reject Ms Praisoody's submission that the cause could have been connected to the change in Child 4's milk powder two days before her hospitalisation. There is nothing that would link those two events, and no possible known causative link that would lead a change in milk to the type of injuries that I have found above.
131. Mr Richards said that the shaking that caused the injury would be an acceleration/deceleration movement, and could have been one strong shake. He was clear that the shaking would have been beyond what any responsible carer would commit, and would plainly amount to inappropriate and unlawful care. I take into account the fact that there were no retinal haemorrhages and these are often found in babies with shaking injuries. However, Mr Richards explained and this was not challenged, that it is quite possible to have such injuries without retinal haemorrhages, particularly when the shaking is at the lower end of the scale. It seems probable that

Child 4's injuries were at the lower end of the scale, given her apparently good recovery so far.

132. Mr Richards accepted that it was impossible rule out the "unknown unknowns", of some medical cause currently entirely unknown to science. However, it was in my view important that a witness of his experience said that in all his years of examining babies showing symptoms such as Child 4's and with scans such as hers, he could not see any alternative explanations, given the lack of any reporting by the carers of an explaining event. Therefore, the medical evidence all points clear and unequivocally in one direction. I fully accept that the authorities, in particular Re B, make clear that the court should not stop there, but must consider all the evidence. However, given the clear and unequivocal medical evidence, it does seem to me that I would have to find some unusual or unexplained factor, to depart from the unequivocal medical evidence in this case.
133. There is no suggestion that any third party caused the injuries, and there is no third-party evidence or corroborative evidence except the video, and therefore I must consider the parents' evidence particularly carefully. Neither parent gave at all satisfactory evidence, and both made significantly inconsistent statements, both within their own evidence and between each other. Both parents were, in my judgment, evasive in their answers at key points. I take into account the fact that they were giving evidence through interpreters, and that can be a barrier to clear communication, but the interpreters were excellent, and it seemed to me that the Father in particular was deliberately avoiding or confusing questions that he did not want to answer. The Mother also avoided difficult questions, and had a notably hazy recollection of those parts of the critical evening that involved the Father, whilst having a much better one in respect of events concerning the children alone. I am afraid I am satisfied that neither parent was being honest and truthful in their evidence to me, in a number of material regards.
134. Their lack of straightforwardness and honesty with the court is important because it indicates to me that there were matters that they wanted to hide. I appreciate that some parents will be very nervous and suspicious of social workers, police and ultimately the court. I also fully take into account the principles in *Lucas* and the fact the people may lie for a variety of different reasons, and that does not mean that everything they say is untrue. However, the clear impression I had from these parents was that they were trying to conceal matters and this led them to minimise some issues, and to fail disclose or mislead on key matters.
135. Overall, both parents were unwilling to accept the very obvious stresses of looking after four such young children, in a fairly small flat and with only limited help, and how tired they must have been. Their description of the children's behaviour was not credible. The Father suggested that the three older children, including Child 3 who was aged 13 months, largely put themselves to bed with no trouble. The Father said he had no difficulties managing the children. These descriptions are not credible, but are made even less so when it is remembered that these are the same children who were described by both foster carers as being difficult to manage, and by the first foster carer as being "wild" and "violent" to each other. Although I accept that the children would have been upset and disorientated when moved from their parents, the two sets of descriptions just do not match.

136. The parents must have been under enormous strain, and this creates risk factors, which following the analysis in *Re BR* sets the framework for the findings of fact. In particular I take into account the following factors. Firstly, the parents were under considerable financial strain, including rent arrears. Secondly, they had relatively little support with none of the children going to nursery or school and only limited help from the maternal grandmother, who seems to have had a difficult relationship with the father and sometimes the Mother. Thirdly, both parents themselves had a difficult childhood, although it is impossible to know how this impacted on their behaviour with the children. Fourthly, the Mother had had some health issues during the pregnancy with Child 4 and thereafter, having so many children in quick succession must have had some impact on her physical and mental wellbeing. Fifthly, there was potentially stress between the parents as evidenced by the domestic violence incident in 2017. Finally, and probably most importantly the parents must have been exhausted. This has perhaps been slightly underplayed in the case as a whole. Young children are exhausting, and these children and particularly the Mother had been cooped up in the flat for at least 2 days. The parents, on their own account, were feeding Child 4 at 11pm, Child 3 at 12pm, Child 4 at 2-3am and 5am, and Child 3 at 7 am. Even if one accepts that these were babies who woke drank their milk and went straight back to sleep (a somewhat unlikely proposition), that list of times shows how little sleep the parents must have been getting. It is not difficult for any parent to crack under the strain of looking after young children when they are tired. It would be surprising in my view if these parents were not at the “end of their tether.”
137. In my view neither parent has given a true description of the stresses and inevitable tensions that must have been taking place after Child 4’s birth. It is not unusual for parents to want to diminish the stress they are under, but given the issue in this case, it seems probable that the parents are deliberately not being frank about whatever was going on in the flat, and the problems they were having. Given that they were the only witnesses of fact called it is not possible to determine precisely what was happening in the flat, but I do find that the parents were not being honest with me about conditions within the family home.
138. There is also the domestic violence incident in 2017. The Mother told the police that there had pushing and pulling and the Father had shaken her. Again, it is neither possible nor necessary to make findings in respect of this incident, but I do take the view that both parents were seeking to minimise the incident.
139. In relation to the events leading to Child 4’s injury, I find the parents were not being truthful. I have close regard to the principles in *Lucas* as further elucidated in the family law context in *Re H C*. People may lie for a variety of reasons, and it is perhaps particularly understandable that parents when faced with allegations such as these may be frightened of telling the truth.
140. Mr Richards said that the timing of the injury was likely to be between 19 and 24 March, and at the point between the child behaving normally and abnormally, the clearest indicator probably being whether she was feeding normally. This appears to narrow the window to late Saturday afternoon or early evening. However, I note that the only reporting of Child 4’s appearance and behaviour comes from the parents, and

to some degree the video, so I am reliant on piecing together what they have said at various points, and trying to work out what is most likely to be true.

141. Neither parent said in their statements to the court or the police, that the Father had been out for at least an hour in the early evening of Saturday 23rd. I find it not credible that they could not have realised the importance of this fact, once they had been told the nature of Child 4's injuries. Both parents sought to actively mislead the court in this respect by suggesting that the Father remained in the flat; or that the Mother wasn't sure whether he was in the flat or not. It is now plain the Mother knew that he went out, and self-evidently the Father knew. I find that this was a deliberate lie, relating to a material issue, made out of fear of the truth. Therefore, applying Lucas, albeit in a civil context, I can and do place reliance on that lie as an indicator of the parents' responsibility for Child 4's injuries.
142. It now appears that the Father was out for at least an hour, but the circumstances in which he went out, what he did and when he came back, remain very unclear. The video probably, but not certainly, fixes a likely time for the injury. Mr Richards said that he thought Child 4 was not behaving normally in the video, for what it is worth that is also my view. However, I do note that Dr Y, who is a consultant paediatrician, put in his notes that he did not think the injury had occurred before the video was taken.
143. However, I do not need to make a determination on that issue, because whether the injury had or had not occurred by the time of the video, does not establish whether it was the Father or Mother who inflicted the injuries. It is possible that the Father shook the baby before he went out, and that is why he went out; or it is possible that the Mother shook her whilst the Father was out. The video does not ultimately help to resolve that issue and neither does the timing of the video. The police screenshot indicates it was taken at 20.10, which accords with what the Mother told the nurse. However, that would put the Father's return about an hour later than he suggested. It is possible that the phone was set to GMT and not BST, which I know does sometimes happen, in which case the video was taken at 19.10. As I have said, the precise timing will not assist me to determine who injured Child 4, but the most likely time is 20.09 being the time the Mother told the nurse and very close to the time recorded on the phone.
144. The parents were also neither consistent about what happened when the Father got home. The Mother had said in her statement that she showed the Father the video and he had said not to worry the baby seemed fine. She then said that she was not sure he had seen it. The Father denied seeing it, and said he went to care for one of her daughters and did not watch it. If the Father's story that he did not injure Child 4 and did not witness the Mother doing so is true, I find his statement that he did not watch the video very difficult to believe. He came back from being out and the Mother was sufficiently worried about the baby to take a video and want to show it to him. The baby was then undoubtedly unwell in the night, and I find it inexplicable in those circumstances that the Father would not watch the video.
145. I do not accept that the parents' recollection of events that evening is as poor as they are now making out. When they made their first statements it was within two weeks of the incident, and the Mother spoke to Dr Y on 26 March. Further, this was on any view an intensely memorable evening. It may be that the trauma of that evening and the next

day impacted on their recollection, but it seems extremely unlikely that both of them would have forgotten that the Father went out, and confused their recollection of the video.

146. In relation to the 2am feed, again recollections seem very hazy. By the end of the hearing they both accepted that the Mother was sufficiently worried that she had suggested calling an ambulance, but that the Father said that Child 4 was alright and it was not necessary. The Mother in her police interview said she had no recollection of the 2am feed; in the record from the hospital nurse it is clear that she was concerned about the baby at 2am; in Dr Y's notes the suggestion (though it is not 100% clear) is that the video was taken at 2am; in her evidence in chief she said the baby fed normally at 2am. The Mother seemed to have forgotten that Child 4 vomited and had to be changed, and according to the Father both parents changed her.
147. In relation to both 2am and 5am the Mother said that one reason she did not call an ambulance was the parents' poor English. I do not accept that this can be the real reason. The Mother had called the police in 2017 during the domestic violence incident and it seems could make herself understood. It is possible that the parents convinced themselves that Child 4 was not seriously unwell, but it seems highly probable that this was in whole or in part because they knew that one of them had injured her, and were worried about the consequences. In any event, the parents' descriptions indicate strongly that an ambulance should have been called much sooner, and the failure to do so was itself conduct that put Child 4 at great risk.
148. For all these reasons I find that all the threshold findings sought by the LA are made out. I am unable to determine on the balance of probabilities whether the Mother or Father is solely responsible for causing the injuries that Child 4 has suffered, I therefore find that both the Mother and Father are in the pool of perpetrators and that the parents have deliberately sought to mislead the professionals involved and the court. I want to emphasise that that does not mean that the parents do not very much love their children, and never meant to do Child 4 any harm. These types of injuries can, and often are, caused in a momentary loss of self-control. However, my findings do mean that the parents have put Child 4 at significant risk, and that she and her siblings remain at significant risk, certainly at the present time. I will deal with the consequences of those findings, and what happens next at the next hearing in January.