

IN THE FAMILY COURT
SITTING AT MIDDLESBROUGH

Date: 30/09/2022

Before :

HHJ MURRAY

Between :

Stockton Borough Council

Applicant

- and -

M

Respondent

-and-

F1

-and-

F2

-and-

a) P

b) L

c) B

**[Children through their Children's Guardia, Nikki Jo
McNeil]**

-and-

MGM

Intervenor

-and-

MSGF

Mr H Trory (instructed by **S Rovardi**) for the Applicant
Ms P Wordsworth (instructed by **Carl Reed of Cathy Webb Solicitors**) for M
Mr L Sharp (instructed by) for F1
Ms L Little of AHM Solicitors for F2
Ms H Lannagan of Freeman Johnson solicitors for P, L, and B
Ms R Mangenie (instructed by) for MGM
Ms F Shames (instructed by) for MSGF

Hearing dates : 21st, 22nd, 23rd, 28th and 30th September 2022

JUDGMENT

<p>If this draft Judgment has been emailed to you it is to be treated as 'read-only'. You should send any suggested amendments as a separate Word document.</p>
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HHJ Murray :

Introduction

1. On the morning of 01.03.2022, P, then just over 2 years old, was dropped off at nursery by M and maternal grandmother (“MGM”). M had the day before been discharged from hospital, due to her own health issues. She had been an inpatient from 23rd February 2022 to 28th February 2022; some 5 days.
2. P lived with her M and father, F1, as well as her full sibling L and her half sibling B. B’s father is F2
3. As of 01.03.2022 the family were unknown to children’s services and no concerns had ever been made in respect of the care that P, or her two siblings, were receiving from their parents.
4. When P was dropped off at nursery, the M mentioned to nursey staff that P had some bruising to her legs. She and the MGM then left.
5. Staff at the nursery became concerned at bruising seen on both of P’s ears; in particular it was noted that one bruise was a little bigger than the other and “very distinctive”.
6. So concerned was the nursery, that the nursery manager contacted the M by phone to ask about that bruising. It is reported in the papers that the M’s response was that they looked like blisters, that she didn’t know if it was where she bangs her head or pulls her ears.
7. The nursery contacted children’s services at the local authority, Stockton Borough Council (“LA”), and P was taken to Hospital that same day, for a Child Protection medical.

8. She was seen by a consultant community paediatrician, Dr T, at 3pm. P's M, F1, a social worker and a police officer were all present during the examination.
9. Dr T prepared an interim child protection report that day, later supplemented by a full child protection report 02.03.2022, albeit it was signed on 04.03.2022 (E4). Dr T noted that the parents reported that P had speech delay and that they have concerns regarding her behaviour and possible autism.
10. Dr T gives detail about P's presentation during the examination and his observations of injury at paragraph 7 of that report:

“P was very active, continuously watching a video on her mobile, she made no eye contact or attempted to interact with anyone present in the clinic. She was following her own agenda and walking from one place to another in the clinic with her mobile phone and banged her head against the wash basin a few times. I had to request P's dad to supervise her so that she does not injure herself. P did not cooperate at all with the examination, was constantly moving, and remained unsettled and cried so it was extremely difficult to take her pictures, examine her or measure her injuries. Thus, as a compromise, I numbered her injuries, charted them on the body map and took the photographs but could not measure them. I could not do a systematic examination. I have noticed the following injuries on her body:

1. *A blue bruise on her right ear lobe.*
2. *A blue bruise on her left ear lobe*
3. *Six brown bruises on her right buttock*
4. *One brown bruise on left lower back, above the buttock*
5. *A blue bruise on her right cheek”.*

11. Dr T opined that the injuries to both ear lobes and right buttock are highly likely to be non-accidental.

12. The parents suggested to Dr T that the bruising to the ears could have been caused by P pulling her ears or banging her ears against wooden bed guards. Dr T's view was that those mechanisms were unlikely to cause the injuries to the ears.
13. The parents reported to Dr T that the bruises to the buttock could have been caused by a hard sensory toy. Again, Dr T found that difficult to accept as an explanation.
14. The parents signed s.20 consent for P and L to be accommodated with a maternal great aunt. The M agreed for B to be accommodated with his father, F2 who had exercised his PR.

Proceedings

15. On 09.03.2022 M and F1 indicated that they were withdrawing their s.20 consent and that all 3 children would be returning to their care. As a result, the LA issued proceedings on 11.03.2022 and the matter came before Recorder Fairwood on that day as an urgent interim care hearing.
16. At that stage the case was listed on 24.03.2022 for a fully contested interim care hearing where it was intended that evidence would be heard. In the interim, as a holding position, the Court made interim care Orders in respect of all 3 children, on a plan that they remained in their current placements until the matter could be properly considered.
17. By the time that the matter returned to Court on 24.03.2022, there had been a shift in the LA position. The LA interim plan was for all 3 children to be returned to M's care under the interim care orders, underpinned by a safety plan. The case was adjourned to 28.03.2022 for a family group conference to take place and a finalised safety plan to be produced. In the meantime, the Court approved the Part 25 instruction of Dr Morrell, consultant paediatrician, to prepare a report in respect of P's bruising.

18. In addition, MGM and her partner, MSGF, were joined to the proceedings as intervenors. They were joined due to the care they had provided to P in the approximate time frame that P had suffered her injuries.
19. On 28.03.2022 all parties, save the CG, supported a plan whereby all 3 children would return to M care. The CG did not support the plan, suggesting instead that any decision should await the production of Dr Morrell's report. The Court approved the LA plan on the basis that F1 would move out of the home. The Court listed a fact-finding hearing on 27.06.2022.
20. That fact-finding hearing did not take place due to the need for platelet functioning testing, as later recommended by Dr Keenan, Part 25 instructed Consultant Paediatric haematologist.
21. The case was therefore re-listed before me on 21.09.2022 with a time estimate of 3 days. The local authority has been represented during this hearing by Mr Trory, the M by Ms Wordsworth, F1 by Mr Sharp, MGM by Ms Mangenie and MSGF by Ms Shames. Although playing a limited role, Ms Little has attended to take a note of the evidence on behalf of F2. The children's interests have been represented by their children's Guardian Nikki-Jo McNeill, represented by Ms Lannagan.

Issues

22. The local authority has provided me with a schedule of findings it invites me to make.
23. That schedule reads as follows:

1) On 01/03/2022, P was medically examined and observed to have sustained the following injuries:

i) A small bruise around 0.5cm across over the upper edge of the helix of the right ear.

ii) *A small bruise around 0.5cm across on the central part of the rim of the helix of the left ear.*

iii) *5 bruises around 1-2 cm in size over the right buttock.*

2) *These injuries were deliberately inflicted and non-accidental.*

3) *These injuries were caused by either M, F1, MGM or MSGF.*

This hearing

24. In undertaking this fact-finding exercise, I have read the entire Court bundle, a case summary prepared by the local authority, and a threshold document provided by the Local Authority.

25. Following receipt of the oral evidence, I was provided with copies of videos and photographs, which had previously been sent to Dr Morrell. I attach a schedule of those items to this Judgment as Schedule A. I was also provided with several additional photographs and videos, provided by the M. I had made it clear that I would look at additional photographs and videos, so long as there was no issue raised by any party as to relevance and provenance. I attach a schedule of those items as Schedule B.

26. I have also heard live evidence from the following witnesses:

- a) Dr Morrell
- b) M
- c) F1
- d) MGM and

e) MSGF

27. I have heard full submissions from all parties, following the conclusion of the evidence. I am grateful to the advocates for the succinct way in which they have put their respective cases, allowing me to focus on those issues specifically relevant to the live issues in this fact-finding exercise.

Law

The Legal Framework

28. As part of her closing written submissions, Ms Wordsworth provided me with an “Annexe of pertinent law”. I am grateful to her for doing so and confirm that I have read and applied the principles contained therein. I do not intend on repeating the contents of that document. However, there are some general principles that I have specifically applied, and which are set out below.

Threshold

29. In order to make a care or any public law order the Local Authority must prove that the situation justifies the intervention of the State. This means that the Local Authority must establish the statutory threshold set out in s.31(2) Children Act 1989.

(2) A court may only make a care order or supervision order if it is satisfied

–

(a) that the child concerned is suffering, or is likely to suffer, significant harm; and

(b) that the harm, or likelihood of harm, is attributable to –

(i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or

(ii) the child’s being beyond parental control.

30. The relevant date is 01.03.2022.

The burden and standard of proof

31. The Threshold is established by proving facts which establish the child is suffering significant harm and that the harm is attributable to the care given not being what it would be reasonable to expect a parent to give to him. In respect of the task of determining whether the 'facts' have been proven the following points must be borne in mind as referred to in the guidance given by Baker J (as he then was) in *Re L and M (Children)* [2013] EWHC 1569 (Fam) confirmed by the President of the Family Division in *In the Matter of X (Children) (No 3)* [2015] EWHC 3651 at paragraphs 20 – 24. See also the judgment of Lord Justice Aikens in *Re J and Re A (A Child) (No 2)* [2011] EWCA Civ 12, [2011] 1 FCR 141, para 26.
32. 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.
33. The parents 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 [paragraph 8(vi)].
34. It follows that an inability of a parent to explain an incident, in this case the events surrounding P suffering bruising, cannot be relied upon to find an event proved. A lack of explanation is something that forms the overall picture, but the burden remains on the local authority to prove its case, on a balance of probabilities. (*Re M (Fact Finding Hearing: burden of proof)* [2013] 2 FLR 874).
35. The standard to which the Local Authority must satisfy the court is the simple balance of probabilities. The inherent probability or improbability of an event remains a matter to be taken into account when weighing probabilities and deciding whether, on balance, the event occurred [*Re B (Care Proceedings: Standard of Proof)* [2008] UKHL 35, at paragraph 15]. Within this context, there is no room for a finding by the court that something might have happened. The court may decide that it did or that it did not [*Re B* at paragraph 2]. If a matter is not proved to have happened, I approach the case on the basis that it did not happen. This is of particular relevance in these proceedings, it being accepted by all that it is a single-issue case.

36. Findings of fact must be based on evidence, and the inferences that can properly be drawn from the evidence, and not on speculation or suspicion. The decision about whether the facts in issue have been proved to the requisite standard must be based on all of the available evidence and should have regard to the wide context of social, emotional, ethical and moral factors [A County Council v A M, A Father and X, Y and Z [2005] EWHC 31 (Fam)].

Expert Evidence

37. The Court is in the unique position of having an overview of all the evidence in a case. As such, the court is not limited to considering the expert evidence alone. Rather, it must take account of a wide range of matters which include the expert evidence but also include, for example, its assessment of the credibility of the witnesses and the inferences that can properly be drawn from the evidence. The court must take into account all the evidence and furthermore consider each piece of evidence in the context of all the other evidence. The court invariably surveys a wide canvas (Re U, Re B (Serious Injuries: Standard of Proof) [2004] EWCA Civ 567). A judge in these difficult cases must have regard to the relevance of each piece of evidence to other evidence and to exercise an overview of the totality of the evidence in order to come to a conclusion.
38. The opinions of medical experts therefore need to be considered in the context of all of the other evidence. While the opinion of medical experts is important and plays a vital role in the overall analysis, those opinions need to be considered in the context of all the other evidence. The roles of the court and the expert are distinct, and it is the court that is in the position to weigh up the expert evidence against its findings on the other evidence. It is the Judge who has the benefit of having read, hearing and seeing all of the evidence and considering it as a whole. It is the judge who makes the final decision.

39. Where there is a disputed aetiology giving rise to significant harm, the court must bear in mind, to the extent appropriate in each case, the possibility of the unknown cause [R v Henderson and Butler and Others [2010] EWCA Crim 126 and Re R (Care Proceedings: Causation) [2011] EWHC 1715 (Fam)].

“Today’s medical certainty may be discarded by the next generation of experts. Scientific research may throw a light into corners that are at present dark. That affects neither the burden nor the standard of proof. It is simply a factor to be taken into account in deciding whether the causation advanced by the one shouldering the burden of proof is established on the balance of probabilities.”

Lay evidence

40. 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]. In assessing the credibility of a witness of fact, the Court must bear in mind that performance in the witness box is only one component of the evaluation of their credibility and care should be taken in evaluating the ‘impression’ a witness makes in particular in interpreting body language. Some people are convincing liars. Others are, as Williams J has previously described, “anxious tellers of the truth”. The assessment of credibility must take account of the consistency of a witnesses account internally and over time, its consistency with known facts, how it compares with the evidence of other witnesses, particularly independent witnesses and in this case the medical evidence, the character of the witness and how their evidence is given.
41. Whilst the Court should not base any conclusions solely on an assessment of a witness from their oral evidence, the way in which a witness gives their evidence may be an important strand of the overall evidence before the Court, upon which decisions are reached. In Re B-M (Children: Findings of Fact) [2021] EWCA Civ 1371 Lord Justice Peter Jackson said:

[25] No judge would consider it proper to reach a conclusion about a witness's credibility based solely on the way that he or she gives evidence, at least in any normal circumstances. The ordinary process of reasoning will draw the judge to consider a number of other matters, such as the consistency of the account with known facts, with previous accounts given by the witness, with other evidence, and with the overall probabilities. However, in a case where the facts are not likely to be primarily found in contemporaneous documents the assessment of credibility can quite properly include the impression made upon the court by the witness, with due allowance being made for the pressures that may arise from the process of giving evidence. Indeed, in family cases, where the question is not only 'what happened in the past?' but also 'what may happen in the future?', a witness's demeanour may offer important information to the court about what sort of a person the witness truly is, and consequently whether an account of past events or future intentions is likely to be reliable.

Identification of a perpetrator/s

42. It is always desirable, where possible, for the perpetrator of non-accidental injury to be identified both in the public interest and in the interest of the child. The Court of Appeal has recently considered the law where only two possible perpetrators are identified. In Re B (a child) [2018] EWCA Civ 2127 Lord Justice Peter Jackson said:

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

1. *[20] Even where there are only two possible perpetrators, there will be cases where a judge remains genuinely uncertain at the end of a fact-finding hearing and cannot identify the person responsible on the balance of probabilities. The court should not strain to identify a perpetrator in such*

circumstances: Re D (Care Proceedings: Preliminary Hearing) [2009] EWCA Civ 472 at [12].

2. [21] *In what Mr Geekie described as a simple binary case like the present one, the identification of one person as the perpetrator on the balance of probabilities carries the logical corollary that the second person must be excluded. However, the correct legal approach is to survey the evidence as a whole as it relates to each individual in order to arrive at a conclusion about whether the allegation has been made out in relation to one or other on a balance of probability. Evidentially, this will involve considering the individuals separately and together, and no doubt comparing the probabilities in respect of each of them. However, in the end the court must still ask itself the right question, which is not "who is the more likely?" but "does the evidence establish that this individual probably caused this injury?" In a case where there are more than two possible perpetrators, there are clear dangers in identifying an individual simply because they are the likeliest candidate, as this could lead to an identification on evidence that fell short of a probability. Although the danger does not arise in this form where there are only two possible perpetrators, the correct question is the same, if only to avoid the risk of an incorrect identification being made by a linear process of exclusion.*

43. When looking at how best to protect child and provide for his future, the judge will have to consider the strength of that possibility as part of the overall circumstances of the case [Re S-B (Children) at paragraph 43].

44. When considering the bruises to P, I should not ask myself whether it is more likely that they were the result of an inflicted injury by a particular individual, but whether the evidence establishes that they were probably caused by infliction. If the answer is in the positive, it is only at that stage that I should then go on to consider the evidence in respect of perpetration.

Lies/Withholding Information

45. It is common for witnesses in these cases to tell lies in the course of the investigation and the hearing. The court must be careful to bear in mind at all times that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear, and distress.

The fact that a witness has lied about some matters does not mean that he or she has lied about everything [R v Lucas [1981] QB 720]. It is important to note that, in line with the principles outlined in R v Lucas, it is essential that the court weighs any lies told by a person against any evidence that points away from them having been responsible for harm to a child [H v City and Council of Swansea and Others [2011] EWCA Civ 195].

46. The family court should also take care to ensure that it does not rely upon the conclusion that an individual has lied on a material issue as direct proof of guilt but should rather adopt the approach of the criminal court, namely that an established lie is capable of amounting to corroboration if it is (a) deliberate, (b) relates to a material issue, and (c) is motivated by a realisation of guilt and a fear of the truth [Re H-C (Children) [2016] EWCA Civ 136 at paragraphs 97-100].

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

“To these matters I would only add that in cases where repeated accounts are given of events surrounding injury and death, 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 reason. Further possibilities include faulty recollection or confusion at times of stress or when 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 accounts. The possible effects of delay and repeated questioning upon memory should also be considered, as should the effect on one-person hearing accounts given by others. 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 inference of bad faith.”

48. All the evidence is admissible notwithstanding its hearsay nature, including Local Authority case records or social work chronologies which are hearsay, often second or third-hand hearsay. The court should give it the weight it considers appropriate:

Children Act 1989 s.96(3); [Children (Admissibility of Hearsay Evidence) Order 1993]; [Re W (Fact Finding: Hearsay Evidence) [\[2014\] 2 FLR 703](#)].

49. When I then turn to the evidence, I bear all these principles of law in mind as I consider whether the Local Authority have proved that P suffered inflicted injuries and, if so, who was responsible for them.

The Evidence

Medical Evidence

50. I have had the benefit of reading a number of documents produced by the treating clinician, Dr T. As well as preparing the initial child protection report on 01.03.2022, Dr T went on to prepare a full Child Protection Medical report dated 04.03.2022 and responded to questions on 22.03.2022. The latter was produced following receipt of statements from M and F1, along with photographs and video clips.
51. Whilst Dr T attempted to assist as best he could, he was clear that many of the questions being raised were beyond his expertise. It was on that basis that, on 24.03.2022, the Court approved the instruction of Dr Morrell, as an expert Consultant Paediatrician.
52. Dr Morrell produced his substantive report on 02.05.2022. That substantive report was supplemented by two addendums; dated 07.06.2022 and 25.08.2022. Without setting out the minutiae of his written evidence, the following is taken from his executive summary:

6.02 P has presented with developmental delay and is showing some features suggestive of autism spectrum disorder. This requires further assessment. There have also been concerns regarding her hearing and this again requires further assessment.

6.03 On 1 March 2022 when P was aged just over 2 years she presented with bruising to the ears and her bottom. I have discussed the nature of this bruising below. It is my opinion that the bruising to the left and right ears is likely to have been caused by a pinch to each ear. It is my opinion that it is unlikely that a child of P's age could

have caused this type of bruising by pinching her own ears. It is also my opinion that the bruising to the buttocks is likely to have been caused by pressure applied with the fingers or the thumb although it may be difficult to exclude the possibility that a fall onto hard object may have also cause this bruising.

53. I have been impressed with Dr Morrell's reporting. His reports are concise, clear and ultimately very helpful. His substantive report produces photographs upon which he places reliance when formulating his opinion, so as to assist the reader in understanding his rationale. Whilst providing the information required to assist the Court in its ultimate determination, his substantive report also stands at 23 pages; well within the 40-page limit set out PD27A para 5.2A.1 and even within the 25 pages suggested by the President in his "Make every hearing count" Guidance, dated 09.03.2022. It is my view that if all expert reports were produced in a similar fashion, not only would there be a saving to the public purse, but the judicial task of understanding the medical evidence and ultimately weighing it as part of the wide canvass of evidence, would be made easier.

54. In his oral evidence, Dr Morrell told me the following in respect of the injuries to P's ears:

- qq) Although not diagnosed, Dr Morrell was aware that the parents indicated that they had witnessed Autistic Syndrome Disorder traits in P.
- rr) A child with ASD, is more prone to cause self-harm.
- ss) A child with ASD may have a higher threshold to pain.
- tt) There would be two relevant consequences that follow from (c):
 - i.* A child might cause a higher degree of self-harm before the pain response stops them from continuing to cause the harm.
 - ii.* A carer may not be aware that a child has caused injury.
- uu) Children of P's age are more likely to self-harm by way of biting.

55. Dr Morrell thought it was unlikely that a child of P's age could produce enough force to cause bruising through pinching:

“When a child bites may produce sufficient force. However, pinching is different. In my experience I do not recall an instance where a child of P’s age has caused bruising to themselves through pinching”.

56. Dr Morrell confirmed that there is no research available as to the force required to cause bruising in children. His opinion came from his own clinical experience, where he could not recall a single case where bruising had been caused by a child of P’s age. Regardless of the impact that a diagnosis of ASD might have, any child of that age is unlikely to be able to create enough force in a pinch to cause a bruise.

57. However, Dr Morrell told me that it would be difficult to exclude the possibility that P had herself caused the bruising to her ears.

58. As to the injuries to P’s buttocks/thigh, he told me:

- i. There are 5, maybe 6, bruises to the buttock area.
- ii. For a fall to have been responsible for causing that bruising there would need to be either:
 - A fall onto an object with at least 5 protrusions, all capable of impacting so as to cause the bruising seen.
 - Separate falls onto the same area (the buttock/thigh) each causing some of the bruising.
- iii. The explanation of a fall onto an object causing the bruising was unlikely. It is unlikely because:
 - The forces created for a short fall from standing to sitting would be unlikely to have caused bruising.
 - If a nappy was being worn, then the area is usually protected.

59. Dr Morrell told me:

“It is uncommon to see accidental bruising of a child this age to the buttocks. A fall of that height is likely to have to have a low velocity and low force. In addition, children of that age are often wearing a nappy”.

60. He told me that a fall onto a specific toy, the “beaded toy”, was unlikely to have caused the bruising. Dr Morrell repeated that as set out within his addendum report at E88:

“I would conclude that on a balance of probability of fall under this toy is unlikely to produce bruising of the nature scene to P’s bottom because of the number of bruises scene and the relatively low impact force likely to have been generated and the cushioning effect of the nappy”.

61. The likelihood of causing one bruise from a fall is relatively small. The more bruises there are then it becomes increasingly more unlikely.

62. On a balance of probabilities, the bruising seen was indicative of fingertip bruising. However, the bruises do not have a pattern of a finger grab; the pattern is “*somewhat non-specific*”

63. Dr Morrell remained of the view, as set out at para 9.15 in his substantive report:

“9.15 It is not possible to exclude the possibility that a fall onto a hard object making impact with the buttocks would result in bruising. However, the bruising would occur at the point of impact and there would therefore have to be at least five separate points of impact. Although I accept that it is possible that if P had fallen onto an object with at least five protruding hard surfaces, then there could be impact with more than one surface. However, it is difficult to imagine that the impact onto that object would occur in such a way as to produce bruising at each of the separate points of impact.

9.16 On the balance of probabilities I think that it is unlikely that the bruises to the right buttock were caused by a fall onto some form of hard object. Alternative mechanisms would be pressure applied with a hard object, such as the fingers, and it would be possible to cause this type of bruising if the buttock had been squeezed tightly with the fingers. I think that this is the more likely explanation for these bruises.

64. He confirmed that, although unlikely, a single fall onto a single object with 5 protrusions, or multiple falls on to an object, cannot be ruled out.

65. Finally, in terms of timing bruises, Dr Morrell suggested caution in any attempt to do so. In very broad terms, he told me that from his experience, bruises are usually apparent from the first hour or two and tend to disappear after 7-10 days. For the purposes of the chronology (set out below) that puts both sets of bruising having been caused approximately between 19.02.2022 and 8am on 01.03.2022 (the “relevant timeframe”)

Factual evidence

66. The parties have assisted the Court greatly in setting out detailed chronologies within their various statements. The unusual accuracy of those chronologies has resulted from reliance upon several sources, including CCTV footage outside of the M and MGM’s home and dates of photographs and videos taken.

67. Quite properly, I have not been asked to look at the CCTV footage. The LA has confirmed that no issue is taken with the timings provided as a result of that footage. However, as previously set out, I have been invited to consider various videos and photographs provided by the parents. Most of that material is relied upon to show, as it does, incidents of P touching, playing with, pulling or folding her ears.

68. Whilst I have considered all of that evidence, of specific note has been:

a) Schedule 1; video 6: Short video of P in distress and reaching up to both ears with hands in that moment of distress.

b) Schedule 1; video 8: Short video of P not just folding ears but pushing her left ear with some force using her thumb.

c) Schedule 2; video 6: Short video of P pushing at both ears with her fingers the same time and in the approximate area that bruising to her ears was noted on 01.03.2022.

d) Schedule 2; video 9: Short video of P said to have been taken at the park on 22.02.2022. There is also a still photograph (schedule 2;

photograph 11) which seems to have been taken from that video. Within that photograph and video there does not appear to be any bruising to P's left ear. That date is important to the M's case when the chronology is considered.

69. I have attached a chronology to this Judgment, marked Schedule C. The chronology is taken from the evidence of the M, F1, MGM and MSGF. The Local Authority properly tested the family members accounts of what they had seen and done during that relevant time frame. However, it is a feature of this case that the chronology itself, as set out in that schedule, was not challenged by the local authority. It is therefore an amalgamation of the evidence that the family members have given to me. Whilst it does not set out all of the detail contained within the various documentary and oral evidence, it includes those matters relevant to my determination of the issues in this case.

The M's evidence

70. I heard evidence from the M for just over 2 hours. She gave her evidence in a calm, confident and measured way. When she spoke of all of her children, she did so with obvious affection. She told me how difficult these proceedings had been; not only because of the nature of the allegations but also because they have resulted in her and the father living separately since April 2022. She told me that she remained in a relationship with the father.

71. In general terms the M came across as open and genuine in her responses. I detected some defensiveness in her answers when she felt that her ability as a parent was being questioned. There were times when she found it difficult to accept that some aspects of parenting P were more difficult. However, my impression was that this was not evasiveness or an unrealistic view of parenthood, but rather a desire to protect and defend P from any criticism. Mr Trory was at pains in his questioning to make it clear that he was not criticising P in any way, but I find the M's defensiveness to be a natural response in difficult circumstances.

72. As can be seen from the chronology, the timeframe in which the M had an opportunity to cause the bruising is limited. She only had sole care of P on 19th and 20th February 2022. Thereafter, the M was unwell and, for a significant period of the relevant timeframe, hospitalised.

73. The M told me that she was the main care giver for P; she is the one who P comes to if she is particularly upset. However, the M was clear that F1 was not an absent parent. Whilst she took the lead in caregiving, the father shared the responsibilities if he was around, such as changing nappies and feeding.

74. I asked the M about F1 and his character. She told me that he was a brilliant father. She told me, and I quote:

“I could not fault him as a father. He is always putting the children first. He could not love them anymore if he tried”.

75. She became upset at that stage; my impression being that she was reflecting on his absence from the family home since April 2022.

76. I was told that F1 was not an angry or aggressive man. He was not prone to lose his temper and that their relationship, she said, included disagreement but not heated argument. There has never been a time when she has seen F1 acting inappropriately, either through rough care or lack of care. I am reminded that P was not the couple's first child. She could not believe that F1 would ever hurt P, so as to cause the bruising seen on 01.03.2022.

77. Understandably, Mr Trory explored with M the reason why F1 was not looking after the children whilst the M was unwell and in hospital. The M was asked whether the maternal grandparents (“MGPs”) had been asked to care because there was concern around F1's ability to care for them. The M was forthright in her explanation. She told

me that she did not have any concerns with F1's care; the decision for the children to stay with MGPs was to prevent instability whilst father visited M in hospital. Stability and routine are factors which are particularly important for P.

78. Given what I have been told and have read about this M, I accept that the decision was focussed on minimising the impact of the hospital stay, rather than some underlying concern as to F1's care or ability to cope.

79. The M also told me about her views in respect of MGM, and MSGF. I was told that both MGM and MSGF have always played a significant role in P's life; they see her often. Although the end of February was probably the longest period of time that P had stayed with them, she had stayed for consecutive periods of overnight stays previously and without issue. She described MGM as having a very loving relationship with P, to the point that she is seen as a second mum and is referred to as "nan mum". There are no circumstances that the M could see where MGM could be responsible for the bruising to P.

80. The M told me that she had known MSGF since 2018, when he and MGM commenced a relationship. She told me that he is a great person and has cared for her as if she were his daughter. The M told me that she had never witnessed any concerning behaviour from MSGF. MSGF has been part of both girls lives since they were born, and he has a close relationship with them. Like F1 and MGM, her experiences of MSGF lead her to the view that he would not have caused the bruising to P.

81. I pause to consider some areas that were lacking in clarity from the M. One significant issue is the discussion that took place between the M and the MGM in the car on 01.03.2022, having dropped P off at nursery. I was surprised by the M's evidence that, having been told by MGM that she had forgotten to tell nursery about the bruising to the ears, that she did not ask anything further. On the M's account, there was simply no further conversation about the bruising. My surprise arises from the fact that the M tells me that she was not aware of the bruising until raised by MGM.

For a M who seems to be interested in any issues arising in respect of her children, and I mean no criticism in that observation, I find it difficult to understand why she would not have enquired further. The M tells me that she didn't ask any further questions because she had not been surprised; it is a feature of his case that there is a lot of evidence about P's tendency to pull, push, fold and play with her ears. But this was the first time that bruising to ears had ever been raised. Even in November 2021, when P was taken to an audiology appointment with marks to her ears, the M accepted that the marks were not bruises. The local authority has not challenged the family's account that P has been seen previously with marks to her ears.

82. There have been moments in this case where language has had to be clarified. In particular, the use of the word "bruise" has sometimes been used to describe a "mark", which, when clarified has meant reddening. There is an important distinction to be made. As Dr Morrell made clear in his evidence, a bruise is caused by pressure being applied sufficient to cause the bursting of blood vessels. I have not formed the view that the interchanging of the words "mark" and "bruising" has been done purposefully or with the intention to deceive. They are words which have been used by the family over time so that their descriptive accuracy has been eroded.
83. I do not accept that the MGM told the M that she had forgotten to tell nursery about bruising to P's ears. If she had, I believe that the M would have enquired further, as it would mean an escalation in self-injury to that which she, as a protective M, was used to. Instead, I have concluded that the confusion around terminology, evident in the oral evidence of both the M and MGM, has resulted in the MGM telling the M that she should have told nursery about "marks" to P's ears. In the MGM's mind she was talking about the bruises she says she saw. In the M's mind, she is aware that P has sustained marks to her ears before as a result of self-harm. On that basis she did not feel the need to ask any further questions.
84. I have considered the evidence within the social worker statement setting out a report from the nursery as to the discussion with the M over the phone. At the start of the case, I asked the Local Authority if there was any direct witness evidence from the nursery. It seemed to me that it was likely that issue would be taken with the contents of that phone call on 01.03.2022 and that, in any event, I might be assisted by

evidence in respect of any propensity for P to push, pull, fold or play with her ears. I was told that no evidence had been obtained from the nursery and that the 01.03.2022 was actually P's second day, meaning there was a limitation on any observations of P's usual behaviour by the nursery.

85. The M denies saying to nursery staff that "they look like blisters". The M told me that she would have suggested that any bruising would have been caused "where she bangs her head or pulls her ears". If the M had of seen the bruises before dropping P off at nursery, I would be surprised if she would have described them as red blisters. Nor does that description fit with the marks that I am told by the family were historically seen on P's ears. I have to consider the amount of weight that I can attach to that hearsay evidence, given I do not have any direct evidence from the nursery and nor has the author of that comment been challenged.

86. Having considered the context of that alleged comment, in circumstances where the M was driving whilst being told of bruising to her daughters ear and the imminent involvement of children's services, there are two scenarios which I find are probably equally likely; either the M used the word "blister" in the stress of the moment when she actually meant "mark", or the M did say "mark" and the comment has been inaccurately recorded. I do not need to determine which is the more likely. However, I do not find that the comment adversely impacts upon the M's credibility. Nor does it assist me in determining the cause of the bruising.

87. Having heard from the M, my overall impression was that she was an honest and credible witness.

The father's evidence

88. In contrast to the M, the father was less self-confident when giving his evidence. He spoke in a low voice, to the point that I had to repeatedly ask him to keep his voice up. He was cross examined robustly by Mr Trory but at no point did he show

irritation, a loss of temper or frustration. I formed the view that his separation from the family home, and from his children, had taken a significant toll on him.

89. His involvement in P's care over the relevant period was unpicked by Mr Trory. The father remained consistent in the accounts he had given in his Children Act statements and police interview. He denied any involvement in the causation of the bruises.

90. The father was also questioned as to why the decision had been reached that the children should stay with MGPs. It was suggested that it was because he could not cope with the care of P and her siblings. The father echoed the M's evidence; the children were familiar with staying with MGPs and doing so would provide some stability whilst M was in hospital. He was willing to accept that it can be more difficult looking after P, because of the way she sometimes presents. Like the M, the father was taken to letters provided by individuals who had witnessed P's behaviour at a party in March 2022. The father accepted that P can sometimes present in the way described. However, the father was at pains to tell me that such behaviour was the exception rather than the rule. The father told me that he and the M were aware of what could trigger that kind of behaviour and avoided exposing P to those environments. The father told me that such behaviour did not take place within the family home.

91. There is no evidence presented by the local authority to suggest that this father was unable to care for P and her siblings together. Nor is there any evidence to show a propensity for this father to lose his temper or become frustrated or aggressive.

92. The father raised no concern about the M, MGM or MSGF. He described a strong bond between the M and P. He echoed the M's views about the closeness of relationship that P had with both MGPs. He told me that he did not believe that any of the family members could have caused the bruising. It remained the father's view that

the bruising to the buttocks was caused by a fall onto toys and the bruising to the ear caused by P pinching herself or banging her head.

93. Overall, I found the father to be a credible and honest witness.

The maternal grandmother's evidence

94. The MGM gave her evidence in a confident and straightforward manner. She is a midwife of 10-years' experience and has been a registered nurse for 12 years. She answered the questions asked of her directly and without deviation.

95. She was asked why P came to stay when the M went into hospital. She told me that P had stayed at her house on previous occasions, albeit not for as long. She had felt that it was right for the children, especially P to have some stability whilst the M was in hospital. P has specific important routines, such as bath time. With the father visiting the M at hospital, often in the evening, it was felt that she might be disrupted.

96. She described the incident on 24.02.22 in detail, describing seeing what she believed to be the aftermath of P falling onto toys. She accepted that she had not actually seen the fall and that she was speculating as to why P was upset and getting up off a floor covered in toys. When she saw bruising on P's thigh/buttocks later that evening, she believed that the fall onto the "beaded toy" could have caused it. She could not recall any other significant incident but agreed that there were often times when P might be expected to cry after a fall, and she did not.

97. The MGM also told me that she had observed P's nappy to, at times. "ride-up", exposing the upper part of P's leg from the usual protection of the nappy. She was unable to say whether it had ridden up on this occasion.

98. The MGM only had positive things to say about the father and Paul. She described the close bond between P and Paul. She told me that the father is "a very good father. He is attentive and loving towards the children". She told me that she has never had any concerns with the way in which the father deals with the children. She has never been

concerned with the father's presentation, towards the children, towards the M, or generally.

99. She was consistent in her account of when she noticed the various bruising to P. When she saw the bruising to P's buttock/thigh on 24.02.2022 she accepts that she did not tell the M about it until 01.03.2022. Mr Trory challenged the MGM about that. He suggested to her that it was strange that she did not tell the M; surely such bruising was noteworthy enough to raise with the M? The MGM told me that she did not want to raise the issue whilst the M was in hospital. She told me that her daughter was very unwell and that she was worried about her. She told me that she had settled in her mind that the bruising was caused as a result of the toy. She did not believe it was appropriate to raise it with M whilst she was in hospital. She told me that she was worried about her daughter. She conceded to Mr Trory that, with hindsight, perhaps she ought to have. If the MGM is being honest about how she understood the bruising to have been caused, I do not think it unreasonable that she did not raise it with the M at that time. In her mind the bruising had an explanation. Her focus was on her very unwell daughter.

100. The MGM told me that she had told M about the bruising to the buttock on the way to nursery on 01.03.2022. She had not told the M about the bruising to the ears that she had seen to the left ear that morning and the right ear the day before. She told me that she had meant to tell both the M as well as the nursery, but that the distraction of L's accident at the door of the nursery meant that she did not. When questioned by Mr Trory, she was unable to say why she had not raised the bruising to the ears at the same time as she had told the M about the bruising to the buttock/thigh. She had meant to. She thought that perhaps it was not as important in her mind, because P was known to play with her ears and marks had been noted previously. When she had seen the bruise to the right ear in 28.02.2022 she told me that it had not caused her any concern:

"I believed she had caused it pulling on her ears or knocking it against her bed at my house".

101. I have seen video footage of P knocking her head against the bed, causing a bang to be heard and then showing no sign of distress. The risk of banging her head against her head had resulted in the MGPs putting padding against the bed.
102. The MGM denied that there was an attempt to cover up the bruising to the ears; P did not wear a hat on the morning of 01.03.2022 and her attendance at nursery was not compulsory that day. Suspicions would not have been raised if she had not attended.
103. When she was being questioned about why she had not raised the bruising to the ears that morning, either to the M or the nursery, she became visibly upset from the witness box, as she did when describing the fall she says P had on 24.02.2022. My impression was that the MGM recognised that her failure to raise the bruising to the ears then set in train what would follow, including the children's temporary removal, the father's exclusion from the property and these lengthy proceedings.
104. I was impressed with the way in which the MGM gave her evidence. I formed the view that she was attempting to help me in my task of determining the truth of what has happened to P.

Maternal step grandfather's evidence

105. MSGF was the final witness from whom I heard oral evidence. Within the papers he describes himself as a tutor. In his oral evidence he told me that he tutored adults in door supervision and conflict management. He had previously been in the army. When he left, he went into private security. As part of his tutor role, he told me that he taught elements of safeguarding. He told me that one of the central themes of his tutoring was the idea of mental health first aid.
106. As seen within the chronology, there were some hours, within the relevant timeframe, that he was caring for P by himself. He told me that he could not think of

any incident or unusual presentation during that time that might account for the bruising to P. During that time he was caring for all 3 siblings. He was questioned about his ability to care for P, given her potential for difficult presentation. He told me that it did not cause him any difficulty at all. He said that he had cared for all 3 children by himself previously, with no issue. He accepted that P can be difficult to deal with at times. He recognised the description of P's behaviours set out in the letters attached to the M's statement but added that such presentation was rare. In terms of her usual everyday presentation, he described her wriggling around when changing nappies and being full of energy. He said:

“P can at times be very distant but can then also be very challenging sometimes. She gets frustrated when her routine is disrupted. She can then get agitated and will bang things until, for example, her TV programme is put back on.”

107. He told me that he had seen her pinching her ears before. He told me that he had no doubt in his mind that P had caused the bruise to herself by pulling or pinching her own ears. He only had positive things to say about the other family members and did not believe that any of the other adults in the family could have caused the bruising.

108. During his evidence he told me that he had previously been pinched on the cheek by P and that the pinch had caused a bruise. He was clear that it had been a bruise and not a “mark”. He told me that it had happened in November/December 2021. That evidence caused me some concern. Given his intervenor status at the time of Dr Morrell's substantive report, which questions whether P would have the strength to cause bruising to herself, I was surprised that the first time he had raised this incident was from the witness box. There is no mention of that incident within the papers, including his own witness statement and police interview. He told me that he had read Dr Morrell's report as relating to P's ability to bruise herself, rather than someone else. Given the clear issue in this case, I remained concerned as to why that incident had not been raised before. I deal with my analysis of that part of his evidence below.

109. Another troubling element of his evidence was in respect of the bruising to the buttock/thigh. According to the MGM, she had seen that bruising at bath time on 24.02.2022. She had confirmed in her evidence that the pictures of the bruising in the Court papers was similar to what she had seen. Both MGM and MSGF seemed to accept that MSGF had not been present at that bath time.
110. The next day, MSGF had sole care of P during bath time. Despite undressing P for her bath, bathing her naked, drying her off after the bath and getting her ready for bed (involving putting a nappy on her), he told me that he had not seen any bruising. He told me that he had not been looking for any bruising and he must simply not have noticed it. He confirmed to me that the first time that he became aware of bruising to P's buttock/thigh was when he was shown it by MGM at bath time on 26.02.22. That explanation sits uncomfortably with the extent of the bruising I have seen within the Court bundle and the MGM's evidence that the bruising was there since 24.02.22.
111. For the most part, I found the MSGF to be open and honest in respect of his care of P during the relevant time and his own observations of the marks to the buttock/thigh and ears. There are some elements of his evidence that caused me concern which I will need to consider as part of my overall analysis.

Summary of the Parties Positions

112. Following the conclusion of the evidence I have been greatly assisted by written submissions prepared in behalf the Local Authority, the M, F1 and the MGPs. Whilst succinct, I do not intend on repeating each detail of those documents. However, it is appropriate to set out a summary of their positions.

Local Authority

113. The findings sought at the commencement of the hearing remain unchanged from that set out at paragraph 23 above.
114. The Local Authority points primarily to the evidence of Dr Morrell. I am reminded that Dr Morrell's written and oral evidence was that it was unlikely that P

could have caused the bruising to her own ears; in his experience she would not have the necessary strength to apply the force required to cause bruising. I am also reminded that Dr Morrell's view was that the most likely explanation for the bruising to the buttock/thigh was as a result of a hard object, such as fingers, squeezing the buttock. Dr Morrell thought a fall onto a toy/s, including the "bead toy", was an unlikely mechanism to have caused the bruising seen.

115. On behalf of the LA, Mr Trory raises areas of the lay evidence which he terms "troubling":

- a) MSGF's evidence, for the first time from the witness box, in respect of a bruise having been caused to him by P in or around December 2021.
- b) MGM not having mentioned to the M the bruising to P's buttock/thigh.
- c) MGM failing to mention to the M and/or the nursery on 01.03.2022, the bruising to P's ears.

116. Mr Trory goes on to address the suggestion that P has suffered previous marks, noted by the family. He submits that it simply cannot be reliably concluded from this evidence that P has previously caused bruises to herself and that no weight should be attached to such evidence.

117. The local authority reminds me of the evidence before the Court that on occasions P can present with difficult behaviours and, consequently, can present a challenge to even the most loving carers. When the evidence is considered as a whole, the local authority invites me to the view that I can find on a balance of probabilities that the injuries sustained by P were deliberately inflicted and non-accidental in nature.

118. If I make that finding, the local authority invites me to find that identification of a perpetrator of those injuries within the relevant timeframe is not possible. Rather, the local authority say:

“It is clear from the evidence of the parents and the interveners that throughout this time, there were periods where all of them had the care of the children. As result, there is a realistic possibility that any M, F1, MGM or MSGF caused the injuries”.

The Mother

119. M denies causing any of the bruising to P. Indeed, if I am to accept the chronology, there is very little opportunity for her to have been able to have caused the bruising.
120. M struggles to believe that any member of the family could have inflicted the bruising. I am reminded that there is no evidence before me in respect of a predisposition, in respect of any of the family members, to aggression, frustration, inappropriate care, mental health difficulties, substance or alcohol misuse.
121. As such, the other’s primary submission is that the local authority have not established, on a balance of probabilities, that the bruising has been inflicted. It is said on her behalf that Dr Morrell’s evidence ought to be viewed as part of the evidence overall. Ms Wordsworth uses the word “holistic” within her written submissions as to the analysis that ought to be undertaken. That is a word often used in the welfare stage of public law proceedings, but in my view is just as valid a description of the process that the Court must embark upon when surveying the “wide canvas” of evidence described by Dame Elizabeth Butler-Sloss in Re U, Re B.
122. I am reminded on behalf of the M that this is a single-issue case, that there is no history of children’s services involvement and that the evidence before the Court is all indicative of a loving family where the children are properly cared for. There are no complaints or allegations made by any of the children in respect of their experiences within the family home. But for the bruising observed on 01.03.2022, no professionals, educative or medical, have raised any issues in respect of the care afforded to these children.
123. Ms Wordsworth invites me to the view that:

- a) I should be cautious about forming a negative view in respect of the care arrangements in place for P within the relevant time frame.
- b) I should weigh the medical evidence within the totality of the evidence before me.
- c) I must take care not to reverse the burden of proof; the family members need not prove anything.
- d) The MGM was an impressive witness, and I can accept her account in respect of the bruising to the thigh/buttock.
- e) Dr Morrell accepted in his evidence that the pattern of bruising to the buttock/thigh was non-specific.
- f) With no criticism, Dr Morrell's opinion on force required to cause the bruising to the ear was not research based but rather a view from his clinical experience. I am invited to be cautious about forming views about the required force, especially in the context of evidence before me indicating a tendency for P to play with, fold and pull at, her ears.
- g) I should be cautious not to incorporate into my analysis, how I might imagine an individual would respond to seeing P's bruising. Rather, I should consider the family's reactions, in particular the MGM's response, in the context of individuals who have an in-depth knowledge of P's presentations and behavioural characteristics.

124. If I find that the bruising was inflicted, Ms Wordsworth submits that the local authority has "*come nowhere near satisfying the Court that there is a realistic possibility that M perpetrated either set of bruising*". In support of that submission, I am invited to the view that opportunity is not enough, by itself, to identify the M as a perpetrator or her inclusion in a pool of potential perpetrators. In any event, says Ms Wordsworth, when the chronology is properly considered, her opportunity to have caused the injuries is limited in any event.

The father

125. F1 denies causing any of the bruising to P and finds it hard to conceive that any of the family members could have caused that bruising.

126. The submissions on behalf of F1 echo those of the M. In particular:
- a) I must consider the medical evidence as part of the wider canvass, with reference to the P's known presentations
 - b) The height of the Local Authority case appears to be that each of the family members involved in these proceedings had an opportunity to have caused the bruising. Mr Sharp submits that opportunity falls far short of a real possibility.
 - c) I am invited to form a positive view in respect of the evidence given by the family members and conclude that the Local Authority have not discharged their burden.
127. If I find the injuries are inflicted, Mr Sharp invites me to conclude that F1r is not realistically a possible perpetrator.

The maternal grandmother

128. The MGM denies causing any of the bruising to P.
129. Ms Mangenie's primary submission is that the local authority has not proven on a balance of probabilities that the bruising was inflicted, either by any party to these proceedings or generally.
130. The submissions made by the M are generally echoed. I am specifically asked to consider the content and manner in which the MGM gave her evidence. It is submitted that the MGM was genuine and honest in her evidence and only attempted to assist the Court.
131. It is submitted that the MGM's actions, for example taking P to a non-compulsory nursery session, are not those of someone who is trying to hide their own wrongdoing.
132. I am asked to carefully consider everything that I have been told about P and her behaviours and weigh that up as part of my overall analysis.

The maternal step grandfather

133. MSGF denies having caused any of the bruising to P. He has never witnessed any concerning behaviours exhibited by any of the other family members which would cause him concern.
134. Many of the points made in Ms Shames' written submissions echo the points made by the M. I do not intend on repeating them. However, the following broad points are made:
- a) The local authority has not proven, on a balance of probabilities, that the bruising seen to P was inflicted.
 - b) I am reminded of the evidence of "stimming" behaviour, involving pulling of both her ears.
 - c) I am reminded that the family evidence was that P appeared to have a high pain threshold, something Dr Morrell told me was not uncommon in children displaying traits of ASD. Whilst not relevant to the necessary force required, Ms Shames reminds me that Dr Morrell accepted that individuals with a higher pain threshold may cause bruising more readily.
 - d) I am reminded that there is no research in respect of force required to produce bruising.
135. If I find that that the bruising was inflicted, Ms Shames invites me to find that the Local Authority have not satisfied me that he ought to be included in a pool of potential perpetrators. I am invited to consider the chronology of his involvement, in particular in respect of the MGM's observation of the buttock/thigh bruising. I am asked to consider everything that I know and have been told about Mr Grant's character and the absence of any evidence to suggest that he might act in. away so as to cause harm to P.
136. In respect of MSGF's evidence about the bruise to his cheek in December 2021, Ms Shames submits that this was not an attempt to mislead the Court. She submits

that MSGF would not have been aware of what information would be important to disclose to the Court at an early stage. She says this:

“it is likely that MSGF was unaware that a bruise to his face caused by P would be necessary to disclose, as it is an injury to a different part of the body”

The Children’s Guardian

137. I have been told that the Children’s Guardian, having considered a note of the evidence, did not have any submissions to make.

138. I should say that I am always interested in any views the Children’s Guardian might have, even at a fact-finding stage. Whilst I understand the anxiety of a Children’s Guardian to remain fair and unbiased, the reality is that the stance on behalf of a child in a fact-finding hearing ought not be neutral. P, and the other children, have a vested interest in the outcome of this fact-finding exercise. Any assistance that can be provided on behalf of the children in an overall analysis of the evidence, is always welcome and ought to be encouraged.

Analysis

139. When I undertake my analysis of the evidence, I am drawing together all of the different strands of that evidence that I have read and heard. That process includes consideration of the medical evidence, consideration of the chronology, consideration of the evidence of the family members and what is known about them and consideration of what is known specifically about P.

140. Any proper analysis must involve the Court weaving together those strands and considering how each piece of that evidence fits with the overall picture. It is a process of reviewing the totality of the evidence, surveying the wide canvas of evidence before me.

141. I have considered all of the evidence, written, oral and provided in media form. It would not be possible to set out my entire analysis within this judgment, but I set out

those matters which appear to me to be of relevance. I have already set out some of my analysis of the family's evidence above.

142. As I have indicated previously, I have been impressed with the medical evidence provided by Dr Morrell. I have no doubt that Dr Morrell has attempted, from a medical perspective, to assist me as best he can. He is clear, from a medical perspective, that the bruising to the buttocks/thigh and the bruising to the ears, is more likely to be inflicted. His concern in respect of the buttocks/thigh bruising is primarily the force that would need to be generated to cause the bruising and the mechanism required to cause the individual bruising. He does not discount the suggestion that it could have been caused by a fall on to a toy/s, but he finds it unlikely. His concern in respect of the bruising to the ears is primarily based on P's ability to create the necessary force with her fingers to cause the bruising. Again, he does not rule out the possibility that she might have caused the bruising herself or that she may have caused it by banging her head in the way observed by Dr T during the child protection medical. But again, he finds that explanation unlikely.

143. I must then stand back and review that medical evidence in the context of everything else that I know about this family, each individual party to these proceedings and P's own presentations.

144. Beyond the medical evidence, of particular relevance is the following:

- a) This is a single-issue case. There has been no involvement with children's services prior to the 01.03.2022. Whilst that does not create any presumption as to the origins of the bruising, it is a relevant consideration that can be properly factored into my overall analysis.
- b) Likewise, there are no concerns expressed in respect of any of these family members and their care for any of the children. No issues have been raised since the proceedings were initiated around the family's interactions with the children and no professional involved with the family prior to 01.03.2022 has ever raised any concern.
- c) There is no suggestion that any of the parties to these proceedings have a propensity to display aggressive or frustrated behaviours. There is no evidence of any "short-fuse" or any suggestion that these children have been anything other than well cared for. Issues such as substance misuse or domestic abuse have not been a feature of the evidence.

- d) There is no evidence of fear or apprehension in respect of the children and any of the family members. No allegations have been made by any of the children in respect of the care that they have received from any of the adults in this case.
- e) Each of the family members has, generally, been consistent in their accounts of their movements and care giving during the relevant time frame.
- f) There is evidence before me, not only from the family members in their evidence, but also in the form of photographs and video, that P has a tendency to pull, push, fold and play with her ears. When I have looked at the videos and photographs it has been apparent, as Dr Morrell agreed, that the site of the bruising to the ears is similar to the area in which P concentrates her behaviours.
- g) There is independent evidence from Dr T that P was seen to accidentally hit her head against a wash basin during the child protection medical. That observation corroborates the family's accounts of P being very active and sometimes causing herself harm without any one being aware of it. I have noted the video of P banging her head against the bed frame and the absence of a reaction from her.

145. The Local Authority case is based around the medical evidence and the opportunity that each of the family members had, during the relevant timeframe, to have caused the bruising. The LA has properly tested the accounts given by the family members and appropriately explored whether any adult concerned with P's care may have monetarily lost their temper, become frustrated or acted in a way so as to have caused the bruising to P.

146. I have therefore carefully considered the oral evidence provided to me by the family members. I was generally impressed with all of the family members evidence. In particular, I was impressed with the descriptions given by the MGM in respect of how she says the bruising to the buttock/thigh was caused. She did not appear to attempt to embellish her evidence. She accepted that she had not actually seen the fall on that day and that she was speculating as to what had happened as a result of the aftermath. If she were attempting to deceive me, she could have done a much better job of it.

147. Alongside the medical evidence, the LA invites me to determine that the stresses of dealing with P's challenging behaviours may have led an otherwise loving carer, to

have acted out of character. Of course, parents who love their children are still capable of assaulting them; frustration, tiredness, the effect of drink or drugs, mental health or underlying personality traits and stress are all non-exhaustive examples of what might cause an otherwise loving parent to assault their child in a 'moment of madness' or loss of control.

148. However, there is no evidence before me to suggest that any of the adults did, at any time, lose their temper, lose control or act in a way contrary to the general descriptions that have been given as to their usual temperament. I have heard no evidence of a particularly stressful event that occurred over the relevant timeframe. I have heard no evidence which would lead me to the view that P's behaviours were any more challenging than normal. In addition, whilst it is clear that P has the potential to display some very challenging behaviour, evidenced within the letters attached to the M's statement and from Dr T's observations, all of the evidence points towards that behaviour being situation specific. All of the family members generally describe managing P on a daily basis to require an element of extra vigilance. However, P being exposed to a loud, bright busy party or the confinements of a medical examination room with several individuals present, is clearly different to being at home or at the MGP's house with which she is extremely familiar.

149. I understand the local authority's points in respect of the reactions of family members to the bruising, in particular the MGM's reactions. But there is force in the submission made by Ms Wordsworth; that I must be cautious not to impose my own view as to how I think I would have reacted in those circumstances. I must look at the reactions in the context of family members who know P and her presentations, far better than I do.

150. I do not fault the MGM for not raising the issue of the bruising to P's buttock/thigh with the M, whilst she was in hospital. As I have previously indicated, if the MGM had settled in her mind that the cause of the bruising was as a result of an accidental fall, it is entirely reasonable that she did not.

151. I have given considerable thought to the evidence that MGM did not mention the bruising to P's ears, either to the M or the nursery. I accept her evidence, corroborated

by the M, that there was an incident involving L that may have distracted her from informing the nursery. What is more surprising, is why she did not tell the M about the bruising to the ears at the same time as she told her about the bruising to the buttocks/thigh. At first blush it seems odd that she did not. Given she was trained in safeguarding, the bruising to the ears should have ordinarily raised alarm bells. But as Ms Wordsworth submits, the exercise should not end there. I must stand back and consider her reaction in the context of what she knows about P. All of the family members have described P as having an underlying preoccupation, for whatever reason, with her ears. I have been told about marks that have been caused previously by P either by pulling, pushing, folding her ears or by impact with a bed board. The concerns around P's ability to injure herself are real and have resulted in family members taking action, such as padding the bed, to stop an accidental injury.

152. I have been told about an audiology appointment in November/December 2021 for P. At that appointment P had a marking to one of her ears that the family members speculated must have been caused by her own hands or impact with her bed board.

153. And so, I view the MGM's failure to tell the M about the bruising to the ear in that context. Where there was a less obvious cause to the bruising to the buttocks/thigh, which required explanation, explanation was given on 01.03.2022. Where there was a known history of P manipulating her ears so as to cause marks, the need to give an explanation was lessened.

154. Viewed in that context, whilst I accept her failure to mention the bruising to the ears is prima facie surprising, it is, I find, understandable.

155. I have had more difficulty with the MSGF's evidence in respect of the bruise he says P caused him in December 2021. I do not understand how, considering his knowledge of the contents of Dr Morrell's report, he did not think it relevant to inform anyone that P had bruised him previously. He had not raised that incident in his written evidence, nor had he raised it in his police interview. I do not accept the suggestion made by Ms Shames that he did not think it was relevant because it is bruising to a different part of the body. P's ability to produce enough force generally to cause bruising was clearly an issue within the medical evidence.

156. So, what am I to make of that part of his evidence? In general terms I have considered MSGF to be an honest and open witness, attempting to assist me in determining the cause of P's bruising. However, on this point I have formed the view that MSGF was embellishing an incident that probably did occur in December 2021. I accept MSGF's evidence that P did pinch him in December 2021, but in light of the issues of which he was aware, and his silence on the incident until evidence from the witness box, I do not accept on balance that it caused a bruise. I then have to consider how that embellishment affects both his credibility and my overall analysis of how the bruising was caused.

157. People tell untruths and half-truths for a variety of reasons. Having heard from MSGF on this issue, I have formed the view that he has embellished the incident, not because of a desire to mislead the Court as to how the bruising to P had been caused or misdirect attention away from any wrongdoing on his part, but rather to bolster his genuinely held belief that P has caused the bruising herself.

158. It is unfortunate that he has created a stain on his otherwise credible and honest evidence. As a result, I have taken a closer look at his account of not observing the bruising to P whilst bathing her on 25.02.2022, given it was identified by MGM on 24.02.2022. However, if I accept the MGM's account of seeing the bruising, as I do, then it simply makes it more likely that MSGF simply did not notice it on 25.02.2022.

159. In light of the timings in the chronology and the rest of the evidence in this case, I have concluded that his embellishment in respect of the December incident does not make it any more likely that the bruising was inflicted.

160. I have found the M to be, overall, an honest and genuine witness. I found her to be a proud M, attuned to P's needs. She came across as being very protective of P and was quick to defend any perceived criticism of P. I have been told only good things about this M and her care of all of the children. She has fortunately been able to continue for the children since April of this year with no issue being raised by the LA under the scrutiny of these proceedings. She says she would do anything to protect

these children, and I believe her. I consider her description of the father and other family members in that context.

161. Similarly, I found the father to also be attuned to P's needs. Whilst the LA properly explored the extent of his care giving prior to 01.03.2022 and the reasons for the children staying with MGPs whilst the M was in hospital, I found no evidence to suggest that he was unable to cope with the care of the children.

162. There was much cross examination of the family members in respect of the decision for the children, in particular P, to stay with MGPs rather than stay at home with F whilst the M was in hospital. Whilst no criticism is made as to the LA's exploration of that decision, having heard the family's responses to that decision making, I have formed the view that it had nothing to do with any underlying concern as to the father's ability to properly care for the children during that time. Instead, I find on balance that it was a decision made to try and reduce the impact upon the children of the M's hospitalisation. Far from being suspicious, it was a child centred and focussed decision made by the adults surrounding the children.

Conclusions

163. As part of my analysis, I have undertaken the task of interweaving the medical evidence with the other factual evidence to create an overall picture. Having done so, I have formed the view that all of the family members have been honest and open as to their evidence around how P has suffered the bruising observed on 01.03.2022.

164. I have not ignored the medical evidence in favour of a focus on the lay evidence. I have considered Dr Morrell's medical view as to the likely cause of the bruising. However, I have reminded myself that even unlikely things happen. And when I look at the evidence holistically, putting the medical evidence alongside all of the other evidence in this case, I form the view that the local authority has not discharged its burden, to the requisite standard, to show that the bruising has been inflicted by any of the parties, or at all.

165. Rather, in respect of the buttock/thigh bruising I accept the evidence from the MGM in respect of her observation of the aftermath of what was probably a fall. I

accept her evidence that she had not seen any bruising or other marks prior to that fall. I accept her evidence that she then saw the bruising for the first time whilst bathing P that night. I find that the bruising to the buttocks/thigh was probably caused by P falling accidentally onto a hard object/objects on 24.02.2022. In order for the bruising to have been caused, it is likely that P's nappy had ridden up in the way the MGM had previously observed. I am unable to say whether it was one fall causing all of the bruising or multiple falls causing some of the bruising.

166. In respect of the bruising to P's ears, I find that it was probably caused by either P pushing, pulling or pinching her own ears or through an accidental collision with a hard object, or a combination of the two. I am unable to say exactly how it was caused but find that it has not been proved by the LA to have been inflicted.

167. I make no criticism of the local authority for seeking a fact-finding hearing in this case. Viewed in isolation, the medical evidence suggests infliction. This is exactly the type of case which required judicial analysis, bringing all of the evidence together holistically, to consider the wider picture.

168. The Local Authority has indicated that if no findings are made in respect of inflicted injury, then it will seek discharge of the interim care Orders and permission to withdraw proceedings. That seems an appropriate way forward. I would hope that the family can now be reunited as soon as possible and the impact of these proceedings, felt by all of the family members in various ways, can be lessened.

169. That ends my Judgment.

SCHEDULE A

VIDEO NO.	DATE	TIME	DESCRIPTION
Video No. 1	04.03.2022	09.39am	P rubbing her head against the fire on the wall. (which is turned off)
Video No. 2	03.03.2022	16.39pm	P playing with her ear whilst watching the iPad and eating.
Video No. 3	07.03.2022	17.23pm	P constantly shaking her head during dinner time.
Video No. 4	08.03.2022	07.48am	P constantly shaking her head whilst sat in high chair.
Video No. 5	19.03.2022	18.04pm	P sat on sofa with Great Granddad watching TV, nipping her arm.
Video No. 6	20.03.2022	14.51pm	P initially shows with her fingers in her ears, whilst having a tantrum
Video No. 7	20.03.2022		P shown unhappy playing with hair behind her ears.
Video No. 8	20.03.2022		P shown playing with ears.
Video No. 9	07.05.2021	12.54pm	P continuously shaking her head. Aged 1 year 3 month.
Video No. 10	12.08.2021	18.42pm	P rocking back and forth in bed, and head banging the wooden bed showing no emotion.
Video No. 11	03.09.2021	18.17pm	P is shown 'stimming' whilst strapped into her car seat.
Video No. 12	14.01.2022	19.28pm	P sat on the bed with father, biting her finger and putting her fingers in her ear.
Video No. 13	31.10.2021	08.25am	P running back and forth happy and making noises. Attempted to head butt phone.
Video No. 14	22.02.2022	13.11pm	P in pushchair laughing at the wind. Visible view of ear.
Video No. 15	02.03.2022	14.03pm	Video shows P pushing and playing with ears.
Video No. 16	02.03.2022	14.06pm	Video shows P pushing and playing with ears.

Video No. 17	02.03.2021	14.10pm	Video shows P pushing and playing with ears. As well as playing with hair behind ears.
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IMAGE NO.	DATE	TIME	DESCRIPTION
Image No. 1	15.02.2022		Ps first day at nursery.
Image No. 2	15.02.2022		Ps first day at nursery.
Image No. 3	21.02.2022	07.14am	P is shown asleep, visible view of ear. (Zoomed in)
Image No. 4	21.02.2022	14.10pm	P is shown asleep, visible view of ear.
Image No. 5	21.02.2022	07.14am	ORIGINAL PHOTO IMAGE NO. 3
Image No. 6	23.02.2022	16.48pm	CCTV snapshot, no bruising to ear.
Image No. 7	02.04.2021	15.16pm	P aged 1 year 2 months laid with finger in her ear.
Image No. 8	21.02.2022	07.16am	P sat on sofa with hands towards her hair/ears.
Image No. 9	23.6.2021	09.10am	P shown laid holding her legs in the air. Which she does quite often (nipping)
Image No. 10	30.09.2021	17.51pm	P 'stimming' with her head extended back.
Image No. 11	22.02.2022	13.11pm	Snapshot of Video No. 14.
Image No. 12	02.02.2022	14.11pm	Photo shows P was sat with finger in her ear.
Image No. 13	02.02.2022	14.09pm	P sat pushing on her ear.
Image No. 14	07.02.2022	17.18pm	P unhappy with hands over her ears.
Image No. 15	07.02.2022	11.24am	P 'stimming' extended her head back.
Image No. 16	29.04.2021	06.48am	P asleep in 'wooden bed' in question. Showing how close her head always is to guards.

Image No. 17	19.08.2021	08.23am	P shown laid holding her legs in the air. Which she does quite often (nipping)
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SCHEDULE B

VIDEO NO.	DATE	DESCRIPTION
Video No. 1	20.03.2022	P running around at 'party'
Video No. 2	12.08.2021	P hitting head off the bed and no reaction noted.
Video No 3.	14.01.2022	P putting finger in her ears.
Video No. 4	02.03.2022	P playing with ears.
Video No. 5	02.03.2022	P playing with ears.
Video No 6.	02.03.2022	P playing with ears.
Video No 7.	25.07.2022	P sat on sofa attempting to bite herself.
Video No 8.	01.08.2022	CCTV- P biting herself whilst getting nappy changed.
Video No 9.	22.02.2022	P at the park.
Video No 10.	20.03.2022	P at 'party' playing with ears.
Photo No 1.	01.08.2022	Still photograph off Ps bite mark from CCTV (Video 8)

SCHEDULE C

19.02.22

M cares for P throughout the day.

F1 went to work at 07.23am and arrived home at 3.30pm

P would have been cared for throughout the evening and night by both M and F1.

20.02.22

Children in care of M and F1 in the morning until 10.22am. At that point F goes to MGPs to collect L and P. He arrives back at home at 10.53.

From 10.53 until 3.40pm, P is in joint care of M and F1 with other family members visiting during the day.

At 3.40pm F takes all of the children, including P, to PGPs as M was not feeling well. F then takes children to MGPs house.

They are looked after by MSGF until 8pm, when MGM returns home from work.

P stays overnight with MGPs.

21.02.22

M and F1 at home. M not feeling well

MGM takes MSGF to work at 7.45am, with the children in the car.

MGM then cares for the children all day until she collects MSGF from work at 5pm.

P stays overnight with MGPs

22.02.22

MGM takes MSGF to work at 7.45am, with the children in the car.

M and F1 go around to MGPs house around 11.46am.

12.49pm: M and F1 take P out to the park for between 45 minutes to 1 hour. MGM has dressed P that morning. Photo and video available. No obvious bruising to left ear. P is wearing a coat (as can be seen in video footage).

2.56pm: P dropped off at MGPs as M not feeling well. P remains in care of MGM until 5pm, when MGM collects MSGF from work.

P stays overnight with MGPs

23.02.22

MGM takes MSGF to work at 8am and then drops children back off at home with F1 between around 8.30am to 9am. MGM is working overtime that day.

M in bed as unwell.

Around 9.50am, M gets out of bed and goes to the Doctor with F1 and the children, arriving around 10am.

The doctor appointment takes around 1 hour. During that time F1 remains in the car with the children.

At around 11am M and F1 drop the children off at PGPs home for approximately 10 minutes. M and F1 collect MGM from MGP's house, as she had come home from work by this time.

F1 drops M and MGM off at hospital then collects children from PGPs home.

F1 collects children after dropping M off. Gives them lunch.

MGM returns from hospital at 2pm. F drops P off as he is visiting M in hospital.

P remains with MGM until she collects MSGF from work at 5.30pm.

P stays overnight with MGPs

24.02.2022

M is still in hospital with a severe kidney infection. This is a historical health issue for M which has previously also resulted in hospital admission.

MGM takes MSGF to work at around 8am to 8.30am, with P in car.

P is in care of MGM all morning until 12noon. At that point F1 looks after the children at MGP's home whilst MGM visits M in hospital.

During this time MGM believes P fell over onto some toys.

MGM says she was sat on sofa in living room with P. MGM looking at phone. She hears P cry and looks up. P is getting up off the floor crying.

MGM did not see the actual fall but saw the aftermath. She assumed that P had fallen over. There were toys all over the floor "*so that you couldn't see any of the carpet*". In the area where MGM believed P to have fallen, were several toys including the "beaded toy".

P crying and MGM picks her up and puts her on her knee. P touching the top of her thigh area. MGM says she rubs the area to make it better. P quickly stops crying and gets down from. MGM says the upset is short lived. MGM says that she does not check P's body at that stage.

MGM says she picked some toys up off the floor to prevent P falling on to them again and hurting herself.

MGM collects MSGF from work at 5.30pm.

P is bathed that night.

MGM says that she noticed bruising to P's buttock/thigh. She thought that it had been caused by the earlier fall onto the toys. In particular, she says that she thought that a fall onto the "beaded toy" could have resulted in the bruising.

MSGF does not appear to have been present during that bath.

P stays overnight with MGPs.

25.02.2022

M in hospital

MGPs drop P off at home with F1, on way to work.

MGM tells F about bruises to buttock/thigh when she is dropped off.

Around 10.30am. F1 drops P off with PGPs whilst he visits M in hospital.

PGPs take P to soft play.

F1 joins P and PGPs at McDonalds at around 12.30pm. They then all go back to PGPs house until approximately 3.15pm

F1 then goes home with girls for approx. 40mins. At 4.10pm F1 collects Paul from work and takes him back to MGPs house. P with F in car.

F1 leaves P in care of MSGF and goes home, arriving home around 5.45pm.

P stays with MSGF until MGM gets home from work at around 8pm.

MSGF baths P that night.

He says that he did not notice any bruising to P's buttock/thigh. He says that he might not have seen it if it was there.

26.02.2022

M still in hospital

F1 at home until 1.41pm, when goes to visit M in hospital

P in MGPs care all day.

That evening P is bathed by MGM with MSGF present. MGM shows MSGF bruises to P's buttock/thigh. MGM tells MSGF that caused by fall onto toy.

Explanation accepted by MSGF

27.02.2022

M in hospital

MGM goes to work at 6.30am

MSGF looks after children all morning.

Incident occurs where MSGF says that P slips on a book and falls face forward on fireplace hearth. MSGF says that P has bloody nose but does not really cry

11.55am: F goes to see girls at MGPs house for 10-15min

MSGF tells F that P had fallen on fireplace on her face and had a blooded nose.

Children stays with MSGF until 8pm, when MGM returns from work.

MGM then goes to visit M in hospital, leaving P in care of MSGF.

28.02.2022

M still in hospital

As MGM is getting P dressed and hair brushed, she notices red mark to P's right ear. MGM tells MSGF about red mark.

MGM takes MSGF to work with P in car around 8am, and then returns back to her house

F1 comes around to MGPs from approximately 8am to 10am. F1 then visits M in hospital. MGM does not tell F1 about red mark to P's right ear.

M is discharged from hospital at 12.29pm. F1 then collects M from hospital and they go home together.

At 12.56pm MGM takes P to see M at home. F1 is there. M spends time on sofa due to being unwell. They are there for approximately 45 minutes, leaving at 1.49pm

MGM then leaves with P, collecting MSGF from work at approximately 4.30pm, with P in car. They wait for MSGF to finish work and return back to MGPs home at around 6pm.

P stays overnight with MGPs.

01.03.2022

At 7.20am F1 leaves home for work

MGM gets P ready for nursery. It was P's 2nd day at nursery. It was not compulsory. M wanted to be there for drop off on P's second day.

Whilst getting P ready, MGM notices a bruise to P's left ear. Both MGM and MSGF say that there was no mark when P went to bed the night before.

MGM drops MSGF off at work, with P in car. She returns back to her house because she knows that M will be arriving.

M goes to MGPs house at 08.28am.

MGM says that she tells M about bruises to leg/bum so could inform nursery. MGM does not tell M about bruising to ear.

MGM says that she was going to raise the bruises to the ears with M but there was an incident at nursery whereby L fell over and hurt herself. MGM says she was distracted and forgot to raise the issue of the bruises to the ears

As M hands P over to nursery staff, she tells them that P has bruises to her legs. At this point M says she has not seen the bruising and is simply passing on the information told to her by MGM.

M says that she does not notice the bruising to P's ears that morning.

M and MGM get into the car and start to travel to Newcastle for the day.

M and MGM say that MGM tells M in the car that she had forgotten to tell nursery about the bruises to the ears.

M does not ask any more questions about the bruises to the ears as she says that P has been known to have marks on her ears previously.

At 9.45am nursery calls M asking about the bruising to ears.

The LA evidence at C2 indicates that M says: *“They look like red blisters and she doesn't know if it's where she bangs her head appalled or pulls her ears. M made out that she had them for a while”*.

M denies saying that they looked like red blisters and maintains that she had not seen the bruising that morning. She says that she said over the phone to nursery staff that P had had marks on her ears before from pulling her ears and banging her head.

At 3pm P is taken to Hospital for a Child Protection medical.