

Before HH Judith Rowe KC

In the matter of:

XY Twins Inflicted Injury

Nick Goodwin KC and Sian Cox (instructed by SLLP) on behalf of the local authority

Jonathan Sampson KC and Susan Quin (instructed by Lovall Chohan) on behalf of the mother

Joanne Brown KC and Tim Potter (instructed by Creighton & Partners) on behalf of the father

Tim Hussein and Claire Fox (instructed by National Legal Services) on behalf of the children through their guardian

Paul Storey KC/Sara Lewis KC and John Thornton (instructed by Patrick Lawrence) on behalf of Emily Waters

David Jockelson of Miles and partners on behalf of Nurse 1

Nurse 2 acting in person

## FACT-FINDING JUDGMENT

1. In the early hours of 6 October 2023 their father and maternity nurse, Emily Waters, brought a twin X, aged 5 weeks, to the Accident and Emergency Department of their local hospital. X was unsettled and in distress. The twin was found to have sustained a fractured left femur, and during the enquiries triggered by this discovery both this child and their twin Y, were found to have sustained a number of injuries. This judgment concludes a fact-finding hearing held to determine the nature of the injuries and the circumstances in which they occurred.
2. The local authority, the parents, and the second and third interveners, night nurses privately hired briefly to care for the twins overnight (hereinafter 'night nurses'), accept the expert evidence in respect of the injuries, and they assert that all of the injuries to both twins were caused by Emily Waters. Ms Waters challenges some of the medical evidence as to the nature, timing and causation of the twins' injuries. She accepts responsibility for X's fractured

femur and a small bruise seen on X's forehead, both of which Ms Waters describes as accidental, and she denies causing any other injuries to the twins.

3. The twins have remained living with their parents throughout the period since their discharge from hospital, with arrangements in place to ensure that the parents are always supervised when caring for the children. The twins are developing well in their parents' care and there are no concerns about that care which is described in very positive terms by medical and professional witnesses. The twins' older sibling has also remained at home throughout; the sibling sustained no relevant injuries and there has never been an issue as to the quality of the sibling's care.

### **Concise chronology**

4. The mother and father have lived together for years initially abroad and then in London. Married for over ten years, they have three children, their first child who is now 7, and twins X and Y.
5. The twins were noted to be MCMA, growing in one sac and sharing one placenta. They were born, prematurely, at 33+5 weeks. They remained in the Special Care Baby Unit at hospital until 16 September 2023 when they were transferred to another hospital. The twins were discharged home on 21 September 2023 once they and their mother were sufficiently settled into their feeding regime.
6. In the period between the twins' return home on 21 September and their admission to hospital on 6 October 2023 they were cared for by their mother who breastfed them and expressed milk when she was not available to feed them. The father helped the mother as much as he could while working both from home and from his office; he especially assisted with the care of the older child given the need for the mother to focus on the care of the twins. The parents were assisted in their care of the children by the three interveners. One night nurse cared for the twins overnight on 21 September, 22 September and 1 October 2023. Another night nurse cared for the twins for the one night of 24 September 2023.
7. Maternity nurse Emily Waters began working for the family on 25 September and she was still working for the family when X was admitted to hospital on 6 October. Under her contract she worked each week for 20 hours a day from lunchtime on a Monday to lunchtime on a Friday, with the expectation that she would undertake the twins' night-time feeds using milk expressed by the mother. The words "nurse" and "nanny" have both been used to describe Ms Waters. There is no forensic significance to the title and for consistency, without any other significance, I will use the term "nurse" in this judgment.
8. The family also employed a nanny once a week to help with the older child's care.
9. To all appearances the twins were settling in well at home with no concerns expressed either by anyone within the family or by the various professionals who saw the twins over this period. Indeed, those professionals comment extremely positively on the care given to the twins by the mother in particular. It is now clear that from the start of her employment in the family home, Ms Waters was expressing concerns to friends via WhatsApp about the quality of the parents' care of all three of their children. She did not, however, maintain those

criticisms in the course of her evidence in the case, and they stand alone in contrast to the rest of the evidence.

10. X sustained a small bruise on their forehead in Ms Waters' care on 4 October, which Ms Waters explained was caused when X "headbutted" her in an accident during feeding. The parents accepted the explanation and were not unduly concerned.
11. The first sign that something was wrong came when Ms Waters woke the mother at around 2am on the morning of 6 October 2023, saying that she thought there was something wrong with X. The mother woke the father who called 111. To avoid delay rather than wait for an ambulance, the father took X and Ms Waters to the local hospital where X was x-rayed, and the fracture to the femur discovered.
12. Subsequent investigations of the three children led the clinicians in the treating and initial investigative team to the following conclusions:
  - a. The older child had sustained only one fracture some years earlier, and that had been innocently explained;
  - b. X had sustained,
    - i. Left parietal linear skull fracture with overlying soft-tissue swelling;
    - ii. Bruise to the left side of forehead;
    - iii. Displaced oblique midshaft fracture of the left femur and swelling to the left thigh;
    - iv. Fractures to the right ribs – 1<sup>st</sup> (posterior), 5<sup>th</sup> and 6<sup>th</sup> (lateral), 8<sup>th</sup> and 9<sup>th</sup> (posterior);
    - v. Fractures to the left ribs – 4<sup>th</sup> (lateral) and 9<sup>th</sup> (posterior);
  - c. Y had sustained,
    - i. Fractures to the right ribs – 9<sup>th</sup>, 10<sup>th</sup> and 12<sup>th</sup> (posterior);
    - ii. Fractures to the left ribs – 6<sup>th</sup> and 7<sup>th</sup> (lateral), 8<sup>th</sup> (posterior), 8<sup>th</sup> (posterolateral), 9<sup>th</sup> (posterior), 11<sup>th</sup> and 12<sup>th</sup> (posterolateral).
13. Safeguarding referrals were made as soon as the femoral fracture was discovered, and the police and children's services began their investigations. The police interviewed the twins' parents and, subsequently, the interveners. The police investigation is ongoing and the police, it is understood, await the outcome of these family proceedings before deciding how to move forward.
14. The local authority issued care proceedings on 19 October 2023. the older child was made subject of an Interim Supervision Order, and the twins were made subject of Interim Care Orders.
15. The twins were discharged home from hospital on 31 October 2023, and they have remained at home ever since. The older child's care is supervised by the paternal grandmother and

nanny. The twins' care is supervised at all times by agency support workers provided by the local authority.

16. Emily Waters stopped working for the family on her return from hospital on 6 October 2023.
17. In the course of these proceedings expert evidence in respect of the nature, mechanism and timing of the twins' injuries has been gathered from the following consultants:
  - a. Dr Kieran Hogarth, neuro-radiologist;
  - b. Dr Adam Oates, radiologist;
  - c. Dr Russell Keenan, haematologist;
  - d. Dr Ian Ellis, geneticist; and
  - e. Professor Peter Fleming, paediatrician.

There is no challenge to the conclusions of Dr Keenan and Dr Ellis who exclude, for the court's purposes, both any underlying blood-clotting disorder and any genetic predisposition relevant to the causation of the injuries.

18. Evidence about the circumstances leading up to 6 October has come from each of the lay parties who have set out in detail their accounts of their actions and the twins' lives over the relevant period.

### **The hearing**

19. This hearing began on 3 June 2024 and the evidence concluded on 26 June 2024.
20. The hearing was timetabled to judgment over 15 court days ending on 21 June. As the issues crystallised, this appeared to be a timetable which allowed for reading time, evidence, submissions and judgment. The timetable was interrupted by the withdrawal from the case of leading counsel for Ms Waters, on 11 June on the grounds of ill health. In circumstances set out in my judgments of 12 June and 17 June I refused both an indefinite adjournment of the case and then a longer extension of time within the proceedings. In short, I considered that this would be a fair hearing with time allowed to Ms Waters' team to re-group, and this also allowed the case to conclude albeit with the delay of some six weeks that the loss of time has caused. I regret the fact that Ms Waters, already facing a daunting hearing, had to adjust to new leading counsel and, further, that she alone of all the witnesses in the case faced giving evidence in a more daunting courtroom at the Royal Courts of Justice rather than the local family court. I am extremely grateful to Ms Lewis KC for taking over Ms Waters' case, and I am confident that with the time allowed for her to prepare for the balance of the case, this was a full and fair hearing in which all of the parties and interveners had the fullest opportunity to participate. No party has suggested otherwise in their helpful closing submissions.
21. I am grateful to the legal teams in this case not just for their expertise and commitment in preparing and presenting their own cases but for their collaborative approach, for instance in respect of the substantial volume of medical evidence and of the analysis of the substantial body of phone record evidence which arrived relatively late in the forensic process. I must also commend Mr Jockelson, the solicitor who acted for the first night nurse pro bono and

who also, over time, plainly became a significant conduit and support for the second night nurse, the unrepresented intervener.

22. I have read the documents to which my attention has been drawn, in the core bundle, the supplemental bundle and in the phone record bundle. I have received and viewed as necessary the parties' police interviews.
23. I have taken the oral evidence of,
  - a. the older child's nanny;
  - b. Dr M, treating clinician at the hospital;
  - c. Dr H, treating consultant at the hospital;
  - d. Dr Hogarth;
  - e. Dr Oates;
  - f. Ms M, paediatric safeguarding lead at the hospital;
  - g. Ms C, ward sister;
  - h. Professor Fleming;
  - i. The mother;
  - j. The father;
  - k. night nurse, intervener;
  - l. night nurse, intervener;
  - m. Emily Waters, maternity nurse, intervener.

### **The Law**

24. The principles to be applied at a fact-finding hearing are set out in various judgments, perhaps most oft cited is the judgment of Baker J (as he then was) in Re IB and EB [2014] EWHC 39 (Fam):
  - a. The burden of proving a fact lies on the party asserting it. The responding party bears no burden and has nothing to prove.
  - b. The standard of proof is the balance of probabilities. In deciding this question regard must be had to whatever extent is appropriate to inherent probabilities. As to inherent improbabilities, as Jackson J (as he then was) observed in BR (Proof of Facts) [2015] EWFC 41, the fact that an event is a very common one does not lower the standard of probability to which it must be proved. Nor does the fact that an event is very uncommon raise the standard of proof that must be satisfied before it can be said to have occurred. Similarly the frequency or infrequency with which an event generally occurs cannot divert attention from the question of whether it actually occurred.
  - c. Findings must be based on evidence, not suspicion or speculation.
  - d. When considering cases of suspected child abuse the court must "survey a wide canvas" and must take into account all the evidence, and must weigh each piece of evidence in the context of all the other evidence. As the President, Dame Butler Sloss, observed in Re T [2004] EWCA Civ 558 "*evidence cannot be evaluated and assessed in*

*separate compartments. A Judge in these difficult cases must have regard to the relevance of each piece of evidence to other evidence and exercise an overview of the totality of the evidence in order to come to the conclusion of whether the case put forward by the local authority has been made out to the appropriate standard of proof.”*

- e. The court has received evidence from a number of experts in this case. The court must pay appropriate attention to the evidence of those experts, whose opinions must be considered in the context of all the other evidence. It is important to remember that 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 that makes the final decisions. The court must be careful to ensure that each expert remains within their own area of expertise and defers appropriately to the expertise of others.
- f. The evidence of the parents and interveners is of particular importance. The court must reach clear conclusions on their credibility and reliability. Each must have the fullest opportunity to take part in the proceedings, and the court is likely to place considerable weight on their evidence and the impression it forms of them. For the test of fairness of a fact-finding hearing, a fairness not in fact challenged in this case, I take into account the principles set out by Jackson LJ in Re (A Child: Fair Hearing) [2023] EWCA Civ 215.
- g. It is common for witnesses to tell lies in the course of an investigation and a hearing. The court must be careful to bear in mind that a person may lie for many reasons such as shame, misplaced loyalty, panic, fear and distress and the fact that a witness has lied on some things does not necessarily mean that he or she has lied about everything. Considering R v Lucas [1981] QB 720 in the case of Re A, B, C [2021] EWCA Civ 451, Macur LJ referred to the helpful guidance in the Crown Court Compendium as a helpful summary of the principle: “1. A defendant’s lie, whether made before the trial or in the course of evidence or both, may be probative of guilt. A lie is only capable of supporting other evidence against D if the jury are sure that: (1) it is shown, by other evidence in the case, to be a deliberate untruth; i.e. it did not arise from confusion or mistake; (2) it relates to a significant issue; (3) it was not told for a reason advanced by or on behalf of D, or for some other reason arising from the evidence, which does not point to D’s guilt. 2. The direction should be tailored to the circumstances of the case, but the jury must be directed that only if they are sure that these criteria are satisfied can D’s lie be used as some support for the prosecution case, but that the lie itself cannot prove guilt”. Where this issue arises in a family case, good practice requires counsel seeking an adverse finding from a lie to identify the deliberate lie on which they seek to rely, the significant issue to which it relates and the basis on which the court can determine that the only explanation for the lie is guilt.
- h. As observed by Dame Elizabeth Butler-Sloss P in Re U, Re B (Serious Injury: Standard of Proof) [2004] EWCA Civ 567, “The judge in care proceedings must never forget that today’s medical certainty may be discarded by the next generation of experts or that scientific research would throw a light into corners that are at present dark”. It is

*important for a court in considering aetiology to take into account the possibility, to the extent that it is appropriate in any case, of the unknown cause”.*

- i. The court’s approach to identifying a perpetrator was more recently considered by Jackson LJ in Re B (Children: Uncertain Perpetrator) [2019] EWCA Civ 575. From his judgment come the following principles:
  - i. The court should first identify a list of people who had the opportunity to cause each injury;
  - ii. The court must then determine whether a civil standard finding can be made against a single individual or individuals – “so, to state the obvious, the concept of the pool does not arise at all in the normal run of cases where the relevant allegation can be proved to the civil standard against an individual or individuals in the normal way”. The court should “seek, but not strain, to do so.”
  - iii. Only if it cannot identify the perpetrator(s) to the civil standard of proof should the court go on to ask in respect of those on the list: “Is there a likelihood or real possibility that A or B or C was the perpetrator or a perpetrator of the inflicted injuries?” Only if there is should A or B or C be placed in the pool. Thus the test must be one of inclusion not exclusion.
  - iv. It is theoretically possible for the court to be unable to make a civil standard finding against an individual, but for the ‘pool’ to be whittled down to a single individual on the basis that he or she alone satisfied the “likelihood or real possibility” test. Thus, at paragraph 51 of Re B, Jackson LJ states “so where there is an imbalance of information about some individuals in comparison to others, particular care may need to be taken to ensure that the imbalance does not distort the assessment of possibilities. The same may be said where the list of individuals has been whittled down to a pool of one named individual alongside others who are not similarly identified. This may be unlikely, but the present case shows that it is not impossible. Here it must be shown that there genuinely is a pool of perpetrators and not just a pool of one by default.”
- j. While the legal consequences of a finding that an allegation has not been proved are no different from the exoneration of an accused party, I am asked in this case to exonerate a number of the parties. Setting out the relevant law on exoneration in AA & Os (Children) [2019] EWFC 64, Sir Mark Hedley said that “*If the court has concluded that someone did not do something alleged, as distinct from its not being proved that they so acted, then in common justice the court should say so...what is the test for exoneration? All parties agree that it is more than simply a finding that a specific allegation has not been proved against them. I suggested an analysis that whilst the legal burden of proof at all times remains on the local authority, a party seeking exoneration assumes an evidential burden to satisfy a court of their innocence on a balance of probabilities. No one sought to suggest that was wrong nor to argue for any particularly different approach. In my judgment where the court accepts that a party has given frank evidence, specifically accepted by the court, then the court should say so, and assuming that evidence to be consistent with exoneration, the court should say that too. That is conceptually clear, simple, and in accordance with justice.*”

- k. If the court makes an adverse finding against either parent then the threshold criteria will be met. If the court makes a sole perpetrator finding against Emily Waters alone then the threshold criteria will not be met: see the principles set out in Re S-B [2009] UKSC 17 per Baroness Hale.

### **The Findings sought**

25. I start with an analysis of the injuries sustained, the mechanism and timing according to the medical evidence. I will then move on to review that evidence in context when considering the lay evidence about the circumstances of and around the injuries and how they may have been sustained, so that my ultimate conclusions are based on all of the evidence looked at together, without either the expert or the lay evidence having any inherently greater weight. My ultimate conclusions are set out in response to the Schedule reproduced at the end of this judgment.

### **THE INJURIES**

#### **X's skull fracture/ swelling**

26. The neuroradiology is the most important evidence when the court comes to determine whether or not X sustained a skull fracture. Dr Hogarth's evidence, to which Dr Oates and Professor Fleming deferred, is to be found in his report, in the experts' meeting and in his oral evidence.
27. In his report Dr Hogarth identified a "fairly long linear lucency within X's left parietal bone" with some overlying minor scalp swelling. Y's CT scan which he also analysed, showed several linear lucencies, all of which were accessory sutures. Dr Hogarth identified the lucency on X's scan to be either a fracture or a complex fracture/suture combination i.e. a pre-existing accessory suture had been lengthened due to an impact injury. Overall "the soft tissue swelling pushes the needle to favour a fracture over an accessory suture". Dr Hogarth took into account the relative susceptibility to fracture of the skull from an impact injury of a premature 1 month old infant. He noted that if the impact was over an accessory suture the force required to cause a fracture would have been less than elsewhere as the suture would have acted as a point of weakness in the bone. In the experts' meeting Dr Hogarth said "we could be talking about a fairly minor knock".
28. In the course of the experts' meeting he said that,

*"this question refers to the linear lucency, or a line, that we can see in the left parietal bone joining the sagittal structure and there was a very small or minor amount of soft-tissue swelling over that line. The way I've approached it in my report is an analysis solely on the neuroimaging, and I've offered the court what I think are the possible explanations for that line, and I've said that the presence of some soft tissue swelling over that line suggests that there had been some kind of impact injury to that area of the head and that might push the needle or tip the balance towards thinking that at least part of the causation for that line is trauma to the underlying bone. What we've said essentially is that this could be a linear parietal skull fracture with overlying soft*



*tissue swelling. I think it's a strong possibility that there could have been an accessory suture there which has been elongated as a result of trauma to that part of the bone, or the alternative, which..I favour least, is that it's just an accessory suture which just happened to have an injury over it which produced some soft tissue swelling. So these are the three main possibilities...from within the neuroradiology domain. There's always a possibility of skull fractures occurring during delivery. It's thought to be very rare..It can't be excluded as a possibility. The minor soft tissue swelling of the scalp would not be expected to have persisted from birth..unless..there was some large amount of soft tissue swelling or fluid collection under the membrane..and I don't recall anything like that being reported at the time of delivery."*

29. Professor Fleming agreed at the experts' meeting that *"the two options Dr Hogarth preferred would also be the ones that I would prefer. This is either a straightforward injury or a relatively less severe injury at the site of an accessory suture and..my preference would be for that latter one"*. Professor Fleming confirmed that metabolic bone disease was very rarely an issue at this age, and none of the relevant risk factors apply in this case. He agreed that genetic testing is an ever-evolving science, and so the possibility of genetic susceptibility must always be considered.
30. In his oral evidence Dr Hogarth was unable to reach a conclusion as to whether the lucency was a fracture line *novus* over an intact bone or the elongation of a suture line by an impact over the same site. He rejected, on balance, the proposition that the scalp swelling was the only injury. Neuro-radiological factors supporting that rejection included,
- a. That the overlying swelling is a hard pointer towards there being a fracture, whether or not over a suture;
  - b. The absence of a zigzag line and the widening of the line as it approaches the sagittal suture are both soft factors pointing to the presence of a fracture, whether or not over a suture; and
  - c. Y's skull CT is different to X's, comprising multiple short suture lines none of which resembled any case of skull fracture that Dr Hogarth had seen clinically.
31. As to timing, Professor Fleming confirmed in relation to Dr Hogarth's evidence about X's birth that there is no record of any complication during birth or swelling seen on X's skull after birth. While skull fractures are not amenable to ageing swelling is, absent any larger longer lasting pre-existing swelling, Dr Hogarth concluded that the skull fracture was caused at the same time as the swelling, within two weeks of the scan on 6 October.
32. In his report and at the experts' meeting Dr Hogarth confirmed, as to the degree of force required to cause the skull injuries, that the injuries are consistent with a single impact, and that the required forces would be caused by an impact against a hard unyielding surface. He maintained his view that although there is no quantitative scientific evidence of the force required to injure a child for obvious reasons, a lesser force would be required to injure a skull over an existing suture line. Professor Fleming's written and oral evidence was that in either case there would still need to be an impact, there would still need to be significant force generated, and the event would be memorable, not least given X's likely reaction. Normal handling, whether gentle or robust, would not have generated the necessary forces, and the location of the injuries was such that Professor Fleming struggled to envisage what

sort of rough handling could have caused it. His thought based on his extensive clinical experience of head injuries was that if accidental it would require something akin to a knock of X's head against a doorpost.

33. All parties save Ms Waters invite the court to make the findings sought by the local authority, namely that X did suffer a fracture, with or without an accessory suture, with overlying soft tissue swelling, caused by a single blow to the head or impact against a hard or unyielding surface, with less force if the impact was over an accessory suture and that X was immediately distressed at the point of injury.
34. Ms Waters invites the court to conclude on balance that X did not sustain a skull fracture. On this issue and indeed in respect of all of the twins' bony injuries, Ms Waters urges caution, given the unusual circumstances in this case of small, premature MCMA twins and given what is unknown as much as what is known in current medical science. She points in particular on the issue of X's skull injury to the difficulties in distinguishing between a fracture with and a fracture without an underlying suture. She reminds the court of Dr Hogarth's comment in the experts' meeting that a fracture could possibly be caused over a suture line with only a "minor knock" and she highlights Dr Hogarth's third possible cause of the lucency, namely that there was only a soft tissue injury which was coincidentally located above a suture line with no fracture at all. The swelling was, she submits, "very small and minor". She further submits that the possibility of an unknown cause must be factored in and that the possibility of an unknown genetic condition affecting bone strength remains a live one, citing Professor Fleming's caution about the limits of current science to test for genetic conditions. Indeed in her submissions she goes so far as to submit that there is "compelling support for the proposition that these infants are likely to have susceptibility to fracture from lesser force than would otherwise be expected".
35. The medical evidence alone establishes, in my judgement, that,
  - a. X probably sustained a skull fracture, which may have been either over an intact skull or over an accessory suture, with overlying swelling;
  - b. It is possible but unlikely that X sustained only scalp swelling which happened to be directly over a lengthy accessory suture;
  - c. The force required to cause a fracture over an accessory suture would be less than the force required to fracture an intact skull, but in either case there must have been either a blow to X's head or an impact against a hard unyielding surface;
  - d. It is unlikely but cannot be wholly excluded that some unknown medical cause accounts for the fracture, and/or that X had some heightened susceptibility to fracture due to an as yet unknown genetic cause;
  - e. Regardless of which of the three possible causes of the skull/ scalp injury is correct, there would need to have been *an* impact on the swelling site which would have been obvious to the carer at the time, both because it happened and because of X's probable reaction of immediate distress;
  - f. A carer not present would not have known that X sustained an injury.
36. Ms Waters is right to urge caution on the court, and to remind the court of the need carefully to consider whether there is an underlying genetic cause for the lucency and/or the swelling seen. The court has, however, the assistance of the evidence of Dr Keenan and Dr Ellis who

reported on any relevant underlying causes or predisposition to injury. Their evidence was that there was no such underlying cause or predisposition. The evidence was unchallenged, I accept it and both Dr Hogarth and Professor Fleming deferred to it. I found both Dr Hogarth and Professor Fleming to be impressive witnesses who were thoughtful and fair, and ready to acknowledge both the specific limits of their own expertise and the limits of medical science. I accept their evidence, and factor it into my conclusions above.

37. I accept the submission that the court need not strain to decide between a fracture and a fracture/suture as either suffices for the court's forensic purpose. I further remind myself that there was no challenge to the presence of the swelling over the lucency. While the presence or absence of a fracture has medical significance, in forensic terms the presence of any injury to X's skull requires an impact even if only a "relatively minor knock". Even if there was no fracture to X's skull, therefore, the swelling alone indicates that there was a knock against a hard surface that would, however minor, have been obvious to the carer of this very young baby. None has been reported.
38. On the question of what skull and scalp injuries X sustained the medical evidence is extremely important. I will, nonetheless, return to my overall conclusions putting my conclusions on the medical evidence into the wider context. I remind myself that improbable events happen every day and that unlikely events – even highly unlikely events – do happen.

#### **Bruise to X's forehead**

39. There is no dispute that X sustained this injury, when they did so and that they sustained the injury when in the sole care of Ms Waters. There seems to be no challenge to the proposition that a blow to X's head would have been required to cause the bruise – and indeed on Ms Waters' evidence that there was such a blow. I so find. As to the circumstances of how the injury was sustained, I analyse the wider canvas of the evidence in due course.

#### **Femoral fracture**

40. All parties accept the medical description of X's injury which I also accept and find. All parties accept that the injury occurred when X was in the sole care of Ms Waters which I also find.
41. All parties save Ms Waters support the finding sought as to causation, specifically that the degree of force required to cause the fracture was "far beyond that used in normal handling, and recognisable to any independent observer as obviously inappropriate".
42. Ms Waters again points to the very specific circumstances of the twins' conception and the possibility of an unidentified genetic susceptibility to fracture – described in her closing submissions as "the *likely* presence of susceptibility to fracture" – in inviting the court to accept Ms Waters' account of how the injury was caused.
43. Both Dr Oates and Professor Fleming told the court that femoral fractures are "vanishingly rare" in young children. A significant amount of force is needed to cause this fracture even in a premature baby; Professor Fleming used the phrase "exceptional force". The experts were asked about the two different mechanisms arising from Ms Water's descriptions of how she injured X's leg. To Dr M and Dr H, treating doctors on admission, she described lifting X up

with a twist caused by X's leg getting caught in an item of Ms Waters' clothing. Subsequently, Ms Waters described placing X down onto a trapped leg.

44. While the experts considered the plausibility of the earlier "lift and twist" movement as a cause of the injury, and were not persuaded that it was a plausible cause of the injury, that is now irrelevant since Ms Waters has maintained the description of placing X "down onto a trapped leg" as the cause, and indeed she demonstrated that manoeuvre both to the police and during her oral evidence. Dr Oates considered this mechanism to be "*potentially more plausible*", i.e. more plausible than the lift and twist, if Ms Waters' bodyweight had been involved. This mechanism was, he said, "*very unusual..but possible*". As to the force required, however, he said that significant force would need to accompany the mechanism otherwise the fracture would be much more common than it actually is since carers put babies down in this way multiple times every day. Professor Fleming also said that this mechanism was "*plausible but extremely unusual*". In his clinical experience, this type of fracture remains very unusual despite babies being cared for by parents who are "*inept, clumsy and careless*". He said that "*I can't imagine that putting a child down in an awkward position gently would do this, it requires a rapid and forceful lowering*".
45. Ms Waters submits that the mechanism she described was considered plausible and should be accepted by the court. She invites the court, as I take her submissions, to reject the proposition that very significant force would have been required to accompany the mechanism described, and to do so on the basis that the evidence establishes – and/or that the court should be cautious in excluding the possibility of - a susceptibility in the twins to fracture with the application of less force than in other children.
46. The conclusion of the medical evidence is that this highly unusual fracture would require the application of an excessive twisting/rotational force, far beyond that used in normal handling, and recognisable to any independent observer as obviously inappropriate. The mechanism described by Ms Waters is a plausible though very unusual mechanism as a cause of the injury but that mechanism would have to have been accompanied by a significant degree of force far beyond normal handling to cause this injury.
47. This is the agreed conclusion of Dr Oates and Professor Fleming, careful witnesses who are alert to the possibility of unknown cause and the evolution of medical science. It also reflects the unchallenged evidence of Dr Ellis as to the presence in these twins of any underlying susceptibility to fracture.
48. Here too, however, I remind myself that improbable events happen every day, and unlikely – even highly unlikely – things also do happen. Here too, therefore, I will place the medical evidence in context when reaching my ultimate conclusions.

### **Rib Fractures**

49. All parties accept (or do not challenge) the description of the injuries sustained by the twins, that some degree of force was required to cause them, that Y's rib fractures were sustained on at least two different occasions and that the children were likely to react as described at the time they sustained the injuries. No party submits that the timeframe for the fractures extends back to birth. I make the findings sought accordingly.

50. The issue here with the medical evidence, once again, is whether the twins were particularly susceptible to fracture and, it follows, as to the degree of force required to cause the fractures.
51. Dr Oates told the court that rib fractures are vanishingly rare in a domestic context, and that even after significant levels of trauma – for example after a baby is injured in a road traffic accident – they are very, very unusual. They cannot have been the product of normal or even rough handling. He explained that babies’ ribs are designed to be elastic to allow the baby safe passage down the birth canal. Dr Oates described how his team x-ray the chests of very many young children for many reasons unrelated to trauma and it is exceptionally unusual to see even one incidental rib fracture. Professor Fleming gave similar evidence from his paediatric perspective.
52. Ms Waters repeats her general submissions as to the importance of bearing in mind an unknown cause of all of the twins’ injuries and, further, the possibility – if not likelihood - that the unusual circumstances of the twins’ conception, their development pre-birth, and their premature birth together render both of them more than usually susceptible to fractures of their bones.
53. Particularly in relation to his evidence about the twins’ rib fractures, she further relies on deficiencies in the evidence of Dr Oates of whom she is extremely critical. Her first criticism is that Dr Oates entirely failed to factor into his report and conclusions a report – “the Glasgow report” – which found that in premature babies it is rib fractures that are the most commonly detected fractures. Dr Oates further failed to consider and be cautious given the lack of research into possible increased susceptibility to fracture in premature twins, especially MCMA twins. He further failed to consider, as evidence that there are unknowns at work in this case, the relevance of the fact that one twin had 13 rows of ribs and one 14 rather than the usual 12. Her second, linked, criticism is that Dr Oates went outside his remit, his area of expertise, by factoring in the wider canvas i.e. the sheer number of fractures. He was, submits Ms Waters, dogmatic at times, and he failed to consider, objectively, whether the number of fractures was in fact evidence of an underlying cause for the fractures indicative of an underlying issue that may be complex, uncertain or unknown.
54. I conclude on the medical evidence,
- a. that the fractures were probably caused by the application of compression force to the chest far beyond that used in normal handling and recognisable to an independent observer as obviously inappropriate;
  - b. that the relatively mild prematurity of the twins was not a factor rendering them susceptible to fractures;
  - c. but that some unknown genetic factor relevant to susceptibility cannot be excluded given the limits of medical science.
55. This is the agreed evidence of Dr Oates and Professor Fleming, unchallenged by any other expert evidence.

56. I reject the criticisms of Dr Oates. He gave a clear radiological explanation for his conclusion that the twins' bones were appropriate for their gestational age, that the twins were only mildly premature, and that it was very unlikely that prematurity was relevant to the fractures. Whilst relying appropriately on the unchallenged evidence of Dr Ellis and Dr Keenan, Dr Oates added from his own experience that whilst there are genetic conditions which can be relevant to the aetiology of injuries in some children there was no radiological (or other) evidence of such a factor in this case. In those circumstances Dr Oates cannot be criticised for not referring to an irrelevant paper. As to the extent to which Dr Oates factored in the wider canvas, that is, I accept, the ultimate task of the court and not the medical expert. That said, both Dr Oates and Professor Fleming were within their area of expertise to consider not just the fact of rib fractures but their number when assessing the likely cause; both did so. I did not find Dr Oates to be dogmatic, and conclude that he was a thoughtful, fair and careful witness whose evidence I accept.

## **PERPETRATION**

57. All parties save Emily Waters assert that Ms Waters has been untruthful about the circumstances of X's facial bruise and femoral fracture, and that despite her absolute denials, Ms Waters perpetrated all of the children's injuries. Ms Waters maintains her denial of causing any but the accidental femoral and facial injuries. She does not positively assert that any of the other parties caused the twins' injuries, though as to the children's rib injuries she points to the wide time frame and notes that this time frame allows for the possibility of many professionals and others who were in contact with the twins having possibly caused these injuries, especially if the twins were unusually susceptible to fracture with unusually limited force.

### **Assessment of credibility and reliability**

58. I first assess the credibility and reliability of the parties.

#### **The mother**

59. The evidence about the children's mother comes from many sources inside and outside the family. It is all to the same effect. The mother prioritised the twins and, from their birth, she devoted herself to the rigorous regime required of her both to be close to the twins when they had to remain in hospital and to preparing herself for their punishing feeding regime. She was seen to be devoted to the twins from the outset. She received only praise from the many professionals constantly present at both hospitals, and from the night nurses who subsequently helped with the twins' care over some of their early nights at home. She readily described, to friends in some messages seen when her phone was interrogated, how exhausting she found the early days, having to go constantly to and from the hospitals, to feed and, when not feeding, to pump so that others had milk with which to feed the twins. Her messages were, in my judgement, honest and understandable expressions of exhaustion in the context of excitement and positivity about having the twins home. The mother knew how tiring the regime about the twins would be on their arrival home, and so she was keen to make appropriate arrangements for support at night, identifying the two night nurses for suitable assistance until the maternity nurse was able to start her work. While Ms Waters

was critical of the mother from the outset in her messages to friends, she did not maintain any criticism of the mother when giving her oral evidence to the court, telling me that she liked and respected the mother.

60. Ms Waters submits that the parents were both unsupportive of Ms Waters, resenting her presence in the living area when they were there, when they would have preferred her to remain in the lower area of the house where the twins had their room. She submits that since the injuries were discovered the mother has, whether consciously or subconsciously, embellished her evidence of concern about Ms Waters' handling of the twins to support her case that Ms Waters caused all of the injuries. She has spoken of Ms Waters being heavy handed with the twins in a way that made her uncomfortable, when there is no contemporaneous evidence of her saying that to anyone at the time. Had she had a concern about the twins' safety, submits Ms Waters, she would undoubtedly have said so, and she didn't. Rather there are records of her saying that she found Ms Waters to be "annoying" and "not a good fit" which suggests differences of culture rather than safeguarding concerns. Ms Waters cautions against accepting the mother's evidence where it is given with hindsight and therefore is likely to contain exaggeration of criticisms of Ms Waters' care of the twins.
61. I had the opportunity to listen to the mother give evidence over the better part of a day. I found her to be a straightforward witness, whose evidence was undisturbed by appropriately extensive and skilled cross-examination. She was able to accept where she was looking at events with the benefit of hindsight, describing herself as trusting and naïve, for instance when told about how the bruise to X's forehead was sustained.
62. I found the mother to be a reliable and credible witness. I thought that she struggled with feelings of guilt for not having foreseen a risk to her twins, and I accept the need when factoring in her evidence to separate out any element of hindsight about what was actually happening at the time. I am satisfied, however, that the mother was not deliberately embellishing or exaggerating her evidence about Ms Waters' care of the twins.

#### The father

63. Whilst the father was far less directly involved in the intimate care regime for the twins, the evidence of all professionals in contact with the family is that he was appropriately supportive of his family. He took leave where he could around the birth of the twins and their return home, he worked from home as much as possible when he had to work, and he was able to and did focus on spending time with the older child. For a few days around the date of the twins' arrival home the father had been unwell with a cold, and he kept away from the twins to ensure that he did not pass anything to them or to the mother.
64. I had the opportunity to listen to the father give evidence over the better part of a day. I found the father to be a straightforward witness, whose evidence was also undisturbed by appropriately extensive and skilled cross-examination. In particular the father was consistent that he had had minimal direct contact with Ms Waters; he did not take any opportunity to exaggerate any contemporaneous concerns. Though he did say that on the few occasions he saw Ms Waters with the twins he was uncomfortable, for instance when she winded the twins robustly, or when she swaddled them, something he was not expecting, he did not try and link those observations with any significant worry for the twins. He described his feelings as a difference in fit or style, and readily accepted that he had had no safeguarding concerns.

He accepted that he was “somewhat miffed at having to move myself in my own home” because Ms Waters chose to be in the living area with the twins rather than basing herself in the nursery, “the biggest room”; he did not deny his feelings about that.

65. I found the father to be a reliable and credible witness.

#### The two night nurses

66. I can take these parties together for my analysis of their reliability and credibility.

67. These two nurses came into the household as professionals with suitable experience and expertise. No party challenged their positive evidence about the regime around the children in the family home. Ms Waters did not cross examine either nurse.

68. No party has challenged the reliability and credibility of these two witnesses and I find no basis on which to do so. I found them to be straightforward witnesses and accept them as both reliable and credible.

#### Ms Waters

69. I am unable to accept Ms Waters as a reliable and credible witness. The full reasons for this conclusion are intertwined with my analysis of the chronology and the evidence below, however at this stage of the judgment I identify the key factors in this conclusion as,

- a. The stark difference between the messages sent by Ms Waters from her very first day working for the parents, critical of them both, and the evidence of everyone else about the parents. Ms Waters was unable, in my judgement, to explain these messages satisfactorily in her oral evidence and indeed did not stand by her own contemporaneous observations;
- b. The significant difference in Ms Waters’ accounts of how X sustained the femoral injury;
- c. Ms Waters’ inability satisfactorily to explain the reasons for her delay in waking the mother on 6 October, and to explain her initial explanation that she did not know how or where X was injured.

70. On the issue of credibility, I take into account that from the outset Ms Waters accepted causing the bruise to X’s forehead and the femoral fracture, however I have given that factor limited weight if any given that there was no escape from the fact that the injuries were sustained in Ms Waters’ care so that Ms Waters had no choice but to accept and explain.

71. I had the opportunity to listen to Ms Waters give evidence over a full court day. I was troubled throughout by her difficulty in explaining significant inconsistencies including the difference between her accounts of her state of mind when starting the job – in evidence she told me she was in a good state of mind when starting the job but she had messaged two friends just 4 days before starting saying the opposite (“after the last 2 weeks. I haven’t been in a good place..” “my mental health just isn’t good”), and the other inconsistencies listed above. On these key points she was simply unable satisfactorily to explain the contemporaneous



evidence. When required in evidence to demonstrate how X's leg was injured her demonstration was unclear and unconvincing. I did not find her evidence to be at all straightforward, and where uncorroborated, I am unable safely to rely on it.

### **Detailed chronology: analysis**

72. I heard evidence from the parties and from the nanny about the care of the children from their return home on 21 September until 6 October. In my analysis of credibility above I touched on the fact that both of the parents and the nanny gave evidence that from the 25 September 2023 when Ms Waters started working for the family they were, to varying degrees, of the view that her care of the twins was quite heavy-handed. Their evidence was also that she did not appear to be warm towards or emotionally invested in the twins and, further, that she employed caring methods that left watchers feeling uncomfortable. In particular they referred to the fact that she swaddled the twins tightly, that she "stacked" them, carrying them one above the other in one arm, and that she fed both at the same time, one in each arm, rather than one after another. Tested in evidence, the parents and the nanny accepted that while they noted these matters at the time, they never saw anything that led them to step in or to say anything to Ms Waters let alone terminate her employment. I find that this job was a poor fit and that the parents, the mother in particular very gentle in her care of her babies, decided early on to end Ms Waters' employment, but to do so within the terms of her contract rather than peremptorily or prematurely. I accept the submissions of Ms Waters and the local authority that save perhaps for the evidence of a lack of warmth towards the twins, these observations do not assist me in determining how the twins sustained their injuries. I do not accept Ms Waters' submission that they establish some sort of malign "animus" against her.
73. Turning to the first incident of concern, in the afternoon of 4 October 2023, X sustained a bruise to the forehead when in the care of Ms Waters.
74. The mother remembers Ms Waters telling her that she and X had bumped heads while Ms Waters was feeding and winding X. The mother's recollection is that this was during the 3.30pm feed which she did not do that day as she had a work call. Her recollection is that Ms Waters said that her chin had come into contact with X's forehead; this is what the mother told the father and what he told staff at the hospital on 6 October. The mother's account is that she asked if they should seek medical advice but that Ms Waters said not to worry, that she would monitor the bruise and that there was no need to take advice. It is the parents' evidence that later during the 111 call on 6 October, Ms Waters told the father that there was no need for him to tell the 111 call handler about the bruise, although he did so anyway.
75. In her first statement, Ms Waters said that the mother fed X that afternoon, and that she, Ms Waters, was winding X over her shoulder when X "jerked their head" and bumped it on Ms Waters' eyebrow bone. In her interview and in her oral evidence she said that while she was picking up X in order to wind them, "X was crying, so as I picked X up, because I knew they had wind, they tipped their head and I tipped my head and I caught X's head on my eyebrow bone". Ms Waters demonstrated in evidence how she picked X up, holding X with their head tilted back so that it wouldn't tip forward, but that as X came up to vertical their head fell forward. Further in oral evidence Ms Waters accepted that her statement read as if the

mother was present when X was bruised but said that the mother was not present. As to X's response to the bump, Ms Waters told the police in interview that X did not cry, however in oral evidence she said that X did cry.

76. Putting aside the factual issue about whether Ms Waters said that her chin or her forehead contacted X's forehead, an issue on which the evidence is not clear cut, there are other factors leading me to the conclusion that Ms Waters has not told the truth about how this incident occurred. I remind myself of Professor Fleming's evidence that it would be "very surprising" for a baby of this age and size to generate enough force to cause a bruise. He would expect the baby's head to be supported, so that any force would be generated by the carer's hand. I accept that evidence and as a result do not accept that X's head "jerked" or that X "tipped" her head. Further even with Ms Waters' demonstration in evidence, I still have no clear account from her of exactly what happened: she has given different accounts both of what she was doing (picking X up to wind and winding X on her shoulder) and, as set out above, of X's reaction and even of whether the mother was or was not present. Finally, I accept the parents' evidence that on two separate occasions Ms Waters tried to prevent the parents from telling anyone about the bruise.
77. I take into account Ms Waters' many years of experience in her job and her many glowing references, however that renders even more stark the lack of care required for X to sustain a facial bruise. I conclude that all of the force involved in causing the bruise came from Ms Waters, not from X, and so at best the injury was caused by momentary extreme carelessness on Ms Waters' part, a carelessness surprising in a professional with Ms Waters' experience doing Ms Waters' job. I find that Ms Walters has minimised X's likely reaction to the pain of the blow, sufficient as it was to hurt Ms Waters (as she told the police) and to cause the bruise. I return to these conclusions when putting all of the evidence together to respond to the Schedule of Findings sought.
78. I turn to 6 October, but to do so I need to set the context by reference to contemporaneous evidence now available from the phones of the parents and Ms Waters. The parents' phone records, which I accept are complete, confirm that the mother in particular was finding the early days of the twins' care physically demanding and exhausting. In those records there is, however, no evidence that this ever tipped into frustration, impatience or anger. The picture which emerges from Ms Waters' phone record is very different. There are very many pages of her phone records, and even the summary helpfully prepared for me is lengthy and I do not intend to rehearse it in this judgment, however various themes are clear and relevant to the issues in the case.
79. First, there is information about the job Ms Waters had before this family which ended with her contract being cancelled on 9 September. In the run up to the cancellation, Ms Waters had been vociferous in her criticism of the father in that job, and following the cancellation there was a difficult period of wrangling between the previous family and Ms Waters about her pay, with Ms Waters considering suing her previous employers or calling in the police; this appeared to resolve only around 20 September, when Ms Waters was already discussing her job with this family.
80. Next, the messages chart a difficult period between Ms Waters and her partner, and latterly Ms Waters' reaction to the fact that the cancellation of her contract with the family before

this family meant that she did not have the money for a planned holiday to Thailand at the end of the year.

81. Ms Waters' own assessment of the impact on her of her circumstances generally was that she was not in a good place mentally, something she repeated to friends over 21 and 22 September, 22 September being the date she signed her contract with the family to start work with them on 25 September. There were still contractual issues with Ms Waters' agency by the end of September, 1 October.
82. The records show that from her first day with the twins, both that Ms Waters was finding the job very tough and that she was critical of the parents ("just done my first double feed abs (sic) fuck irs (sic) hard with them", "dad's just come home and he hasn't even seen this (sic) babies", "got to take my break 10-2 due to [the mother] is struggling to breastfeed them on her own", "babies having a feed at 9 and then it's bedtime bloody exhausted already"). This sets the scene for the dozens of messages over the following days ("mum won't promote good latch", "I'm struggling as really low on calories", "makes you wonder how [the parents] even had time to make the twins", "I don't rate her husband either", "I'm exhausted already these twins are such hard work", "X is just a pain", "[father] hasn't once hold or kissed his babies while I've been here", "hard work both reflux..plenty of screaming", "I'm seriously flagging....just three and a half hours broken sleep is catching up with me", "I've been so shit but the last few weeks have been totally shit", "Jesus when I'm allowed to do 4 hours and they barely last 2!!! I'm exhausted" "going to launch these twins out the window in a min". Ms Waters did not share any of her difficulties with the parents at the time; given her apparent views about them that is unsurprising.
83. To outward appearances the evening of 5 October was uneventful, though it is now known that Ms Waters messaged a friend at 22.23 that evening saying "fed them at 8.45 and already crying for more milk". There is no reference to this in Ms Waters' statement, which presents that evening as resting with the twins asleep between their 9 and 12 feeds, and with her, Ms Waters, being able to snatch some sleep as well. Between 00.19 and 00.27 Ms Waters made a number of google searches: broken leg baby; broken leg in children – Boston Children's Hospital; broken leg baby; broken leg newborn x 3; broken bones x2; broken leg newborn x 2. At 01.36 she messaged the mother "Are you awake?X". At 01.48 she googled "broken leg in 6 week old", and she visited "Broken bones, BabyCenter". She made 4 calls to the mother at 01.58.
84. Ms Waters then went and woke the mother. Ms Waters says that she woke the mother and said that there was something wrong with X's leg, that the parents examined X, that none of them could see anything wrong, that X had cried "a little but not concerningly". The parents relate that X was screaming, and was visibly more distressed when their leg was touched. They say that Ms Waters said something to the effect that it seemed the problem was with X's leg. It appears to be common ground that Ms Waters did not say that she *knew* something was wrong with the leg, that she knew – or thought – that the leg was broken – and she did not give any explanation of how the injury had happened. It is further agreed that when the father called 111 and described X's presentation he did not tell the 111 caller that X had a suspected broken leg – indeed he had no reason to know that as Ms Waters had not told him – and so when the parents decided to get X to hospital quickly, without waiting for an ambulance, they put X into the car seat.

85. To Dr M Ms Waters described how she was feeding both twins at the same time, she had X resting against the front of her bent knees, she picked X up to burp them and as she did so X's leg may have been caught and twisted. X cried out, settled briefly, then started crying inconsolably. Ms Waters said she had then swaddled X in an attempt to soothe X. The fracture was discovered on x-ray at 04.42, and thereafter to Consultant Dr H Ms Waters gave a similar account, worried that X's leg may have "got caught up in [Ms Waters'] pyjamas".
86. To her agency, in a note sent at 12.17 on 6 October, Ms Waters said that "*When I came to winding them at about midnight I put Y onto my shoulder and using one hand scooped X up catching their leg in between my legs and then sitting X on my leg to wind catching X's leg just under them before X gave a massive squeal cry*". This is the downward motion that Ms Waters demonstrated to the police in her subsequent interview, and during her evidence in court.
87. All parties save Ms Waters submit that Ms Waters' words and actions over this period drive the court to the conclusion that she has lied about what happened, and that she has done so to conceal the true circumstances in which X's leg was broken. In particular they point to the contemporaneous evidence from Ms Waters herself about how tired and frustrated she was by life in general at the time and, in particular, by the demands of caring for the twins. They point to the fact that though Ms Waters obviously thought – or feared – that she had broken X's leg given her searches, she said nothing to the parents or the doctors at the hospital about a possible broken leg which emerged only on x-ray; in her oral evidence Ms Waters accepted that she knew X might have had a broken leg right from the start of her google searches. This, they submit, is powerful evidence that she had done something she wished to hide. They point to the delay between at the latest 00.19 when the searches began, and 01.36 when she first messaged the mother as wholly inappropriate and also as evidence that Ms Waters wanted to delay telling the parents she had done something wrong in case X calmed down and it might not be necessary to say anything about what had happened.
88. Ms Waters submits that she has given essentially the same account of what happened throughout, accepting full responsibility for this accidental injury. That account is first seen in Ms Waters' own words in her account to her agency, written on 6 October; this is the account she has maintained since. Any differences in detail can be explained by the fact that she was tired, shocked and worried for X's welfare. Ms Waters demonstrated in court the same motion as she demonstrated to the police and she described to her agency. She answered questions in an open and straightforward manner when giving evidence, making appropriate concessions and thereby establishing her honesty. The court should place little weight on the delay in notifying the parents of the incident since it was reasonable of Ms Waters to wait and see if X settled before she concluded that there was a need to involve the parents and seek medical attention. Had Ms Waters needed to fabricate a cause for X's injury in order to cover up the truth, then she would have created, planned and rehearsed a far better scenario. Further, in considering the events of 6 October, the court should not draw adverse conclusions from the WhatsApp messages sent at that time. The court should factor in Ms Waters' extensive record of caring for babies in these difficult circumstances, she was used to it, and the WhatsApp messages merely indicate that she had friends to whom she could let off steam in a way that helped her feel supported despite her relative isolation in the family home.

89. I have taken into account all of the submissions made on Ms Waters' behalf, and I have reminded myself carefully of the Lucas guidance. I am, however, driven to a number of conclusions about this evidence:
- a. By the night of 5/6 October 2023 Ms Waters was in a fragile state of mind, distracted by events in her private life, still angry about the fallout from her previous job, feeling unwelcome and isolated in the family home and finding the care of the twins absolutely exhausting;
  - b. On that particular evening on Ms Waters' own account to a friend the twins had not settled after their 9 o'clock feed and were crying for milk before 10.30. The fact that Ms Waters did not tell anyone about this but portrayed the night as calm until the twins woke for their midnight feed was a deliberate minimisation on her part of the challenges of the evening;
  - c. At some point before 00.19, Ms Waters caused the fracture to X's leg;
  - d. By 00.19 Ms Waters either knew or was fairly sure that she had broken X's leg. She accepted this in evidence and it is consistent with her computer searches at the time. Every search was to do with either broken leg or broken bones. I reject her evidence in court that she had googled broken bones as her mind automatically went to the worst case scenario as untrue. It is highly unlikely that she had broken X's leg – which she had, that she didn't know she had, and that coincidentally she happened to google broken leg;
  - e. The delay from 00.19 to 1.36 was inexcusable. I conclude that she felt guilty about what she had done and hoped that somehow X would settle and no-one need find out;
  - f. This conclusion is strengthened by the fact that even when she woke the parents, Ms Waters said nothing of her belief that she had broken X's leg. The 111 call handler was therefore unable to give appropriate advice, and X was not, therefore, handled on the basis of a broken leg either when examined by the parents or, more concerningly, when manoeuvred into the car seat for transport to the hospital. For Ms Waters not to give a truthful account even at that point, despite seeing the broken leg manipulated into the car seat causing X real pain and distress is strong evidence of her wish to conceal the cause of the injury.
  - g. Ms Waters has not given a true account of that cause. She has not given a consistent account, but rather she has given an account that evolved from simple scooping up and twisting, to putting down onto a bent leg. The likely reason for this inconsistency is that neither account is true. I conclude that Ms Waters has concealed the circumstances of the injury because the true account of what happened is more adverse to Ms Waters than the scenarios she has described thus far;
  - h. Ms Waters' demonstrations to the police and to the court of how X sustained her injury may contain a plausible (though unlikely) mechanism however they lack

anything like the force that is likely, on the medical evidence, to be required to cause this fracture.

90. From these conclusions I turn to put all of the evidence together when setting out my findings on the local authority's Schedule of Findings.

### **X's Skull fracture/ swelling**

91. **On 06 October 2023 X presented at hospital with a left parietal skull fracture, alternatively a left parietal linear skull fracture at the site of an underlying accessory suture. Soft tissue swelling overlay the fracture site.**

92. **The fracture and associated swelling were caused by a single blow to the head or impact against a hard unyielding surface, requiring a significant force. If the fracture overlay an accessory suture, a lesser force would have been required than that needed to cause a skull fracture on a site without an accessory suture.**

93. **X was immediately distressed, and cried, at the point of injury. A carer who was not present at the time of injury would not necessarily have been aware that X had been injured.**

94. **The scalp swelling and fracture were inflicted deliberately in an undisclosed incident within 2 weeks of the 06 October 2023 CT scan, thus between 22 September 2023 and 6 October 2023 inclusive. In the alternative they were sustained in an undisclosed accident, within the same timescales, which was the result of reckless care and handling.**

95. **The scalp swelling and fracture were inflicted by or sustained following an undisclosed accident in the care of Emily Waters.**

96. I make these findings in full. To the extent that they are not already clear from my analyses above, my reasons for these findings are as follows.

97. My conclusion on the medical evidence is that on the balance of probability X did sustain a fracture, with or without an accessory suture. I accept the evidence of Dr Hogarth and Professor Fleming, both of whom regard as unlikely the possibility that X had only scalp swelling which happened, coincidentally, to be over an unusually long accessory suture.

98. The other issue taken with the expert evidence was as to the degree of force required for the impact to cause the fracture and swelling to X's skull and scalp.

99. I conclude that on the balance of probability the degree of force required to cause the fracture was significant, though less if the fracture was over an accessory suture.

100. Despite the unchallenged evidence of Dr Ellis, and in deference to the very fair evidence of Professor Fleming I have carefully considered the unlikely but possible conclusion that there is an unknown genetic cause for some increased susceptibility to fracture with, I infer, a lesser degree of force, however I do not reach that conclusion in this case. Even if there were a greater than known susceptibility to fracture, since there is no evidence that a fracture would then occur spontaneously there must still have been an impact to X's skull at

the fracture site. Even if the only injury to X's skull/ scalp were the minor swelling, that in itself required an impact and cannot be explained by any increased bony susceptibility.

101. I have found that Ms Waters caused both the bruise to X's forehead, also an injury to which bony susceptibility is irrelevant, and the femoral fracture in circumstances she has not disclosed honestly. I have concluded that she is being dishonest in order to conceal the true circumstances of both injuries and that she has done so knowing that the truth would be more harmful to her. It is likely, therefore, that in relation both to the forehead bruise and the femoral injury Ms Waters acted in a way she knew to be inappropriate when caring for X and I import those conclusions into my consideration of these skull and scalp injuries.
102. None of these parties caring for X have disclosed any impact injury to X's head at the site of the fracture/ swelling, and even if the impact was minor and accidental it would have been known to the carer, not least because X would have reacted to the blow. That means that someone is hiding the truth about how the injuries occurred.
103. I have analysed the evidence about each of the carers, and concluded that the parents and the two night nurses are credible and reliable witnesses whose care of the twins was appropriate. I accept their evidence that none of them caused or saw being caused an injury to X's head.
104. I have concluded that Ms Waters caused two injuries to X and that she has concealed the truth about the causation of each. I have considered Ms Waters' denial of injuring X's skull and scalp, but having found her to be an unreliable witness who is not credible, I can give her denial little weight. I accept that she taken responsibility for the femoral fracture and for X's facial bruise and consider whether that adds weight to her denial of this injury and others, but I conclude that this factor is also of little if any weight in support of her denials since Ms Waters had no alternative but to accept that she caused those two injuries. Further, it is, I conclude, vanishingly unlikely in circumstances where I have concluded that Ms Waters caused X's forehead bruise and femoral fracture and concealed the truth, that at the same time X's bones have such a susceptibility to fracture for an unknown cause that X's skull was fractured without any impact at all, and that at the same time X sustained a soft tissue injury to the skull also without any impact at all. It is likely, and I find, that there was an impact injury which has been concealed.
105. I repeat my conclusions about Ms Waters' state of mind over this period, based on the contemporaneous evidence unshaken by Ms Waters' attempts to distance herself from that evidence now.
106. I conclude that while in Ms Waters' care there was a blow to X's head as described in the findings sought. Ms Waters has concealed the circumstances of that blow and I conclude that she has done so to hide the truth. Given that I do not know the truth about these injuries I cannot go further and determine whether they were caused by a deliberate impact or by a reckless accident and so I make the findings in the alternative as sought.

#### **Bruise to forehead**

107. **X sustained a bruise to the left side of the forehead c1cm in diameter.**

108. **Emily Waters failed to seek medical attention for X, despite knowing X had sustained an impact to the head caused by a deliberate blow inflicted in an undisclosed incident at c3.30-3.45pm on Wednesday 04 October 2023 by Emily Waters.**
109. **In the alternative, the bruise was caused that day in an accidental collision of heads with Emily Waters, as a result of reckless care and handling.**
110. **Emily Waters, dissuaded the mother from seeking medical advice for X's bruise on 04 October 2023 and sought to dissuade the father from telling the 111 operator about it on 06 October 2023.**
111. I make these findings for the reasons set out fully above. Here too, absent a truthful explanation from Ms Waters I cannot determine whether the injury was caused deliberately or recklessly and so find, as asked, in the alternative.

#### **Femoral fracture**

112. **On 06 October 2023 X presented to hospital with a displaced oblique midshaft fracture of the left femur, and swelling to the left thigh, which was slightly bruised and very tender.**
113. **The fracture was caused by the application of an excessive twisting/rotational force, far beyond that used in normal handling, and recognisable to any independent observer as obviously inappropriate.**
114. **It was deliberately inflicted in an undisclosed incident on 06 October 2023 by Emily Waters.**
115. **In the alternative, the fracture was caused on 06 October 2023 accidentally by Emily Waters but as a result of reckless care and handling, using far greater force than Emily Waters has been willing to admit.**
116. **X was immediately distressed, and cried, at the point of injury and immediately thereafter when their left leg was handled.**
117. **Ms Waters did not immediately notify the parents that X had cried out in pain but searched on Google at 00.19am for "broken leg baby", then undid X's sleep suit to check X over, rubbed X's back and burped them, carried on feeding both twins, then swaddled them both, waiting in total c80 minutes post-injury before messaging the mother at 01.36am. She should have immediately notified the parents and/or sought medical help. By withholding from the parents and the 111 operator her account of the incident with X and her suspicion that she had broken X's leg, she caused unnecessary delay in X receiving appropriate medical attention and pain relief and allowed X to be handled and transported in a manner which increased their suffering.**



118. I make these findings, for the reasons set out above.
119. I am unable to conclude, in this case, that there is bony susceptibility due to an unknown genetic cause for the reasons set out above in relation to my finding about X's skull fracture.
120. Here too, absent a truthful account from Ms Waters I am unable to determine whether the injury was caused deliberately or recklessly and so find, as asked, in the alternative.

### **Rib fractures**

121. On 06 October 2023 X presented to hospital with the following rib fractures:
- a. Right 1<sup>st</sup> (posterior), 5<sup>th</sup> and 6<sup>th</sup> (lateral) and 8<sup>th</sup> and 9<sup>th</sup> (posterior);
  - b. Left 4<sup>th</sup> (lateral) and 9<sup>th</sup> (posterior).
122. Oedema was present around the right posterior 8<sup>th</sup> and 9<sup>th</sup> rib fractures and left posterior 9<sup>th</sup> rib fractures. The presence of oedema around the other fractures can be neither confirmed nor refuted since the 11 October 2023 MRI did not capture the lateral fractures within its field of view. Oedema associated with an acute fracture tends to resolve within 2-3 weeks post-injury.
123. The rib fractures were inflicted during at least one episode of injury and with at least one application of force, between 20 September and 01 October 2023, such application of force being different to that causing the femoral fracture. The rib fractures without visible oedema may have been inflicted before 20 September 2023.
124. Each rib fracture was inflicted by the application of excessive compressive force to the chest, far beyond that used in normal handling or swaddling, and recognisable to an independent observer as obviously inappropriate.
125. At the point X sustained each rib fracture, X was immediately distressed and cried for at least a short period of time. Thereafter, any carer who was not present at the time of injury might not have identified that any distress on handling was the product of pain or injury.
126. The rib fractures were inflicted by Emily Waters.
127. Emily Waters failed, despite X's distress, to seek medical attention.

### **Y**

### **Rib fractures**

128. On 06 October 2023 Y presented to hospital with the following rib fractures:
- a. Right 9<sup>th</sup>, 10<sup>th</sup> and 12<sup>th</sup> (posterior);

- b. **Left 6<sup>th</sup> and 7<sup>th</sup> (lateral), 8<sup>th</sup> (posterior), 8<sup>th</sup> (posterolateral), 9<sup>th</sup> (posterior), 11<sup>th</sup> and 12<sup>th</sup> (posterolateral).**
129. **The rib fractures were inflicted during at least two episodes of injury and with at least two applications of force before 29 September 2023, the left 7<sup>th</sup> rib fracture being a more recent injury than the others. The timeframe during which the rib fractures were sustained does not extend back to birth.**
130. **Each rib fracture was inflicted by the application of excessive compressive force to the chest, far beyond that used in normal handling or swaddling, and recognisable to an independent observer as obviously inappropriate.**
131. **At the point Y sustained each rib fracture, Y was immediately distressed and cried for at least a short period of time. Thereafter any carer who was not present at the time the injuries were caused might not have identified that any distress on handling was the product of pain or injury.**
132. **The rib fractures were inflicted by Emily Waters.**
133. **Emily Waters failed, despite Y's distress, to seek medical attention.**
134. I make these findings.
135. There is no direct evidence at all about when or by whom these injuries were caused.
136. I have already excluded a finding in this case that there was an unknown genetic cause of bony susceptibility that can explain these fractures, for the reasons I set out above.
137. It is highly unlikely that there were different perpetrators of injuries to the twins in the same household over this limited period of time.
138. Given my findings about the parties, positive about all save Ms Waters and adverse in respect of Ms Waters, I conclude that the rib fractures were inflicted by Ms Waters.

## **Conclusion**

139. I am asked to exonerate the parents and the night nurses. Following the guidance of Sir Mark Hedley and given my findings that all of the twins' injuries were inflicted by Ms Waters, I confirm that I exonerate the parents, and the night nurses from these allegations. I regret that the reward for their briefest of involvements with the twins has been such an intolerable burden for the two night nurses.
140. The local authority does not seek any finding against either parent that they failed to protect the twins. I suspect that the parents are wrestling with feelings of guilt, along with anger, about the harm done to their much-loved twins in their own home. I hope they will put aside any feelings of guilt as they have absolutely nothing to feel guilty about. They must not be influenced by hindsight. They prepared immaculately for the twins' arrival, they

organised their household to ensure that their older child and the twins all received the care they needed and the mother in particular showed absolute commitment to the gruelling, however rewarding, task of establishing a feeding regime for the twins . Whilst the parents did not warm to Ms Waters and they did observe a difference of approach to the care of the twins in those few, exhausting early days, they had absolutely no reason at all to think that the twins were at risk of harm. They knew nothing about the reasons why Ms Waters was simply not in the right state of health and mind to care for the babies as she concealed this from them.

141. These findings end these care proceedings. Threshold is not met. Finally, this family can start to live a normal life and, I hope, to start to put the case, the circumstances that led to the case and all of its distress behind them.

142. I leave the advocates to draft the final order and to identify any grammatical or factual errors in my judgment which ideally will be with me in one combined email in time for the hearing on 9 August.

143. At that hearing I will deal with any matters arising from this judgment, and hopefully I will be able to approve a final order.

HH Judith Rowe KC

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