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Case No: BH19C00610

IN THE FAMILY COURT SITTING AT BOURNEMOUTH

Courts of Justice  
Deansleigh Road  
Bournemouth  
BH7 7DS

Date: 28.2.20

Before:

HIS HONOUR JUDGE DANCEY

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Between:

Bournemouth, Christchurch and Poole Council

Applicant

- and -

A, the mother

1<sup>st</sup> Respondent

-and-

B, the father

2<sup>nd</sup> Respondent

-and-

C, the child

3<sup>rd</sup> Respondents

(by his children's guardian Martha Sharp)

-and-

D, the mother's partner

Intervener

**Anthony Hand** (instructed by **BCP Council Legal Services**) for the **Applicant**

**Adam Langrish** (instructed by **Aldridge Brownlee**) for the **1<sup>st</sup> Respondent**

**Gareth Bishop, solicitor** for the **2<sup>nd</sup> Respondent**

**Nigel Hawkins, solicitor** for the **3<sup>rd</sup> Respondent**, instructed by his children's guardian

**Sarah Henstock-Turner** (instructed by **Gales**) for the **Intervener**

Hearing dates: 21, 23, 24, 28, 29 January 2020

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**JUDGMENT**

## **His Honour Judge Dancey:**

### **Introduction**

- 1) On 17 July 2019 a 17-month old boy, C, was taken to A&E after his mother and her partner were concerned he was not using his right arm and leg properly. Examination and X-rays showed that C had suffered:
  - a) fractures to his right upper arm, either side of his right elbow (which was swollen), his left and right collarbones (clavicles), his shoulder bone (scapula) and below his right knee (tibia);
  - b) bruising to his forehead, both cheeks, his left inner elbow, a bite shaped bruise over the left elbow, his right buttock, a scratch to the corner of his left eye and an abrasion below his right nostril.
- 2) The local authority has issued care proceedings in respect of C. They say that, with the exception of the bruise to the right buttock (which may have been caused by an accidental slip in the bath), these injuries were inflicted by C's mother's partner, D, during the weeks leading up to C's admission to hospital.
- 3) While accepting that C's mother did not cause his injuries, the local authority seek a finding that she failed to protect him. The threshold criteria as drafted defines failure to protect in the broadest sense – essentially failure to seek medical assessment, failing to give an honest account and covering up the truth about the injuries.
- 4) By the conclusion of the evidence the local authority sought findings of failure to protect against the mother:
  - a) by leaving C with D, in untested circumstances and after becoming aware of a bruise to his left cheek and knowing that D was struggling with D's care and in circumstances therefore where a reasonable parent would or should have realised that D posed a risk to C;
  - b) by failing to seek prompt medical attention when she realised (or should have realised) C was injured;
  - c) by lying to professionals (including those treating C) about what she knew;
  - d) by failing to end her relationship with D until 20 December 2019 (and even then staying with him over Christmas and New Year).
- 5) So the local authority seeks findings against D that he inflicted the injuries and against the mother of failing to protect.
- 6) C has been in foster care since 17 July 2019. Happily he has recovered from his injuries (and has not suffered any further injuries). His mother seeks his return. His father (who separated from the mother when she was expecting C but who has parental responsibility for him) also puts himself forward to care for C in competition with the mother (and not just as a 'backer' to her therefore).

### **The hearing**

- 7) This judgment follows the fact-finding hearing held between 21 and 30 January 2019. The local authority was represented by Mr Anthony Hand, the mother by Mr Adam Langrish, the father by Mr Gareth Bishop, D as intervener by Ms Sarah

Henstock-Turner and C by Mr Nigel Hawkins instructed by children's guardian Mrs Martha Sharp.

- 8) I heard oral evidence from:
- a) Dr Katharine Halliday, Consultant Paediatric Radiologist (by video link);
  - b) Dr Rashad Nawaz, a specialist in Paediatric Medicine;
  - c) C's GP;
  - d) C's maternal grandparents;
  - e) D;
  - f) the mother.
- 9) In addition to the oral evidence I have read a substantial amount of written evidence and material. I do not intend to set out all the detail of the information I have received, but I do take it all into account.

*The statements sent to the social worker on 20 September 2019*

- 10) I will deal here with an issue concerning the authorship of two statements purportedly made by D following a meeting between him, the mother and her father on 18 September 2019. These statements, which are not dated or signed but have D's name typed at the end, were sent to the social worker on 20 September. D says that the last page of the first statement and the whole of the second statement were in fact written by the mother who was trying to please her father. D points to stylistic differences between what he accepts he wrote and the rest.
- 11) In evidence D sought to distance himself from those parts of the statements he says were written by the mother.
- 12) The mother told me that she had no input into the first statement but did type the second statement, guided by D over the phone. She accepts that she sent an email to the social worker at 09:00 on 20 September sending the second statement and that she could have sent a second email to her at 12:00 that day sending both statements.
- 13) Although I accept the mother's involvement in the production and sending of the second statement, I am satisfied that both statements were produced either by D or with his knowledge as to their contents. The mother's evidence is more consistent with what D himself told the police on 21 October, having accepted that he wrote the first statement, as he put it, in frustration: "*The second one parts of it are written by myself and parts are written by myself and parts are written by [the mother] with me explaining it to her*". So, I accept that both statements of 20 September are those of D.

#### **D and the mother's positions in summary**

- 14) At the start of the hearing on 21 January Ms Henstock-Turner told me that she had been taking instructions from D that morning and he wished to clarify his position. D believed that the fractures happened as a result of an accidental fall from his grip on 10 July and when struggling to manage C on 11 July 2019, pulling him back when running off and holding him down to change his nappy. He accepted that he was at the end of his tether and lost control on 11 July. He could not be clear how much force he used. D made a further statement at court dealing with these new instructions.

- 15) D does not however accept responsibility for the fractures to the right upper arm and left clavicle if the court concludes (as the medical evidence suggests) that they were caused earlier.
- 16) In summary his explanations are that:
- a) the bruising to the cheeks was caused either by D putting his index finger inside C's mouth with thumb on his cheek in getting him to brush his teeth on 9 July, or getting him to use an unfamiliar drinking cup on 10 July;
  - b) the bruise to the forehead and fracture to the right tibia was caused accidentally on 10 July when C slipped from his grip, banging his head on a plate and/or table and landing on his feet (causing a compression fracture to the tibia);
  - c) the remaining fractures were caused by what D accepts was excessive rough handling on 11 July when forcing C to the floor for a nappy change and pinning him down by the shoulder.
- 17) The mother accepts that she failed to protect C. She accepts that on 12 July she should have sought medical attention for him. She relies on the fact that his presentation over the days leading up to his admission improved at times as justifying a 'wait and see' approach to seeking medical assessment. She accepts she should have realised that D had caused the injuries much sooner than she did and accepts that she was driven by her love for him and trying to keep what she saw as a happy family unit together. She accepts she should have left him much earlier. And she accepts she has lied to professionals.
- 18) The mother does not accept that she should have known D was a risk to C (and failed to protect by leaving C with him therefore) or colluding with D to put forward false explanations for the injuries.
- 19) Based on those admissions the parents inevitably accept that the local authority have proved the threshold criteria under section 31(2) of the Children Act 1989. Notwithstanding that, the local authority still seek findings (so far as possible) as to how C's injuries were caused and as to the extent of the mother's failure to protect (they and the guardian would put the failure to protect at the top end of severity, the mother would say it is far less serious). The level of the failure to protect is seen as relevant to future assessment of the mother. The guardian also considers a judgment is important as part of C's life story.
- 20) The local authority questions the genuineness of the separation between the mother and D. I am not asked to make findings about this. It is said the separation is too recent, not all evidence has been put before me on this issue and time will tell whether the mother really has, as she says, ended the relationship.

### **Summary of my findings**

- 21) Fact-finding hearings are akin to doing a jigsaw. All the evidence has to be considered to see how it fits (or doesn't fit). This has been a particularly large and difficult jigsaw, not made any easier by D effectively throwing all the pieces on the floor through multiple, elaborate explanations most of which he now accepts were lies or half-truths designed he says, to protect his relationship with the mother.
- 22) The evidence has spanned over:

- a) three police interviews of the mother (18 and 19 July and 21 October 2019) and four of the father (18, 19 and 27 July and 21 October 2019 – his alone occupying 275 pages of transcript);
  - b) numerous witness statements by each of them, including the D's two statements sent to the social worker on 20 September 2019;
  - c) notes of D's parenting assessment and other materials eg from C's nursery and the church organisation attended by the family;
  - d) the written and oral medical evidence;
  - e) the oral evidence of D, the mother and her parents.
- 23) At one point towards the end of the mother's evidence I asked whether, given D was accepting responsibility and the mother was admitting failure to protect, there was scope to reach an agreement as to the facts on which the case should proceed. There were some discussions following which I was told this was not possible. On reflection I consider the parties were right to resist that course. This has been one of those cases where hearing all the evidence and then standing back, re-reading the written material, including all the police interviews and considering the totality of the evidence, really has been necessary.
- 24) I have come to the conclusion, and find, that D inflicted all the fractures and the bruising to the left elbow, the forehead and both cheeks. He did so not as a result of accident but because he lost his temper with C when he would not do what he was told. Most of the injuries were inflicted on 10 and/or 11 July. The fractures to the right upper arm and left collarbone were inflicted on an earlier occasion but I cannot be specific when.
- 25) I also find that the mother failed to protect C both in the ways she has admitted but also by leaving C in D's care on 10 and 11 July (and 9 July). By then there had been enough incidents that should have told her that it was not safe to leave C with D. She ignored the risks because she was blinded by her love for D and wanted to trust him. She put the obvious out of her mind. That was not reasonable parenting and it resulted in D having the opportunity to cause C's injuries.
- 26) I do not find that the mother colluded with D to concoct false explanations for C's injuries.

### **Legal principles**

#### *What needs to be proved?*

- 27) The purpose of a fact-finding hearing is twofold:
- a) to establish what happened so that a decision can be made whether the local authority has proved threshold;
  - b) if threshold has been met, to inform assessment of risk for the purpose of the welfare decision.
- 28) The court only needs to make findings to the extent that they further these purposes.
- 29) In *Re A (No. 2) (Children: Findings of Fact)* [2019] EWCA Civ 1947 Peter Jackson LJ said that the questions for every fact-finder, in no set order, are *What, When, Where, Who, How and Why?* Some answers, he said, will be

obvious, while other questions may be extremely hard or even unanswerable. Sometimes a question may not need answering at all. The answers to the questions will be provisional until they have been checked against each other to provide a coherent outcome.

- 30) The court is not bound by the local authority’s schedule of findings sought and may reach an alternative solution of its own: *Re S (A Child)* [2015] UKSC 20. If, however, the court is to go ‘off piste’, there must be both good reason and solid evidential basis for doing so and procedural fairness must be maintained (the person against whom the finding is sought must know the nature of the allegation and the substance of the supporting evidence and have a reasonable opportunity to respond): *Re G and B (Fact-Finding Hearing)* [2009] EWCA Civ 10, *Re B (A Child)* [2018] EWCA Civ 2127 and *A (No. 2) (Children: Findings of Fact)* [2019] EWCA Civ 1947.
- 31) In the present case the threshold is less than specific about failure to protect. However I am satisfied that the case put to the mother during the hearing made clear the findings that were sought, as set out in paragraph 4 above, and that she has had a proper opportunity to respond.
- 32) Section 31(2) provides (so far as is relevant in this case)
- A court may only make a care or supervision order if it satisfied –
- (a) that the child concerned is suffering, or is likely to suffer, significant harm; and
  - (b) that the 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; ...
- 33) So there are three essential elements to threshold – significant harm, attributability to a carer and an objective standard of care.
- 34) The question whether harm is attributable to unreasonable care was considered by Ryder LJ in *Re S (A Child)* [2014] EWCA Civ 24 where he identified the use of the term ‘non-accidental’ as a catch-all for everything that is not accidental and drew the true distinction necessary for section 31(2) as between

*“an accident which is unexpected and unintentional and an injury which involves an element of wrong. That element of wrong may involve a lack of care and/or an intent of a greater or lesser degree that may amount to negligence, recklessness or deliberate infliction”.*

- 35) As Ryder LJ pointed out, it may be useful to distinguish deliberate infliction from negligence, but that is not strictly necessary for threshold which only requires findings meeting the three elements.
- 36) In relation to the question of significant harm and threshold, I also bear in mind what Hedley J said in *Re L (Care: Threshold Criteria)* [2007] 1 FLR 2050 at 2062:
- “society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent. It follows too that children will inevitably have both very different*

*experiences of parenting and very unequal consequences flowing from it. It means that some children will experience disadvantage and harm, while others flourish in atmospheres of loving security and emotional stability. These are the consequences of our fallible humanity and it is not the provenance of the state to spare children all the consequences of defective parenting. In any event, it simply could not be done.”*

#### *Other principles*

- 37) The legal principles to be applied in the fact-finding exercise are well established. See, for example *Devon County Council v IB and EB* [2014] EWHC 369 (Fam).
- 38) The burden of proving the facts on which it relies is on the local authority.
- 39) The standard of proof is the balance of probabilities. If a fact is proved it happened, if it is not proved it didn't happen and must be disregarded – the so-called binary consequence. As a matter of common sense, the court can take into account inherent improbabilities in deciding whether the standard of proof has been met: *Re B* [2008] UKHL 35.
- 40) Findings of fact must be based on evidence, not on speculation: see *Re A (A Child) (Fact-finding hearing: Speculation)* [2011] EWCA Civ 12. While the court may draw proper inferences from the evidence it must be careful not to reverse the burden of proof. The burden of disproving reasonable explanations put forward falls on the local authority: *Re S (Children)* [2014] EWCA Civ 1447). The inability of a parent to explain an event cannot be relied upon to find an event proved: *Re M (A Child)* [2012] EWCA Civ 1580.
- 41) The local authority must adduce proper evidence to establish what it seeks to prove using best evidence available where it is challenged. The local authority must also link the facts relied upon with its case on threshold to demonstrate why the facts justify the conclusion that the child has suffered, or is at risk of suffering, significant harm: *Re A (A Child)* [2015] EWFC 11 (Munby P).
- 42) The court must take into account all the evidence, considering each piece of evidence in the context of the other evidence – surveying a wide landscape – and must avoid compartmentalising: see *Re U, Re B (Serious Injury: Standard of Proof)* [2004] EWCA Civ 567.
- 43) Expert opinion evidence must be considered in the context of all the other evidence, remembering that the expert advises but the court, with the advantage of the entire landscape of the evidence, decides. In a case involving multiple injuries, the court must consider the totality of the injuries and have due regard to an expert paediatric opinion that the injuries (taken as a whole) were typical of those seen in abused children: *A Local Authority v A Mother & Ors* [2019] EWCA Civ 799.
- 44) Experts must be kept within the bounds of their own expertise and, where appropriate, should defer to others.
- 45) The court has to allow for the possibility of medical uncertainty and unknown cause and resist the temptation to believe it is always possible to identify the cause of injury: *Re R (Care Proceedings: Causation); R v Henderson & Ors* [2010] EWCA Crim 1219.

- 46) The evidence of parents and other carers is of the utmost importance and the court must make a clear assessment of their credibility and reliability: *Re W and another (Non-accidental injury)* [2003] 2 FCR 346..
- 47) It is common for witnesses to lie in the course of investigation and hearing. They may do so for a variety of reasons – shame, misplaced loyalty, fear and distress being examples. It does not follow that because they have lied about one matter they have lied about everything: *R v Lucas* [1981] QB 720.
- 48) There is a different but related question of witness fallibility, which is a matter of reliability rather than credibility. The court should bear in mind that recall of events by a witness is a process of fallible reconstruction which may be affected by external influences and supervening events, moulded by the process of litigation and the drafting of lawyers, with past beliefs being reconstructed to make them more consistent with present beliefs and motivated by a desire to give a good impression: *Gestmin SGPS SA v Credit Suisse (UK) Ltd & Anor* [2013] EWHC (Comm), Leggatt J.
- 49) In *Lancashire County Council v C, M & F (Children - Fact-finding)* [2014] EWFC 3 Jackson J (as he then was) said:
- “.... 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 reasons. 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 account. The possible effects of delay and repeated questioning upon memory should also be considered, as should the effect on one person of 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.”*
- 50) Wherever possible the court should try to identify the perpetrator of ‘non-accidental’ injuries (applying the balance of probabilities standard) but should not strain to do so: *Re D (Children)* [2009] EWCA Civ 472. The question to ask is whether the evidence establishes that a particular person perpetrated the injuries: *Re B (A Child)* [2018] EWCA Civ 2127. In the present case it is agreed that D was the perpetrator and the question of a pool of perpetrators therefore does not arise.

#### *Failure to protect*

- 51) In *Re L-W (Children)* [2019] EWCA Civ 159 the Court of Appeal cautioned against automatically ‘bolting-on’ failure to protect findings in injury cases. There has to be a causative link. King LJ said:

*“60. [Counsel for the local authority] accepted that it cannot be right to say that any woman who fails to separate from a partner who has been violent outside the home in adult situations is failing to protect her children, although in certain circumstances that may be the case. On the judge's findings, [mother's partner] has a quick and unpleasant temper*



*and is controlling within his personal relationships. This can be very serious and controlling and coercive behaviour is rightly, in certain circumstances, now recognised as a form of domestic abuse which can lead to a criminal conviction (Section 76 Serious Crime Act 2015).*

*61. On the facts of the present case however, these unattractive personality traits and/or the controlling personality of [mother's partner] did not prevent the mother from acting quickly and appropriately when her child was injured, and she maintained her independence sufficiently wholly to ignore [mother's partner]'s suggestion that L should not be taken to see a doctor. In my judgment, putting together [mother's partner]'s behaviour in the home with his aggression on two occasions a number of years apart on adult men outside the home, do not go anywhere near supporting a causative link such that the mother ought to have known that [mother's partner] presented a risk of physical abuse to L or the twins.*

*62. Failure to protect comes in innumerable guises. It often relates to a mother who has covered up for a partner who has physically or sexually abused her child or, one who has failed to get medical help for her child in order to protect a partner, sometimes with tragic results. It is also a finding made in cases where continuing to live with a person (often in a toxic atmosphere, frequently marked with domestic violence) is having a serious and obvious deleterious effect on the children in the household. The harm, emotional rather than physical, can be equally significant and damaging to a child.*

*63. Such findings where made in respect of a carer, often the mother, are of the utmost importance when it comes to assessments and future welfare considerations. A finding of failing to protect can lead a Court to conclude that the children's best interests will not be served by remaining with, or returning to, the care of that parent, even though that parent may have been wholly exonerated from having caused any physical injuries.*

*64. Any Court conducting a Finding of Fact Hearing should be alert to the danger of such a serious finding becoming 'a bolt on' to the central issue of perpetration or of falling into the trap of assuming too easily that, if a person was living in the same household as the perpetrator, such a finding is almost inevitable. As Aikens LJ observed in *Re J*<sup>1</sup>, "nearly all parents will be imperfect in some way or another". Many households operate under considerable stress and men go to prison for serious crimes, including crimes of violence, and are allowed to return home by their long-suffering partners upon their release. That does not mean that for that reason alone, that parent has failed to protect her children in allowing her errant partner home, unless, by reason of one of the facts connected with his offending, or some other relevant behaviour on his part, those children are put at risk of suffering significant harm."*

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<sup>1</sup> *Re J (A Child)* [2015] EWCA Civ 222

*Findings against/criticism of a non-party*

- 52) There has been some concern about the adequacy of an assessment of C by his GP when taken by his mother on 16 July, the day before his admission to hospital. The adequacy of the GP's examination needs to be addressed because it is linked to the extent of the history given by the mother and the reasonableness of her understanding following the examination.
- 53) I raised the question how any criticism of the GP, who gave evidence, should be dealt with, particularly in light of the decision of the Court of Appeal *in Re W (A Child)* [2016] EWCA Civ 1140. That case established that professional non-parties against whom findings are made or criticisms levelled have a right to a fair process, set out in paragraphs 95-95 of the judgment of McFarlane LJ:

*“95. Where, during the course of a hearing, it becomes clear to the parties and/or the judge that adverse findings of significance outside the known parameters of the case may be made against a party or a witness consideration should be given to the following:*

- a) Ensuring that the case in support of such adverse findings is adequately 'put' to the relevant witness(es), if necessary by recalling them to give further evidence;*
- b) Prior to the case being put in cross examination, providing disclosure of relevant court documents or other material to the witness and allowing sufficient time for the witness to reflect on the material;*
- c) Investigating the need for, and if there is a need the provision of, adequate legal advice, support in court and/or representation for the witness.*

*96. In the present case, once the judge came to form the view that significant adverse findings may well be made and that these were outside the case as it had been put to the witnesses, he should have alerted the parties to the situation and canvassed submissions on the appropriate way to proceed. One option at that stage, of course, is for the judge to draw back from making the extraneous findings. But if, after due consideration, it remains a real possibility that adverse findings may be made, then the judge should have established a process that met the requirements listed in paragraph 95 above.”*

- 54) In the event Mr Hand suggested, and the parties agreed, a proportionate and appropriate process which involves the GP not being identified in the judgment but the relevant part(s) of the judgment being sent to him for him to consider any training need and his future practice. I agree with this suggestion.

**The history**

- 55) In this section I will go through the background and events leading up to C's admission to hospital on 17 July.
- 56) The primary purposes at this point are:
- a) to ascertain what, if any reliance, can be placed on D's current explanations for C's injuries;

- b) to understand what, if anything, the mother knew (or should have known):
  - i) about the risks to C from D before leaving C with him;
  - ii) about the injuries and how they happened;
- c) whether D and the mother colluded to give false explanations or whether the mother was honestly putting forward what she subjectively believed had happened.

### *Background*

- 57) The mother is 23. She separated from C's father, who is 24, when expecting C. Until these proceedings the father had not had contact with C since about Christmas 2018. C was in the primary care of his mother from birth until 17 July 2019.
- 58) The mother, taking a lead from her mother, signed up with St John's Ambulance when she was 19. There she learnt some basic first aid, including CPR, dealing with choking and cuts and bruises. She knew that if a fracture was suspected 999 should be called.
- 59) The mother had known D, who is 24, for about three years. She described him as her best friend. The mother and father invited D and his former partner to be C's godparents. The mother and D did not start a romantic relationship until early February 2019 when they started to live together, initially at the home of the maternal grandparents. From that time they jointly cared for C, although the mother remained his primary carer. Fairly quickly into the relationship D was being referred to by C as 'Daddy [D]'. The maternal grandmother, who is a nurse, also shared some of C's care when they were living at her home.
- 60) The mother and D moved into their own rented home with C on about 6 or 7 April 2019.
- 61) Neither the mother nor D (nor the father so far as I am aware) has had any police involvement. Although the mother and D had been in past relationships which were abusive, they were the victims within those relationships rather than the perpetrators. Neither had been involved as parties in any court proceedings. Neither the mother nor D use drugs or alcohol. D has had some history of depression and anxiety.
- 62) The mother and D worked long hours. D had Wednesdays off and so routinely cared for C during the day on Wednesday each week until about 8pm. C attended nursery on Monday and Friday, morning and afternoon each week.
- 63) D says that by the beginning of June he was feeling under financial pressure. Promises by the mother about the availability of benefits had not happened. He found himself having to pay the first month's rent and credit cards from his own salary without contribution from the mother. He worried about C's nursery fees. This is a theme that D has visited on a number of occasions in his statements and evidence. It seems clear that he felt stressed by the financial circumstances.

### *26 June 2018*

- 64) The only incident of note from C's early months was on 26 June 2018, when he was 5 months old and living with his mother at his maternal grandparents' home. The mother described hearing a bump and a scream from C. He had rolled off a

bed and hit his head. There was a swelling. Initially the mother did not know what to do but the grandmother, who is, as I have mentioned, a nurse, called the GP and 111 and then they quickly took C to A&E. Fortunately, all was well. This incident is referred to because of the decisive action of the maternal grandmother and the following of her lead and advice by the mother, in apparent contrast to her response to the grandmother's advice to seek medical treatment in July 2019.

*April-June 2019*

- 65) In his first and third police interviews, on 18 and 27 July 2019, D talked about an incident when C bit on his finger sufficiently hard to leave C's teeth marks and draw blood. D says he instinctively and forcibly pulled his hand out of C's mouth accidentally giving him what he described as a 'backhander' and throwing C back on a sofa. This caused some redness to C's mouth. D wondered whether this caused the injury to C's collarbone.
- 66) There is some confusion about the dating of this incident. In his police interviews D said it happened not long after they moved into their own home in April 2019. In the second statement sent to the social worker on 20 September it is said this happened in June (as the mother said in her third police statement).
- 67) Whenever it happened there seems at least to be some agreement between D and the mother about what she knew and her reaction. According to the mother in her third police statement, D rang her crying down the phone from within the house. She ran upstairs and shouted at D, "*How could you do this? It's completely unacceptable*". She removed C from D and took him to C's room and closed the door for a while. She said she understood what had happened had been a response by D hitting C when his hand swung back.
- 68) D described in the statement of 20 September that this was the first time he had noticed C to be truly scared of him – "*he was absolutely petrified ... this is one of the first times I noticed something was wrong with me*".
- 69) It was put to the mother in interview that she had still allowed D to have sole care of C. She replied that he didn't have sole care for a little while after that happened and she thought it was never going to happen again.
- 70) In interview on 27 July D referred to another incident about a month before 10/11 July, so about mid-June 2019. He described how C was crying during the night. He tried giving him a bottle but he wouldn't take it. It was hot so he took C out of his grow suit and tried to comfort him. D tried bouncing and cuddling C to distract him but could not get him to stop crying. Then C punched (or "baby-punched") D in the face. D said he had just done a 14-hour day and it had been stressful. He told the police what happened:

*"And I just flipped my lid. I just got so angry. And basically I opened [C's] door, I booted our door down or tried to [it was blocked] and I shouted at [the mother] saying take your child. Fuck this and fuck that and I stormed off downstairs. And I slept downstairs that night."*

*24 June 2019*

- 71) In more than one police interview and in discussion with the parenting assessor, D referred to C behaving "*like a demon*" at nursery on 24 June 2019. He said that C may have hurt another child. He described C as being "*like an exorcism like*

*he's on a sugar rush*". When it was put to C by the police that they had been told by the nursery that C had been fine and there was no incident, D suggested they were lying to cover themselves. In interview on 21 October D identified this occasion as the start of all the problems. He described C as being a "golden boy" when with his mother and "troublemaker and rebel" when with him.

72) In interview on 21 October D said that when he gets into a stressful situation he is not comfortable with, "I get the shakes. With [C] I had quite a few of them. Not throughout having [C] when we lived with [the mother's] mum and dad but later. Like after we have moved into our property and all this stuff. Like on 24<sup>th</sup> I had the shakes".

*Tuesday 2 July 2019*

73) On 2 July 2019 the mother and D were out with C. He needed a nappy change. The mother and D shared nappy changes. On this occasion D saw a men's toilet with a sign for toilet changing facilities. The sign for the ladies' facilities was not immediately visible and so D took C into the men's toilet and used the changing facilities there.

74) The mother says she heard a painful cry from C (also described by her in police interview as a scream). She told me the only other time she heard a different cry like that was when C rolled off the bed a year earlier. She was sufficiently concerned to rush into the men's toilets to find out what was wrong with C.

75) This incident was first mentioned by D in his statement of 20 September 2019. He described how he had placed C on a changing table and left him there while he took his used nappy to a bin on the far wall. He heard C cry and turned round to see C urinating over himself and squirming onto his side and almost coming off the changing table. D described racing back aiming to place his right hand over C's private parts and his left to place him back on the table. In fact, he said, he slammed his left arm/elbow onto C's stomach causing him "massive pain and letting out a painful cry". He says he told the mother what had happened.

76) In his evidence D's story changed so that rather than slamming his arm/elbow onto C he brought it down on the changing table, placing his arm across C.

*Wednesday 3 July 2019*

77) In his statement on 20 September D said there had been an incident on Wednesday 3 July when C was in his care. He said that C had "done a poo" which was leaking through his nappy. So he took him into the bathroom to clean him off. There D said he lost grip of C who landed on his feet near the bath but then slipped back and landed on his back on the side of the bath causing him to cry. D does not refer to any resulting injury. D tried to shower C in the bath. C does not like showers and kept trying to run to the other end of the bath so that, said D, he had to keep grabbing his hand and holding him in place.

78) D also refers to C biting him on this occasion, for the second time.

79) In his first statement of 20 September D referred to an incident, the date of which he cannot recall but which seems to come after the incident on 3 July (although in his fourth police interview he dated it to June). He said he was changing C's nappy when C urinated hitting him directly in the mouth. C seemed to think this was funny and laughed. He said in his statement:

*“I then said you like that then with my right hand I grabbed his buttocks and with my left hand I grabbed his ankles. Lifted his bottom into the air and his legs towards his face causing his pee to go over him. I did this deliberately and I regretted it the moment it happened.”*

- 80) In interview on 21 October D denied saying that he had caused C to urinate in his own face by lifting him up. He did say C knew what he was doing (a theme which appears more than once in this story). D thought part of him saw this as a game because of what C had done to him. He sought to step back from his statement of 20 September, saying it had been the result of the meeting with the grandfather on 18 September and written quickly late at night.
- 81) Talking to the parenting assessor on 13 November D described himself as lifting C’s legs up in frustration from *“peeing in my mouth and that he was laughing. I was like see how you like peeing on yourself.”*

*4-8 July 2019*

- 82) There are photographs of C happily playing in a swing at a park on 4 July, holding onto the swing with both hands. There is no visible injury. According to both the mother and D, C was fine at this point.
- 83) Nor was there any cause for concern when C attended nursery on Friday 5 July, when the maternal grandparents saw C on Saturday 6 July or when C attended nursery again on Monday 8 July. Both the mother and D say that at these times C was moving freely, using his arms and legs and appeared to be pain free. If, at this point, C had suffered a fracture to his upper right arm and/or his left clavicle he was showing no symptoms.
- 84) The mother and D had agreed to housesit D’s parents’ home and look after their two cats, some 30 miles away, on 10 and 11 January. In the event, the mother was unable to arrange her shifts at work and there was discussion about D looking after C overnight for the first time in a home which was unfamiliar to C. Initially D expressed some reservations but the discussion was, he said, brief and he soon came around to the idea that he would be able to look after C on his own.

*Tuesday 9 July 2019*

- 85) On Tuesday 9 July D looked after C at home while the mother went to work. They saw this as a practice run for the next two days.
- 86) D described how C would normally copy him brushing his teeth. On 9 July he didn’t and was reluctant. In evidence D described putting his index finger inside C’s gum with his thumb on the outside of his cheek to get him to open his mouth and brush his teeth. D believes this to be the cause of the first bruise that appeared on C’s left cheek that day.
- 87) In his first police interview D denied knowing how the bruise had been caused.
- 88) D explained to the parenting assessor on 30 October 2019 that C was being difficult using a glass to drink and he tried to ‘force feed’ him from the glass and demonstrated to the parenting assessor using his right hand with fingers at the side of each cheek forcing his jaw open. As a mechanism for bruises to both cheeks, this would seem a more consistent explanation.
- 89) There was a Facebook exchange at 11:58 that morning when the mother said *“hope he isn’t being a pain for you xxx”* and D replied *“nah he’s been a good boy”*

*for a change mostly*". D then posted a photograph of C eating a burger. The bruise to the left cheek is visible. There is no comment about it in the Facebook messages which continued during the day. The mother says she did not examine the photograph closely enough to notice the bruise at that point. She did see the bruise when she returned home from work after 17:00 and asked where it came from. She says D told her it came from brushing his teeth.

90) The mother has given the police as a possible explanation for this bruise that C was biting the inside of his gums while teething. He had been doing that in March 2019. However, that explanation was given, if I accept her evidence, in knowledge that D had said this bruise was caused by brushing C's teeth. The mother told me she had forgotten D had given that explanation until she came to read the statements in preparation for the fact-finding hearing.

*Wednesday 10 July 2019*

91) The mother went to work on Wednesday 10 July before C was up. D took him to his parents' home. There he says there was an incident to which he attributes the bruised forehead and fractured tibia.

92) D says that late in the afternoon he was watering the garden. In the final version of his explanation, given in evidence, D said that C was in the garden with him (he had previously said C was in the house unattended). He said that C approached one of the two cats, which hissed at him. He picked C up and took him into the house, where he saw the other cat on the dining table eating left-over food. D said he was carrying C facing towards him and C was shoving in his face and resisting. To prevent that, D said he turned C around so that he was facing forward with his legs reaching to D's waist. He said D was not wearing shoes and had on a T shirt. At this point, D said, he tried to stop the cat eating the left-over food and to pick up a plate. At the same time, he said, D raised his arms and slipped through his grip. He said he didn't know how to react. He heard a bang as, he thought, D's head hit a plate (bouncing the cutlery on it) and/or the corner of the table. He did not see this because, he said, as soon as C slipped, D closed his eyes and kept them closed for some time. At one point in cross-examination D said he had his eyes closed for 10 to 15 minutes saying to himself "*please don't tell me this is happening*". He later altered this to having his eyes closed for about one minute. He said that, when he finally opened his eyes, C was lying on the floor next to him lying on his right-hand side, not moving and apparently unconscious. D said he got down on the floor and put C on his lap. In evidence he said C had been unconscious for 10 to 15, maybe 20, minutes. When challenged about this changing evidence he said everything, including timings, was a blur. D said he moved C into the lounge. While moving him there was some stirring. He said it seemed as though C was just asleep.

93) D had referred to a photograph he took while C was unconscious and which he sent to the mother. Dr Nawaz was unable to say from the photograph whether C was unconscious or just sleeping. When it was pointed out that this photograph sequenced after another photograph showing C awake with a bruise on his forehead, D said that the photograph must have been taken later when he was asleep, not unconscious.

94) There was this Facebook message exchange between D and the mother:

*D: He don't freak out when I was watering the plantes [C] somehow bumped his head bad ish waiting to see got a little bump*

*Mother: Okay he always bumps his head what part of his head did he hit*

*And did he cry when it happened*

*D: Crying when I came back in*

[Photograph of C with a mark to his forehead just left of the centreline. The bruising to the left cheek was much more prominent.]

*D: Mate this kid*

*Mother: Okay it looks alright just keep an eye on him couple of bruises but it will go down Note to self buy him a helmet*

*D: Gonna have to looks like hes been in a fight all the bumps and cuts he got*

*Mother: Blame the cats we will say he was in a fight with [the older cat] Is he asleep??? Xxx*

[Photograph of C apparently asleep]

*D: Could say that yeah*

*Mother: Aww bless have you tried putting him in his basket xxx*

*D: No asleep on me for now xxx*

*I've got no bottles for his milk*

*Mother: Shit do you have a sippy cup*

*You could use that*

*Or wash out a fruit shoot bottle I will bring some up with me tomorrow*

- 95) The mother told me that the reference to blaming the cats was no more than a joke, as was reference to buying C a helmet. It was not intended as the start of any sort of collusive false explanation.
- 96) There were then a number of video chats over the course of that evening and the following morning during which the mother and D say there was brief discussion about C.
- 97) I have already indicated some of the contradictions in D's evidence about what happened on 10 July. These are the other versions given by D:
- a) In explanations given to the police on 18 and 19 July D said that he had been watering the garden when he heard a noise from inside the house and went in to find C had fallen and had a bump on his head and a cut on his nose.
  - b) On 27 July he told the police C had initially been outside with him and, he thought, had followed a cat indoors. He thought C must have climbed on the changing bag onto the chair and then the table to get to the cat. He said he did not go in immediately on hearing a noise, only about 15 minutes later. He reported C crying once he (D) went inside and it was "a painful cry".



- c) In his first witness statement on 9 September and in further interview on 21 October D said that he was watering the garden, C followed the cat indoors, D heard a bang and a thud, went inside 5 or 10 minutes later and found C lying on his right side, distressed and hurt. He assumed C had climbed onto the chair from the changing bag and was attempting to climb onto the table. He thought C had fallen and hit his head on the floor.
  - d) At a parenting assessment meeting on 30 October D said he had heard a bang and a thud but assumed it was the cat and did not associate it with C. He carried on watering the garden for a minute or two. When he went indoors he heard C crying painfully, lying on his right side with his right arm bent at the elbow over the back of his shoulder and right leg bent.
  - e) D told the parenting assessor on 30 October that after the fall on 10 July (described to the parenting assessor as from the table but not seen by him) D started feeling C's arm and could feel a lump at his elbow. He said he panicked and started moving his arm around in all directions as far as he could stretch it (and demonstrating by moving his own arm around in strong vigorous movements). He said he did movements with his legs like "*can-can kicks*". Asked how C was when he was doing this D said "*He went from a painful cry to a really painful cry. I feel like I treated him like a rag doll. I always have nightmares about it.*"
  - f) It was not until the hearing on 20 December that D gave the account of being present with C (rather than something happening while he was unattended in the house), dropping him and C being unconscious. In his witness statement of 13 January he said C had been unconscious for 30 minutes to an hour (cf 10 to 30 minutes in his oral evidence).
- 98) D also referred in the police interviews to C catching under his nose with his sharp nails immediately after this incident, causing it to bleed. However, D went to the police on 15 August to clarify that he thought the cut to C's nose had happened on the 11, not 10 July. He talked about everything being a haze.

*Thursday 11 July 2019*

- 99) D told me that during the night of 10/11 July he did not sleep at all. He said he tried to comfort C during the night. On the morning of 11 July D told me C was using his arms and legs and seemed fine, although in his last statement (made on 24 January to confirm information he had given at court on 21 January) he said C was grizzly when he woke up, which he attributed to hitting his head on the plate and table the day before.
- 100) That morning D took C to a shopping mall and park. CCTV from late morning shows C walking slowly and apparently without enthusiasm or energy but without a limp or apparent distress. D told me C did not want to leave his pushchair at the play park and did not want to join in with other children.
- 101) In interview on 27 July D said "*Refusing to walk in [the shopping mall] hurt me beyond belief. The people pointing at us in there and shit like that. That still upset me. Still got to me.*" This is another occasion when D seemed to take personally the behaviour of a 17-month old child.
- 102) In his witness statements on 7 and 24 January D said that, on returning to his parents' home at between 14:00 and 15:00, C cried a painful cry and constantly

walked off to the kitchen. He told me he seemed to be looking for somebody else. D told me that when C caught sight of him he seemed to be in distress. He kept picking C up and bringing him back into the living room. At one point he said he had taken hold of C and spun him round telling him, “enough”. He had yanked C’s hand away from his (D’s) face at “multiple moments that evening”. D said he was tired because C was continually crying and he was struggling with him.

- 103) In his statement of 24 January D said he remembered taking hold of C’s right hand/wrist and pulling him around to face him. He just wanted to keep him in one place, he said. C did not want his nappy changed. D said he had to pin C down by his shoulders with both hands with his legs pinned between D’s legs. He used his right hand to yank C’s nappy off without undoing it. He was still pinning C down with his left hand, using his body weight to keep him down. D said he had had enough and lost his temper and used excessive force.
- 104) D talked to the parenting assessor on 30 October about trying to placate C by bouncing him (as the maternal grandfather did) to make him happy and hearing “a pop ... like a bone pop. He did the wounded dog thing with his arm again.”
- 105) In evidence D told me he had tried to get C to sit down and he wouldn’t. He said he grabbed C by the shoulders with both hands and forced him down. He said C continued to cry painfully and gritted his teeth. C was clearly in distress, he said.
- 106) In evidence D said C co-operated with his nappy change, apparently contradicting his last statement. When pinning C down he described his crying as “the worst cry – worse than before”. He yanked C’s nappy off. D said he was at the end of his tether by this point.
- 107) After changing C’s nappy he seemed to settle a bit but soon whimpered and resumed crying. D said he sang ‘Baby Shark’ to distract him. He told me this involved crouching down out of sight of C on the sofa and then coming up with his hand as a shark’s fin and pretending to bite him. He said in his statement and in evidence that he intended only to blow a raspberry. D admits that he in fact bit C and left an indentation and subsequent bruise. D said in his statement of 7 January he remembered the shock on C’s face. D told me C didn’t cry.
- 108) D told the police on 18 July that he assumed this was a cat bite. On 27 July he told the police he had put C’s arm in his mouth as he sang a verse from a song about a shark and left teeth marks on his arm. He accepted he had bitten C too hard. He said this actually stopped C crying and he started laughing instead.
- 109) D described to the parenting assessor on 30 October how he bit him hard: “I don’t know why I did it. There was a massive bite mark. I swear I did it with my gums and not my fucking teeth.”
- 110) Immediately after this, C says he telephoned the Samaritans, crying down the phone and asking for help. He told me he couldn’t phone 111 or an ambulance - “how could I explain what I had done to the child”. During the police interviews C said only that he had called a helpline and did not mention the Samaritans.

- 111) Very shortly after that D telephoned his brother to say he was struggling with C and not coping as he couldn't stop him crying. He told me his brother told him to "*man up and deal with it*".
- 112) The brother said in a police statement that he had been told by D that C had fallen over in the park. D denies he said this. The brother reported D as saying that he felt he was being judged by other parents and D told me in evidence that he noticed glares from other mothers. He told me he was "*trying to take a kid out in the world who was badly injured and I couldn't put him covered in bruises with other kids. I felt guilt.*" D told me that C had a cycle helmet on to cover up the bruise to his forehead.
- 113) D's brother telephoned the mother, concerned about the call from D. The mother described the brother as somebody who was normally calm but he was clearly worried about what he had heard.
- 114) The mother got to D's parents' home between 21:00 and 22:00. There was no answer at the front door. She found the back door wide open with D asleep on a sofa and C sitting in the middle of the floor naked. In interview the mother initially said C had been wearing a nappy but changed her story when told by the interviewing officer that D had said he was not wearing a nappy. The mother said she picked C up and took him upstairs to comfort and check him, changed his nappy and put him in his pyjamas. In changing C the mother naturally had to manipulate C's arms and legs. She said that C was smiling and not in any apparent discomfort. She could see bruises to both cheeks and the bruise to the forehead which looked worse than in the photographs D had sent her. Given the hour and need to settle C (whose normal bedtime was 19:00) she did not give him a full body check.
- 115) Once she had seen to C, the mother went back downstairs and asked D what had been going on. There was, according to the mother, a heated conversation. According to the mother D told her to take C and go home, the relationship was over. When she asked D why his answer was, simply, "*Just look at your son*". She told me she asked him what he meant and had he hurt her son. She told me he replied "*no*". She said she wanted more explanation but did not get it. D told me he couldn't tell her he had just bit her son – he didn't know what to say or do in the situation he found himself in.

*Friday 12 July 2019*

- 116) The mother told me that C did not appear distressed on the Friday. She changed him and he did not show any signs of discomfort. He used his arms. He was however very sleepy and not himself. He seemed withdrawn and was not very active. When left to play C just sat there and did not follow the mother around the house as he normally would. D had told her he had given C Calpol and Ibuprofen on the Wednesday and Thursday. She bought more of both and teething gel. The mother noticed C was limping. They went to buy him new shoes and he seemed to stop limping. Indeed, he was very happy walking around the shop in his new shoes such that he didn't want to leave. Soon afterwards the limp re-appeared. It transpired that they had been sold shoes of different sizes and the mother says they wondered whether the limping was to do with the old shoes and wrong new shoes.

- 117) The mother took C to nursery on 12 July. She told them she had taken C to hospital. She later accepted this was a lie.
- 118) The mother asked the grandmother about the possibility that C was suffering with growing pains, as she and her brother had when they were young.
- 119) In evidence the mother accepted that she realised on 12 July C was not himself. At the time she thought he was teething but realises she should have known that something had happened. She accepted it was obvious on the Friday that she should have sought medical attention.

*Saturday 13 July 2019*

- 120) On the Saturday C was more willing to play and seemed to be back to his happy self. The mother took C on a bus. D and his brother were with them but sitting separately on the bus. A lady on the bus commented that the bruise over Cs left elbow looked like a bite. The mother said it was a cat bite. The lady clearly didn't think so. The mother was upset by comments that the lady made and asked the father about the bite mark. According to the mother, he said he didn't know.

*Sunday 14 July 2019*

- 121) On Sunday the mother took C to her parents' home. Notwithstanding that, according to the mother, C had perked up and was playing happily, the grandparents were shocked by what they saw. The mother did not think C was limping but he was walking with an unusual gait. He was protecting his right arm (which he had first started to do on Saturday afternoon). The grandfather said in a police statement that when he gently squeezed C's right arm he pulled it away. When the grandfather referred to the arm being swollen the mother said it might be a strain and perhaps he had "*slept funny*".
- 122) The grandmother suggested to the mother that she should seek medical attention for C. The mother thought the GP surgery would be shut on Sunday. Nobody could recall mention of A&E. The mother thought the grandmother would have suggested A&E if she thought it necessary. The mother recalled having a heated discussion with her father who was "*looking for answers*" and who was "*not buying*" what she was saying. The grandfather asked the mother straight out whether she had hurt C. He says he was told by the mother that the bite mark had been caused by one of the cats. The mother admits now that she should have seen things as her parents were and taken C straight to hospital.
- 123) During the afternoon the mother, C and the grandparents attended a church concert.

*Monday 15 July 2019*

- 124) The nursery too was concerned about C's presentation when he attended on Monday. The mother admits she lied when she said that C's cuts and bruises had been caused by an accident on a slide at the park. She told me she did not know what had caused the injuries and was just trying to piece things together. According to the grandfather, the mother told him the nursery had phoned regarding the bruises and he had advised her again to call 111 or the GP first thing Tuesday morning.

*Tuesday 16 July 2019*

- 125) On the Tuesday morning the grandfather reported his concerns about C to the church organisation which employs him. The grandfather referred to bruises on both sides of C's face and forehead and a bite mark on his arm. The grandfather reported D as saying that C had fallen in the garden and the bite was from a cat. The grandfather said he had spoken to the mother and expressed his concern especially as C seemed to be limping. The officers at the church organisation suggested that the grandfather ask again what had happened and suggested a visit to the GP as soon as possible.
- 126) In the afternoon the mother took C to the GP. The main concern which the mother presented to the GP was that C was not using his right arm or leg properly.
- 127) The GP made an informal statement and gave evidence. He told me this was the first and only time he had seen C. He said the mother reported noting 2 days earlier that C was not using his right arm or leg and they looked slightly swollen. She said he had not been using his right arm over the previous two days. She said he had been unsteady on his feet, putting less weight on his right leg and had been quiet and withdrawn the day before in nursery. At this point the GP advised that C should be taken to A&E for X-ray. The GP explained to the mother the possibility of a pulled elbow which could be easily corrected. At that point C appeared reluctant to be examined.
- 128) The GP asked the mother about the scab under C's right nostril. The mother explained to the GP that 5 days earlier C had been with D. She said D reported that he while had turned his back C had reached for the cat who ran off startled and C fell and hit his head on (she thought) the TV stand. She said she had not been there but D had told her about the injury. There was no loss of consciousness and no vomiting.
- 129) The GP reported that C did stand on the ground with some hesitation initially as he moved but then he started pottering around the consultation room, banging cabinet doors with both arms. The mother told the GP that C hadn't been using his arms like that the day before, his walking had improved and he was being more active.
- 130) The GP took the opportunity to examine C while he sat back on the mother's lap. He got C to 'high five' him with both arms. He palpated along C's right arm and did not feel any bony tenderness and without C seeming to be in any pain. He palpated along both C's legs which he did not resist and which did not appear to cause C any discomfort. The GP did not undress C, who was wearing a short-sleeved top and shorts which went down to just above knee level.
- 131) The GP said that the examination did not reveal any evidence of an arm or leg injury. Given that and the reported improvement in his presentation from the day before he revised his advice to the mother, explaining that she should take C straight to A&E if any of the concerns of the previous day returned or there was any unsteadiness on his feet or if she was concerned he was not using his right arm.
- 132) The GP arranged to make a follow up call but that was preceded by C's admission to hospital the following day.

- 133) Given the presentation of C reported by the grandparents on the Sunday, the nursery on Monday and Tots Group on Wednesday it is unsurprising that the GP faced some challenging questions. Why was it that he did not see the bite mark on C's left elbow, visible below the short-sleeved top? And what did he make of the facial bruising?
- 134) Essentially, the GP's response was that, based on the history given, the focus had been on the right arm and leg. He had not been given a lot of the information that was put to him in cross-examination. He was given an explanation for the bruise to the forehead, namely that it happened when C was with D 5 days earlier. Concerns were alleviated by C's improved presentation that day. He had seen a very small bruise around the left elbow which he had not noted up. He accepted, looking at a photograph of that bruise, that it should have been visible but did not recall seeing it or the bruises on his cheeks. A full body examination was not called for – this was a mobile child with bruising (to the forehead) that had been explained.
- 135) I asked the GP about his experience. He told me he had been a GP for 15 years, that he had received updating safeguarding training a year ago and had previously worked (albeit briefly and many years ago) in both paediatrics and A&E.
- 136) That evening the maternal grandparents turned up unexpectedly (for the mother) to babysit as D had arranged a surprise outing to the cinema for her. The mother told her parents what had happened at the GP surgery that afternoon. The grandparents reported C as being a bit brighter. At one point he slipped in the bath onto his bottom while in their care.

*Wednesday 17 July 2019*

- 137) Early on the Wednesday morning D Facetimed the maternal grandfather asking him to look at C's leg. The grandfather thought it looked alright but he wasn't awake properly. He advised D to take C to the Tots Group at the church.
- 138) D took C to Tots Group. The officer there completed a 'Notice of Concern', recording that C was not reacting to anyone and was listless and pale. D said that C had seen the GP the day before but the officer strongly advised D to seek medical advice. The officer was sufficiently concerned to call the grandmother (knowing that she was a nurse).
- 139) D did call 111 and an ambulance took C to A&E. The mother went to the hospital after work.

*At the hospital*

- 140) The Consultant Community Paediatrician at the hospital, Dr Renshaw, noted the injuries already described and the inconsistent explanations given for them by the mother when she saw her and C on 18 July. She explained that, according to D, C had been left in the conservatory at his parents' home on the previous Wednesday and D had heard a bang. Reference was made to the shoes as a possible explanation. The mother suggested the bite mark was caused by a cat and the bruises to the cheeks by C biting the inside of his cheeks. Dr Renshaw was clearly unpersuaded by these explanations.

*Police interviews – July 2019*

- 141) The mother and D were arrested and initially interviewed on 18 and 19 July. The interviews were lengthy. I have set out in the history above the explanations given by D. The mother simply repeated as much as she had been told by D. Certainly by the second interview the police were putting to the mother that D had caused the injuries and she was not telling what she knew. The mother consistently said during these interviews that she did not think D would have harmed C and that she loved and trusted him.
- 142) D went to the police again on 27 July wanting to give further information. He said he had lied about what happened on 10 July and had given a false explanation to the mother. He went onto give the explanation I have set out at paragraph 86(b) above which he now accepts was also a lie.

*The statements of 20 September.*

- 143) At a hearing on 9 September it became apparent that C's injuries were more extensive than at first thought. D was to make a statement dealing with this. The maternal grandparents were also looking for an explanation. It was suggested that D should tell the grandfather face to face what had happened.
- 144) This resulted in the two statements of 20 September. It is suggested now by D that the grandparents have distorted the position against him and are 'out to get him'.

*Police interviews – October 2019*

- 145) The mother and D were further interviewed by the police about the further injuries on 21 October. I have set out some of the further explanations given.
- 146) The mother admitted during this interview that she had lied when telling the nursery on 12 July that she had taken C to hospital. She had also vehemently denied in her July interview telling the nursery that she had taken C to hospital but had to backtrack when the nursery records made clear she had said this. D told the police that the mother often lied about matters.

*Parenting assessment notes – October/November 2019*

- 147) The parenting assessor has produced notes of her meetings with D on 30 October and 13 November 2019. I have already set out some of what D said in those meetings. They are of particular interest because D told me that, of all the professionals he has dealt with, the parenting assessor was the one person he felt listened to him and to whom he felt able to talk. It is therefore perhaps to the parenting assessor that he came closest to telling the truth before giving evidence.
- 148) There are a number of references to C as a "*demon child*" and about 24 June being "*an exorcism moment*".
- 149) The parenting assessor described D as emotional and quite gushing, presenting as needing to give her all this information. He said he had not had a chance to say this to the police on 21 October as they had been firing questions at him.

*The mother's internet searches*

- 150) The mother was asked in interview and in evidence about a number of internet search enquiries she made seeking answers to questions about her child hating

her partner, the best way to get rid of bruises and how to get rid of bruises quickly and, on one occasion, finding her partner masturbating in front of her child.

- 151) The last enquiry she denied in interview making at all, or, if she did, saying it was accidental. In evidence she said it had cropped up in a drop down of enquiries and she had looked at it through curiosity. It was plainly a matter of interest to the police, not least because the mother made this search four times. I accept however that there is no other evidence to suggest that D did masturbate in front of C. It is not a matter about which the local authority seek a finding and I proceed on the basis that did not happen.
- 152) Of more interest to the local authority are the searches suggesting that C hated D and about getting rid of bruises. It was put to the mother both by the police and in evidence that this reflected her knowledge and concern about the relationship between C and D and her wish to cover up the bruising from public scrutiny as quickly as possible.
- 153) The mother explained both in interview and in evidence that she often makes Google searches for answers to questions. She told me that D did get frustrated at times and said he thought C hated him. She said she told him a one year-old child can't hate you. She said C was a lovely happy little boy. She said that C was very much a mummy's boy and there were times he wouldn't go to other adults. Because the maternal grandparents had been involved in C's care when they were living at their home – to the point that C may have seen them also as parents - the mother has wondered whether moving to their own home in April resulted in some loss of attachment figures in C's life. In making the search she did she was trying to find answers to a possible problem. It did not mean, she said, that she thought D was a risk to C.
- 154) As to searches about getting rid of bruises, the mother said she was concerned about preventing infection. She was trying to get her own answers independently from her mother to whom she would otherwise turn for advice. She denied wanting to hide anything. She said if she had wanted to hide anything she wouldn't have taken C to her parents or to nursery. She knew the nursery would need an explanation and that records would need to be kept.

### **The medical evidence**

- 155) Dr Halliday gave evidence about the likely timings and mechanisms of the fractures. Dr Nawaz gave consistent evidence regarding likely mechanism and C's likely presentation following injury. Each expert deferred to the other's specialism where appropriate.

#### *Timing*

- 156) Dr Halliday noted that only two of the fractures (the upper right arm - *right proximal humerus* – and the shaft of the left collarbone – *clavicle*) showed evidence of healing (periosteal reaction) in the X-rays taken on 18 July. The other fractures showed no evidence of healing on 17 or 18 July but periosteal reaction was present in x-rays taken on 31 July.
- 157) This, said Dr Halliday, points to injuries at different times, probably at least 4 days apart. Periosteal reaction is not found within 4 days of fracture but will always be present by 11 days. Most typically it will be found by 7 or 8 days.



Logically therefore the right upper arm and left clavicle fractures were at least 4 days old by 18 July and must have happened therefore on or before 14 July. The remaining fractures could have happened at any time in the preceding 11 days, most likely 7 to 8 days before. That would fit with D's explanation of injuries happening on 10-11 July. The difficulty about his explanation that all the fractures happened then is simply the differentiation of the healing seen on the X-rays and the deduction that the fractures happened some days apart.

### *Mechanism*

158) Dr Halliday gave her opinion about the likely mechanisms required to cause the fractures:

- a) Right upper arm – *proximal humerus*: this fracture was caused by yanking the arm forward. This is strongly associated with physical abuse. Dr Halliday rejected the suggestion it could be caused by downward pressure on the arm. The two parts of the bone have been pulled apart through the cartilage joining them, with bits of the long bone breaking off. This could be picking the child up and throwing him or shaking with a really severe force. She also rejected the child running away and being pulled back as a satisfactory explanation.
- b) Shaft of the left clavicle (the main part of the collarbone): Dr Halliday thought this would usually be caused by a fall onto an outstretched arm, but normally from chair or table height rather than from standing. They are common accidental injuries but may also be caused non-accidentally. This could be a pressure injury. Dr Halliday originally thought this to be a normal companion shadow but on review agreed with Dr Fairhurst (the hospital radiologist) that this was a fracture.
- c) Inside end collarbone – *distal right clavicle*: this fracture was caused by indirect forces through the arm. It could be caused by yanking the arm or a fall onto an outstretched hand. These are most commonly accidental injuries in mobile children but can also be caused non-accidentally. It is unlikely that this fracture was caused by downward pressure as described by D unless he used totally inappropriate force. Toddlers often need firm handling which does not usually result in fractures like this.
- d) Fractures either side of the right elbow – *distal right humerus* and *proximal right ulna (coronoid process)*: fractures like this are more likely to be abusive and are caused by yanking on the arm. They sometimes occur as a result of falls onto the arm but these are quite high energy injuries. They would not normally result from a fall from standing and a child of this age would not normally get up enough speed to cause the fracture by falling while running. This and the injury at c) above could have been caused by the same application of force at the same time. However, these and the fracture at a) could not have been caused on the same day. Dr Nawaz said that although the distal humerus (just above the elbow) is a weak point and accidental fractures are common, the combination of fractures to the right arm/shoulder makes it unlikely to be accidental.
- e) Fracture of the knee end of the lower right leg bone – *proximal right tibia*: this was caused by a fall or blow to the leg. It could also be caused if the

child was brought down hard onto his feet/legs. These fractures can occur accidentally in this age group but can also be inflicted. Dr Halliday rejected the suggestion that the fracture could have been caused by downward pressure on the leg (while trying to change C). She thought it was more like a stamp or a kick.

- f) Fracture to the left shoulder blade (*scapula or glenoid*): this fracture, according to Dr Halliday, is strongly associated with physical abuse by yanking of the arm. She said that scapula injuries are very rare. The scapula, right next to the rib and with a lot of attached muscles, is well protected. If the arm is pulled very strongly that can pull muscle and bits of bone off. Scapula injuries are normally seen as part of more complex chest injuries resulting, for example, from car accidents – and even then it is rare. Dr Halliday had never seen a scapula injury from a fall. These injuries do not result from falls. Nor does it result from being picked up and swung around. The fracture was caused by something quite out of the ordinary, thought Dr Halliday. Dr Nawaz had only once seen such a scapula injury and that was where a perpetrator admitted inflicting multiple injuries.

#### *Paediatric view*

- 159) Dr Nawaz deferred to Dr Halliday as to timing but had no reason to disagree with any of her evidence (which he both read and heard).
- 160) The photographic evidence of the bruises was of poor quality such that he could not assess their causation.
- 161) Dr Nawaz considered that the pattern of injuries, taken both in totality and in context, was crucial to the paediatric assessment. He considered it unlikely that A has an underlying medical condition increasing his propensity to fracture or bruise easily (and the hospital had run the usual range of tests the results of which were normal). D referred a number of times in evidence to C bruising easily, but there is in fact no evidence to support that. Dr Nawaz said it was more likely that the pattern of skeletal injuries is likely to be abusive and inflicted and related to more than one abusive event. The force required to cause these fractures would and should, he said, have been recognised by an adult carer present as unreasonable and excessive and liable to cause injury and distress to a child.
- 162) Any of the fractures would have resulted in C being in severe pain and distress and presenting with intense and painful crying lasting many hours, maybe the whole day. Ongoing complaint of pain or discomfort would last many days. Dr Nawaz said he would have expected C to be have been holding his arm. He may have limped or been reluctant to walk. He would not have been pain free, although it could have been relieved by the use of analgesics such as Calpol or Ibuprofen. His attention, mood and appetite would have been affected. He wouldn't have been himself.
- 163) Dr Nawaz considered there was significant delay in seeking medical attention. Although he would not have expected a carer to have identified fractures he would have expected a reasonable carer to have sought medical attention on Friday 12 July.

- 164) Key features on which Dr Nawaz placed emphasis when drawing his conclusions were:
- a) delayed presentation;
  - b) no reasonable or plausible explanation;
  - c) inconsistent history/inappropriate child response;
  - d) old and new fractures;
  - e) absence of any underlying medical condition.
- 165) Dr Nawaz identified what he called the main ‘outlier’ as the GP’s examination of 16 July, with possible explanations of analgesia used before the appointment, fractures improving or healing becoming more painful that evening following a fall in the bath or an inadequate GP assessment (or combination of any of the three). Dr Nawaz said he would not have expected C to have been able to ‘high-five’ the GP with his right hand given the fractures that must by then have been present. He could not understand why the GP described C as he did on 16 July (active, using his arms and legs, not appearing to be in any discomfort and with no bony tenderness). He would not have expected the GP to have been able to palpate C’s right arm and both legs without resistance or discomfort, as the GP reported.
- 166) Neither Dr Halliday nor Dr Nawaz considered that any of the explanations put forward for C’s injuries were sustainable.

### **Impression of the lay witnesses**

- 167) The maternal grandparents struck me as forthright and credible witnesses with an overriding concern for C. They clearly have not let their familial relationship with the mother bias their view in her favour. They seem to have come to an early view that the explanations put forward for C’s injuries were not plausible (hence the grandfather saying to the mother “*I don’t buy that*”). They have also been clear in their minds that D was responsible for the injuries and that the mother has not done what she needed to do.
- 168) The grandparents gave strong evidence critical of both D and the mother. I reject D’s suggestion that they have exaggerated the case against him. They have at all times, in my judgment, sought to act protectively towards C and, to the extent that this approach has conflicted with that of D and the mother, that is to the grandparents’ credit.
- 169) D presented in evidence as calm and placid, consistent with my observation of him when sitting in court over a number of hearings. I have however come to a number of conclusions about him based not simply on demeanour but all the evidence I have about him, including his statements, interviews and assessments, as well as his evidence in court:
- a) D plainly lacks credibility. His purpose in lying to the police, to the mother and other professionals was to protect his relationship with the mother. I bear in mind the *Lucas* self-direction. His purpose may explain a lie. It does not follow as a matter of pure logic that what he says subsequently is also a lie. The problem in this case is the scale of the lying and the elaborate nature of the false explanations he has given over an extended period of time to various different people. I am entitled to, and should, treat what he says in evidence now with considerable caution, looking to see how it fits with other evidence, including medical evidence.

- b) D is also plainly a man who becomes frustrated and loses his temper. A number of examples are given by him in the months leading up to July 2019. He was stressed by his financial circumstances on top of a busy work life. He blamed the mother for their financial difficulties.
  - c) Worryingly, there are a number of instances of D taking C's actions personally – urinating on him, punching him, not wanting to walk in the shopping mall and not staying awake when D was making a 111 call about him. On all these occasions I got a sense that D made no allowance for C's age and imputed to him some intention that simply wouldn't be there.
  - d) I also got the impression of a man who focusses more on the impact of all these things on him than on C. He talked a great deal about how all this had affected him. He talked a lot about his employment (which he has lost as a result of the ongoing investigation).
  - e) Further D tends to minimise, and dissociates himself from, his actions. I wondered in fact whether he was genuinely blocking what he had done from his memory.
- 170) The mother was a better witness. I bear in mind she has lied. However, the mother in evidence appeared considered and prepared to make at least some appropriate concessions. What is plain, as she accepts, is that she has been blinded by love for D and has made a priority of preserving the happy family unit she thought she had found. She appears genuine in saying that she believed and trusted in D and did not think him capable of harming C.

### **Discussion and findings**

#### *Responsibility for the injuries*

- 171) It is clear to me, beyond any real doubt, that D inflicted the principal injuries on C.
- 172) There remain a number of inconsistencies in the explanations put forward by D. Remembering that it is for the local authority to rebut an explanation, D's story about an accidental fall from his grip on 10 July simply does not hold water:
- a) Putting aside for the moment that this is the third main variation of an explanation, the description given by D of C slipping through his grip, him closing his eyes for an appreciable period and opening them after some time to find C lying unconscious (with wildly varying time estimates for both the time his eyes were closed and the period of unconsciousness) is inherently implausible. The story lacked any ring of truth.
  - b) He says C hit his head on a plate and/or the table as he fell. That at best has to be assumption if his story that he closed his eyes as soon as C started falling is true.
  - c) A fall from that height is not accepted by the medical experts as a reasonable explanation for any of the fractures.
  - d) Failure to seek medical attention for a child who has lost consciousness would be extreme recklessness. D said he couldn't face saying what had

happened but, on his story, all that had happened at the point was pure accident.

- 173) What has emerged over time is a picture of D struggling to manage C and losing his temper with him. This is consistent with my conclusions about D, including how he is personally affronted by C's rebuffs and other actions. Coupled with external stresses around finance I conclude that, as he admits, D did lose control of his temper and inflicted injuries on C. I am unable to come to a clear conclusion whether he intended to cause the injuries or whether he was reckless in doing so.
- 174) It is of course possible that there was an accident, as described by D, on 10 July resulting in injury to the forehead and, possibly, one or more fractures, with inflicted injury on 11 July. I reject that scenario. I regard it as altogether more likely that the story about an accidental fall on 10 July is as much a fiction as the previous explanations and that in fact all the principal injuries were inflicted by D.
- 175) I except from that the bruise to the bottom, accepted by the local authority as accidental, but also the cut below the nostril which is of a different nature and may have been self-inflicted and the small cut near the eye for the same reasons.
- 176) The bite to the elbow is admitted by D. I reject his minimisation of this incident and find that he bit C in anger. Only that is consistent, in my view, with the impression of teeth marks and significant bruising that resulted.
- 177) I also find that the bruising to the inner elbow was inflicted.
- 178) The bruising to the cheeks I find was caused by D forcibly squeezing C's cheeks between the thumb and finger(s) of one hand to open his mouth, either to brush his teeth or get him to drink or both. The intention was, I accept, to get C to do something rather than simply taking his anger out on C (at least the local authority has not proved that) but I find that D again lost his temper with C, who was not doing as he was told, and D used entirely inappropriate force to cause the bruising.
- 179) I am unable to reach a clear conclusion as to how C came by the bruise to the forehead. Bearing in mind however that this appeared on 10 July at around the time when I find D had inflicted other injuries, it appears to me more likely than not that this too was an inflicted injury.
- 180) Some of the fractures could, according to the experts, have been caused accidentally – the collarbones, the elbow and the tibia fractures. However, others, in particular the scapula and the right upper arm, are more specific to inflicted injury. While not impossible, it is in my view inherently improbable that a child of C's age would suffer both accidental and inflicted fractures in a relatively short space of time. Taking the totality of the fractures and the limited admissions made by D, I conclude that all the fractures were inflicted by C. I find it is probable that those fractures which showed no evidence of healing as at 18 July were inflicted on 10 and/or 11 July
- 181) Given the differential timing of the fractures to the right upper arm and left collarbone I cannot sensibly conclude that those fractures also happened on 10/11 July. I cannot identify the occasion or circumstances in which those injuries were inflicted. Despite Dr Nawaz evidence that C would have been in

pain following those fractures, and taking into account C's varying presentation, including to the GP on 16 July, I do not exclude the possibility that C's right upper arm and left collarbone had already been fractured, possibly on 2 or 3 July. This would tie in with the painful cry D and the mother report on 2 July. It did not necessarily happen on that date. Whenever it did happen I am satisfied these were inflicted injuries and that D was the perpetrator.

*Failure to protect*

- 182) The mother is right to accept that she failed to see the obvious, that she delayed presenting C for medical treatment, that she lied and that she has failed to separate from D when she should have done.
- 183) I accept the mother's case that she did not collude with D to put forward a false explanation for these reasons:
- a) The weight of the evidence shows that D has consistently lied about what happened to C. I accept that he has also lied to the mother and withheld from her any sort of satisfactory explanation for C's injuries.
  - b) For reasons I will come to, the mother should have realised that D presented a risk to C. She should have been aware on 9-11 July that bruises were appearing both from her examination of C on 9 July when she saw the bruise to the left cheek and from the photographs D sent her on 11 July.
  - c) I accept that the mother, blinded by her love for and trust in D, ignored the obvious and created for herself the story that all was alright and this was just C being clumsy. That was not a reasonable conclusion for her to reach but I accept it was borne out of naivety rather than any collusion between her and D. I accept her evidence that, initially at least, 'blaming the cats' was no more than a joke in the context of what she thought were relatively minor cuts and bruises.
- 184) I do however find that the mother failed to protect C from risk of harm. This is of course a more serious finding because it impacts directly on the question whether C's injuries could have been avoided in the first place.
- 185) When I started hearing this case and even during the mother's evidence, I had some sympathy for the mother's position. What may not look acceptable in the bright lights of the court room may need to be seen through the prism of real life. This is part of the margin of reasonable parenting we allow for. But as I considered the wider evidence, in particular what D himself told the police and others about what happened before the decision was taken to leave C in his sole care for two days, I found myself drawn to the conclusion that any reasonable parent should have realised D was a serious risk and should not have taken that risk.
- 186) While I accepted that the mother, subjectively speaking, was blinded by love for D and trusted him, there was, objectively speaking, plenty of evidence available to this mother that should have told her she should not leave C in D's sole care, certainly not for any appreciable time. These things should have been clear to her:
- a) D was stressed about financial matters;

- b) he was worried about his relationship with C – he expressed the view that C hated him;
  - c) he was taking things personally – she had already told him a one-year old child can't hate you;
  - d) there was the incident when C bit D and D 'backhanded him' – resulting in the mother telling him his behaviour was unacceptable, D saying that C was scared of him and the mother not leaving C in D's care for a time;
  - e) he had already lost his temper when C punched him in the face (and see his reaction which directly involved the mother);
  - f) he was talking about C as a 'demon child' concerning what he said was an incident at nursery on 24 June;
  - g) there were the incidents on 2 and 3 July when, at the very least, D struggled with C and, on the mother's evidence, she heard C cry out in pain (on 2 July);
  - h) she saw the bruise to C's left cheek on 9 July and should not have accepted D's explanation about brushing his teeth (or at least questioned how he used such force as to cause a bruise).
- 187) A reasonable parent would have drawn from these events that it was not safe to leave C with D on 10 and 11 July (or indeed on 9 July). And a reasonable parent should have been more worried than the mother apparently was on 10 and 11 July when D started reporting further injuries and should have acted immediately to remove C from D's care.
- 188) It also follows that the reasonable parent would not have accepted D's explanations (or inability to give explanation) and should have prioritised C by separating from him immediately.
- 189) The failure to present C for medical attention on Friday 12 July is admitted. It is mitigated to an extent, but not entirely excused, by C's variable presentation and the fact that the GP did not himself diagnose the seriousness of the injuries on 16 July. The failure of the mother to give the GP a fuller history also amounted to failure to protect.
- 190) Even allowing for the margin of reasonable parenting and the need for a causative link between failure to protect and harm, I am satisfied that the local authority has made its case on this part of their threshold.

### **Postscript**

- 191) Since starting this judgment I have been sent by the local authority a lengthy email from the GP acknowledging the concerns expressed during his evidence and acknowledging that there may be a need to learn from the experience of this case. That email has been copied to the parties.
- 192) I do not consider this is the place to deliver an opinion as to any shortcomings by the GP or steps that he should take. With the benefit of hindsight I am sure he acknowledges that he should have seen the bruises to the cheeks and the left elbow. Had he done so that should have alerted him to the possibility of further unobservable injuries and that C could be a victim of physical abuse. There is a danger in accepting the presenting history in a case involving injury to a young,

albeit mobile, child. Here the mother told only part of the story. That hampered the GP in his examination.

- 193) My only suggestion to the GP would be to revisit his safeguarding training and be alert in the future to the lessons from this case. I direct that this judgment be sent to the GP.