

[2023] EWFC 263 (B)

IN THE FAMILY COURT SITTING AT COVENTRY
IN THE MATTER OF THE CHILDREN ACT 1989
IN THE MATTER OF CM (DOB 6/12/22)(A CHILD)

Coventry Combined Court
Much Park Street
Coventry

Date: 1st November 2023

Before :

HHJ WALKER

Between :

WARWICKSHIRE COUNTY COUNCIL

- and -

K (1)
E (2)
CM (3)

Applicant

Respondents

- and -

N

Intervenor

Mr Watson for the Applicant

Miss Isaacs KC and Miss Pemberton for the First Respondent

Mr Vater KC and Miss Henderson for the Second Respondent

Miss Reed KC and Miss Bush for the Fourth Respondent

Miss Mettam and Mr Duncan for the Children's Guardian

Hearing dates: 17th, 18th, 19th, 20th, 23rd, 24th and 25th October 2023

JUDGMENT

HHJ Walker :

1. CM was born on the 6th December 2022. By 2pm on the 2nd January 2023, she had sustained the following injuries;
 - (1) A transverse fracture of the midshaft of the right femur,
 - (2) Fractures of the anterolateral left 3rd, 4th, 5th and 6th ribs,
 - (3) Metaphyseal fractures of the distal right and left tibias,
 - (4) An incomplete fracture of the midshaft of the right fibula.
2. CM was K and E's first child. CM had been living with both of them in N's home since she was born. K is only 19 years old herself and E is now 21. N is K's mother. K, E and N do not dispute the nature of the injuries to CM, nor do they dispute the evidence as to the likely timing of those injuries having occurred, or the probable mechanism as to how they occurred.
3. During these proceedings, I permitted the instruction of three eminent experts. Dr Karl Johnson is a Consultant Paediatric Radiologist based at Birmingham Children's Hospital. He reviewed an x-ray of CM's right leg taken on the 2nd January 2023, and then two full skeletal surveys, from the 5th January and the 20th January.
4. Dr Johnson found no evidence of any underlying metabolic bone disease or abnormal bone density. There was no radiological evidence of a healing response related to the fracture to the right femur, meaning it was likely to be less than 8 days old on the 2nd January. There was some evidence of healing in the rib fractures, and so Dr Johnson considered that they were most likely to have been sustained 2-4 weeks before the 5th January. The metaphyseal fractures to the right and left tibias near the ankle were no older than 11 days on the 5th January, given the lack of healing response. The healing fracture to the right fibula was between 2-4 weeks old at the same time.
5. Of course, Dr Johnson gives those timeframes recognising that the dating of fractures is uncertain, imprecise, and subjective. Dr Johnson was of the view that the fractures to the ribs all occurred at the same time and from a single episode of chest trauma. Each fracture was likely to be the result of significant force having been applied to the bones, and whilst the precise level of force required is unknown, it was likely to be significant, excessive and greater than one would expect to see during the normal handling of an infant.
6. At the time that CM sustained the injuries, she would have been in pain and distress, although Dr Johnson appropriately defers to the paediatricians in relation to the clinical presentation of CM. Rib fractures are commonly the result of a 'squeezing' mechanism. The incomplete fracture of the right fibula is likely to have been caused by a blow, impact or bending force having been applied to the leg. The same mechanism is likely to have also caused the transverse fracture of the right femur. Metaphyseal fractures are typically the result of severe twisting/torsional forces being applied to the end of the limbs.

7. Overall, it was the opinion of Dr Johnson that CM had suffered “*at least two separate episodes of trauma (potentially including birth injury), but five separate applications of force.*”
8. Dr Kathryn Ward is a Consultant Paediatrician of many years’ experience. She has provided the court with a detailed report, in which she provides a chronology of all involvement of medical professionals with both the mother during her pregnancy but also with CM during her delivery and afterwards. It is an unusual feature of this case that CM was seen many times by a number of professionals during her first four weeks of life. I have copied this table from the opening document prepared by Mr Watson for the local authority.

Date	Reference	Details
08.12.2022	HB104-5, HB135	CM was readmitted to hospital for bloods. She was assessed to be mildly jaundice.
09.12.2022	CA87	CM was seen at home by the midwife. Grandmother and sister present. No concerns observed or shared.
09.12.2022	G159 HB138	CM was taken to hospital because she was crying a lot with a blocked nose / secretions. Plan: Discharge home with advice to reduce feed slightly.
10.12.2022	G160 HB95, HB123, HB127 HB138	CM was taken to hospital as the parents were concerned about her blocked nose / noisy breathing / secretions. Ongoing for 4 days. Plan: Discharge home with advice to reduce feeds. Saline drops were prescribed.
11.12.2022	CA87	Postnatal and baby check at the Bluebell Birth Centre. No concerns observed or shared.
12.12.2022	CD8	CM was checked by ambulance service personnel.
12.12.2022	G160 HB93, HB122	CM was taken to hospital at 6.51pm and parents had left sometime after 9pm before being seen.
15.12.2022	G160 HB90-92 HB139	CM was taken to hospital and the presenting complaint was nasal congestion / noisy breathing. The symptoms had been present for about a week. Plan: Discharge home, saline nasal drops, and safety netted.
20.12.2022	CA87	Discharge visit attempted by the midwife. CM was being cared for by the maternal

		grandmother as K and E were not at home.
20.12.2022	CA91	The Family Nurse completed the New Birth Visit at home. CM presented as relaxed and content. K felt she was making good progress whilst the maternal grandmother reported that CM was smiling in response to social interaction. K mentioned that she and E were doing well with sharing CM's care and maternal grandmother was supporting her when she was tired. N mentioned that she had a slight concern that K and E had not woken up to CM crying on a couple of occasions during the night. N said she had to wake them up. The family nurse recognised the concern and advised monitoring the situation and planned to review at the next visit.
23.12.2022	G160 HB48 HB139	CM was presented to hospital with noisy breathing of 1 week duration, with associated mild coughing and sneezing, no fever, no cyanosis, and no increased work of breathing. Also, some difficulty in feeding when nose is blocked. Observations and examinations were all normal. Plan: Allow home and safety netted.
28.12.2022	E170	CM was seen by the GP again regarding noisy breathing and feeding. The plan was to continue with nasal saline drops.

9. Not included in that table is a further visit to Accident and Emergency at 12 noon on the 1st January. The presenting complaints were crying, reduced feeding, reduced wet nappies and congestion. CM was noted to be well, pink, alert, hydrated and smiling. Her parents were reassured and given some saline drops to aid the congestion. There were no outward signs of injury.

10. In respect of the fracture to CM's right femur, Dr Ward says this,

"The best indicator of timing of injury is a clear history of a memorable traumatic event. In this case, no such memorable event has been described. It has been suggested that CM had been crying on the day prior to presentation but she had been examined in the emergency department and in the paediatric assessment unit on 1st January 2023 and, at that time, no symptoms nor signs related to the right leg were identified. It was reported that, on the paediatric assessment unit, she was undressed and all four limbs inspected and moved with no evidence of swelling or discomfort. Parents sought medical advice for swelling to the right leg on 2nd January 2023."

11. Femur fractures have traditionally been identified as ‘red flags’ for child abuse amongst young children. It is most likely that CM would have cried in pain immediately after the injury and that she would have remained irritable for more than 30 minutes after the injury. It is likely that there would have been signs to the carer, including a carer who was unaware of the presence of the fracture, those signs being reduced movement of the limb, pain on passive movement of the limb and swelling. The fracture would have required a considerable force. Dr Ward also notes that CM required treatment with morphine, diazepam and paracetamol for several days after she was admitted to hospital, indicating that she was, as Dr Ward would have anticipated, in considerable pain.
12. Dr Ward agrees with Dr Johnson when she states that the most likely mechanism for the rib fractures is that of compressive trauma to the chest. Children’s ribs are difficult to fracture as a result of being flexible. Anyone present at the time will be aware of the force applied and that it would be likely to cause injury. However, once the acute pain has settled, rib fractures are difficult to detect and are often missed clinically. A carer who was unaware of the injury might notice that the child was irritable and may attribute the discomfort to other non-specific factors, such as colic.
13. Metaphyseal fractures require biomechanical forces that are not produced by the usual accidental trauma of infancy, rather rotational forces are generated as a result of a severe twisting/tortional force applied to the end of the limbs. She notes Dr Johnson’s conclusions in relation to the tibial and fibula fractures, and then says this,

“In CM, the pattern of fractures was highly suspicious of non accidental injury in that she had an acute transverse fracture of the femur in addition to metaphyseal fractures, rib fractures, multiple fractures in various stages of healing and long bone fractures.

However, before a diagnosis of non-accidental injury can be established, consideration must be given to possible pre-existing medical conditions that may predispose structurally weak bones to injury with normal handling or minor trauma and to disorders that may produce skeletal abnormalities that mimic the radiological manifestations of inflicted trauma:”
14. Dr Ward then goes, in some detail, through all the various differential diagnoses for the cause of the fractures suffered by CM. She concludes as follows,

“I have reviewed the chronology and investigations. I have not identified any underlying medical condition which could have caused or contributed to the clinical abnormalities identified from 2nd January 2023 onwards. Please refer to the chronology, results and review of the differential diagnosis in the discussion above.”
15. She goes on,

“In my opinion, it is more likely than not that:

 - a) *The transverse fracture to the right mid femur was the result of a forceful impact or blow or bending force. On the basis of the clinical and radiological features, it is not possible to differentiate between an inflicted injury or an accidental injury such as a high velocity fall which has not been disclosed. However, in the absence of a*

history of a memorable event to account for the injury, it is more likely than not that this was an inflicted injury.

b) Rib fractures left 3rd, 4th, 5th and 6th ribs. Rib fractures to the antero-lateral area are more likely than not the result of forceful compression – a squeezing action. The presence of unilateral fractures does not exclude this mechanism. No memorable event has been described to account for these injuries.

c) A healing incomplete fracture of the right fibula reflects a direct impact blow or a bending action to the fibula. No memorable event has been described to account for this injury. I note Dr Johnson is unable to exclude the possibility of an injury dating back to the time of birth. I have seen nothing in the medical history which would explain rib fractures or a fractured fibula as a result of delivery by caesarean section.

d) Bilateral distal tibial metaphyseal fractures. Metaphyseal fractures are strongly associated with inflicted injury. The mechanism of injury is forceful yanking or twisting with torsional force.”

16. Dr Ward specifically rules out any possibility of the fractures having been sustained during CM’s delivery, which was unexceptional, although K did require a caesarean section as a result of her membranes having ruptured. There was no suggestion that the section required increased physical effort.
17. Professor Greene is a Consultant Paediatric Endocrinologist. He has reviewed all of the biochemistry results and reaches the conclusion that, *“on the balance of probabilities, there is no evidence in the medical history of CM of an underlying organic cause to the fractures discovered at 18 days of age.”* He goes on, *“It is my opinion that in an 18 day old, non-mobile infant, inappropriate force is the cause of the fractures and the force would be greater than experienced in the normal handling of a neo-natal infant.”*
18. All three experts were asked some additional questions, which left their overall conclusions unaltered. Whilst the medical evidence has not been challenged by any of the parties to these proceedings, it is but one aspect of the evidence that I must consider in determining what, if anything, happened to CM whilst she was in the care of her family. CM has been in foster care since she was discharged from hospital.
19. K has been known to CAMHS since she was five years old. She was diagnosed as having ADHD in 2010 and autism in 2018. Following her transfer into adult mental health services, she failed to attend a number of appointments and was discharged as a consequence. Within these proceedings, K underwent a cognitive functioning assessment with Dr Tanya Garrett. Dr Ward records Dr Garrett noted the following significant history,

“Dr Garrett observed that K was noted to have “violent tantrums” which had resulted in damage to walls and doors of the family home. It was also reported that she had assaulted her mother causing a fracture to her mother’s arm. It was reported that K had described E as being “rough” with their daughter, describing him as pulling at her limbs and snatching her hands away from her face if she went to scratch herself. K also alleged that E would shove the bottle into CM’s when she was struggling to feed. An assessment of K took place on 20th February 2023. K’s affect

and mood were described as appropriate and she made good eye contact and was verbally responsive with the psychologist. However, K was poorly orientated and was unable to recall the correct date and gave incorrect information regarding the location of the building in which the assessment took place. K confirmed that she had ADHD and autism having been diagnosed at age 14. She stated that she had trouble in controlling her anger from a young age and had weekly sessions with CAMHS in relation to this “for years” as a child. She alleged that her mother stopped the sessions and the medication following her diagnosis because she did not consider it to be effective in managing K’s anger. She stated that she was not currently involved with mental health services and was not prescribed any psychotropic medication.

K was of the opinion that her anger was part of the ADHD and stated that she would hit doors and walls and pillows to control her anger up to the age of 15 or 16, although she said that she had never harmed others. She was of the opinion that she had been more successful in controlling her anger more recently. She had begun to self-harm by cutting at the age of 16 due to being bullied at school; this lasted for a period of three or four months and stopped when she discovered that she was pregnant with CM. However, since the incident with CM, the self-harming behaviours had started coming back and it would calm her and get rid of the thoughts. She was clear that this was not an attempt at suicide. She described feeling down and sad all the time, wanting to stay in bed and not wanting to see her friends. She reported that she had been seeing people in the corner of her eye and shadows walking. She said that she could also hear screeching, buzzing and blowing several times a day. She denied any use of illegal drugs and claimed to have a glass of wine occasionally. She smoked an electronic cigarette regularly stating that it had a calming effect on her.”

20. K has a full-scale IQ of 77 and has a number of areas of weakness in terms of her abilities to understand and reason. When assessed, she was also presenting with significant anxiety and depression. K accepted that she had problems controlling her anger in the past, when she would hit walls, doors, pillows. She had self-harmed at times. K told me that when she feels stressed and anxious, she finds that her mind fills with thoughts, and she cannot concentrate.
21. Dr Garrett also assessed E. E was working full time at the time of the assessment and has a full scale IQ of 97. But he too was experiencing significant levels of anxiety and depression. E’s own childhood was not without difficulty, and previous social work involvement noted that he presented without emotion. Although E does not suffer from quite the same difficulties as K, I recognise that the court process has been difficult for both of these young parents.
22. N has two other children besides K. L is 21 years old and S is 11. N and K have had a difficult relationship over several years. The police were involved on three occasions in 2020. Both K and N have reported that they have had violent arguments in the past. N has since reported that before K was pregnant, she would have ‘melt-downs’, during which N would try and hold her in order to control her flailing arms and legs. During one incident, N fractured her arm. K has also kicked a fish tank and damaged her own bedroom door. N told both the police and this court that there were times that she was scared of K’s angry outbursts. However, N told me in evidence that, during the pregnancy, there had been a noticeable improvement in K’s behaviour, and there had been no repetition of any angry episodes, either before or after CM’s birth.

23. Both parents were arrested on the 2nd January and were interviewed the following day. K was not interviewed in the presence of an intermediary and although she did have the benefit of legal advice, I am entitled to assume that the police officers did not have a full understanding of the extent of K's vulnerabilities. Therefore, I must approach the content of that interview with some caution, particularly as the interview was a lengthy one, and at times, the tone of the questioning is bordering on unpleasant.
24. E described how he and K had first observed swelling to CM's leg on the evening of the 1st January, but that they decided to wait until the next day before taking any action. By the 2nd, CM's leg was more swollen, "*more warm and quite hard.*" E denied having any problems changing or feeding CM, although he did tell the officers about the repeated concerns in relation to congestion and CM's breathing. After a long interview, E said this,
- "Erm well when I saw the swelling on the leg I was kind of, I was confused as to what was going on, me and K did have that kind of brief conversation about it in the morning we would go have a look and see what's happening and the only thing she was saying was about a few days ago she had twisted her leg and that's that. I mean I can't think of anything else that could have done anything like that off the top of my head."*
25. E also described how K would become stressed when CM was crying as a result of "*not knowing what to do,*" but he had never seen K become violent with CM.
26. K also reported that she and E had first seen swelling to CM's leg on New Years Day evening. She said,
- "well her leg started swelling up the night before we realised the leg started swelling up erm I wasn't too worried about it at the start and then the next day it got worse so I decided to take her to hospital and the doctors ask me how the injury happened and I said I lifted CM while changing her nappy and her leg came back a bit further than it should've done and that's why I said that's how the injury happened because that's the first thing that came into my mind."*
27. K said that she thought that E was a good dad and that she was happy with the way he was caring for CM. K admitted to getting upset when CM cried. There is a lengthy discussion as to how K handled CM in relation to the nappy change. K said that her hand slipped whilst holding CM's ankles up in order to get the nappy underneath her bottom, when she lost grip of the left leg and CM's right leg went backwards.

The Law

28. In respect of the task of determining whether the 'facts' have been proven the following points must be borne in mind as referred to in the guidance given by Baker J in *Re L and M (Children)* [2013] EWHC 1569 (Fam). The burden of proof is on the local authority. It is for the local authority to satisfy the court, on the balance of probabilities, that it has made out its case in relation to disputed facts. The parents have to prove nothing and the court must be careful to ensure that it does not reverse the burden of proof. There is no burden upon a parent to come up with alternative explanations.

29. The standard to which the local authority must satisfy the court is the simple balance of probabilities. The inherent probability or improbability of an event remains a matter to be taken into account when weighing probabilities and deciding whether, on balance, the event occurred (Re B (Care Proceedings: Standard of Proof) [2008] UKHL 35).
30. Findings of fact must be based on evidence, and the inferences that can properly be drawn from the evidence, and not on speculation or suspicion. The decision about whether the facts in issue have been proved to the requisite standard must be based on all of the available evidence and should have regard to the wide context of social, emotional, ethical and moral factors. The court is not limited to considering the expert evidence alone. The court invariably surveys a wide canvas. Thus, the opinions of medical experts need to be considered in the context of all of the other evidence. The evidence of the parents and of any other carers is of the utmost importance. It is essential that the court forms a clear assessment of their credibility and reliability. The parents must have the fullest opportunity to take part in the hearing and the court is likely to place considerable weight on the evidence and the impression it forms of them.
31. It is always desirable, where possible, for the perpetrator of non-accidental injury to be identified both in the public interest and in the interest of the child. The Court of Appeal has recently considered the law where only two possible perpetrators are identified. In Re B (a child) [2018] EWCA Civ 2127 Lord Justice Peter Jackson said,

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

[20] Even where there are only two possible perpetrators, there will be cases where a judge remains genuinely uncertain at the end of a fact-finding hearing and cannot identify the person responsible on the balance of probabilities. The court should not strain to identify a perpetrator in such circumstances: Re D (Care Proceedings: Preliminary Hearing) [2009] EWCA Civ 472 at [12].

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

identification on evidence that fell short of a probability. Although the danger does not arise in this form where there are only two possible perpetrators, the correct question is the same, if only to avoid the risk of an incorrect identification being made by a linear process of exclusion.”

32. It is common for witnesses in these cases to tell lies in the course of the investigation and the hearing. The court must be careful to bear in mind at all times that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear, and distress. The fact that a witness has lied about some matters does not mean that he or she has lied about everything (*R v Lucas [1981] QB 720*). In *Re A, B and C [2021] EWCA Civ 451*, at §55, Macur LJ advised the use by Family Court of this ‘Crown Court Compendium’ guidance:

“1. A defendant’s lie, whether made before the trial or in the course of evidence or both, may be probative of guilt. A lie is only capable of supporting other evidence against D if the jury are sure that: (1) it is shown, by other evidence in the case, to be a deliberate untruth; i.e. it did not arise from confusion or mistake; (2) it relates to a significant issue; (3) it was not told for a reason advanced by or on behalf of D, or for some other reason arising from the evidence, which does not point to D’s guilt.

2. The direction should be tailored to the circumstances of the case, but the jury must be directed that only if they are sure these criteria are satisfied can D’s lie be used as some support for the prosecution case, but the lie itself cannot prove guilt.

32. In relation to the finding as to N’s failure to protect, I remind myself of the decision of the Court of Appeal in *L-W Children [2019] EWCA Civ 159* where King LJ said,

*“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*, “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.”*

The Position of the Parties

33. As I have previously recorded, K, E and N do not dispute the fact that the CM suffered a number of injuries about which the medical experts are unanimous in their conclusions were most likely to have been sustained non-accidentally. Although both K and N had expressed some concerns about the way in which E had handled CM, and N had voiced criticism about both K and E as parents, no party was actively running a case that another had deliberately injured CM.
34. The local authority’s schedule of findings appears at the start of my bundle. Mr Watson seeks findings that CM suffered at least two episodes of trauma involving five

separate applications of force. At the conclusion of the evidence, the local authority conceded that there was no evidence that substantiated a finding that there was a real possibility that CM's injuries were inflicted by N, and so I was invited to remove her from the 'pool.' However, the authority continued to seek a finding that N had failed to protect CM from harm.

Events during the hearing

35. On the second morning of the hearing, the representatives for N circulated a screen shot of a hand-written note, said to have been written by K in the days immediately after the injury to CM's leg was known. K filed a statement confirming that she believed that she had written the note after she had been visited by the social worker on the 4th January. She said that she was annoyed with E at the time because he had been speaking to other girls and so her own father suggested that she write down how she was feeling. K says in that statement,

"7. There were times when E was not gentle with CM, when he was feeding her, he would be quite rough and would shove the bottle in her mouth. He was also rough with CM, this usually would be when she was crying. I would tell him to stop and he would shout at her saying that she clearly didn't like him.

8. I would take CM off E at times because she wasn't settling with him and I remember saying to him I didn't want him to hurt her.

9. I didn't like leaving CM with E. If I went to the bathroom, I would hear CM crying and I would leave the bathroom and go and take CM off him."

36. N believed that K had shown the note to social workers at the time, and so the provision of it to the court led the local authority to undertake a review of its care recordings from this period. Somewhat unfortunately, it became immediately apparent that there were a number of records which contained important discussions with various family members which had not previously been made available.

37. In particular, there is a record of a visit that took place on the 12th January 2023 to K at home, when it is noted that K told the social worker that,

"K stated that E would cover CM's mouth because he said that it would help her to breathe through her blocked nose. K stated that CM made a screaming cry on the evening of 01/01/202 while she was with E upstairs in the property and K was downstairs making a bottle, she said she ran upstairs and said "what did you do?". K stated it was a high pitch cry and CM did not stop crying for quite some time, around 20 minutes and that CM struggled to take her bottle from E and then from K.

38. Although K has, within her previous evidence to this court indicated that she was concerned that E was sometimes rough with CM, she had never mentioned this incident in her own evidence, and the first that the parties and the court knew about this account was on the morning of the third day of the trial, despite it having been discussed with the social worker before the initial SWET was filed with the court. Unsurprisingly, Mr Vater KC for the father expressed his view that it was imperative that the court, as well as his client, knew exactly what K's evidence was about the handling of CM in the days leading up to her hospital admission.

39. Ms Isaacs KC, with her usual care and attention, alerted the court to her concerns about the challenges that K would face in giving her oral evidence if we went about the process in the 'normal' way i.e. by first obtaining a written statement from the mother and then permitting questioning, albeit whilst affording the mother all protections suitable for a woman of her vulnerability, from five different counsel. Ms Isaacs KC was clear that she considered that her client would simply be unable to provide her best evidence in those circumstances and that an alternative way would have to be found.
40. So, I determined, with the support of all of the parties, that K should be permitted to give her evidence in chief on the fourth morning of the hearing in the presence of only myself, her counsel and her advocate, with the other parties watching her evidence via a teams link. We then took a break over the weekend, before she was cross-examined, by each advocate in turn, observed via the link.
41. I am entirely satisfied that K coped well with this process and was able to give her best evidence, despite the fact that there was much in the history that she could not recall. However, over the course of the weekend, K suffered a deterioration in her mental health and self-harmed by cutting herself. She told E and N about it. K's legal team took her instructions as to whether K was willing/able to continue with her evidence, and she was. Mr Watson conducted his cross-examination, again with the other parties save Ms Issacs KC viewing over the link. Mr Vater KC adopted the same approach, and I determined that no further questioning was either necessary or proportionate, K having been in the witness box for a number of hours and all matters having been addressed.
42. It is important that I take some time to express my concerns in relation to the failures of the local authority in their handling of this evidence. Firstly, as I have already mentioned, there is no record within the SWET of three important visits undertaken by the then allocated social worker, LB, to the family on the 6th, the 9th and the 12th January 2023, nor any mention of the accounts given during those visits. The impact of this cannot be understated and has led directly to this situation. It is of fundamental importance that a SWET document gives an accurate and comprehensive summary of the evidence available to the social worker. Further, it would appear to be the case that the social worker was shown K's handwritten note, and no copy was kept on the file. When the local authority was asked for its records relating to this period, Mr Watson tells me that there was a misunderstanding as to what was being asked for (someone thought that handwritten notes were the subject of the request rather than case records) and then the person charged with the task of undertaking the search went off sick before the task was completed. When no records were provided, the legal team assumed (wrongly) that this was because there were no records, rather than that the task had yet to be done.
43. The family court has to rely on the local authority to give a balanced and comprehensive account of all the evidence it has been able to obtain in relation the families with which they are engaged. Any failure to do so risks the Respondent parties and the court being left unable to make appropriate enquiries, or worse, being left in the dark about, what may be, important evidence.

Evidence Heard and Read

44. I have been provided with a trial bundle of 1559 pages. I was also provided a supplemental bundle of the additional records identified by the local authority, alongside the updating evidence and position statements. There are two separate bundles of the relevant material from the parents' mobile telephone downloads.
45. I have heard oral evidence from Laura O'Hanlon (the social worker who conducted the connected persons assessment of H), L, sister of K, K herself, E and N.

Impressions of the parties

46. K is, undoubtedly, a vulnerable young woman. She told me that, whilst she was happy to become a mother, she was almost immediately wracked with feelings of guilt and unhappiness that she was not "*good enough*." Within days of CM being born, K was searching the internet using the search terms "*how to tell if your newborn does not like you*." K told me that when CM cried and she was unable to settle her, she felt as though CM did not like her, and that she was not a very good mother. These feelings were made worse when N tried to help, and she was able to settle CM. Over the next few days, K searched repeatedly about CM's nose being blocked and having trouble breathing.
47. K had other challenges at that time. She told me that she was in a lot of pain as a result of the C-section, as well as taking a course of antibiotics to prevent infection, as she had been without amniotic fluid in the days before CM arrived. She was struggling with money, but those struggles were made greater by her ADHD/autism, in that, for example, she found herself washing CM's clothes all of the time, but her mother asked her for a financial contribution to the costs of the washing machine/tumble drier. K told me that she couldn't understand why that was necessary. She told the court that she borrowed money off her father to buy clothes and formula for CM.
48. E also had his challenges. In evidence, he accepted that he struggled to manage his money, and owed sums to a friend, his nan and a loan company. He decided not to return to his job after his paternity leave. The texts from that time suggest that he made that decision because he did not like the shifts that he had been offered. But he didn't have enough money for petrol, or for things for CM. He said that he also became angry at times, taking it out on his car, by kicking it sometimes, or punching the inside. He also struggled to understand why CM cried as much as she did, and admitted that he had once said, "*you obviously don't like me, then*."
49. Whilst K and E both told me that they had known each other since school, fell in love quickly, and remain, to this day, in love with each other, their relationship was not without issue. K admitted that she was 'clingy' towards E, and did not like him going out, even if it was to work. K has made E aware of her mental health challenges but accepted that she has sometimes threatened to harm herself, or shown pictures of that harm to E, in order to stop him leaving her. It was my impression that K had no real sense of how abusive this kind of behaviour could be within a relationship.
50. Since CM's admission to hospital, N has been very frank about what she saw at home, matters which are largely admitted by K and E. N said that K and E did not dress CM appropriately for the weather (neither K or E accept this), they did not wake up when CM cried at night, they did not sterilise the bottles properly, they did not persevere

with feeds so as to ensure that CM took the full amount that she should, they were lazy and did not get up in the morning. N said that it was her view that K and E were not natural parents and were not coping very well with the enormous challenge of becoming new parents at a young age. K also accepted that N had told her off for pulling CM by the ankles across the bed in order to change her nappy. K said that she thought that she was ‘playing’ with CM, and that she said “wee” as she pulled CM, but she accepted that CM was too young for this. K also accepted that N had heard her say to CM to “*shut the fuck up*” on one occasion when she was crying.

51. E struck me during his evidence as being quiet and mild mannered, despite his admissions about losing his temper. He did accept that he had lifted CM into the air on one occasion, which he should not have done, and that when he did so, he was trying to play with CM and raise a smile. This evidence would seem to suggest that both K and E were inexperienced in caring for children and had expectations of CM that were way beyond her age and development. E also said that he had tried to force a bottle into CM’s mouth on one occasion.
52. Overall, it was clear to me that both these young parents found CM’s irritability and crying difficult to manage, both practically but also emotionally. They were, in truth, ill-prepared for the demands of parenthood. That is important context for the events that took place.

The Events over New Year

53. K was due to have a meeting with Wendy Riggall on the 30th December. She sent a text to her, cancelling the appointment, saying that “*my mum has been vile too me all night, not nice at all and we haven’t had any sleep at all.*” Although in her oral evidence, she could not recall what she had fallen out with her mother about, K said that she was also feeling unwell with a cold at this time, and was finding CM’s crying difficult to cope with.
54. On Saturday 31st January, N told the police that CM had been crying most of the day. Although N had been at work, K had been messaging her mother that morning, telling her that CM was “*still screaming and crying all morning.*” K messages N a number of times, and the impression upon reading them is that K was at the end of her tether. K also undertook an internet search of, “*baby crying and wont stop.*” She did that search at 10.35am and also again at 18.57pm, indicating that she was concerned about CM for most of the day. The only relief from CM’s crying seemed to be a trip to Leicester in the car, when K and E went to collect a new door for their bedroom. The only celebrations to see in the New Year involved K, E and CM going for a brief drink at the pub at which L worked.
55. CM appeared to be no better by New Years Day. E texted his friend to say that CM was “*screaming and crying constantly.*” They decided to take CM to the hospital at about 12 noon and were sent home at about 4pm. During that visit, CM was stripped and examined, and the medical staff were unconcerned. Upon their return home, K and E left CM in the care of N and L whilst they went in the car to a local village to collect a Chinese takeaway. L recalls that CM was happy and settled and nothing happened of any significance. N said the same. When K and E returned, they spent a brief period downstairs before taking their food and CM up to their room, where they were able to close their door.

56. The family home is a normal four-bedroom property. L said that she heard CM crying loudly at periods during the late evening. N says this,
- “That night, I recall that CM was crying a lot, and seemed very distressed. The door to K’s room now had a lock on it, and when I knocked on to ask if they needed any help, E snapped at me. I felt very anxious because of how CM was crying. I knocked on again and K eventually opened the door, and E asked K “what did you do that for?.....*
- CM did cry a lot this night and seemed almost impossible to settle to begin with. She did settle after being clothed and fed, though I do recall her waking and crying in the night/early hours of 2nd January 2023.”*
57. N told me that when she finally got access to CM, she was upset, and N tried to reassure her. N also said that K came into her room later that night, and told her that she wasn’t feeling well, and that E was not being nice to her. There was no mention of any concern in relation to CM’s leg, despite the fact that both parents told the police that they were aware of her leg being swollen and red the night before. It was only the next morning that K told N about her concerns, and N told her that they needed to contact the hospital.
58. The evidence is clear. CM’s femur was uninjured when she went upstairs on the evening of the 1st January and by 10am the next morning, it was broken. The only people who were caring for her were her parents. I am afraid that I do not believe their account that they were concerned about her leg from about 8pm that night. Everything about these parents indicates that, had they been aware of redness and swelling before N had gone to bed, they would have told her about it and sought her advice. They did not. It is my view that they gave this account to the police in order to conceal an event that took place in their room later that night.
59. I accept the coherent and unchallenged medical evidence as to the likely mechanism and timing for the fracture to CM’s leg. E and K both know what happened in that room that night, and they have failed to tell the court the truth about it. There is a real possibility that CM’s injuries were caused by either K or E, but I am not able to ascertain who was responsible. Even giving proper account for the challenges faced by both K and E in giving oral evidence, it was apparent to me that they were not being truthful when they were asked questions about what happened in that room that night.
60. I do not consider that I can place any significant weight on the text exchanges between K and N the following day, in which K said that she had “*twisted her leg*” or the accounts that she subsequently gave to LB about hearing a cry when E was alone with CM earlier that evening. At the time that K said this, she was living with her father, who had, for reasons I am not clear about, formed his own view that it must have been E who had injured CM, and had made this well known to K. K also accepted that she had also found out about E texting other girls, and she was upset with him. If the account that K gave to the social worker was true, it is hard to understand why she would not have told clinicians, the police and social workers about it when she was first asked. I do not believe that it was. Dr Ward is clear that the account K gave of the nappy change could not account for the final fracture.

The other injuries

61. I accept the unchallenged medical evidence as to the presence and age of the other fractures, and the likely mechanism for causation.
62. E told me that he was on paternity leave from before CM's birth. Save for one shift that he did at a garden centre on the 27th December, he was caring jointly for CM with K. My impression from their evidence is that they were together most of the time, save for a couple of times when E went out with his friends. Neither of them have told the truth about how these injuries were caused, but there is a real possibility that it was either E or K who caused them.
63. As I have already noted, E and K were both struggling with being parents. They found it hard to cope with her crying, which they appeared to believe was an indication that CM did not like them, and they were not good parents. Whether or not the injuries were inflicted out of anger, frustration, distress or a combination of the above, I am not able to tell, nor am I required to. But I do accept that E and K loved CM, and that they are ashamed that she was injured in their care, such that they have not been able to tell the court or their families the truth of what happened.
64. Those feelings of shame led K and E to fail to ensure that CM received medical attention for her fractured leg as soon as it happened. Given that they had repeatedly sought the advice of doctors on numerous occasions before the 2nd January, it is inexplicable that they delayed going to the hospital for a number of hours during the night of the 1st January and then the next morning. They both accept that they went to two supermarkets on the way to hospital in order to obtain some food. During that time, their baby was in significant pain.

Failure to protect

65. The local authority has accepted that N is not within the pool of possible perpetrators for the injuries to CM. The evidence from Dr Ward is that, aside from the fracture to the thigh, someone who had not injured CM would not otherwise be aware that she had been harmed. The local authority's case in relation to failure to protect does not assert that N failed to act in relation to any of the injuries.
66. The case against N is that she should have put together a number of pieces of information that she had and recognised that CM was at risk as a result. That information is detailed within the schedule of findings as follows;
 - (1) She was aware of K's mental health and anger control issues
 - (2) She overheard K tell CM to "*shut the fuck up*"
 - (3) She heard E talking angrily to CM
 - (4) She was increasingly concerned about E and K's handling of CM and their parenting skills
 - (5) She was so concerned that she asked the parents whether they had dropped or shaken CM on the 1st January

67. It is said by the local authority that N told no-one about these concerns apart from the family nurse, and she should have done. Further, the local authority relies on the fact that N asked if CM had been shaken or dropped as an indicator that she was aware that CM was at real risk of harm.
68. It is right to note that everyone knew about K's vulnerabilities, including her age and parenting experience, throughout her pregnancy. K was offered the Family Nurse Partnership Parenting Programme, which she engaged well with. K looked after herself and her unborn baby well during this time, and I accept N's evidence that everyone around K noticed an improvement in her emotional regulation. Therefore, it is hard to see how the local authority can suggest that K's past behaviour was a red flag for N at the time that CM was born.
69. N told me that, during a meeting with the family nurse on the 20th December, she mentioned the fact that K and E were not waking up to CM in the night. There was not another meeting planned with the nurse until the 4th January, and so she had not had an opportunity to discuss the other concerns that she had by that point. But she told me that she had planned to.
70. I was impressed with N. During her evidence, it was obvious to me that she had tried to "walk the tightrope" of supporting her daughter and her partner in caring for their baby, whilst also not intervening or imposing upon them. Any grandparent has to find that line, and it was my impression of N's evidence that she had done all she could to try and show K and E how to care for their baby.
71. I accept the submissions made by Ms Reed KC that this court must be careful to avoid hindsight or outcome bias. This was explained by Mrs Justice Theis in [Surrey CC v E \[2013\] EWHC Fam 2400](#), at paragraph 75:
- "I should guard against 'Hindsight Bias' and 'Outcome Bias' which is described in The Department of Education's Guidance on 'Improving the Quality of Serious Case Review' published in June 2013 as follows: 'Hindsight bias occurs when actions that should have been taken in the time leading up to an incident seem obvious because all the facts become clear after the event. This tends towards a focus upon blaming staff and professionals closest in time to the incident. Outcome bias occurs when the outcome of the incident influences the way it is analysed. For example when an incident leads to a death it is considered very differently from an incident that leads to no harm, even when the type of incident is exactly the same. If people are judged one way when the outcome is poor and another way when the outcome is good, accountability becomes inconsistent and unfair.'"*
72. In short, it appears to me that this is the 'trap' which the local authority has fallen into when it asks me to effectively use hindsight to fit all of N's pieces of knowledge together, with the known outcome being that CM sustained significant injuries, and then to find that N failed to protect her granddaughter. But that does not reflect real life. N saw her daughter pull CM across the bed once, and she advised her not to do that again. She overheard both parents speak inappropriately to their daughter, and she told them not to do so. But nothing that she saw or heard could possibly have alerted her to the fact that one or other of the parents would harm CM, even within the context of these parent's own challenges. The local authority's case also ignores the fact that N would have also been seeing some wholly positive interactions and care

during this period which would have indicated to her that K and E were taking on board her advice.

73. I do not accept that when N asked whether CM had been shaken this was because she genuinely suspected this. Rather that she was searching for any explanation for CM's obvious distress at that time over the New Year.
74. I do not make any finding against N that she failed in any way. In fact, I think it is important that this court offers her some reassurance that, in my view, there was nothing more that she could or should have done to prevent CM being injured in the way that she was. I am sure that N has spent much of the last year blaming herself in one way or another for what happened, but she should not.
75. That is my judgment.