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Case No: SD22C50191
Neutral Citation Number: [2024] EWFC 147 (B)

IN THE
FAMILY COURT SITTING AT BRIGHTON

Date: 19/02/2024

Before :

HIS HONOUR JUDGE BEDFORD

Between :

**WSCC
- and -
MOTHER
FATHER
MATERNAL GRANDMOTHER
CHILD A AND CHILD B (by their Children’s
Guardian)**

Applicant
Respondents

**Sharan Bhachu and Kate Claxton for the Applicant
Professor Jo Delahunty KC and Delia Minoprio for the Mother
Rex Howling KC and Andrew Grime for the Father
Jodie Cudworth for Maternal Grandmother
Pauline Troy for the children**

His Honour Judge Bedford

1. **The background.**

2. The mother and father started their relationship in 2020. Together, they have two children. Child 'A' (a boy) who was born in [2020] and child 'B' (a girl) born in [summer 2022].

3. The father also has another child 'C' (a girl) who was born before A and B and is their half-sibling.

4. A has been known to West Sussex Children's Services since [2021] including concerns of; over-feeding by parents, poor home conditions and an unexplained bruise to A and an incident of unconsciousness in [2021].

5. The matter was listed for a fact find hearing the remit of which was to be confined to the issue of suspected injuries to B, the remaining matters on the schedule of allegations in respect of neglect were to be dealt with at the welfare final hearing scheduled for July 2023.

6. However, due to a number of unforeseen circumstances, the hearing has not been split in the sense of factual issues being tried separately from welfare, though it has been heard over three sessions. This part of my judgment draws heavily on the summary provided by the local authority. I make clear that the court's findings are limited to those set out in the final section of this judgment and I set out the background here to provide insight into the lived experience of the family around the relevant period. I do not intend, at this stage of the case, to draw final conclusions as to that lived experience save as set out in my specific findings.

7. The family were open to Early Help from A's birth.

8. A was admitted to hospital in [early 2021] with vomiting believed to be linked to overfeeding. He was discharged home the same day and the mother was advised to reduce feeds to 150 ml from 216 ml/ feed [A9, C12, G160, 0238- 239].
9. On [date] A was admitted to hospital with vomiting again thought to be due to overfeeding. A MASH referral was made [A9, C12, G161].
10. A was admitted to hospital on [date] via 111 as a 'crying baby' having continued to vomit (which had been projectile) for the last 24 hours. A diagnosis of Pyloric Stenosis was made and plans made to refer him to [a different hospital]. An ultrasound showed all was normal. A was prescribed Nutramigen 1, 0-6 months and mother was advised as to feeding. No formal diagnosis of cows' milk protein allergy was made.
11. A Child & Family assessment was completed in [spring 2021]. Case closure was agreed as A was putting on weight and the parents appeared to be taking on board advice. Home conditions had become adequate. The family was stepped across to Early Help [E165-166].
12. In [summer 2021] the mother called 999 as A had stopped breathing. A was taken to A&E. There were concerns expressed that the parents had given different accounts of what happened at the time.
13. A was discharged on the [same day] with a diagnosis of Bronchiolitis [I100, I104, O274, O276, I102-103, O278].
14. On [date] a MASH referral was received from the hospital due to A's attendance at hospital not breathing. The referrer spoke to the consultant who confirmed there were no safeguarding concerns. The only concern was that parents may need update on

CPR training which the health visitor would organise. The case was closed and logged for no further action [G102-124, G166]

15. On [date] a referral was received from EHW raising concerns that whilst at hospital on [date] A was seen with a bruise to his chin which the parents had allegedly stated was caused by a cuddle from his sister (C). The hospital raised concerns that the bruise was consistent with A being on his tummy and possibly struggling whilst banging his chin on the floor [C13, C47, G167, G138, G125-145 G154, G174, G194, G199-200, G272, L63, N56].
16. On [date] A attended A&E because the mother had concerns about a bruise to his arm. A was discharged the same day [O238, I1].
17. On [date] at [time] the mother sent the family support worker a media message of a video of A breathing heavily with the text saying – “This does not look right”. The family support worker called the mother the next morning and asked her if she had taken A to A&E, she had not.
18. On [date] a Child & Family assessment was completed because of the 2 bruises sustained by A and the incident where he stopped breathing. There were worries about A’s basic needs being consistently met and whether the parents could take on board information provided by professionals. A decision was made for a CIN plan to commence to provide support in meeting A’s basic needs consistently.
19. On [date] A was referred for a CP assessment and was seen a Paediatric Registrar who noted the following:-[E200]
20. Scab above right eye

Scab on side of the nose

Bruise above his left knee

Bruise on his left shin

Bruise on the back of the left call

Bruise on the side of his left buttock

Red mark on the sole of the right foot

21. A CIN review took place on the [date]. A was considered to be meeting his developmental milestones, and the parents appeared to have engaged whilst being supported with promoting and responding to the developmental needs of the children. A was being weaned. Home conditions were appropriate. Early Help made a referral to continue parenting support to the family. The case was closed on [date] [C14, G170, G226-234].
22. On the [date] the family stepped back to Early Help for support with home conditions, housing, safety, and development.
23. In the [Autumn 2021] A was taken to A&E and the discharge summary records
Diagnosis: Bronchiolitis [0310]
24. In [early 2022] concerns were expressed by the family support worker that the parents had not been proactive in contacting the GP for the last 3 weeks when A had been displaying green mucus from his nose and sounding raspy. [N271-272]
25. On [date] the mother was seen for an initial assessment with Time to Talk – it was agreed she would be suitable for further counselling and had been added to the

waiting list. The main concern was her feeling of being overwhelmed and unsure of what to do moving forward regarding family breakdown in particular with the maternal grandmother. The mother is said to have felt torn as to whether or not she should allow contact to continue between the maternal grandmother and A. [G11]

26. In [Spring 2022] there was a police call out to parents home. The police were called by [a neighbour] who reported that she heard a female shouting and then a noise which sounded like a slap which she believed to be against a child. [C371-373, C171, K4C-K4M, K4q-K4ah]
27. The local authority contends that on [date] the mother advised the family support worker that a neighbour had contacted the police due to noise in the flat and A screaming. The mother is said to have said that A had been jumping on his bed and broken it. A broken bed was seen at the next visit. [C18].
28. On [date] a police referral was received following an anonymous report of shouting being heard coming from the parents' home. The caller reported hearing a female shouting and what they considered to be a "slap against a child". The police attended and raised concerns regarding home conditions. The mother is said to have told officers she was struggling to manage home conditions and A was not taking his usual nap. It is said that she admitted to shouting in frustration. There were no signs of physical abuse noted during the police visit.
29. B was born in [summer 2022]. B was reported to be in good condition at birth with [details of Apgar scores, weight and injections].. Her new-born examination was normal. She passed her new-born hearing screen and had a normal new-born heel prick metabolic screen [E195-E196, I21-22, O23]

30. On 15th August 2022 the health visitor visited the family home. The health visitor reported that B's eyes were clear. B was slow to gain weight having gained 40g in 3 days.
31. Around 15-16th August 2022 and 22nd August 2022 the mother is said to have seen redness in both B's eyes. [C2, C155, K55]
32. On the 8th or 15th August 2022 B was left with the maternal grandmother and aunt whilst the mother went to the shop to purchase electric. The mother is said to have been away for approx. 10-30 mins. [C131, C161, C204 K1-K2 K17 K21]
33. On the 16th August 2022 the midwife was concerned that B was not gaining weight. [A13, C155]
34. On 18th August 2022 the mother had a hospital appointment for A. The maternal grandmother and uncle had care of B in the car. The mother is said to have been gone 45 mins-1 hour. The maternal grandmother is said to have had a cigarette whilst the uncle remained in the car with B. The mother is said to have gone to [the shop] (approx. 5 mins) after the hospital appt and again the maternal grandmother and uncle remained in the car with B. They all then went back to the maternal grandmother's home. The grandmother is said to have noticed B's eyes and said "it looked as though she had burst blood vessels in both eyes". The maternal aunt stated in her police interview that she noticed the bloodshot eyes of B and mentioned it to the mother. Her response is said to have been "oh yeah don't worry about it." [C131, C160, C204-205 K3-K4 K17 K21 K22 K54, maternal aunt police interview]
35. On 18th August 2022 the mother reports showing the maternal grandmother B's eyes. [C155, C204, K17]

36. On 24th August 2022 B was discharged from midwife care and gained weight [A13,C18N 385]
37. The mother asserts that she did a google search about B's red eyes and spoke to MGM about B's red eyes [C155, K105-108]
38. On 30th August 2022 the health visitor received a text from the mother as follows:
"hi its [the mother] I need to talk about [B] as I have noticed that she keeps getting red mark on eyeball and need to know to get it checked out" [C89 and L34]
39. On 30th August 2022 the health visitor observed B's eyes and noted
"Mum pointed out that [B] had small pinpoint blood spots in both eyes which she says can come and go. Have advised to see GP" [L28-29, L33, C80]
40. The mother took B to see the GP on 30th August 2022 [C30, 014] who in turn advised the mother to attend hospital.
41. On 30th August 2022 B was admitted to hospital. A doctor diagnosed bilateral subconjunctival haemorrhages, temporal in the right eye and medial and lateral in the left eye. Red reflexes were present through both pupils, but B did not seem to fix or follow a light. There were no other ocular abnormalities seen. She had a small anterior fontanelle (soft spot on top of the head). [E170-171, N367]
42. B was seen by Dr E, a consultant paediatrician on 31st August 2022 who noted that B had subconjunctival haemorrhages in both eyes. Dr E also noted that B's vision was of concern. [E197, E3, I160, I223]

43. On 31st August 2022, B had an examination by a Consultant Ophthalmologist who confirmed the bilateral subconjunctival haemorrhages but reported no other ocular abnormalities, including no retinal haemorrhages. Routine follow up was planned for one year. [E172, E3, I159]
44. Medical examinations were completed for B including a CT scan [E173, E4, I66], blood testing, ophthalmology review and a full skeletal survey. Whilst the CT scan and blood test results raised no concerns, the skeletal survey undertaken on 1st September 2022 found B to have fractures to her 4th left rib and 6th and 11th right ribs to the posterior position with callus formation, with no reported medical explanation. [I65]
45. A consultant radiologist reported a possible fracture to the left radius and [a paediatric radiologist] from [a separate children's hospital] independently provided a tertiary report and felt there was likely a right radial fracture [C148]
46. The safeguarding consultant at [local hospital] shared in the strategy discussion held on [date] that B is a non-mobile baby with significant injuries and “there is enough evidence to state that [B] has suffered inflicted harm”. [C2, C32, G28-42]
47. In the strategy discussion held on [date], professionals including the early help worker and health visitor raised concerns for A and B's care due to current poor home conditions, safety concerns within the home, parenting capacity, lack of stimulation, B not gaining weight when formula feeding and the parents' reluctance to engage with support/professionals. [G31, G1-27]
48. On 1st September 2022 a skeletal survey showed posterior left 4th, right 6th and right 11th rib fractures with some callus formation. There was a possible right distal radius

metaphyseal fracture. Bone architecture and density were otherwise normal and there were no features of metabolic bone disease [E172, E197, E4, I65]

49. The parents were arrested in [September 2022] on suspicion of causing the injuries to B. The mother and father were released on police bail with conditions not to have any contact with A and B, save for that arranged by social care.
50. Police exercised Police Protection powers for both A and B on [date].
51. B was put into foster care and was due to have a MRI brain scan on 5th September [I164-165].
52. The court granted Emergency Protection Orders on 2nd September 2022, and on 8th September 2022 interim care orders were made for both children. The children have been in foster care for most of the duration of the proceedings, though latterly have been placed with the maternal grandmother.
53. On 5th September 2022 a repeat MRI brain and spine scan was performed on B. This confirmed no abnormalities. [E172, E5, I64]
54. In [September 2022] the parents had their first contact. It is said that the father had to be advised how to lift B from her car seat after attempting to do so inappropriately. B's head is then said to have been almost hit on the table as the father sat down, and he again had to be prompted to be careful when holding B. The father is said to have accepted the advice, but the mother was noted to be dismissive and hostile towards professionals and is said not to have accepted how B could have been hurt. [C25]
55. On 12th September 2022 a repeat skeletal survey of B confirmed the report of 1st September 2022 including possible left distal radius fracture. The findings were

normal bone architecture and density. There was healing posterior left 4th rib, right 6th rib and right 11th rib fractures as before, normal clavicles, and the lungs and pleural spaces were clear. There was a subtle step at the left distal radius on the ulna side with mild bulging just beyond it. This it was said may represent a subtle buckle fracture, and it was suggested that it might be worth seeking a tertiary paediatric radiologist opinion. Normal right wrist. Both humeri were normal. Both legs and ankles were normal. [E172, E198, E54, I63]

56. On the 14th September 2022 a paediatric outpatient follow up appointment showed that B fixed and followed an object or light normally [E172]. B had her initial health assessment and her current health, wellbeing and development appeared to be progressing within normal range [O87-98].
57. In [September 2022] A had a paediatric dietitian appointment. It was agreed that A would be discharged. There was no evidence of milk allergy as he was tolerating all dairy foods and he is growing well and eating well. [O352-353].
58. In [September 2022] A had an initial health assessment. It was noted: A has mild right metatarsus adductus which is being monitored by a physiotherapist at the CDC, he has no gait problems, and this is improving with age and activity A has mild delay in speech and language which may be due to the impact of his experiences of emotional neglect and abuse. He has some behavioural difficulties that are improving with careful adult reassurance and may also be due to his experiences in the family home. His emotional and developmental progress should be carefully monitored by the health visitor and social worker to ensure he does make the expected progress over the next few weeks and months and that he receives therapeutic input if needed [E55-E69, O334-O341, O361-O384]

59. In [October 2022] there was an updated CP medical of B by Dr E:

“Summary; There are bilateral subconjunctival haemorrhages with multiple posterior rib fractures and a possible arm fracture in a non-mobile infant who is out of the immediate neonatal period. This is highly suggestive of non-accidental/inflicted injury. As per the RCPCH child protection companion chapter 9 “rib fractures in very young children are highly specific for abuse. Abusive rib fractures are commonly multiple. The commonest site for abusive rib fractures are posterior rib fractures”. [B’s] case was peer reviewed on [date]. Recommendations and follow up. Following on from the strategy meetings held on [date], and [date] a section 47 investigation is ongoing. Medically B will be followed up by the Ophthalmology team under [name] in one years’ time to assess her visual development. We are awaiting a tertiary report of the second limited skeletal survey as there is a suggestion there may have been some subtle changes indicative of a fracture not seen on the initial survey. [E36-41]”.

60. In [October 2022] an email was received from Dr E in relation to the report from [the children’s hospital] for the skeletal surveys on B as follows;

"There is a further equivocal appearance of the right distal radial metaphysis. On initial images there is a linear lucency paralleling the metaphyseal margin on AP view and fragmentation on the ventral aspect of the metaphysis on lateral projection. Both of these findings have resolved on the subsequent images and on the balance of probability I believe that the appearances here represent a metaphyseal fracture. There are healing fractures of the posterior aspects of the right sixth and 11th ribs and of the left fourth rib. On the images dated [date] there is focal callus formation in relation to all of these fractures. On the images dated [date] there has been some remodelling, but the fracture line is clearly visible in relation to the right 11th rib. There are equivocal

appearances to the medial aspects of the distal femoral metaphases bilaterally. On the initial images there is subtle spurring evident. Allowing for slight projectional differences this has not altered significantly on the subsequent study dated [date] and on the balance of probability this is likely to represent physiological spurring.' There is an equivocal appearance to the right distal tibial metaphysis. on the initial AP images there is a suggestion of a double density medially with an intervening linear lucency' Unfortunately the projection obtained on follow up views is significantly different, making it difficult to assess whether this represents a normal physiological finding or a bucket handle fracture”.

It concludes "Bilateral posterior rib fractures. Probable right distal radial metaphyseal fracture. No other convincing evidence of bony injury has been identified. There is no radiological evidence of osteogenesis imperfecta or metabolic bone disease."

Further “I have spoken to the paediatric orthopaedic team at [the children’s hospital] and they are happy no follow up or interventions are required. I am unsure of the current situation [B] is in and so will ask you to please disseminate this information to those who need updating (and if that includes her parents)”. [E92]

61. In [October 2022] there appears to have been an incident between the parents potentially involving domestic abuse. The parents disagree over the circumstances. [C168-169, C180, C218, K4n-k4p, K38-52]
62. In [October 2022] a further email was received from Dr E concerning whether it is the left or right radius about which there is a concern Dr E responded: “Thank you so much, I had also spotted that. I have confirmed with our local radiologist he was only worried about suggestion of left wrist but wasn't sure, hence we asked the specialist at [the children’s hospital]. I have also contacted her and she informs me she is happy

with the left wrist, but thinks there was a probable fracture of the right wrist.” [C93-95].

63. **The parties’ positions.** The local authority seeks the findings set out in the schedule which is incorporated into this judgment at Appendix A. The schedule was expanded following the conclusion of the evidence and all parties have responded. In final submissions the local authority submits that the evidence does not enable the court to identify the perpetrator of the injuries to B. In those circumstances the court should arrive at a list of potential perpetrators i.e persons in respect of whom there is a real possibility that they caused the injuries and that the said list comprises of two people namely the mother and the father. In the event that the findings are made, then it seeks for the children to continue to be placed with the maternal grandmother and aunt under interim care orders pending a trial placement followed by Special Guardianship Orders.
64. The mother denies having caused any injuries to B and seeks to care for both children. During the course of the proceedings, the mother has come to allege that any injuries have been caused by the father. She also alleges, and is supported by the local authority, that the father has sought to mislead all in this process as to his mental health. The magnitude of this assertion and the extent to which the local authority and the Children’s Guardian make a similar assertion will be dealt with later in this judgment. The mother is clear in the submissions from her leading and junior counsel, and from her stated position upon the resumption of the fact finding hearing that the father has lied about his mental well-being, he has done so with a view to avoiding giving evidence and that the reason that he did not wish to give evidence was that he has caused the injuries to B.

65. The father denies causing any injury but accepts that he is not in a position to care for either child. He does not support the children being placed with his parents or with the mother. He does not oppose the local authority's plan. He denies any suggestion that he has set out to mislead the court and maintains that his presentation has been genuine. For a period during the proceedings, he was subject to a negative capacity assessment and was represented by the Official Solicitor. Following a second report, the court being dissatisfied with a report from Dr McClintock for reasons set out in my judgment on 24 October 2023 which is at S485 he has resumed a full role in the proceedings and has instructed leading and junior counsel through his solicitor and with the benefit of an intermediary. His position is that the court should find that the mother has caused the injuries but it is accepted that the court might not feel able to do so in which case the correct approach is to make a finding as to those in respect of whom there is a real possibility that they caused the injuries and it is accepted that he would be on that list along with the mother.
66. The maternal grandmother was first involved in the proceedings as the local authority included her on the list of persons in respect to whom there was a real possibility that they had caused the injuries. One of the few advantages of the proceedings having taken so many months is that the local authority had the opportunity to reflect upon having heard all of its own evidence and that of the maternal grandmother, which enabled it to conclude at that stage that it would no longer seek a finding against the grandmother. All parties agreed and she was removed from the schedule of findings. She has remained as a party however given that the local authority's plan is for the children to be placed with her and indeed they have been placed with her during the latter part of the proceedings. The grandmother's evidence contributed to the factual matrix. Her evidence is relevant as to what she has seen and also the relationship in

the family in the wider context. At the conclusion of the fact find hearing she has made detailed submissions through her counsel as to the likely perpetrator and seeks to persuade the court that the father is the perpetrator. Ultimately, she seeks care of the children jointly with the aunt.

67. The Children's Guardian does not advance a positive case but rather has sought to assist the court by testing the evidence, asking appropriate questions and in providing proportionate, sensible and frank submissions. The Guardian supports the mother in the findings that she seeks against the father in terms of his credibility, having come to the same conclusions herself. However, the key question for the Court she says is whether those lies were to avoid giving evidence or whether they were also because he caused the injuries.
68. The law can be stated briefly at this stage as later applied to the facts of this case. I am grateful to the advocates for their submissions with regard to the same. For my part the most relevant principles are as follows.
69. The burden of proof lies with the person or authority making the allegation. The local authority makes the majority of the allegations and each parent makes allegations against the other. The standard of proof is the balance of probabilities.
70. The court must seek to identify the perpetrator of any injuries as per *Re B (Children: Uncertain Perpetrator)* [2019] EWCA Civ 575, [2019] 2 FLR 211) per Jackson LJ And *Re A (Children) (pool of perpetrators)* [2022] EWCA Civ_1348. 'The proper approach is not to seek to distinguish as between the possible perpetrators in order to see which one inflicted the injuries. Rather the proper approach is to consider each individual separately in order to determine whether that individual can be found on the balance of probabilities, to be the perpetrator;' (para 43)

71. If the court is satisfied that it is more likely than not that an identified individual caused the injuries, then it will make that finding. Any previous guidance which suggests that a court should seek to identify a perpetrator but should not strain to do so is no longer relevant and that approach must not be applied. *Re A (Children) (Pool of perpetrators)* [2022] EWCA Civ 1348 where King LJ stated at para 34: “I suggest, therefore, that in future cases judges should no longer direct themselves on the necessity of avoiding “straining to identify a perpetrator”. The unvarnished test is clear: following a consideration of all the available evidence and applying the simple balance of probabilities, a judge either can, or cannot, identify a perpetrator. If he or she cannot do so, then, in accordance with *Re B (2019)*, he or she should consider whether there is a real possibility that each individual on the list inflicted the injury in question”.
72. Only if the court is unable to identify a perpetrator will it establish a list of those people in respect of whom there is a real possibility that they caused the injuries. *Re B (Children: Uncertain Perpetrator)* [2019] EWCA Civ 575 The court, in composing that list and making such a finding will not express any view as to whether there is variation in the likelihood between those named on the list.
73. The court will be mindful of how it treats lies in the context of their relevance to the factual matrix under examination. In *A, B and C (Children)* [2021] EWCA Civ 451. Macur LJ at para 58 states. “That a tribunal’s Lucas self-direction is formulaic, and incomplete is unlikely to determine an appeal, but the danger lies in its potential to distract from the proper application of its principles. In these circumstances, I venture to suggest that it would be good practice when the tribunal is invited to proceed on the basis , or itself determines, that such a direction is called for, to seek Counsel’s

submissions to identify: (i) the deliberate lie(s) upon which they seek to rely; (ii) the significant issue to which it/they relate(s), and (iii) on what basis it can be determined that the only explanation for the lie(s) is guilt. The principles of the direction will remain the same, but they must be tailored to the facts and circumstances of the witness before the court". I have been assisted by submissions crafted in the light of that direction.

74. As regards the issue of failure to protect I have regard to the need to ensure that the court does not deal with the issue as if it were to be assumed in respect of a parent not found to have injured the child but to have been living in the same household. I have in mind the dicta of King LJ to which I have been referred.

75. **The expert evidence as to B's injuries.**

76. During the course of the proceedings and pursuant to FPR 2010 Part 25, three medical experts have been jointly instructed namely Dr Markham (Ophthalmologist), Dr Johnson (Radiologist) and Dr Cleghorn (Paediatrician). Each of the experts have provided written reports and given oral evidence.

77. The report of Dr Markham (Ophthalmologist) is dated the 3 January 2023 [E169-179]. His findings can be summarised as follows: -

Birth injury can be excluded; subconjunctival haemorrhages (sch) occasionally appears in babies (about 1.4%) and is said to last about two weeks before resolution. The history for B suggests there were no haemorrhages in the first two weeks after birth.

Accidental injury to the conjunctiva after birth is very uncommon but could occur. There would almost always be an explanation for this. And bilateral haemorrhage

would make this even more unlikely as a cause. B was not of an age to be able to inflict injuries to her own eyes.

Violent coughing or vomiting can lead to sch in children but affects older children aged over 3.

Bleeding and coagulation disorders. These are rare causes of bleeding in children but cannot be ruled out until an extended clotting screen has been carried out. A clotting defect however would not account for B's rib injuries.

No metabolic disorders such as osteogenesis imperfecta have been linked with subconjunctival haemorrhage in any age group.

In B's case the presence of rib fractures in addition to subconjunctival haemorrhages in both eyes would suggest non-accidental injuries or very rough handling indeed, this latter mechanism being very unlikely.

It is more likely that chest compression such as that which could cause rib fractures could raise intrathoracic and intracranial pressure causing secondary haemorrhages which could be limited to the subconjunctival site.

In summary, no underlying medical cause for the subconjunctival haemorrhage has been identified and no convincing explanation for these injuries has been put forward by B's parents. Chest compression and secondary subconjunctival haemorrhages would therefore seem the most likely mechanism implying non-accidental injury.

An underlying bleeding diathesis needs to be excluded by an extended clotting screen.

[E179]

78. In his addendum report at E245 Dr Markham opined;

- The tiny red dots described by the mother is not a description of sch. They would not come and go and could never be described as tiny red dots. they would clear slowly over days but would not fluctuate in size apart from a reduction in size as they cleared.
- It seems very likely that the mechanism that caused the rib fractures was an adult gripping B's chest and compressing the venous circulation in the upper half of the body. The sch would appear immediately after this.
- At E246, when answering a question about what the midwife saw on [date] and the mother's suggestion that the tiny red dots fluctuate, he responded that "It is difficult to know what the tiny red dots described by B's mother would be. This is not a description of subconjunctival haemorrhages which would not come and go and could never be described as tiny red dots. They would slowly clear over a few days but not fluctuate in size apart from a reduction in size as they cleared. It seems likely that the subconjunctival images appeared at 30th August 2022 and that B's mother was describing something else". It is relevant to note that the expert is commenting there not upon what the maternal grandmother and aunt are said to have seen on the 18th August but an exchange between the mother on the midwife on the 19th August.
- In his oral evidence he informed the court as follows.
- The sch would appear as a substantial red patch. Not a dot. It would not come and go. It could grow over hours, might be bigger the next day and clear within a few days. It could recur in which case it could appear to disappear and return. It could disappear partially and come back. It could disappear and come back a few says later perhaps. That said, under cross examination from Miss Minoprio, he

regarded it unlikely that it is possible for whatever the appearance of redness to have been there visible to the human beings to have gone away when a midwife looked at her eyes, and then come back at a later stage to the GP and to the hospital. S12

- The sch arising as a birth injury is “vanishingly unlikely”.
- The fact that the sch are bilateral adds weight to his theory as to the cause.
- The sch could not be caused by the child being picked up by the head.
- He accepted Dr Cleghorn has seen sch in children aged under 3 who have suffered whooping cough but stated that he had not seen such children in his eye clinic. The blood vessels are more likely to be fragile in an adult.
- In answer to a question from myself “if we go back to 18 August, one potential witness says “ it looked as though she had burst blood vessels on both eyes” he interrupted (helpfully) with the response “And- and that would describe subconjunctival haemorrhages very accurately”. He then went on to confirm that there had been an actual diagnosis on 30th August.
- Dr Karl Johnson , Consultant Paediatric Radiologist provided a report dated 6 January 2023 [E180]. His findings can be summarised as follows:
 - a. There is normal bone density and no evidence of underlying metabolic bone disease. These appearances indicate that from a radiological perspective, B is at no increased risk of fracturing compared to any other child of her age.
 - b. Fractures to the posterior left 4th rib, right 6th rib and 11th ribs.

- c. There is prominent breaking (widening of the ends of the bone) of both distal radii (end of one of the forearm bones at the wrist) which, in my opinion, is within normal limits.
- d. The rib fractures are 2-5 weeks of age on 01.09.2022. He reports that timing of the fractures is “difficult, imprecise and subjective estimation”. In this case his conclusion is informed by the “amount of healing response around the fracture sites.” I note that healing was also noted by the reviewing radiologist Dr E.
- e. These rib fractures could be the result of one, two or three episodes of trauma to the chest.
- f. Each fracture is the result of significant force being applied to the bone.
- g. The amount of force required to cause these fractures is unknown but in Dr Johnson’s opinion it is significant, excessive, and greater than that used in the normal care and handling of a child.
- h. At the time of the rib fractures occurring B would have been in pain and shown signs of distress which would have lasted for some moments, but Dr Johnson defers to Dr Cleghorn in that regard.
- i. Rib fractures are typically the result of a severe excessive squeezing compressive force applied to the chest. The amount of force applied is significant. An isolated rib fracture could alternatively occur from a direct blow or impact at the site of the fracture. From a radiological perspective he cannot determine if each fracture has occurred from an episode of squeezing compressive force or a blow/impact. However if the rib fractures did occur at the same time then they would most likely be the result of significant squeezing compressive force applied to the chest as the rib fractures are in different locations

- j. He defers to the paediatrician and / or obstetricians in relation to the possibility of birth injury
 - k. In his opinion, the presence of multiple fractures which may have occurred on more than one occasion, increases the suspicion of inflicted nonaccidental injury.
79. In his oral evidence he revised his opinion re g above in that he stated that the degree of force required to cause the injuries was significant and beyond rough and inexperienced handling.
80. He accepted the view of Dr Cleghorn that the injuries being caused at birth should be ruled out.
81. He clarified that he did not defer to Dr Cleghorn as to her view at E205 6.3.2 and did not agree that the mechanism described by her was the only way that the fracture could have been caused. Further it is impossible to say where the hands which caused the injuries were positioned as the fracture can occur away from that point. If the injuries were caused by a squeeze, they would not necessarily be at the site where the fingers were placed. He accepted that if a person were to pick up the child face to face and apply the necessary pressure to cause the injury, more pressure being applied on one side could lead to there being two breaks on that side but he responded that it would also depend on how the child was being held and how the force was distributed through the rib. He also stated that it was not possible to say that it was more likely that the person who inflicted the injury was left or right handed – there were too many variables at play.
82. In his oral evidence in answer to questions posed by Counsel for the mother about timing [S99-S100], Dr Johnson gave even clearer evidence on this point and stated

that he was *“as sure as I can be given the inaccuracies and approximation. But there is a healing response throughout the fracture sites. The very earliest point you see the healing response would be after about five days. To my mind, considering the amount of healing response, I think that’s been around at least a couple of weeks. So, based on the amount of healing response that you see, and then take into account the changes that you see between the X-rays, it might have been an indicator that the fractures have some degree of maturity on the 1st but are still evolving by the 12th”*.

83. In this regard I note that the ageing takes into account not only the degree of healing as at the date of the original Xray but also the pattern of healing which post-dated the first Xray and was present by the day of the 2nd x ray on 12 September.
84. Dr Johnson described the mechanism to cause these injuries “Each fracture is the result of significant force applied to the bone. The amount of force required to cause these fractures is unknown, but in my opinion, it is significant, excessive and greater than that used in the normal handling and care of a child”. [E184]
85. Under cross examination from Mr Grime as to whether injuring a young baby in this way takes less force than with an older person. He responded that it was unknown if this was the case and further that babies have ribs which tend to be more pliable and plastic.
86. Dr Nicola Cleghorn is a Consultant Paediatrician. Her report is dated 24 January 2023 (E190). Her findings can be summarised as follows;

B has suffered fractures to the posterior left 4th rib, right 6th rib and 11th ribs and bilateral subconjunctival haemorrhages.

The bruises reported on A’s calf and buttock are more unusual for accidental injuries... whilst it is possible for a child to bruise their buttock accidentally

(for example when falling onto a toy) a nappy provides extra padding which makes it less likely that bruising will happen. Bruising to the calf is also seen more often in inflicted injuries.

Difficult to comment on the bruising to A when he was young. There does not appear to be any holistic assessment of A completed by Paediatricians at the time and there is some discrepancy on where the bruises were.

Defers to Dr Johnson in relation to the aging of the fractures.

Rules out various potential medical causes for the fractures to B.

Rib fractures at the posterior of the chest are thought to be caused by excessive squeezing most often by adult hands reaching around either side of the chest, fingers on the back near the spine and thumb on the front of the chest.

Defers to Dr Johnson on the ageing. **[E205]**

Unlikely that the fractures occurring during birth but acknowledges Dr Johnson's estimate of timing of the fractures could extend back to birth.

It is unlikely that B had a medical cause for her fractures and in the absence of an appropriate medical explanation it is more likely that the fractures were inflicted. Agrees with Dr Johnson in this regard.

Defers to Dr Markham as to the subconjunctival haemorrhages but agrees in the absence of an appropriate accidental explanation and with the presence of other injuries, particularly rib fractures which are currently unexplained and more likely to be inflicted, then it is more likely that these were inflicted in some way..

Fractures are extremely painful, both when the fractures occur but also during normal handling and movements by the child EG when getting dressed. Pain from fractures occurs not only from the episode but also from movement of the broken areas against each other. With fractures of the limbs, immobilisation of the limb through a cast is often enough to reduce any painful sensation, however, neither rib fractures nor skull fractures can be immobilised to reduce pain. Normal breathing movements will be painful with rib fractures and so infants will often start to breathe shallowly to avoid causing too much pain. Parents may or may not notice that the infant is not breathing as deeply as before. Handling around the chest when lifting, dressing etc will be painful and infants with rib fractures will be distressed during this handling unless there is something else compromising their responses. Once the rib fractures are healed sufficiently for there to be little

movement or disturbance of the bone then breathing will become less painful the time this takes is variable from child to child and cannot be quantified.

Expects B to fully recover from her injuries.

In relation to A- it is well recognised that infants with bronchiolitis can present with apnoea and then clear their secretions and remain well

Does not think a neonatologist report is required.

87. She provided a further report on 15 March 2023 in response to further questions which appears [E235]. The additional questions went specifically, to how B may have presented upon suffering the rib fractures and in the hours following the injuries. The expert responded as follows: “as each child is an individual it is not possible to be specific. As discussed in my first report fractures are painful when they occur, and I would expect a child to cry out and be distressed... Each child is an individual and they show their distress in many ways from facial grimacing, crying, screaming, wriggling, refusing feeds etc. Many parents identify and learn their child's cues and begin to distinguish a hungry cry from a pain cry but not all parents can do this. If a child was otherwise normally a settled or quiet baby, then I would expect that any signs of distress would have been noted as unusual or a change in behaviour and that a parent or carer would have therefore realised that something was wrong, but they may not have realised that this specifically meant pain... It is not possible to state how B might have specifically presented... I described the general features of rib fractures i.e that a child may breathe more shallowly or be distressed when being handled. This might take the form of B crying each time she was being handled or be more fussy or unsettled. It is not possible to say how long this might last for.” In response to the question as to how B may have shown her distress and how obvious that would have been to a carer that she was suffering pain upon handling they response was “as outlined above this is difficult to say and there are many ways for better show that

they are in distress which include crying, being unsettled, grimacing. Parents may have notice she was more distressed or unsettled when being handled particularly she was normally a settled Placid baby, but this may not have realised this specifically meant she was in pain. The expert was taken to the mother statement at C158 was she noted B to be distressed. In that statement at paragraphs 27 to 29 the mother describes an unwitnessed episode of the father feeding B when she heard B crying more than usual and for longer. She then took over feeding B who settled and calmed. The expert comments “it is possible that the excessive crying noted by the mother represented an injury being caused but it could also be that the injury have previously been caused and B was crying because she was in pain from being handled or that no injury was being caused or are being caused and B was distressed for another reason.”

88. In her oral evidence she said that she had seen sch as small dots, thus giving different evidence from the ultimate view from Dr Markham on this point. Small dots however would not necessarily be referred to as sch in records whereas a patch or larger area of bleed would be. She considered that the description of small dots was a reasonable way of expressing what was seen.

Sch are insignificant from a paediatric clinical perspective and their relevance is more to indicate that something has caused increased pressure rather than being of clinical concern themselves. Sch will generally resolve in days, and one would not expect them to endure beyond two weeks. One would not expect the sch to go away and then come back. She agreed with Dr Markham that the fact that the sch were bilateral is significant and not surprising as they occur due to an increase in pressure and both eyes are in the same head.

89. Dr Cleghorn was asked if, the sch having resolved, any later sch would require less force if there were a remaining underlying injury. She was not able to say but did go on to say that greater or lesser force would not be required, just another event.
90. Under cross examination from Miss Claxton, she confirmed that if the sch resolved they would not repeat but also said that the presentation on 18th August may have been bloodshot eyes rather than sch. which would mean that the incident which ultimately gave rise to sch was not necessarily a second incident. She confirmed that there was nothing in the records of B to suggest that the cause of the sch could be vomiting or similar.
91. Later she stated that she would not expect sch to go and come back [S200] and there would need to be a second event for a second bleed [S201]. She indicated that this could be the result of a further episode of increased pressure caused by a further hard squeeze of the chest over the same site of existing rib fractures but not sufficient of itself to cause further rib fractures [S202]
92. Dr Cleghorn cautioned against presuming that what the family observed as burst blood vessels were sch as there was no medical diagnosis at that point [S202]. On 19th August 2022, B's eyes were reported as 'clear' by the health visitor [I56]. However, there is a confirmed medical diagnosis of sch as of 30 August 2022 from the hospital.
93. When asked about the relative severity of subconjunctival haemorrhages compared to retinal haemorrhages Dr Cleghorn commented that: "subconjunctival haemorrhages are bleeding into the white of the eye. They are insignificant from a clinical perspective, they should heal and really they are more to indicate that there has been something which has often caused increased pressure in the face or in the head, rather than being of clinical concerns themselves".

94. Dr Cleghorn elaborated regarding the mechanism. The force required would be beyond rough handling. The person who caused the injury would know they had caused it as B would be distressed. The child would subsequently be more grizzly. A person who was not there at the time might notice a change in behaviour. They might not seek immediate medical attention but would bring it up with the health visitor. A parent noticing a few red dots in the eye might not be expected to have an immediate response in terms of seeking medical help but would contact 111 or go to A&E or speak to the health visitor if there were blood over a large proportion of the eye the next day.
95. Turning to the question of the child's reaction to any rib injury Dr Cleghorn responded at [E239] as follows: “if a child was otherwise normally a settled or quiet baby then I would expect that any signs of distress would have been noted as unusual or a change in behaviour and that a parent or carer would have therefore realised that something was wrong but they may not have realised that this specifically meant pain”.
96. In earlier evidence on the point of whether or not a carer or professional would notice pain from fractures she said: “so it's the change in behaviour. So she might not cry out in distress, she might just be more grisly than normal or whimpering or not as happy as she had been previously. This might be the only thing that apparent, a carer would pick up; that change of behaviour and I think I've already said that actually it's really difficult for professionals, particularly when we don't know the babies too, and when we clinically examine them, to be able to identify that there are rib fractures there.”
97. When asked whether anything would have been felt by the person holding B the doctor's reply was: “not necessarily, no we're talking about quite a difficult area to feel too, even as paediatricians, when we clinically examine babies we often can't feel

rib fractures. That's why we do skeletal surveys in many ways because there's often no external signs that we can pick up.” In addition Dr Cleghorn gave evidence that it is not uncommon for babies of B’s age to be sleeping for 18 plus hours of the day.

98. I have in mind that all the experts had sight of the statements and police evidence and they do not consider the explanations advanced in that evidence to account for the injuries sustained by B.

99. The experts are agreed that there is no medical cause for the injuries B has sustained.

100. **Issues arising;** following the conclusion of the hearing the court has received lengthy submissions from each of the parties in relation to the expert evidence. The existence of the rib fractures and the expert evidence as to causation is not disputed. The parties make different submissions as to the most likely timing of the rib fractures in the light of the totality of the evidence which will be addressed below. There are two schools of thought. The first is that advanced by the children's guardian that the court should accept the evidence of Dr Johnson which was subject to a caveat to the extent made clear by him in terms of the difficulty in dating fractures, but was clear in that he dated the rib fractures as being at least two weeks old at the time of the first X-ray. This conclusion is reached in the light of the extent of the healing presentation at that point and the subsequent healing process which was evidenced by the second set of X-rays 11 days later. The doctors involved in the taking and initial review of the X-rays on the 1st September reached a similar conclusion. The second school of thought entertained by all others is that the caveat attached to Dr Johnson's evidence enables the court to conclude, in the light of the totality of the evidence, that although there was the degree of healing seen by Dr Johnson on the X-ray of 1st September, in fact, the ribs were injured closer to the date of the X-rays and (the parties differ as to the

exact date of causation) were more likely to have been inflicted on the morning of the 26th August or thereafter.

101. Turning to the issue of subconjunctival haemorrhages. Again, two schools of thought have emerged. The first being that put by the children's guardian which is to remind the court of the description of burst blood vessels advanced by the maternal grandmother and aunt as having been seen by them on 18th August. If the court accepts the description from those witnesses as being true and accurate then one has a description which has been accepted by Dr Markham as being appropriate, present in the child at a time which fits with Dr Johnson's ageing of the rib fractures. That said, the court has in mind the caution expressed by Dr Cleghorn in the context of whatever those members of the family reported not having been seen by a professional. Without at this stage delving into the factual matrix, search haemorrhages were not seen by medical professionals either on the 16th or 19th August.
102. The second school of thought is that the descriptions given by the family members should be treated with such caution as to prevent the court from concluding that they are accurate and to conclude that the subconjunctival haemorrhages were not present at that point. The only certainty about the presence of sch being that provided by the hospital on admission on 31st August 2022.
103. Finally, as to the medical evidence as to a child's reaction to rib fractures, the extent of obvious pain at the time and any subsequent pain and how obvious or not the child's plight would have been to someone who had not caused the injuries, the court has in mind the comprehensive evidence of Dr Cleghorn.
104. I will now go onto examine the broad canvas of B's life and those closest to her with a view to seeking to identify who caused her to suffer broken ribs and subconjunctival

haemorrhages. I intend to do so first by turning to three areas of evidence which have the potential to illuminate my examination of the period during which B is said to have presented with red eyes and during which the radiological evidence points to the rib fractures having been sustained. The three areas of evidence are as follows: family life before the issue of proceedings (including the parents relationship on the involvement of children services); the events at the [train station]; the subject of father's capacity and whether he has sought to mislead the parties and the court as to his mental well-being and ability to participate in the court process.

105. The background section of this judgment sets out much of how the local authority was involved in the life of this family prior to these proceedings being issued. It can be seen that there were several occasions upon which A was taken to hospital and advice given to the parents. MASH referrals were made. This is particularised at paragraph 11 of the schedule of findings sought by the local authority which is confirmed in its final form in closing submissions at A681.
106. The concerns include failing to seek medical intervention for A when he was unwell in [summer 2021], then not taking him to see his GP when he was ill in [winter 2021] and not contacting the GP for three weeks when he was ill with a similar problem in [early 2022].
107. There were concerns regarding emotional harm and home conditions. In [early 2021] it was said that the home had an unpleasant smell with rubbish in the kitchen, cat faeces on the floor and soiled nappies and nappy bags. There were similar problems in [summer 2021] and again in [winter 2021].
108. A child and family assessment had been carried out in [summer 2021] and a child in need plan was put in place.

109. That said, a review of the plan had taken place in [autumn 2021]. The parents had engaged. A was being weaned. Home conditions were appropriate, and the case was closed but as soon as December the problems had returned.
110. By [early 2022] the family social worker was concerned that the parents were not proactive in contacting the GP for the last three weeks, when A had been displaying green mucus from his nose and sounding raspy.
111. In [spring 2022] A's bedroom had a dirty floor that was stained and covered with food remnants. The windows were covered in mould.
112. There is a concern in [spring 2022] the mother being overwhelmed with the result that she was referred for counselling with time to talk following a family dispute with a maternal grandmother.
113. In [spring 2022] there was a police callout following a neighbour reporting that she had heard a female shout and a noise that sounded like a slap. There was another callout on [date] regarding female, shouting and annoyed that was considered to be like a slap against a child. The police were concerned about home conditions and the mother was said to have told officers that she was struggling to manage home conditions. It is said that she admitted shouting and frustration. There were no signs of physical abuse.
114. Thus, it can be seen that the local authority had been involved with his family from A's birth, it was at a very low level and elements of their intervention appeared to be successful in so far the local authority then felt able to withdraw having made progress.

115. The sense from reading the chronology and documents is of a family struggling but managing to function just above the level where the local authority would have to invoke pre proceedings protocol. One can identify failure to seek timely medical advice, failure to maintain good enough home conditions, domestic acrimony resulting in third party intervention and problems with family relationships as being live themes. That said, the concerns were not such, as I have said, to cause the local authority to invoke pre-proceedings protocols and they felt able to step back from time to time.
116. This apparent background cannot be assumed. One must look at what the parents and others have to say about it.
117. I heard from the health visitor. She was the health visitor from [spring 2022] and she continued until 31st August. When she visited in [spring] she did not have any concerns about the home conditions. The parents had a lot of stuff, but the place was generally clean and tidy. Both parents were engaging, were receptive to advice and were excited about the new baby. A was doing really well. She had the opportunity to discuss with the mother whether she felt safe and secure in her relationship and she confirmed that she did. Her further evidence went to her visit on the 30th August when she was asked whether there were marks in B's eyes and replied "yes tiny, tiny ones, they were not significant and I think that is what I put in my notes, too small pinpoint". She had also given evidence that when she visited on 15th August the eyes were clear.
118. I heard from [a neighbour]. Her evidence is contained in a statement at C371 she confirmed having heard the female continued to shout repeatedly whilst a baby was crying and then she heard a sound which was a "loud smack and then there was

nothing. There was no more crying, no more shouting nothing”. She also said that she had made two further reports to the police have similar incidents of she said that she could recognise the voice of the mother whom she has known from when they were at school together. She also knows the other couple who live in the flat and another woman. She said that her residents had heard screaming during the first few weeks of August. She gave evidence of some of the phrases she had heard. Whilst there was confusion around the precise date, the witness maintained that she had heard shouting on three occasions and that she was not alone in hearing this but others were not willing to come forward.

119. I heard from the paternal grandmother. The paternal grandmother has been unsuccessful in her application to be a party to these proceedings. Her contribution has been to help the court have a greater understanding of the family dynamics at large. The evidence is that during the time frame with which this court is concerned the mother was at times less friendly with her own family than she had been previously. The mother's evidence is that she has turned to the paternal grandmother for support but was also concerned about the extent to which the father appeared to be perhaps over dependent on his mother and over involving her in their own family lives.

120. Without wishing to appear disrespectful to the paternal grandmother, her evidence was of limited value in terms of the issues with which this court is currently concerned. She was helpful in enabling the court to understand how she manages the father's finances though I remain confused about the extent of and necessity for her involvement. She attempted to give the court an account of how she had become aware of the fact that her son was the father of C whose existence as his child and her

grandchild he had failed to disclose from the earliest possible point. I had a sense that in the paternal family, and this sense is informed by the documentation and correspondence received from that family during the proceedings, often have complex explanations for situations and seem prepared to entertain and advance the extraordinary.

121. This witness seemed reluctant to clarify the extent to which she had discussed the case with C's biological mother who now identifies as male, and indeed with her son. She was unable to reconcile the text messages with the mother which suggested more contact with the mother and B than the witness was willing to admit. This included one occasion when the whole family was said to be together at the grandmother's house for a roast dinner, but the grandmother was steadfast that this had never happened. The grandmother's evidence was at odds with the interpretation of the text chain which I am invited by the mother to adopt. That text chain is more consistent with the events as advanced by the mother than it is with that advanced by the grandmother. The suggestion is that this grandmother has prevented the court process and those involved having the greatest knowledge of B's movements must have some weight in my deliberations. I note that there has been no evidence given by the mother of any cause for concern regarding B's health either at the alleged roast dinner or the alleged later visit to Wetherspoons. The cross examination of this witness by counsel for the mother was patient and thorough and revealed what I am satisfied was a determination by the paternal grandmother to answer only the questions she wished to answer and not to enter into a productive discourse. Her answers to questions were rarely fully on point. They were slightly but significantly shifted in terms of their response. The result was that it would have been easy to have missed that the question had not been in fact answered. The tenacity of Miss Minoprio enabled the court to

appreciate that this technique was being deployed and to realise how dominant it was during the lengthy exchange so as to be incapable of being explained by confusion or nerves.

122. When considering the extent to which this witness's evidence assists the court in understanding what was going on in the run up to these proceedings, one is left with the impression that the mother thought she was being supported by the grandmother and was in regular contact with her. It is clear that the grandmother was looking after A on a regular basis. It is clear that the grandmother was very much in control of the father's finances. It is also clear that the grandmother was very much involved in the life of C and that any concerns which she might have had with either the father or C's mother and which arose from the delay in declaring to the grandmother that she had a grandchild, were long buried.

123. I heard from [name] who is the biological mother of the father's child C. They assisted the court with gaining an understanding of the father's relationship with C. I was told that there was no romantic relationship between them. The father has spent time with C which, during his relationship with the mother has involved C staying with the mother and father for several days per week. This was the arrangement prior to B's birth and after B's birth though the contact seems to have been less, there were occasions when all three children were in the care of the parents. The witness confirmed the delay in informing the paternal grandparents of C's existence / status. When asked why the father would have told others that he was not the father the witness came up with the completely unconvincing response that it was appropriate for the father to deny being the father of C because he was always referred to as

“daddy”. In my judgment that answer illustrated the skewed thinking of this witness on this particular issue.

124. A similar example of adopting an unusual perspective on matters was in relation to the fact that this witness and the father had been in contact during the previous week. The nature of the contact included messages which though not personally sexual related to sexual content. When questioned about the appropriateness of these messages the witness responded that as they are asexual they meant nothing to them. As was obvious from the response of the father in court who giggled at this point, it was clear that they did have a titillating content so far as he was concerned.
125. The witness was asked whether they had been in touch with the paternal grandmother and the father during the course of the proceedings. They claimed to be unable to remember with whom they had had discussions. At the end of the witness’s evidence, they admitted to having recorded the entirety of their evidence on a phone. They denied that they had been put up to this by anyone else and claimed that they record all conversations so as to be able to recall what was said later given difficulties with their memory. I do not accept that there was any reason at all for this witness to record the evidence as they have no reason to wish to be reminded of its content away from these proceedings. Accordingly, I am driven to the conclusion that there was a malevolent reason for the recording having been conducted and I note the witness’s continued involvement with the father's family.
126. The contribution which this evidence makes to the broad canvas is that it is clear that the birth of C was not declared openly and transparently as one would expect and that this witness contributed or at least tolerated the obfuscation around the paternity of C thus disguising the true fact that the father was the father of C and that he knew he

was. The hiding of his paternity is a feature of the early days of the relationship between himself and the mother. The detail of the lies in relation to first saying that the father of C was dead then saying that the father wished to adopt C all go to the ability of the father and those around him to lie as and when it suits them.

127. I heard lengthy evidence from the maternal grandmother. She was clear that on the 18th August she was shown B's eyes before 10:00 by the mother and she saw what she described as "like burst blood vessels" (S223). She told the court that she had had a lot of laser treatment done on her eyes and that causes burst blood vessels. She linked what she saw in B to her own experience.
128. She confirmed that the mother had told her that the father had said something like "I should just admit it and the stress would go away, or it will be better if I just admitted it." Her recollection was that the mother had told her this after she and the father split up and she believed it to have been the [autumn] though she confirmed that she was not good with dates.
129. She was aware that children services were involved, and they were helping in the home for example obtaining a hoover and helping with issues around a housing application. She did not know of the extent of the involvement until she read the court papers. The mother only opened up to her regarding such matters after the parents had split up.
130. She gave evidence of having been contacted by the mother regarding B's eyes around the 17th and the mother trying to show her B's eyes over the video. It was difficult over the video, but the grandmother told the mother that she should take B to the

doctor if the eyes were to get worse. The grandmother said that the mother was not upset during that call but was concerned and wanted to know what they could be.

131. Turning to the question of her relationship with the daughter, she felt that her daughter had pulled away from her since being with the father. Sometimes she would not hear from her for five days and when prompted the mother would say that she had been busy. She felt that the mother was going towards the father's family, and she therefore decided to take a step back and let the mother find her own way. This started pretty much straight away after the relationship between the parents commenced. She was concerned about a lack of honesty around the relationship and confirmed that she had him a bad feeling about the father from the moment she met him and his family. She referred to the issue around C's paternity and she said "I don't like liars." She said that she would have much preferred to have been told the truth from the start but "I can't deal with people who lie to me." She confirmed that the mother had lied to her as well and it seemed that the mother's motivation was not having seen a DNA test at that point. There had been a falling out when the truth about C had been discovered. There have been occasions when the mother has lied to the grandmother, and she confirmed that when she was younger, the mother had a temper. That said, she has calmed down since she had children. She did not think that the mother struggled to look after the children. The mother used to take the children out quite a lot whereas the father did not want to. She said that the mother is the sort of person that would never admit she was struggling but after hearing all of the evidence it was quite obvious to the grandmother that she had been struggling, and the grandmother said she wished that the mother had asked for more help. Later in her evidence she was taken to more recent behaviour which showed the mother to have lost her temper.

132. From the grandmother's evidence the court has the picture of her relationship with the mother deteriorating following the mother forming a relationship with the father. She felt pushed out by the paternal family. She was clear that the mother had a temper when she was younger, and she also answered questions about exchanges between the two more recently. She did not know of the extent of the problems the mother was facing in terms of looking after the children and she wished that the mother had asked for more help. This witness came across as having a realistic view of her daughter, she was in no way claiming her daughter is perfect. She was clear about what she had seen in terms of B and she was clear about what she had felt about the relationship between the parents. She was honest and making it clear that much of her view of the father arose from her initial instinct, but she was also clear that the lies and his behaviour subsequently did nothing to improve her view of him. I note her contribution to this aspect of the evidence and treat it with caution not because the witness has been dishonest but because she has been honest about this subjectivity upon which her views of the father are in part based.
133. [The health visitor], spoke to the court of her involvement as health visitor for A. She had arranged for A to see the GP in [2021] when the parents had not taken that initiative.
134. She gave evidence regarding the home conditions and her worries about safety in the home with leads all over the floor and stair gates not being in place. She was recorded in the CNS assessment as having described, the family as "one of the most worrying... ever worked with" and whilst she could not recall having used those words, she confirmed in her evidence that this was her view. Her concerns were evidenced by her communications to the local authority regarding the [date] and [date] in 2021.

135. I have seen the photographs of the home conditions. The mother has accepted that at times the home was dirty.
136. In my view, that letter provides a powerful snapshot of this professional's view of this particular family at that particular paragraph which reads as follows "I'm finding it hard to find any positives for this family, which makes me very sad and I wonder how they will cope as A grows. I do think they love A but that they do not understand his needs as a baby. This may be due to their learning difficulties in which case this needs addressing. The family support worker spent a lot of time with them. It is generally the father when dresses him for weighing. I have heard the mother speak to A quite abruptly. This was in regards to A touching his nose. I suggested they use mitts when he was asleep but they have them on him for play and he was getting frustrated as he could not pick up his toys ".
137. Although, through effective cross examination, Miss Minoprio was able to probe the health visitor's views, the overall assessment of the family, it's functioning, and the health visitor's worries remained. That said, the chronology shows that the situation was not static and that there were times when the concerns were less.
138. Similarly, there is a helpful concise report from a family support worker which gives examples of involvement with the family from [winter 2021] through to August 2022 at C16
139. In terms of the assistance, which this evidence gives to the court's view of the functioning of the family, it is clear that at that point, there was concern regarding the mother having been heard speak to A quite abruptly.

140. The report includes home conditions being poor, homeless people sleeping in the same bedroom as the children, toys which were dirty, empty nappy sacks providing a risk of suffocation, A's bottom and testicles being red and sore, the father pouring boiling water from the kettle into a bath, where A was seated, a used potty left in the lounge with urine visible, A being described by the mother, as having had a meltdown and deliberately banging his head causing a bruise, A being seen to be cold, sharp scissors been left within the children's reach, B, being in her crib with a thick wool and blanket doubled over, causing the parents to be reminded about safe sleep, and using blankets, advice having to be given regarding the need for regular feeding. Again, this witness was cross examined effectively on behalf of the mother but gave little ground. She accepted that the mother did often contact her, and she felt she had a good relationship with the mother that she could not comment as to whether the information received was 100% true or complete.
141. I heard from the maternal aunt. She confirmed the trouble within the family which arose from the dishonesty regarding C's paternity and she accepted that there was an occasion where she pushed the father and placed the mother in a headlock. Her evidence as to family dynamics is largely consistent with that of her mother and that of her sister.
142. Having read, listened to and considered the evidence in relation to the period before B was injured, I am able to draw a number of conclusions about the life for this family.
143. The father lied from the outset about having had a child. When the mother gave birth to A she thought she was giving birth to his first child when that was not true. The whole family was deceived. That deception has left the relationship between the father and the maternal family very damaged.

144. The mother became more distant from her own family during her relationship with the father and became more reliant upon the paternal family. The paternal grandmother was particularly close to her son and continued to be involved in his daily life to an extent which was unusual even given the father's limitations in terms of his functioning.
145. The father involved C in the life of his new family on a frequent basis and one has the impression of the mother acceding to this.
146. The home conditions were the subject of criticism and suggestion for improvement by professionals. It must have been obvious to the father that the home conditions were not ideal and that the mother was at times struggling and yet there is no evidence of his taking that into account in regulating his relationship with his daughter and her involvement in their family home.
147. The C's biological mother allowed her to be cared for by this mother despite claiming to have concerns about her ability to parent appropriately. The criticism from the mother of C must have been difficult or uncomfortable for this mother to bear.
148. The parents make allegations of domestic abuse against each other. The descriptions of life within the home make clear that there was argument, shouting and disagreement.
149. At times, the parents were not dealing with A's medical issues as the professionals would have expected. Putting to one side the parents' behaviours, the very fact that A was from time to time so unwell must itself have been a source of pressure. Thus, one has a picture of how life was for this family in the run up to B being injured.

150. I now turn to a different topic which requires consideration before the court deliberates upon its findings with regard to how B came to be injured. This topic concerns the father's behaviour following an incident at [a train station] during the earlier part of fact find hearing in July 2023.

151. My recollection is that the father was due to give evidence on Monday 31st July 2023. The children's guardian provided a case report on that day setting out events which had occurred on Friday 28th July after court. That document is at C676. Miss Jones the author was not required for cross examination at the recent hearing. I am satisfied that the account within it is accurate, and I find that events occurred on that day as she has described. In short at 17.44 she received a phone call from the father whom she described as being emotional and distressed and who told her that he had seen the mother at the train station and that she had come to speak to him about the children's futures. He was worried and panicked that they had spoken and repeatedly said that he had broken the rules. He had told the guardian that the mother had not been upset but he was worried that she might say something different at court. He indicated that he had already spoken to his intermediary about what had happened and that he was trying to speak to the local authority. The guardian told him that she would let the children's barrister know so that others could be made aware, and he said that he was worried about this being held against him when giving his evidence. He called again at 18.10 in what the guardian describes as a more distressed state including being breathless. He told the guardian that he had lied to her and that it was he who had gone to speak to the mother. He spoke of being a liar and how everyone will know that he lied. The guardian was worried that he was having a panic attack and so worried that she contacted his mother after he had agreed to that happening and sending her his mother's mobile number subsequently at 18.48 the guardian was in

touch with the paternal grandmother who indicated that she was with the father and was going to take him to hospital.

152. The mother has provided an account of what occurred at the railway station that day. It is largely consistent with the second account given by the father to the guardian, and I am satisfied that the mother's account is accurate.
153. Since that event the father has claimed to have suffered mentally including a loss of memory which he says has prevented him from being able to answer questions about dates prior to that event. He now refers to himself prior to that date as being the “old [father’s name]” and his current self as the “new [father’s name]”. He claims to have no recollection of much that occurred prior to that date. When the hearing resumed the following Monday, his counsel was concerned as to his capacity. An assessment was carried out following which he was represented by the official solicitor.
154. Alongside the proceedings the father accessed medical help and gave information as to his claimed daily functioning. Those representing the mother made application to the court for the father’s telephone records on the basis that there was a concern that those being asked to give a view about the father's level of functioning were not being given an accurate picture by him. The litigation process around this issue is covered in my judgement of the 24th October 2023 and I do not intend to go into any detail at this stage. Suffice to say that ultimately the telephone records did provide a picture of life which showed that the picture given to those commenting upon the father's functioning was not comprehensive. Dr McClintock had been assisting the court as to the father's capacity. My dissatisfaction with the approach taken by that expert and the court’s lack of confidence in his conclusion led to there being a second psychiatrist instructed namely Dr Morton. Dr Morton found that the father did have capacity and

it was confirmed in the run up to this hearing that the father continues to have capacity. The reports of Dr Morton bear reading in full so that the subtlety of his approach is not lost.

155. The issue of capacity being settled, the relevance of the father's behaviour since the incident at the train station and around honesty as to the totality of his presentation becomes a central issue in my deliberations as to what happened to B. The mother is clear in that she says that the father has lied about his mental health with the aim of not giving evidence. The reason he does not wish to give evidence is that he has caused the injuries to B. The local authority and the maternal grandmother adopt that position.

156. The children's guardian supports the mother in the findings which she seeks as to the father's credibility as set out at §151 (a)-(e) of her submissions having come to the same conclusions herself. However, she cautions the court that "the key question for the Court is whether those lies were to avoid giving evidence or whether they were also because he caused the injuries". She makes the following submissions.

1. The children's guardian makes the following points having considered all the submissions filed and having heard the evidence: The Guardian notes that those representing the LA, mother and MGM have provided detailed submissions pointing to the evidence since then that casts significant doubt about the credibility of the father's assertion that he has lost his memory, particularly of key events. There are numerous examples in the text messages of the father's phone that contradict his assertion to Dr McClintock that he was not engaging in any activities during the day and that he 'will do nothing, I stay in, there's nothing for me to do.' [E271 §4.6] He was taken to many examples by Professor Delahunty KC in her cross examination,

highlighting his repeated social activities with his five-a-side football team and his involvement in proactively organising some of those events; his holiday [abroad] with his parents; his engagement with strangers on the dating app Tinder; his interaction with a neighbour and the care of his grandmother. The Guardian shares the concerns of the other parties in this respect and does consider that the evidence suggests that the father's assertions about his daily activities to Dr McClintock were untrue.

2. The father's evidence will require careful scrutiny particularly his multiple responses claiming that he 'cannot remember' and the strange differential of 'old [father's name]' and 'new [father's name]'. Overall, the Guardian would urge the Court to exercise caution in accepting at face value when the father says that he cannot remember and would flag up the following points for particular consideration:

- a) As noted by Dr Morton in his addendum report dated 5 January 2024 Dr Morton thought that the father presents with a 'confusing pattern of memory difficulties' [E481]. At E477 §2.16 the father seemed to have a clear recollection of events over Christmas having previously said that he could not remember:

"I then asked him some questions about [C]. He told me that he is able to see [C] whenever he wants, and he has a good relationship with [C's biological mother] . He then said, "[C] came to mum and dads for Christmas, and we opened presents there it was fun, she looked so happy when she opened her presents there". He told me that [C's biological mother] had been very supportive and was aware of the situation but that he only sees [C] in the presence of [A] or his mum as he does not want to get into trouble".

- b) At E427 of his report, Dr Morton makes an interesting comment quoted from a report produced from the Chapel St Clinic that Dr Morton must have read in the father's medical records that were made available to him (the document authored by [a mental health professional] who saw father on 30 October 2023 is not in the Court bundle). The quote is that the father is worried that 'if he was doing more the court would feel that he was better and expect him to give evidence'. The Court may consider that this is an indication that the father had formed an understanding in his own mind (and one that he was prepared to articulate to a professional) that he would be less likely to be required to give evidence if his health was considered to be poor and therefore, he recognised that his exposure to cross examination is directly linked to whether or not he is perceived to be 'better'. Having made that link, if the father wished to avoid giving evidence, he would have the incentive to continue to present himself as not being 'better' thus maintaining his assertion that he has lost his memory.
- c) In his oral evidence in answer to Prof Delahunty KC asking about the children, he was able to give some details beyond the general response of not being able to remember.
- d) The dual persona of 'old [father's name]' and 'new [father's name]' was explained by the father to represent himself before and after he cut his wrists. If the scars that he is pointing to are those relating to the injuries observed by Dr McClintock when he assessed the father on 2 October 2023, it would seem that 'new [father's name]' emerged in the Autumn of 2023. The order for the inspection of [the father's] mobile phone was made on 5 October 2023, but he was

on notice of such an application being made from 13 September 2023 [B274] so his self-harming behaviour may be linked to that knowledge.

- e) The Court will have to consider if it is likely that the apparent link between self-harming behaviour and the mobile phone inspection is a coincidence or a response to the knowledge that his private, social interactions were going to be made known to the Court and the parties. Within that, the Court will have to consider if the invasion of his privacy of itself (at that point likely to be heavily redacted although later reversed to open disclosure) was a trigger to self-harm or whether it was the consequential impact on [the father's] credibility that was the driving force. The Court may conclude that it is impossible to separate out the various influences, but the Guardian does think it is important that all options are considered given the significance of these events.
- f) It is not clear if the creation of this dual persona is an elaborate device by the father in an attempt to exculpate 'new [father's name]' from the behaviour of 'old [father's name]' but whatever the motivation, it is clear that this father is responsible for the behaviour of both versions of himself. It was also noticeable that [the father] seemed to revert to the use of the third person when describing the behaviour of 'old [father's name]' in what seemed to be a further attempt to distance himself from more difficult questions put to him by Counsel.
- g) The Guardian notes that the concept of 'old [father's name]' and 'new [father's name]' does not appear to have been presented to either Dr McClintock or Dr Morton in any of the four interviews that they conducted with him between them.

In answer to questions posed by the LA about what is the difference between ‘old [father’s name]’ and ‘new [father’s name]’ he said that he did not know but he did confirm that his claim about memory loss dates from the train station incident.

The exchange was as follows:

Q: There has been no claim of memory loss at that point before the train station incident. Are we safe to rely on things you said before the train station to professionals and in your statements?

A: I would think so

157. In those submissions the children’s guardian correctly identifies the issues which the court must have in mind and gives pertinent examples of the evidence which has led the children’s guardian to support the findings sought by the mother. I am particularly struck by the evidence from Dr Morton regarding the father’s ability to have a clear recollection of events which he had previously said that he could not remember (as set out at paragraph 2A of the guardian submissions). This ability to recall sits alongside the ability to recall as evidenced by the examples identified in the mother submissions where the father was able to recall notwithstanding his claim to have lost his memory. The court notes the invitation at 18 e above.

158. I now turn to the case advanced by the mother. She argues that the father has lied on a number of occasions as set out at para 125 of the mother’s submissions. I include them in their entirety so that none of the detail or logic is lost. It is not helpful to try to summarise what is a complex situation and one upon which I asked for specific submissions as to how the mother argues that I should reach the conclusion for which

she contends. They follow on from submissions regarding the incident at the train station.

“The court is asked to make a finding that [the father] did not suffer ‘memory loss or dissociation’ from this event onwards and during his oral evidence to the court. Rather, [the father] has used ‘memory loss’ as a technique to avoid the scrutiny of the court and to avoid the giving of potentially vital information about how [B’s] injuries were caused.

126 We assert pursuant to *Lucas* that:

- (i) the deliberate lie(s) upon which they seek to rely;

Was that M had approached him, that she was not scared, that he now had memory loss covering the whole episode

- (ii) The significant issue to which it/they relate(s).

We say this was directly concerned with the imminence of the parents' oral evidence on the fact find trial. It was an act and then avoidant action designed to firstly put pressure on M by stalking and intimidation on the platform, and then to evade having to address his conduct by claiming a false memory loss. That action was then compounded by a sustained lie about his capacity designed to foster a lie and memory loss and evade giving evidence in court.

- (iii) on what basis it can be determined that the only explanation for the lie(s) is guilt?

The proximity of the act and its aftermath to the parents entering the witness box, the success of F’s avoidance act (the trial was halted, psychiatric assessment ordered,

with the first leading to alleged incapacity and lack of competence to give evidence) successfully avoiding questions about his conduct causing a change in [B's] condition evidencing harm leaving M to deal with them - just as F had done re [A] and the apnoeic episode.

127 [The father] has successfully duped professionals and the court into delaying proceedings for the children for six months. The court can make this finding based on the following:

[The father's] dishonesty with Dr Morton

128 (a) Dr Morton's assessment of F on 3rd January 2024 records 'no evidence of dissociation during my interview and although it has been commented on it does not appear to be a significant feature in his contact with emergency or mental health services.' [E429]

(b) When F claimed to Dr Morton that he could not remember anything, when questions were asked in a different way, he was able to remember specific details:

(i) At [E475] para 2.5 F 'could not remember the circumstances around his children being removed', however at [E476] para 2.7 F is able to recall the reason why [B] went to hospital for 'blotches in her eyes' and that he 'stayed with [C's biological mother] and [C]', that his mother looked after [A] and he joined M at hospital. F was asked what injuries [B] sustained and F said 'it was broken bones and fractures'. In oral evidence F told the court that he was not aware of fractures, saying 'I can't remember anything', a mere 6 days later.

(ii) F was able to remember specific details about how he felt on Christmas Day, when he 'heard voices' and what the voices were saying. [E480] para 4.4

(c) F told Dr Morton that ‘he is able to see [C] whenever he wants’ and in oral evidence he said he was able to see [C] ‘whenever [C’s biological mother] allows me’.

(d) F remembered in oral evidence that he had seen [C] at Christmas, he didn’t know where. When asked what they did F described opening presents and then said ‘I don’t remember, I don’t remember’. F told Dr Morton just six days earlier that “[C] came to Mum and Dads for Christmas and we opened presents there it was fun, she looked so happy when she opened her presents there”. [E477] para 2.16.

(e) In [the father’s] first assessment with Dr Morton in December 2023, this included a number of discrepancies on which questions were put:

(f) At [E415] para 9.14- Dr Morton writes: I asked him if he would like to make more friends and he said that he would like to, but he is “scared that he will do something wrong” when he is out socialising and get into trouble with the police. This assertion is dishonest and does not sit comfortably beside F’s ability to get in touch with total strangers on Tinder for sex, messaging on Facebook Messenger and being out and about in town. And playing football.

(g) At [E414]F told Dr Morton he ‘finds it harder and harder to make friends’ Reporting to Dr Morton he has ‘made one friend since leaving school and that was [friend’s name]. This does not bear scrutiny considering his friendship with [C’s biological mother], football friends and the police note of October 16th 2022 at [K65i] ‘I would be with my mates and she would constantly message me when I am out with my mates’. [the mother’s] evidence was that F did not have a hard time going up to strangers, and had friends both in person and online. The online friends and acquaintances are apparent from F’s whatsapp, tinder and facebook messages.

(h) The first assessment of Dr Morton included medical information about appointments with a mental health professional. Tellingly, on 26th October [E427] when F had a telephone appointment with [the mental health professional] PGM ‘expressed concerns that if he was doing more during the day the court might think he was ‘better’ and expect him to give evidence’. This was then repeated by [the father] on the 30th October to the same professional when he said ‘he was worried that if he was doing more the Court would feel that he was “better” and expect him to give evidence.

(i) the deliberate lie(s) upon which they seek to rely;

we say that F was deliberately misrepresenting his capacity to function in daily life so as to sustain the lie that he had lost his memory and was unfit to give evidence as at [E427] above.

(ii) the significant issue to which it/they relate(s) .

F wanted to avoid having to give evidence, answer questions about his parenting of [B], his mishandling of [B], his feeding frustration with [B], his conduct towards M, his sexual proclivity AND unfaithfulness to M, his deceit of her in that regard, his favouritism of [C] over [A] and [B] and effective abandonment of the children. F was aware his evidence would reveal him to be a man of selfishness, and self-gratification.

(iii) on what basis it can be determined that the only explanation for the lie(s) is guilt?

The extant evidence that originates from the F’s own records that he was aware would damn him. He presented himself at hospital on 26th September saying he ‘had a bad day with disappointing news’ [E424] when he first found out from his solicitor about the court's decision to grant disclosure on the 26th September. (email from [solicitor]

of 27th September informing the parties she had spoken with her client the day before to tell him of the decision re his phone- available if the court requires it)

[The father's] dishonesty with the court

129 It was something of a surprise that after six months of obfuscation and delay M[the father] did indeed manage to come to court and give evidence. The court was given notice of ground rules and the intermediary was provided with questions. Much was proposed on his behalf of the potential for self-harm or potential attempt at suicide that might befall [the father] as a result. However, [the father] appeared to cope remarkably well over hours of cross examination even though his evidence ... sustained, with regular breaks and overnight.

130 However, [the father] continued to avoid giving useful information to the court, sustaining the lie around his purported memory loss. The court will note that [the father's] tone when answering questions did not appear to be one of mental fragility, although he referred to wanting to commit suicide, he was curt with his questioner and appeared fed up and exasperated at having to answer questions.

131 [The father] also appeared to be able to link questions back to previous answers he had given (referring back to the evidence he had given about sexting a few questions earlier), and displayed a sophisticated understanding of what the questions were looking for when he said:

'I'm trying to give you a plausible answer' and 'I think you're trying to get at the old [father's name] being a bad parent' and 'you're trying to get me to say I agree with you'. When his holiday [abroad] was put to him [the father] said 'you're using that as an excuse to say I was ok'.

132 It is submitted that this level of understanding belies his purported cognitive vulnerabilities. Much of [the father's] oral evidence was prefaced with '*I can't remember*' and he asserted that '*this court knows about my memory loss*' by way of explanation. However, [the father] did remember the following:

(i) That [C] was a 'planned baby', that he didn't know when [C] had been born because he and [C's biological mother] had 'fallen out' because she had said something that caused him to run away

(ii) That he didn't know why he didn't tell his parents about [C] but that he had told friends. He didn't worry that his friends might tell his parents

(iii) That having [C] over to stay was not stressful

(iv) That he did not lie to social services about being [C's] father, that he did not lie to [the mother] about being [C's] father

(v) That it was not [the mother's] priority to deal with [C] when she came over, it was his.

(vi) That he remembers [A] being born, the hospital and doing his first feed

(vii) That he remembers having kids around, going to funfair, taking [A] to play football in the park, that's all i remember from my time in the flat

(viii) That at the time [A] was born he had difficulties keeping the flat clean and tidy

(ix) That his mother (PGM) was right that he cannot handle stress

(x) That he remembered [B] being born and holding her

(xi) That [the mother] would never let a man tell her what to do

(xii) That [the mother] was a good mother

(xii) That the holiday [abroad] was 'prepaid' and he didn't even want to go

133 It is submitted that these matters that [the father] was specifically able to recall rather than others do not tally with his purported memory loss. The court may have noticed that there were also a number of times during his evidence when he started to give an answer and then quickly followed it with 'I can't remember' or 'I don't remember'.

134 [The father's] narrative of the 'old [father's name]' versus the 'new [father's name]' made no sense, and was an example of him trying to distance himself from previous actions for which he might now shirk responsibility. F gave the impression that he now thought better of 'Old [father's name]' 's behaviour and was able to see how 'old [father's name]' had done things that he should apologise for as 'New [father's name]'. However, F then contradicted himself by then telling the court that the 'old [father's name]' was timid and kind and would have done anything for his kids. This too, it is submitted, is dishonest.

135 (i) the deliberate lie(s) upon which they seek to rely;

That F had memory loss but was able to remember certain things. The concoction of the narrative of 'old [father's name]' vs 'New [father's name]'.

(ii) the significant issue to which it/they relate(s):

To avoid court scrutiny of actions or information on causation re [B's] injuries.

on what basis it can be determined that the only explanation for the lie(s) is guilt:

There is simply no reason for [the father] to have lied to the court as much as he has in relation to memory loss other than a feeling of guilt. The new narrative of ‘old [father’s name]’ vs ‘new [father’s name]’ is something he has concocted to be able to markedly distance himself from past actions. It is a form of justification, not just for the fake memory loss but also to assuage guilt so that he cannot be blamed for any past behaviours.

[The father’s] dishonesty with Dr McIntock

136 It is submitted that the court cannot rely on Dr McIntock’s report of the father and the expert conclusion he came to in relation to F’s purported memory loss. Clearly the court did not find this expert assessment reliable, directing as it did, a second opinion from Dr Morton.

137 The court is referred to the previous documents filed by M and the skeleton argument prepared on behalf of [the mother] for the hearing on 21st October 2023 at [A607] and is reminded of the submissions made and evidence given in relation to Dr McIntock’s various reports on F and his conclusions based on what F was reporting to him and other medical professionals.

138 In particular the GP report of Dr Wood [E260] of 14th September that [the father] is ‘struggling with normal activities of daily living without support’. The GP report of Dr Bissatt at [E261] states that from an assessment of [the father] on 21st September he is ‘struggling to carry out basic daily tasks without support’. The information from the GP’s is entirely unreliable when considered alongside the phone evidence. The court is referred to the specific messages already included in M’s documents before the court, and the annexe provided.

139 A swathe of text messages in question from that period were put to [the father] in oral evidence and he said he was not able to remember, save for the football texts where [the father] justified that his private life was nothing to do with his memory loss and that engaging in football was helpful to his mental health.

140 The court will also bear in mind the lies [the father] told about having to be supervised by his mother, in order to give the impression that he was unable to care for himself and too mentally fragile to be on his own on the October 2nd assessment date [at E271 at paragraph 4.6] when he told Dr McIntock that he ‘is currently staying at his Mother’s property and she is ‘checking on me every hour’. [The father] self-reported that he stays in during the day and does ‘nothing. There is nothing for me to do’, in order to manipulate Dr McIntock’s view which, he appears to have done with some success. This information is as reported to Dr McIntock is totally dishonest when considering the phone evidence - see attached annexe.

141 It is submitted that this was a sophisticated part of F’s tactics to avoid being seen by any of the professionals to be doing ‘too much’ as he later told Dr Morton, so that he wouldn’t have to give evidence to the court.

142 It is submitted that this is also why he did not attend contact with [A] and [B] and prioritised his need to be seen as incapable or too mentally unwell over and above their welfare needs for a relationship with their father.

143 (i) the deliberate lie(s) upon which they seek to rely;

That [the father] couldn’t manage any daily tasks and that he had to have 24/7 supervision by his own mother.

(ii) the significant issue to which it/they relate(s):

Evasion of the court's scrutiny for information as to [B's] injuries and cross examination.

(iii) on what basis it can be determined that the only explanation for the lie(s) is guilt.

This is part of [the father's] wholesale campaign to avoid questions and scrutiny. Why else would [the father] put so much time and energy into seeking out GP appointments to confirm his state of mental vulnerability if not an attempt to garner sympathy rather than facing the music about his guilt? The court cannot forget that up until 28th July 2023, [the father] was fully engaged in the court process, giving clear instructions and attending at court without any problems.....

FINDINGS SOUGHT IN RELATION TO [THE FATHER]:

151 The court is therefore asked to make the following findings against [the father]:

(a) [the father] duped Dr McIntock about memory loss and or dissociation to the extent that Dr McIntock's expert assessment was flawed and F was assessed as lacking capacity to conduct litigation.

(b) [the father] was dishonest with Dr Morton about his purported memory loss to maintain his position that he should not have to give evidence

(c) [the father] lied to the court as to his purported memory loss to avoid taking responsibility for information or any injuries to [B]

(d) [the father] lied to the Guardian about the train station incident

(e) [the father] lied to social services about the paternity of [C], about how often he was having contact with [C] while he was not having contact with [A] and [B], and

about his ability to function in daily life in order to appear unable to function and unable to give evidence.

152 It is submitted that any finding made in relation to (a), (b) and (c) and (d) can be relied on by the court as relevant to the likelihood that F perpetrated injury to [B]. We say that the lies in respect to his sexual unfaithfulness , alias' and [C's] paternity go to prove his capacity to make and sustain a lie to protect himself from challenge and scrutiny.

153 Although it may not be possible for the court to make a finding that [the father] duped Dr Taylor in his initial cognitive assessment, it is submitted that the level of vulnerabilities recorded in that assessment are exaggerated, given his ability and presentation at court when answering questions in cross examination as above. This is not something that any of the parties could have objected to earlier, nor could the court have realised, until [the father] eventually gave his oral evidence”.

159. Father's submissions regarding the interpretation of his evidence are at a 715 internal paragraph 22. The court is reminded that the father's IQ has been assessed as 69, that he has a reading age of eight years and two months and that ground rules have been in place so as to address ASD dyslexia and dyspraxia. At paragraphs 4 5 and 6: it is argued that the father has been subject to and has exhibited stress whilst giving evidence. It is submitted that there was a real question mark as to whether the father would be able to have to give evidence without “having a complete meltdown.”

160. The court is cautioned not to underestimate the impact on the father of giving evidence. It is submitted that the court would be wrong to conclude that the anxiety in the father arises as a result of his lying or claiming not to remember and the court is urged to exercise caution in relation to the father's demeanour. On the question as to

the father's credibility and his memory loss and whether the same is genuine, the court is reminded of the conclusions of Dr McClintock on two occasions regarding the father lacking capacity and that Dr Morton reached a contra review but nevertheless said that it was a borderline decision. It is submitted that the court should accept the expert evidence supported by the various medical records exhibited by the father to his six statement and conclude that the father had a genuine breakdown in July / August 2023. The father argues that if the court accepts that he had a breakdown then that goes a long way to counter the assertions the mother has made about his credibility and therefore in simple terms it is contended that the meltdown was genuine.

161. The court is reminded that the father is of good character and that he admitted to having misled the mother over the parentage of C. The court is reminded that just because he has lied about that does not mean to say that he has either perjured himself or lied about other issues. In summary it is argued that the father's memory loss is more likely to be stress related and the court is reminded that Dr Morton was not challenged on that issue.
162. The points made regarding the father's failure to confirm the details of his witness statements on oath are not pivotal to my decision making. Finally on this particular topic the court is reminded of the father's vulnerabilities and ASD and in that context that the father is not neurotypical. The court is therefore invited to treat the interpretation of the parents' text messages with caution particularly in the context of the mother having given evidence that the father found it easier to text than to talk.
163. I have had the benefit of spending many hours in the presence of the parents in this case and of observing the behaviours of each. In the proceedings prior to the summer

of last year the father attended regularly and contributed successfully through his intermediary and counsel. I was fully satisfied that he was able to follow the proceedings and to contribute to the evidence underway. I had expected to hear evidence from him but then the incident at the train station intervened. I have already made clear that I accept the children's guardians account of what she was told and I accept the mother's account of what happened on that day.

164. I shall avoid controversial language as to his behaviour on that day but I am satisfied that he did seek out the mother, that he did approach her, that he refused to retreat as would have been appropriate and that he then went on to lie to the guardian about what had happened. It is more likely than not that he was then worried about the consequences of his behaviour that day and his lying to the guardian. We know that he was worried because he said so to the guardian. It is likely that his worry about giving evidence would be increased in the light of what he had just done. That said, he had the benefit of a known and familiar legal team around him and a very supportive, familiar and engaged intermediary.

165. During the following weeks he sought out medical attention. He claimed to be suffering mentally and described various aspects of his life to those whose help he was seeking. It has become apparent that he did not give them the full picture as to what was happening in his life and this continued when he saw Dr McClintock who was to assist the court on the very subject as to whether the father was fit to give evidence. The inaccuracies in his account to the professionals have been laid bare by telephone records and investigations into his daily life, his international travel, and his social and personal life. Given that he has continued to live a life involving his friends, playing football, going on holiday, and not being at his mother's as claimed,

one can see that the purpose of speaking to medical professionals as he did, was not so as to seek some change to or advice about his daily life. The only area in which there has been a significant consequence of his claim to be unwell has been in the court arena and in the related context of his then not seeing his children.

166. I am satisfied that the father has sought to avoid giving evidence to this court and that although he ultimately did give evidence, he embarked upon a deliberate misleading of professionals, medics and this court with a view to avoiding giving evidence. I am satisfied that the father has deliberately lied. The relevance of the lie is that it had the aim of preventing him giving evidence on the causation of the injuries to B in respect to which the local authority has contended he is a likely perpetrator.
167. I now turn to the other aspects of alleged dishonesty which the mother brings to the court's attention.
168. The first is in relation to the paternity of C. In my judgment the father has been dishonest about this important issue. He lied to the mother at the outset and failed to be open with his own parents. The deception went beyond a straight denial to a concoction regarding the death of the child's father and an application by this father to adopt. That said, it is correct that this dishonesty is in a different category to that above in that it has less direct relevance and has thus limited my ability to satisfy the approach now taken in respect of the Lucas test which has been applied carefully in the analysis on behalf of the mother above and which I adopt. I do accept however that this is dishonesty which goes to the father's credibility in that it was perpetuated in his dealings with social services and is indicative of his ability willingness and to obfuscate so as not to answer difficult questions.

169. The court is reminded of the father's several surnames, and it is submitted that the changes go to his overall credibility and skill for obfuscation and avoidance in direct opposition to an order of the court. The relevance of the changes of names themselves is limited but it is relevant that the father was directed to detail all aliases and any date of birth changes in his statement, and he did not do so. That said this issue plays no significant part in my decision making overall.
170. The mother contends that the examples of dishonesty, linked together, "demonstrated capacity by [the father] to conceal a sustained deceit over a significant period of time even when under challenge or required to clarify". I am satisfied that the principal example above justifies that conclusion which is fortified by the evidence we have regarding the father's approach to being honest about C's paternity.
171. **The injuries to B.**
172. I must now turn to the central issue before the court which is that as to how B came to suffer the rib fractures and subconjunctival images which the medical evidence clearly confirms. The conclusions which I have reached about the father's behaviour do not have the effect of creating a presumption that he has hurt B or that the evidence which he has given on the relevant issues is lies. My conclusions as reached above will have me bear in mind when considering all of the evidence that this is a man who I am satisfied has lied in the past and has done so with the aim of avoiding giving evidence to this court about these very important matters.
173. The court has had the benefit of a comprehensive advocate's chronology. The information regarding B starts at page 16 of that chronology, the previous pages being dedicated to the life of A following his birth in [2020].

174. B was born in [summer 2022] and she and her mother were discharged the following day. She was visited in the [early August] by the family support worker who found her to be very sleepy and the parents were advised to wake her for her feeds. B was visited again on the [date] and [date] of August by the midwife and by the 12th August the midwife was concerned that B had not gained appropriate weight.
175. Significantly for these proceedings, B's eyes were noted to be clear on 12th August 2022. Maternal grandmother's evidence was that the mother contacted her on 17th August by video and tried to show her how B's eyes. The grandmother gave evidence that she was unable to see clearly on the video but by the time she saw B on the 18th, she was clear that she could see what appeared to be burst blood vessels in both eyes. Thus, we have evidence from the grandmother that as early as the 17th August the mother was communicating to others about her worries about B's eyes. The grandmother's account of what she saw on the 18th is confirmed by the maternal aunt. There is no evidence from the grandmother or the aunt as to B's presentation otherwise being abnormal. In addition, there had also been, around the time of the video call with the maternal grandmother a FaceTime call with the paternal grandmother about the same subject and again the paternal grandmother had difficulty in seeing the exact state of the eyes over the video call.
176. The following day, the 19th August B was seen at home by the health visitor who recorded that her eyes were clear, the same having been recorded on the 15th and 17th.
177. On the 24th August the family support worker visited and found the lounge to be well presented and the kitchen tidy. B was discharged from midwife's care having gained weight. That said, she was wearing a fluffy all-in-one suit which was unsuitable as the weather was warm. It is noted that the parents said they were coping well.

178. Thus, at the time of the discharge from midwifery care, the mother had raised the issue of redness in B's eyes with her mother on 2 occasions and there had been communication with the health visitor such as to cause the health visitor to make specific recordings about B's eyes.
179. We know that on the morning of 26th August at 08.55 the mother made a Google search regarding the red eyes (K252). The mother's evidence is that she left home early that morning so as to be at [the supermarket] just after it opened after 7:00 AM. There is a text message to the father at 08.27 where she mentions having bought breakfast. The evidence is that the children were left at home with the father during that excursion. The mother was unable to provide the court with any further detail about what happened immediately upon her return home that morning and what discussions took place with the father. I was unclear as to why the visit to the shops had taken so long .
180. The mother texted the health visitor re the eyes who responded and visited on 30th August. The health visitor advised the mother to see the GP. She did so and they referred B to the hospital where bilateral sch were diagnosed. Further tests were carried subsequently out and the rib fractures were detected.
181. The father's written statements show that he was aware of the mother's concern regarding the eyes - C128. He was aware of the GP advice for B to be taken to the hospital yet he did not attend until after 5:00 PM, having prioritised delivering a kitten to his daughter C. A was sent to his grandmother to be cared for during that day. The evidence is that the mother was interacting appropriately at the hospital with B on the 31st August having been admitted and she stayed overnight.
182. Advice had to be given to the mother about milk preparation.

183. I heard from the social worker who said that the “mother was calm. Father was distressed and crying throughout”. She described how the father had become distressed on hearing about the eye examinations, that he felt physically sick and had to go to the bathroom. She said that in a conversation with the father he had expressed that “we were pointing towards him”. There is a note from hospital staff [i176] recording having overheard the mother having a telephone conversation with someone saying such things as “calm down, no need to worry, there is nothing for them to find so don't worry”.
184. Police record that when they attended “[the father] started breathing heaving and looking physically stressed. He was holding his hands to his mouth and [the mother] asked him if he was going to be sick... staff sought him a sick bowl. The social worker ... asked a few questions surrounding who had unsupervised contact with [B]. [The father] stated he was always at work and shortly after this [the father] took himself to the toilet as he felt he was going to be sick”. [K18]
185. We know that the father had paternity leave for a week after B’s birth and the court also knows of the father's work rota which provided for three days off in the middle of the week even when he was working. Accordingly, the mother submits that the father has lied to the police in this regard and the court agrees.
186. I heard from each of the parents. First it is important to note the vulnerability and functioning of each of these parents. I have expert evidence in respect of each of them. The proceedings have been delayed for many months. Those delays, save for the delay caused by the father as detailed above, have been entirely unavoidable. For the most compelling of reasons, it was not possible to conclude the fact find hearing either at the first hearing or the 2nd each of which had to be abandoned due to illness at

the Bar. The delay and the vulnerability of each of these parents has caused this court to be ultra vigilant in ensuring that in these sub optimum circumstances everything has been done that can be done to achieve the best evidence from each of the parents.

187. It is against that background that I heard from each of the parents and that during this delayed hearing. I have been meticulous in ensuring that the ground rules which were agreed in respect of each of them have been followed. There has been some deviation from the ideal in terms of the questioning of the mother, but I am satisfied the course of the evidence made it inevitable that the court had to depart, by way of seeking greater detail, from the agreed approach to questioning. I have in mind the questions about the daily evolution of the redness of the eyes. I was alert to the mother's presentation during that evidence and had I been concerned that fairness was not being achieved then I would have stopped the questions. In the end, I am satisfied that what occurred was that the mother was given the best possible opportunity to communicate to the court the extent of her concerns about B's eyes and how that concern was maintained.

188. The father's evidence was given remotely. I do not feel that my ability to interpret his evidence was in any way impacted by that. As I have already stated, I have spent many hours in the presence of the father and I was able to, so far as was necessary, compare his most recent presentation with that which had gone before. His presentation was very similar.

189. That said, the content of what he was saying in giving evidence was very different from that which he had written in the past and which he had spoken to the police in that when giving his oral evidence he did so in the context of frequently referred to self-harm and to the evidence of the same on his wrists. He spoke of the "Old

[father's name]" and the "New [father's name]" to which I have referred previously. Anything that was to do with the older [father's name] he claimed to forget except as per the examples which I have already cited above, and he now claims that the New [father's name] would behave differently. His position is that the New [father's name] cannot comment upon what happened in the world of the Old [father's name] and so it follows that his contribution to the evidence of the events around B's injuries is limited to that which he has already written as opposed to being able to elaborate further or assist the court further during his evidence before me in the hearing.

190. This position prevented any helpful enquiry into why he had raised the possibility of accepting guilt for the injuries as alleged by the mother and the local authority. Whilst not central to my determination I am not satisfied that I have an explanation for why he spoke as I am satisfied, he did, beyond it being the type of thing a person might say if they thought that it presented a solution to the pressing problem.
191. The mother, I am satisfied, tried to assist the court in gaining a clear understanding of B's presentation during the relevant period and of life at home during that period. Her evidence is clear that she was desperate to have the father involved more. She tried to involve him more by persuading him to spend time with B and she resorted to sending text messages to him as if they were from B. Her evidence is that none of this succeeded and that the father was distant and at times, when interacting with B, she was concerned. It is clear however that her concerns were not such as to lead her to make complaint to anyone else or to remove herself and her children from the home. There is no indication that her concerns reached anything like that level and one notes that at no time whatsoever, before the father's alleged mental breakdown, did she advance a positive case against the father. Of course, it is not for her to prosecute the

father, but it is her responsibility to make sure that the court has all the information which she has available to her when making decisions about B's future and when trying to work out what has happened to her in the past.

192. The mother's account is that she had the majority of the care for B but she did not have sole care and that there were times when the father did have sole care, such as when she was at [the supermarket] on the morning of the 26th. Beyond that and beyond pointing to the father's lack of interest in B and his previous reaction to A being taken ill whilst in his sole care, the mother can take matters no further.
193. In my judgment the mother has clearly been hurt by the way in which the father misled her about the paternity of C and prioritised C over B on the day of B's admission to hospital. During the proceedings she has come to have a greater awareness of his interest outside their relationship though that of course does not go directly to the issue before me.
194. Drawing all matters together I am satisfied that it is more likely than not that B suffered fractures to her ribs in the manner and within the time frame expressed by Dr Johnson. Whilst I have noted that the timing of fractures is not an exact science, I am persuaded by the presence of the healing identified by Dr Johnson and his comments about the development between the two sets of X-rays that it is more likely than not that the fractures were at least two weeks old at the time of the 1st X-ray. My conclusion is informed by my being satisfied that it is more likely than not that the maternal grandmother was correct when she saw what she identified (in the context of her having knowledge of haemorrhages in the eyes) on 18th August 2022. The SCH which were diagnosed on admission to hospital, I am satisfied had a cause separate from the infliction of the injuries to the ribs.

195. The court must now attempt to identify who caused the injuries to B's ribs and eyes around 18th August 2022. The court has in mind the totality of the evidence which has been read heard considered and evaluated, not only as set out above but in totality. The court must consider whether there is someone about whom the evidence enables the court to conclude that they more likely than not to have caused the injuries.
196. I have considered the submissions by the father that the mother assaulted him (K4n), and that she sent threatening texts (C187c). I factor that behaviour into my thinking. I am satisfied that the assault was not part of a pattern of frequent assaults and that the threatening texts need to be looked at in the context of the other texts sent by them mother which show her to be desperate for the father's attention rather than being a dominating or violent force. I am more concerned about the texts such as those at [K191] and [K192] but I am ultimately satisfied that they are a form of communication designed to attract the father's attention rather than being evidence of mistreatment of B.
197. The court does not conclude that it is more likely than not that this mother caused the injuries to B. The court has in mind the mechanism and level of handling which would be necessary to bring about the injury to B's ribs which then had the secondary consequence in respect of her eyes. I am satisfied that this mother has behaved as a reasonable parent in the way she has looked after B alongside her brother, and often half-sister, since she was born. No one has expressed any significant concern about her handling of B and neither has anyone observed anything uncaring, distant, or disconnected in terms of her parenting.
198. Importantly, in the view of this court the mother has spoken to everyone she could speak to about her concerns regarding B's eyes. If this mother had caused the injuries

to B's ribs which had caused the haemorrhages around 18th August, it is unlikely that she would have brought the attention of her mother, her mother-in-law, her sister, and the health visitor to the eyes as she did. I am satisfied that this was a mother who was trying to get to the bottom of what was wrong with her daughter in circumstances where she knew that she had not behaved in such a way (as now described by the medics in terms of what would be required in terms of compression) to have caused the injuries. That search for a greater understanding extended to the Internet searches both at home and after admission to hospital.

199. At the hospital she was cooperative and calm. This is despite the limitations on her own functioning. I am troubled by the mother's failure to seek medical attention on the 26th August when she was so concerned as to be doing the google search and by the lack of explanation regarding that and the lack of detail as to what was going on in the home on the 26th August. By that point B had been or was about to be injured again, given my conclusion that there was an event which gave rise to the sch as diagnosed at the hospital.
200. I have had to pause and consider carefully whether this piece of evidence (or lack of evidence) points to the mother being the perpetrator but I am not satisfied that it does. Neither am I satisfied that it so impacts the mother's account of events such as to undermine my acceptance of the accuracy of that account.
201. Turning to the father, the court is satisfied that it is more likely than not that he caused the injuries to B's ribs which had the effect of causing the damage to her eyes around 18th August 2022. Clearly the father had the opportunity to cause an injury which would have been inflicted in seconds. The court is satisfied that this father showed

little interest and his daughter B preferring to prioritise his time either being out of the family home or absent from hands on parenting when at home.

202. On the day she was ultimately admitted to hospital, he chose not to go to the hospital for several hours. This point is easily made but is of great significance. If one pauses to consider that he had been living with the mother who had been expressing concerns about the child eyes for several weeks and the situation arises where a health visitor says the mother and child will go to the GP, and the GP then says that the child and mother should go to the hospital then a reasonable parent would accompany their tiny child to the hospital rather than distance themselves by going on a completely unnecessary errand in delivering a kitten to their other child. This behaviour is consistent with someone wishing to avoid facing up to the uncovering of the cause of his child's medical presentation.
203. When he eventually attended the hospital, his panic was consistent with the behaviour of someone who had reason not only to be upset but to be panicking about what was about to be revealed.
204. The father's behaviour during the period when he has been aware that the court was about to hear his evidence has been consistent with not wanting to be questioned about his role in circumstances where the version of events which he has given in writing has been incomplete. The extent to which the father has been willing to go in this regard is remarkable. It is clear that he has lied to just about everyone involved in this process. He has done so to distract those seeking to establish the truth from achieving that aim.
205. The court reaches the above conclusion not on the basis of the demeanour of either witness in court but on the basis of the totality of the evidence and its conclusions as

to the behaviours of the relevant adults during the relevant period. In a case where the parents have the limitations of these parents and where the proceedings have gone on so long, it would be dangerous indeed for this court to reach such important conclusions on the basis of how the witnesses have presented when giving evidence. The extent to which the demeanour of either of these witnesses when giving evidence has impacted upon the courts conclusions is insignificant. The court has concentrated on the substance of what each party has written and said and where possible as cross referenced to and taken into account third party evidence when looking for corroboration of what each of these parents have said in their limited accounts.

206. It is when the court draws these threads together in the context of the total factual matrix, including how life was in the family home in the months examined above that it is driven to conclude the injuries caused to B are more likely than not to have been caused by the father and his handling of her, such handling closer to the admission to hospital being of a less forceful degree than that which caused the original fractures and sch but still sufficient to cause the sch for which she was admitted to hospital.
207. The court does not have sufficient information to make findings as to the extent of any redness in the eyes between those two events, the medical significance of the same, or the cause of the same.
208. The local authority amended the schedule of findings during its written submissions. I now turn to that amended schedule so as to apply the above conclusions to the finding sought and to consider the remaining findings sought following which I shall then consider any additional findings sought by either of the parents.
209. I make the finding at paragraph one in its entirety.

210. I find that the fact that B was in pain would have been known to the parent who inflicted the injury.
211. I find that B was in the care of her parents when the injuries occurred. I find that the injuries were inflicted by B's father.
212. I find that the parents failed to seek immediate medical attention for B though I am satisfied that the mother made enquiries of her family and health visitor in an attempt to gain an understanding of B's condition and the seriousness of it. I also find that by the time of the mother's Internet search on the 26th August regarding B's eyes, the level of concern which gave rise to that search should have given rise to the mother seeking immediate medical attention for B. Even the delay between sending the text on the 29th August and waiting for the health visitor to visit on the 30th August is in my judgement an unacceptable delay and not one which could be expected of a reasonable parent in circumstances where this young child had shown varying symptoms of illness in the eyes over a number of weeks and which we know to have escalated in the immediate run up to the admission to hospital on 30th August.
213. I am not satisfied that it is more likely than not the mother failed to protect B prior to the 26th August. I am satisfied that she did not cause the injury and that it is more likely to have occurred when the father had sole care of the child, even in the context of that being for minutes and perhaps in a different room of the house to the mother. The evidence from the paediatrician regarding the infinite variation in terms of pain and how a child exhibits the same, combined with none of the visiting health professionals noting any discomfort on the child being handled, leads me to the conclusion that the mother if absent at the time that the injury was caused, would not

be aware of it and therefore could not be said to be culpable for failing to protect the child going forward

214. However, the evidence is that the mother was out of the home extremely early on the morning of the 26th August, returned and then searched on the Internet regarding B's eyes. Something caused her to make that search. However, she then remained in the family home until the 30th and in that continued to expose B to the environment in which she had come to experience damage to her eyes. The mother's inability to provide me with an account as to what happened that morning leaves the court to conclude that the mother was concerned as to the origins of the condition of B's eyes and failed to remove her from environment within which B's eyes had suffered. She has provided the court with an account of the father's behaviour which has contributed to the courts thinking in terms of the conclusions to be drawn about his harming B. The mother had much of that information all along and was equipped to reach a similar conclusion.
215. The father inflicted injuries on B. The injuries inflicted are in my judgment injuries to which a young baby is susceptible and are not injuries to which similar handling of A would make him susceptible. In addition, the circumstances around handling a tiny baby are very different from those around the handling of an older child. I am not satisfied that A was likely to suffer significant harm but I am satisfied that he was likely to suffer emotional harm as a result of his little sister being injured and also the dynamics at large in the family home at that time.
216. I am satisfied that it is more likely than not that the mother has not shared all the information which she has about life in the family home at which might explain B's injuries.

217. I am satisfied that the father has not been honest with professionals and medical professionals about the cause of B's injuries.
218. As for the issue of domestic abuse within the parents' relationship I agree with the analysis put forward by the children's guardian as follows: "The Guardian does not seek to make any representations as to the domestic abuse allegations made by the parents against each other save that the children (and [A] in particular) would have been exposed to domestic discord between the parents and thereby suffered significant emotional harm".
219. The court has not heard extensive evidence on the allegations and counter allegations between the two parents but has read and heard sufficient to enable it to form the view that a proportionate approach to this topic, when considering that the purpose of the findings is to assist assessment and planning going forward, is to make a finding which equates to the guardian's conclusion and I therefore find that the children were exposed to domestic discord between the parents thereby suffering significant emotional harm.
220. I have considered the finding sought by the local authority at paragraph 13 in relation to A having suffered emotional harm and neglect and the risk of physical harm and B being at risk of suffering similarly as a result of poor home conditions. Whilst I have already noted that the conditions at the time that B was admitted to hospital was satisfactory there is sufficient evidence in the chronology and in the references relied upon by the local authority to form a firm conclusion that there were times during A's life when the local authority's concerns regarding home conditions were manifest. I have considered the references cited at paragraph 13 on mother's evidence about home conditions including her acceptance that at times they had been dirty. Even

without that acceptance, having regard to the totality of the evidence I make the finding sought by the local authority. There had been sufficient occurrences in the history to enable this court to consider it likely that the waxing and waning of conditions which had been manifest in the past is likely to reoccur with consequent effect for B.

221. For the avoidance of doubt, I am also clear that each of the findings made above against each parent satisfy the threshold criteria in respect of each parent.

222. Finally, I returned to the findings sought by the mother against the father in the written submissions. They are set out at paragraph 151 A to E. Notwithstanding initially having some concern about the use of the word “duped” I am clear that the findings sought are made out as follows:

(a) The father duped Dr McClintock about memory loss and or dissociation to the extent that Dr McClintock’s expert assessment was flawed and F was assessed as lacking capacity to conduct litigation.

(b)The father was dishonest with Dr Morton about his purported memory loss to maintain his position that he should not have to give evidence.

(c) The father lied to the court as to his purported memory loss to avoid taking responsibility for information or any injuries to B.

(d) The father lied to the Guardian about the train station incident.

(e) The father lied to social services about the paternity of C, about how often he was having contact with C while he was not having contact with A and B, and about his

ability to function in daily life in order to appear unable to function and unable to give evidence.

HIS HONOUR JUDGE BEDFORD

APPENDIX ONE

1. [B] has suffered significant physical harm and emotional harm in the care of her parents as follows:

a) [B] suffered bilateral subconjunctival haemorrhages [E176]

b) The mechanism for the bilateral subconjunctival haemorrhages was chest compression which caused secondary subconjunctival haemorrhages [E176]

c) [B] suffered posterior left 4th, right 6th and right 11th rib fractures [E183]

d) The rib fractures were 2-5 weeks of age on the 01.09.2022 [E183]

e) The cause of the rib fractures was either as result of 1,2 or 3 episodes of chest trauma by way of either direct blows or impacts and/ or severe excessive squeezing compressive force applied to the chest [E176, E184, E205]

f) There were no underlying medical reasons for the injuries sustained by [B] and therefore the cause of the injuries was inflicted trauma [C176, E204-205, E207-E208, E182]

g) The amount of force required to cause the rib fractures is significant, excessive and greater than that used in the normal care and handling of a child [E184]

h) At the time of the rib fractures occurring [B] would have been in pain and shown signs of distress which would have lasted for some moments [E184, E209]

i) [B] would have been caused pain by normal handling and movements. Normal breathing movements would have been painful. Handling around the chest when lifting and dressing would have been painful. [E209-E210]

- 2. The fact [B] was in pain would have been known to her parents.**
- 3. [B] was in the care of her parents when the injuries occurred.**
- 4. The injuries to [B] were inflicted by either:-**
 - a. Her mother**
 - b. Her father**
- 5. The parents failed to seek immediate medical attention for [B].**
- 6. In the event the court finds either of the parents inflicted the injuries on [B], the other parent failed to protect her.**
- 7. If the parents inflicted the injuries on [B] - At the date of intervention [A] was likely to suffer significant physical harm and emotional harm as a result of the parents being perpetrators of significant physical abuse to [B]**
- 8. The Mother has not been honest with the professionals and medical professionals about the cause of [B's] injuries**

- 9. The Father has not been honest with the professionals and medical professionals about the cause of [B's] injuries**
- 10. The Father has deliberately claimed that he has lost his memory and is unable to remember events relevant to how [B] was injured.**
- 11. [A] and [B] have suffered emotional harm and have been at risk of suffering physical and emotional harm due to domestic abuse within the parent's relationship.**
- a. The Local Authority adopt the parent's schedules of allegations.**
- 12. [A] has suffered and [B] is at risk of suffering significant physical and emotional harm as the parents have not always sought timely medical advice for [A]:**
- a) The parents did not seek medical intervention for [A] when he was unwell prior to the incident when he stopped breathing on the [date] when he was diagnosed with Bronchitis. He was described as unwell for a few days, possibly wheezy and off his foods [C172, E199]**
- b) [Date] the mother sent a media message to [the family support worker] of [A] beathing heavily with the text saying "This does not look right". The parents had not sought medical attention for [A] despite the previous episode where he had stopped breathing [G272, N67-68, N176- 177]**
- c) [Date] – [A] was noted to be raspy and had been for a few weeks and had green mucus coming from his nose. The parents had not taken him to the GP despite being advised to. [N187]**

d) [Date] – The parents had not contacted the GP for 3 weeks after [A] was displaying green mucus from his nose and sounding raspy [N273]

13. [A] has suffered emotional harm and neglect and the risk of physical harm and [A] is at risk of suffering emotional harm, neglect and physical harm as a result of poor home conditions:

a) [Date] - The home was noted to have unpleasant smell with observations of a bag of rubbish in the kitchen, cat faeces on the floor and soiled nappies in nappy bags [A10, C12, C47, G164, N408]

b) [Date]– visit to the family home by [health visitor] the fridge was not locked, [A’s] changing table had creams, talc and nappy sacks in easy reach of [C], there were leads trailing over the living room and bedroom, piles of boxes and lose clothes in each room, the landing carpet was messy with lots of bits over it, the table in the living room was covered with things. [L73]

c) [Date] –The house was very unkempt, rubbish and food on the floor. The bathroom had grime in the tiles, around and inside the toilet. The sink was covered in grime. The floors appeared to have not been hoovered in a while. There was a large amount of boxes in a corner of the lounge, there was a chest of drawers in the middle of the room in the lounge and lots of black sacks. There were nappy sacks on the floor and in a box next to [A’s] cot [A2 , C17, N42, N413]

d) [Date] - parent’s bedroom had rubbish on the floor, piles of paper and nappy sacks on the floor. The kitchen had piles of recycling in bags and the floor was grubby and had mess on. The fridge had grime in it. The lounge had clothes

strewn over the floor, bits of paperwork strewn over the floor, rubbish on the floor, food remnants on the floor. The large pile of belongings were starting to cover part of the lounge, there were nappy sacks on the floor. In the lounge there was a potty that had urine in with a wipe. [N271-272]

[Date] – [A's] bedroom had empty nappy sacks on the floor, the floor was particularly dirty, stained and covered with food remnants. A table in the lounge was covered with rubbish, parent's bed was covered with clothes and the floor was starting to get strewn with items. In the bathroom was a pair of scissors within reach of the children. The windows were covered in mould. [A6, C17, H1-12, N334]