

IN THE FAMILY COURT AT BARNET

Neutral Citation: [2024] EWFC 194 (B)

Case Number: ZW22C50181

29<sup>th</sup> February 2024

Before:

HIS HONOUR JUDGE OLIVER JONES

B E T W E E N:

LONDON BOROUGH OF HARROW

and

(1) MOTHER

(2) FATHER

(3) "TIM" A CHILD

BY HIS CHILDREN'S GUARDIAN, MR WHEWAY

Mr Roche KC & Mr O'Sullivan appeared on behalf of the Applicant

Mr Woodward-Carlton KC & Mr Keyes appeared on behalf of the Mother

Mr Momtaz KC & Ms Rasul appeared on behalf of the Father

Ms MacKenzie appeared on behalf of the child through the Guardian

## JUDGMENT

*This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.*

HHJ OLIVER JONES:

1. These are care proceedings relating to a 2-year-old boy. For purposes of anonymity, I am going to refer to him by a different name throughout this judgment. If the parents do not like this approach, I will change it, but for the purposes of this judgment I will refer to him as “Tim”. I will also anonymise the names of other significant individuals to preserve confidentiality.
2. The local authority is the London Borough of Harrow, represented by Mr Roche KC and Mr O’Sullivan. The mother is represented by Mr Woodward-Carlton KC & Mr Keyes. The father is represented by Mr Momtaz KC and Ms Rasul. Tim is represented by Ms MacKenzie, through his Children’s Guardian, Mr Wheway.
3. This was listed for a fact-finding hearing to consider the circumstances that lead to Tim suffering four fractures that were discovered in May 2022. It is accepted by all parties that Tim suffered the following fractures:
  - 1) A complete fracture of the lower end of the shaft of the left radius, this fracture was more recent than the other fractures;
  - 2) An incomplete fracture of the lower end of the shaft of the right radius;
  - 3) A complete fracture of the left collar bone;
  - 4) A complete fracture of the right collar bone.

## **Background**

4. The mother is of mixed heritage. The father is of Asian heritage. The parents met at work and commenced a relationship. They underwent a religious marriage in February 2021, but have not yet had a civil marriage. When Tim was born, they were living separately, although spent a lot of time together. They moved in to their own flat in December 2021, when Tim was about 2 months old. I have seen photographs and a video of their a two-bedroom flat. It looks very nice and is fastidiously tidy.
5. The mother has an older daughter from a previous relationship who I shall refer to as “Sam” (not her name). Sam’s parents separated when she was just over 2 years old. At that point, the mother returned to work, and arrangements were established for Sam’s care to be shared between her parents.
6. The pregnancy with Tim was uneventful. He was breast fed, but he has struggled with bottle feeding. He has a tongue tie and a high palate.

7. The father has continued to work for the same employer. However, his role has changed. He is no longer on the shop floor. Instead, he deals with customer service online. His role involves responding to emails or dealing with customers via an online chat.
8. The mother is in the process of requalifying as a nurse. Although she ceased to earn an income, the family have managed their finances and with student loans they are no worse off in terms of making ends meet than when she was working. However, she will have accrued debt from her student loan.
9. The pattern had been that the mother was Tim's primary carer, however for two days a week she would attend her university course and the father would care for Tim.
10. The mother's nursing training was due to move onto a new phase in the summer of 2022. She was due to start her work placement in the community which meant being away from home and from Tim for far longer than had previously been the case. In preparation the family made arrangements for Tim, then aged around 7 months, to start nursery.
11. On 9.5.22, Tim attended at nursery for the first time, he was there for 1 hour with his parents present throughout. He settled quickly. On 10.5.22, he was there for 2 hours - his parents dropped him off and were able to leave soon after. On 11.5.22, he spent 3 hours at nursery from 9am to 12pm. His parents did not need to stay, and the staff had no concerns.
12. 12.05.22 was Tim's formal start date at the preschool.
13. The mother told me that Tim slept from 7pm until 4am. She could not remember him waking until 4am, when she would feed him and put him down. It was put to her that Tim would usually wake around 11pm or midnight and she was taken to a number of examples when the parents messaged each other asking for nappies. She said that every day is different.
14. After Tim woke at 4am, he was unusually difficult to settle. Rocking him did not work. Breast feeding did not work. Eventually he settled after the mother put him in a wrap-style baby carrier. The mother told me it was at 6am or 7am when Tim fell asleep.
15. On the morning of Friday 13.05.22, the mother noticed something wrong with Tim's arm. She showed the father, and they were both concerned. Both parents agree that he would flinch when the arm was manipulated and describe him moaning.
16. In his police interview, the father said that they saw swelling in Tim's forearm, and he was not really moving it. In her oral evidence the mother disagreed with that and said there was no swelling. She said she could tell Tim was discomforted, but she was not sure whether he was just not wanting to put on his jacket.
17. Tim was still taken to nursery that day, but the mother intended to take him to the GP. The deputy manager's statement of 6.6.23 sets out that at drop off the mother said she

would be collecting him around midday because, “she had realised that he is not moving his arm properly and so she is a bit concerned and she was going to take him to the doctor.” The manager’s statement sets out more detail, albeit hearsay from the deputy, that the mother said that “when she tried to pick him up during the night, she noticed that his arm was hurting and that it felt weird.” Tim was at nursery from 9am until midday on 13.05.22.

18. The evidence of the nursery staff has not been challenged in cross examination. They all give a similar account that there were no accidents or falls involving Tim during his time at the nursery. The manager’s account is that he would be held or sat with staff who would put pillows around him to keep him up. The parents’ case has explored the possibility that something unobserved could have happened to Tim during his time at nursery.
19. After Tim went to nursery, the mother phoned 111. Later she took him to the GP in the afternoon. She picked him up at midday and spent time walking around locally to the GPs until the appointment. The GP appointment entry is timed at 3.12pm. The history noted is: “Concerned mom – not using left upper limb – feels weak and struggles with movements when compared with right upper limb... no h/o injuries or fall, noticed discrepancy more in the last 4 weeks or so – and ? feels pain around elbow/upper arm area – intermittently”.
20. The examination notes: “Well child – movements noted – had good and free movements of right upper limb – limited and slow movements of left upper limb – with weakness of grip, does tend to reach out with both arms – right more freely compared to left no obvious injuries or deformity noted”. The GP recommended a referral to paediatrics for an x-ray and investigation.
21. The mother took Tim to Hospital on 13.05.22. They arrived at 5.16pm. Triage eventually took place at 10.50pm. The triage document that I have looked at in the bundle at page 825 appears to have been redacted (with black and also with white redactions). Details such as the home address and even details of who accompanied the child have been obscured. Astonishingly, part of the history recorded at triage has also been removed. I have no idea why that occurred. It is completely inappropriate, and it is disappointing that in the preparation of the case this does not appear to have been picked up on.
22. The note states:

“6/12 old baby boy c/o [then blanked text] ...C hx of injury to Lt arm about 1/52 ago? Mechanism of injury does not report and [sic - any?] injury, trauma or fall. Baby uncomfortable and crying. S/B G/P and send to ED... No other injuries...”.
23. The medical report prepared on 16.05.22 by the paediatric registrar describes the presenting complaint as:

“Tim’s mother explained that she noticed that in the morning on 13<sup>th</sup> May 2022 while changing Tim, he seemed to be uncomfortable when his left forearm was touched and held. There was no history of trauma or injuries. Tim attended nursery while his mother made an appointment with his GP for him.”

24. The report confirmed that Tim had tested positive for covid-19 on 14.05.22 but was asymptomatic.

25. On 15.05.22 the police exercised their police protection powers.

26. In a report dated 17.05.22, Dr Day, a consultant paediatrician recorded:

“His mother gave the history to me that on the previous day [13<sup>th</sup> May] she had been putting his arm into the sleeve of his jacket and he seemed like he was in pain and thought something maybe wrong with his arm. She had squeezed over his arm and again he seemed in pain...

“She said that she was surprised that he had a fracture of his arm and did not know how this could have happened. She denies any history of any trauma. She did report to me at this time that he had what she described as ‘hand preference for the three weeks prior to this using his right arm more than his left arm.’ She said that he was still using his left arm but did not seem in any distress and she thought he was becoming right-handed.

“She also explained that they had been unwell in the two weeks prior to presentation with COVID. I asked if the 5-year-old sibling could have been left alone with Tim at any point, but she denied this.”

27. That consultant first spoke to the parents about the discovery of additional fractures, and she noted their reactions:

“Both parents seemed surprised at the findings, but both listened to what I had to say. Neither parent could offer any suggestion as to how Tim had sustained these injuries. They said that he was a very good baby apart from not sleeping well at night. Mum reported that he was a fussy baby when put down, so the tendency is that they hold him and comfort him.”

28. Care proceedings were issued on 24.05.22. Mr Recorder McAllister granted an ICO on 25.5.22. Tim was placed with his mother in a mother and baby foster placement. The feedback was positive, but the carer gave notice for personal reasons. On 13.5.22, the mother and Tim moved to live with the maternal grandparents who had been positively assessed.

29. The father has remained living in the parents’ home. He has had regular contact twice a week. There have been no concerns in contact and the reports are positive. He is

described as having a good bond with Tim and affectionate interactions have been observed.

30. Tim has suffered no further fractures since those that were identified in May 2022. He has continued to have regular health checks with the health visitor team. He has also had a CLA health assessment. His height and weight are satisfactory. He is reported to appear happy and relaxed in his mother's care.
31. Tim has been meeting his developmental milestones. A bright and alert child, he rolled early at 2 months. He began to walk at 11 months. He is an alert child. He suffers some eczema and has Mongolian blue spot.
32. Dr van Dijk in a letter dated 20.05.22 confirms that testing has shown there is no abnormality in the OI genes. However, the information provided does not specify which genes were tested.

### **The Law**

33. In *Re IB and EB* [2014] EWHC 369 (Fam), Mr Justice Baker set out the following principles when undertaking a fact-finding exercise:
34. The burden of proof rests with the local authority. I remind myself that there is no pseudo-burden on the parents to explain occasions when injuries may have occurred. The burden remains on the local authority to prove its assertions.
35. The standard of proof is the balance of probabilities.
36. Findings of fact must be based on evidence and speculation must be avoided, especially where there is a gap in the evidence.
37. The court must survey a wide canvass and take into account all the evidence. Each piece of evidence must be considered in the context of all other evidence. As Dame Elizabeth Butler-Sloss P observed in *Re T* [\[2004\] EWCA Civ 558](#) [\[2004\] 2 FLR838](#).

"Evidence cannot be evaluated and assessed in separate compartments. A judge in these difficult cases must have regard to the relevance of each piece of evidence to other evidence, and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward by the Local Authority has been made out to the appropriate standard of proof."

38. Appropriate attention must be paid to medical experts, but their opinions need to be considered in the context of all other evidence. Only the court is in a position to weigh up the expert evidence against all the other evidence.

39. The court must be careful to ensure that each expert keeps within the bounds of their own expertise and defers to others when appropriate.
40. Dame Butler-Sloss P in *Re U: Re B* [2004] EWCA Civ 567, [2005] Fam 134, derived from *R v Cannings* [2004] EWCA 1 Crim, [2004] 1 WLR 2607:  
“a) The cause of an injury or episode that cannot be explained scientifically remains equivocal.  
b) Particular caution is necessary where medical experts disagree.  
c) The Court must always guard against the over-dogmatic expert, (or) the expert whose reputation is at stake.”
41. The evidence of parents/carers is of the utmost importance and the court must form a clear assessment of their credibility and reliability. They must have the opportunity to take part in the hearing, the court being likely to place considerable weight on their evidence.
42. The court must give itself a Lucas direction. It is not uncommon for witnesses in such enquiries, particularly concerning child abuse, to tell untruths and lies in the course of the investigations and indeed in the hearing. The Court bears in mind that individuals may lie for many reasons such as shame, panic, fear and distress, potential criminal proceedings, or some other less than creditable conduct (all of which may arise in a particular highly charged case such as this) and the fact that a witness has lied about anything does not mean that he has lied about everything. Nor, as *R v Lucas* [1981] 3 WLR 120 makes clear does it mean that the other evidence is unreliable, nor does it mean that the lies are to be equated necessarily with "guilt". If lies are established I do not apply *Lucas* in a mechanical way, but stand back and weigh their actions and evidence in the round. I bear in mind too the passage from the judgment of Jackson J (as he then was) in *Lancashire County Council v C, M and F* (2014) EWFC3 referring to "story creep".
43. The court must not forget that medical certainty may be disregarded in the future and to consider the possibility of the unknown cause.
44. The test to identify whether a particular person is in the pool of perpetrators is whether there is a likelihood or a real possibility that he was the perpetrator. Where it is impossible on the balance of probabilities to find that one person rather than another caused an injury, then neither can be excluded from the pool.
45. As HHJ Bellamy said in *Re FM (A Clinical Fractures: Bone Density)*: [2015] EWFC B26.  
"Where... there is a degree of medical uncertainty and credible evidence of a possible, alternative explanation to that contended for by the local authority, the question for the Court is not "has that alternative explanation been proved" but rather... "in the light of that possible alternative explanation can the Court be satisfied that the local authority has proved its case on the simple balance of probability."
46. When seeking to identify a perpetrator of a non- accidental injury the test as to whether a particular person is in the pool of possible perpetrators is whether there is a likelihood or real possibility that he or she was the perpetrator (see *North Yorkshire County Council v SAV* [2003] 2 FLR 849). In order to make a finding that a particular person was the

perpetrator of non-accidental injury the Court must be satisfied on the balance of probabilities. It is always desirable, where possible, for the perpetrator of non-accidental injury to be identified both in the public interest and in the interests of the child although where it is impossible for a judge to find on the balance of probabilities that for example parent X rather than parent Y caused injury, then neither of them can be excluded from the pool and the judge should not strain to do so (*Re D* [2009] 2 FLR 668 and *Re SB* (children) [2010] 1FLR 1161).

## **Evidence**

47. I have read an electronic bundle of 1404 pages, a supplemental bundle of 351 pages and a number of additional documents that did not reach the bundles:

- (i) the father's statement of 1.12.2023;
- (ii) the transcript of the father's second police interview of 15.05.22;
- (iii) an email response to Dr Saggar's report from Dr Michie dated 8.12.23; and
- (iv) a floor plan of the family home prepared by the father accompanied by a video walk through of the home.

48. I have been given access to a substantial amount of video and photographic evidence – photographs of Tim from the period around May 2022 and security videos of the nursery on the days when Tim attended. The material was not made easily available. The size and number of videos created a technological hurdle to being able to access them. Nonetheless, I have viewed every recording that the parties requested as well as a number of others. I note that the parents have supplied a wealth of videos and photographs of Tim looking happy, smiling, having positive interactions. The parents' documenting of Tim's life has been so prolific that there are photos or videos of him on almost every day of the period when he could have suffered his injuries.

49. I have also received position statements from all parties, written closing documents from the local authority, father and children's guardian, a chronology prepared by the mother and a timeline document prepared by the local authority. I am most grateful to the advocates for their assistance with these helpful documents.

## **Dr Olsen**

50. Dr Oystein Olsen is a consultant paediatric radiologist at Great Ormond Street Hospital. In his report dated 22.08.22 he confirmed that Tim has suffered four fractures, to both radii and to both collar bones. He also confirmed that the left radius fracture is more recent than the other fractures. He ruled out possibility these could have been birth injuries.

51. Dr Olsen's opinion was that the left radius fracture must have occurred on any date up to about 2 weeks prior to 13.5.22, including on the same day.



52. The other three fractures demonstrated ongoing healing, with the skeletal survey of 16.5.22 showing soft callus and subperiosteal new-bone formation in the collar bones; and high density “sclerosis” and subperiosteal new bone surrounding the right radial fracture. Further x-rays on 21.5.22 showed further evolution with hard callus and more consolidated subperiosteal bone formation. Those three fractures Dr Olsen dated as being at least 2 weeks old on 16.5.22 and no more than 4-5 weeks old. Dr Olsen made it clear that although there is a small window of overlap of these timing windows, the differences in expressed healing meant that the left radius fracture was more recent than the other fractures. At the end of his evidence Dr Olsen suggested the extent of healing for the three older fractures compared to the left forearm, which has absolutely no sign of healing, indicates a difference of about a week or so.
53. Dr Olsen said on the assumption that Tim has bones of expected strength, the fractures can only be explained by four separate applications of excessive force to Tim’s arms or shoulders. He clarified that this does not necessarily mean four separate events as one event could give rise to several applications of force. However, he was clear that there must have been a minimum of two separate events.
54. Dr Olsen is not aware of fractures such as Tim’s having been recorded as self-inflicted. He considered it a remote possibility that Tim could have trapped his arm and produced sufficient force to snap a bone in his forearm, but he deferred to Dr Michie about what Tim would have been able to do at his age and development.
55. Dr Olsen was asked to consider a mechanism that might explain the right radius and both collarbone fractures. He told me he had not come across anything other than high energy trauma, such as a car accident or a several storeys fall.
56. Dr Olsen could envisage an encircling force around both shoulders, pressing on both at the same time, which could explain the collarbone fractures occurring simultaneously. He was clear that it would require a squeeze of great magnitude and be beyond reasonable handling.
57. Dr Olsen agreed that a yanking of the arm could cause collarbone fractures. He pointed out that it would require an equivalent sort of force to a low level fall. His opinion was that it would take something out of the ordinary, such that a reasonable observer would think it was not right. He pointed out that if both arms were yanked simultaneously, then the force being applied would distribute between both arms, so if both arms were yanked, it would have to be a greater force to cause fractures than if it was just one arm being yanked. He was clear that it would be beyond normal handling.
58. Dr Olsen said that such a pulling of the forearm could not also be the cause of the radii fractures as these required a bending or shearing force. He did not know how, but accepted that it might be possible to create a bending force at the same time as yanking on the arm.

59. Dr Olsen said that a drop from a height of about 0.5 metres can cause fractures. He thought the forearm fractures were unlikely to be caused by a fall because it implies a fall onto an outstretched arm, which he considered very unlikely at Tim's age. The clavicle fractures could have been due to an impact if Tim was dropped and landed on one shoulder, the collarbone on that side could break. He said it was possible at the same time that another application of force could have also fractured the right radius.
60. Dr Olsen considered that there had not been a good explanation put forward for any of the fractures.
61. Dr Olsen was careful about the areas of professional expertise. He gave cogent reasoning for his opinions. He explained how legitimate professional disagreement can arise in relation to the interpretation of x-rays. This had some bearing on this case because the initial opinion of the clinical radiologists was that there was also an indication of a healing fracture to the right ulna, however, Dr Olsen explained his differing interpretation on the basis that this observation is not uncommon in very young children and it is associated with their stage of development.
62. Dr Olsen findings are supported by Dr Karl Johnson, a paediatric radiologist at Birmingham Children's Hospital, who gave a second clinical opinion in this case and is also a well-known expert in the family courts. Both Dr Olsen and Dr Johnson share the same opinion about Tim's fractures and the absence of evidence of fracture to the left ulna.
63. Dr Olsen explained that x-rays are not well-suited to determining whether there is a reduction in bone density or the presence of any disease or condition that leads to increased fragility. He explained that there can be a 40% reduction in bone density before it can be observed on x-rays.
64. I found Dr Olsen to be an impressive witness. He was appropriately cautious about the limitations of radiological interpretation. He was open-minded to possibilities. He was unshaken in cross-examination. I accepted his evidence.

### **Dr Michie**

65. Dr Colin Michie is a consultant paediatrician. He has provided a report and four addenda reports as well as responses to questions by email.
66. Dr Michie stated that after the fractures occurred, Tim would have felt immediate pain and had manifestations of distress, screaming and difficulty settling. He was unable to say how long such symptoms would endure and described the variation in pain responses between different children as "dramatic".

67. Dr Michie explained that as a paediatrician he expects an average carer to be able to distinguish between an infant's pain reaction to an injury like a fracture compared to discomfort caused by teething or illness.
68. He accepted that fractures of the clavicle can go unnoticed and be picked up later. However, he said that fractures always swell up over the next 24-48 hours. He expected pain as a result of the fracture affecting the nerves and blood around it, but he also expected the swelling to be picked up in the next few days. He accepted that clavicle fractures at birth are often not picked up until later and it follows that there may be many such injuries that are never detected. However, he pointed out that birth is a traumatic event.
69. Dr Michie accepted that broken collarbones may be missed. He did not think that was the case for fractured radii, but accepted that medical science does not know that for certain because they do not x-ray large numbers of children without reason.
70. Dr Michie explained that fractures to the clavicle can be caused by compression to the upper chest, by direct force to the clavicle and by rapid pulling of the arm away from the body.
71. When asked about the parents' descriptions of Tim's distress and flinching when they noticed a problem with his left arm on 13.05.22, Dr Michie considered that was indicative of a damaged area of the child's body causing him significant pain. Thus, he considered it a reasonable inference that Tim is a child who feels pain.
72. Dr Michie deferred to Dr Saggar about his view that the mother potentially has hypermobile EDS.
73. In his report of October 2022, Dr Michie expressed the view that, "[C]hildren with abnormal connective tissue molecules on which bone is built, or atypical levels of metabolites from other causes, will usually manifest with atypical patterns of healing after trauma such as fractures."
74. Dr Saggar disagreed with that view, stating that normal bone healing is present in many disorders of connective tissue, including OI type 1, HSD/hEDS, vascular EDS and classical EDS. However, both Dr Saggar and Dr Michie deferred to Dr Olsen as it is his area of expertise.
75. Dr Olsen confirmed Dr Saggar's opinion when he stated that in his institution, they see many children with OI who can have normal-appearing fracture healing.
76. There was a further difference of opinion between Dr Saggar and Dr Michie. Dr Saggar's view was that there could be situations where there is a propensity to fracture with lessor forces, but that propensity does not occur in a linear and consistent way, instead with a

cluster of fractures during a particular period then a period of time without fractures and more again at a later stage.

77. Dr Michie was unable to identify any scientific or medical literature to back that up and reiterated his view that as the child become more mobile, he would expect more stress and strain on his bones than during infancy.
78. Dr Michie was asked about Rolfe's paper from May 2019, "Fracture Incidence in Ehlers-Danlos Syndrome" which was produced by Dr Saggar. I have been provided with that paper. It is a retrospective population-based case-control study looking at the question of the possible role of Ehlers-Danlos syndrome as an alternative explanation, rather than child abuse, when an infant is found to have multiple unexplained fractures. The study considered 21 subjects, 14 of whom had hEDS. The study concludes that, "We found no evidence that subjects with common forms of EDS have increased fracture susceptibility during infancy. Ambulatory subjects with these EDS subtypes may have a higher incidents of fractures during childhood." The authors warn about the weight to be placed on their findings in relation to ambulatory children: "However, until replicated in a larger, prospective study, our findings should be interpreted as preliminary and with caution."
79. I found Dr Michie to be a generally reliable witness. However, I must bear in mind that he expressed a view about bone healing which both Dr Saggar and Dr Olsen disagreed with, and so I treat his evidence with a degree of caution.

### **Dr Saggar**

80. Dr Anand Saggar is a consultant in clinical genetics. He arranged further testing of Tim and prepared a report dated 29.05.23 in which he identified that Tim has a variant of uncertain significance (VUS) which has been found in a gene associated with osteogenesis imperfecta.
81. It is not clear whether this VUS has any impact on the strength or fragility of Tim's bones. Dr Saggar told me that, "It is important that what I found should not be assumed to be a disease-causing variant of the genes."
82. Dr Saggar explained that it is not known whether the variant in Tim's gene affects the function of the gene. Thus, Dr Saggar recommends that parental segregation studies are undertaken to assess the significance of this finding. Those studies would provide for three possibilities – (i) that the VUS was inherited from the mother; (ii) that the VUS was inherited from the father; and (iii) that the VUS is de novo. If the same gene spelling is found in one of the parents, but no symptoms are manifested by them, then it can be disregarded. He explained that not every mutation or change in a gene implies pathogenicity and not all changes are as bad as each other and some changes can be hypomorphic, i.e. less severe.

83. Dr Saggar references the mother's evidence that she has a series of long-standing health conditions. She described in her statement being found to have hyper joint mobility, multiple bruising and a Beighton score of 5/9. The mother's statement of 10.05.23 sets out a history of multiple fractures, including of the distal radii of both arms after minor falls and a fractured finger from a ball brushing against the tip of her finger. In addition, she has a history of low back pain, dizziness, fainting, temporomandibular joint disorder and sciatic pain.
84. Dr Saggar saw the mother and Tim. He reports that the mother, "clearly fulfils the diagnostic criteria for hEDS [hypermobile Ehlers Danlos syndrome] which is at the more severe end of the spectrum for hypermobile connective tissue disease formerly called EDS type 3."
85. Dr Saggar in his analysis relied on the mother's account of her history of fracturing saying, "I have taken as true that she has fractured after lesser forces".
86. Dr Saggar's report describes in his consultation a history given of the mother fracturing both wrists on two occasions: one where she fell forward downstairs onto her wrists; and, from falling from a pram. The fingertip was described to him as a torn ligament in the little finger from being hit with a ball, rather than a fracture. Dr Saggar did not have access to the mother's medical records.
87. Dr Michie was provided with what he describes as "portions" of the mother's medical records – which he clarified included the GP records. In his first report he stated, "There is no evidence in the cited medical records from either parent that there is a relevant family history of any skeletal fragility or connective tissue syndromes". Later he was asked specifically to consider the mother's medical records and stated, "In this case the mother's records do not record any significant or serious anomaly of connective tissue or bone."
88. It is not possible for me to make any finding about whether the injuries the mother suffered as a child occurred in circumstances when a lesser level of force than expected resulted in fracture. A fall downstairs onto wrists, and a fall from a pram could each have plausibly been from a height of greater than 50cms, at which point fracturing becomes a feasible risk. Fracturing a finger from being hit by a ball depends on a number of factors: the speed of the ball, the movement of the hand, the hardness of the ball and how it impacted against the finger. However, the mother is noted to have been actively involved in competitive sports at school and I can take judicial notice that injuring or even fracturing a finger playing a ball game is not an unusual injury for many sports people.
89. I also note the comment in the June 2009 paper appended by Dr Saggar by Donald Basel, "Osteogenesis imperfecta: Recent findings shed new light on this once well-understood condition" which stated, "Family history is often unrevealing; families suspected of possible child abuse often provide an unverified family history of frequent fractures...".

90. Dr Saggar's findings included a VUS in relation to the COL1A2 gene. This is a gene which has been associated with osteogenesis imperfecta types II to IV and dominant Ehlers-Danlos syndrome type VIIB.
91. Dr Saggar explained that if the VUS is inherited from the father, then it is irrelevant to the issue of Tim's fractures as the father has no fracturing or OI problems. However, if it is inherited from the mother or it is de novo, it may have significance.
92. Dr Saggar's findings open up an area of uncertainty. The presence of the VUS raises the possibility that there is some genetic vulnerability that may increase propensity to fracture. The potential link with the mother's history of easy fracturing (if that is accurate) also increases that possibility. Further testing by parental segregation studies could potentially exclude that possibility. However, even if the link was proven between Tim's VUS and the mother's genetics, the effect of the variation would remain unknown - Dr Saggar stated, "...the COL1A2 VUS will remain a possible risk factor for fracture after lesser force. How much lesser force will be unknown."
93. Ultimately Dr Saggar stood by his report wherein he wrote, "There is no evidence for a major connective tissue disorder in Tim that would result in fractures after normal handling and IO has been excluded on the basis of clinical and genetic findings". He later said that he would slightly withdraw that statement and clarified that clinically he could not make a diagnosis of OI, and that definitely there is no evidence of a major connective tissue disorder that would make him worry that the child could injure himself by fractures.
94. Dr Saggar did not diagnose Tim with hEDS but he commented on the potential that he could inherit it from the mother. Dr Saggar also accepted the possibility that if both conditions were present, potentially they could both exert influence in terms of susceptibility to fracturing.
95. Dr Saggar made a number of comments about the impact of the VUS in relation to Tim's fractures:
- (i) You would need to define what happened and see what the paediatricians say;
  - (ii) A fracture for a child with a hyper-mobile EDS would be as painful as any other fracture, there is no diminution of pain;
  - (iii) It is possible that if the parents were protective and cautious about handling Tim after his fractures that the same forces were not in play;
  - (iv) Over time nourishment and bone density may have improved;
  - (v) Dr Saggar's "central point" is that there still needs to be a plausible and precipitant event to have caused fracturing;
  - (vi) Dr Saggar's clinical experience of families where the child has a susceptibility to easy fracturing is that the fracturing, "has always been after something appreciable, there was always a precipitant event recognised.";
  - (vii) Dr Saggar said the absence of fractures since the May 2022 is a very important observation. If Tim has been more active and falling over, but not fracturing, it suggests that normal activity does not result in fracture; and

(viii) The parental segregation study would normally take four weeks from the samples being taken. The total cost would be between £2,000-2,500.

96. I found Dr Saggar to be a reliable witness. He was doing his best to assist the court in an area of medicine that is not well understood by lay people. Dr Saggar's evidence dealt with his interpretation of the genetic testing, however, he also brought to bear his clinical experience as well as his direct observations of Tim and the mother when he saw them on 26<sup>th</sup> July 2023.

97. Dr Saggar identified some abnormalities in Tim's genetic profile and he explained the potential impact of those, however his evidence was unable to bring clarity due to the limits of medical science. There simply has not been research into the VUS that Tim carries in the COL1A2 gene, so as to be certain about its impact. It is an unknown that I must factor in.

### **Professor Green**

98. Professor Stephen Green, a paediatric endocrinologist, reported on the case. His evidence was unchallenged. He concluded that, "In my opinion and on the balance of probabilities, I believe that the fractures have been caused by inappropriate force in a non-ambulatory child, who has no evidence of an underlying bone endocrine disorder, metabolic bone disease or skeletal dysplasia. The fractures, therefore in my opinion, and on the balance of probabilities, are secondary to NAI."

### **The parents**

99. The mother denied that she had done anything to harm Tim. She was praising of the father as a partner and as a parent. She would not entertain the idea that the father could have injured Tim.

100. The mother's evidence about stress was interesting. She claimed to have never experienced stress apart from when her father had an accident. She told me she is easy going, and just accepts life whether it is good or bad. She said she is resilient and just gets on with it. She said that sleepless nights have been a feature with Tim and described him waking every hour when they were in the mother and baby foster home.

101. Later in her evidence the mother told me that "it had been tough"; the parents were "stressed out" about Tim going to nursery because of the bottle situation, and that they, "don't want our child to starve". She also told me that the situation with the family getting ill with covid, Tim teething, the feeding issues, and the pressure of whether she would be able to do her placement was "stressful".

102. The mother had some exams during the relevant period. However, she explained they were practical exams about handling patients. She had a mock on 12.04.22 and a graded exam on 20.04.22 which she passed. She told me she was not stressed by it. If she did not pass, it would not have been the end of the world as she could take it again.
103. The mother is young, but, unfortunately, she suffers from a number of health conditions. She has struggled with the way health professionals have responded as she outwardly appears well. She described herself as suffering constant pain with sciatica. She said it was normal, she has a high pain tolerance and, “I just deal with it”. She told me that she had recently been confirmed to have hearing loss.
104. The mother told me about how Tim reacts to being hurt. She agreed that she had described Tim as a “wreck” in a text message on 19.04.22 after he had scratched the inside of his mouth with a fingernail.
105. The parents gave differing accounts about their observations of Tim’s forearm on the morning of 13.05.22. The mother did not consider that Tim’s forearm was swollen. In his police interview the father said, “we saw swelling in his forearm and also rarely any movement in his left arm, so me and [the mother], we were very worried.” In his oral evidence the father told me that the account he gave to the police was not accurate. He said that, “looking back... he was moving [the arm] and from the photos and videos it wasn’t swollen.” He asserted that the GP and professionals did not see it as swollen. The father when questioned about his earlier statement to the police said that it had been his genuine impression, but that he had to correct himself because it was not swollen. I note that in Prof Green’s report he records the examination at Northwick Park Hospital on 13.05.22 as having revealed a swollen left arm, although this would have been much later in the day.
106. In her oral evidence the mother described Tim as appearing to have “discomfort” in his arm on 13.05.22. The GP record of that day states, “? Feels pain around elbow upper arm intermittently”. The mother took issue with that note saying that she was talking about his use of the arm which was intermittent. She also disagreed with the mention of pain, saying if it had been in pain she would have mentioned it. That evidence contradicted her contemporaneous text message of 14.05.22, “It was just Friday he was in pain and stiff... Maybe that night when he woke up early crying it happened?”.
107. The father’s police interview described: “Like, if you touched it, he’d – and lift it – he’d be like very very dis- like in discomfort... We’ve never – we never saw any kind of discomfort beforehand...”. In his oral evidence, the father gave similar evidence to the mother’s, asserting that it was discomfort and disagreeing with earlier references to pain.
108. The father’s evidence about the pressure of his work was different to the mother’s when he accepted that he had already called in sick so he was worried that if he missed more work it would affect his salary for that month.



109. The mother's recollection of taking Tim to nursery that day does not accord with her text messages. She told me that when she handed Tim over, he was not crying, but when she moved away he started whining. In her text message she described, "Baby crying when I left him today... I could still hear him when I left the building." And explained that she had not mentioned their concerns about his arm, "I forgot cos he started crying". When the text messages were put to her, she said that Tim started crying as she was leaving and that the nursery worker had brought him to the window which was why she could hear him so clearly. I cannot ignore the effect of the passage of time on her memory in relation to this.
110. In the text messages, the father described himself as a "literally a sitting duck". That was at a time when, because of the covid restrictions, he had to remain outside the hospital while the mother and Tim were inside. Both parents told me that it was a phrase they understood to mean simply that he was waiting around. A "sitting duck" is a well-known idiom that refers to a helpless or easy target or victim. However, I cannot overlook that it is not uncommon for people sometimes to misunderstand the most common phrases. When I consider it in the context of the parents' text messages, it is consistent with their having misunderstood the phrase "sitting duck".
111. Later he sent a message saying, "Sorry if I did anything to hurt you". Then he sent another saying, "I haven't been the best husband for a while now... and father". The mother told me that he is very empathetic and says things like that when he is feeling bad. The father told me that he "likes to self-critique" and he felt he was not doing enough or being supportive, particularly during Ramadan when he was falling asleep. He agreed that he was highly critical of himself.
112. The mother told me that she was a perfectionist. The father said he was less of a perfectionist than her, but agreed that they lead a very well organised, structured life. However, he did not agree that having a baby brought a bit of chaos into their lives, saying they would adjust and make a plan.
113. When the father was asked about his use of the word "nightmare" in the texts of 26.04.22, he claimed it was used in a "flippant" way and claimed it was his sense of humour. I do not accept that evidence. The context is a long series of messages about how difficult it had been to meet Tim's needs – that he was crying, tired, not taking milk and had hit his chin. The mother was reassuring that, "It will get better each time you are with baby... He will get used to it". Half an hour later the mother asked, "How's everything?" to which the father answered, "Nightmare". I am satisfied that in his oral evidence the father was seeking to minimise his contemporaneous description of what had been an extremely difficult day.
114. The mother and the father were both very loyal to each other. They were both dignified during their evidence and occasionally emotional, but appropriately so. There were some inconsistencies between their accounts and with earlier things they had said. They both showed a tendency to minimise or distance themselves from things such as whether the baby was in pain, or his arm was swollen. I am not sure whether that was an

active attempt to dissemble, or simply the fallibility of memory and the human tendency to recollect matters in a more flattering light. However, I was not persuaded by the father's claim that his "Nightmare" description of caring for Tim was a flippant joke. Nonetheless, the overall impression I formed of both parents was that they appeared to be credible.

### Phone evidence

115. The printouts of text messages and whatsapp messages from the parents' devices contain the following:

- (i) On the morning of 1.4.22 the father wrote, "My sore through is annoying... I'm tired ngl... I'm so tired";
- (ii) On 8.4.22, there are a series of messages from the father who was caring for Tim while the mother was at university: "Just hearing up his milk... Not on break yet... One more chat... I had to change his vest... It was far too stretched... He's asleep... Had a meltdown... Didn't want milk". About an hour later he wrote, "He's sleeping on me right now";
- (iii) In a separate message to the maternal grandmother the mother says that Tim is, "...[B]etter but still a little temp";
- (iv) On 9.4.22 the mother told the grandmother that, "Babies temp finally went today in the afternoon";
- (v) On 13.4.22, there was an exchange between the parents. The mother wrote, "Tim just slept for 1hr and a half... actually maybe 2 hours..." and the father replied, "No way!? Woah that's the longest so far.";
- (vi) On 17.4.22, the mother wrote to the grandmother, "My cough and sore throat went we are all better now even baby has been sleeping better and longer and in a good mood he's been eating more food too";
- (vii) On 19.4.22, there were a series of messages from the mother asking how Tim was: "How's baby?... Is he okay?... But how is he tho... Since last light (sic) he was a wreck and that scratch in his mouth";
- (viii) In a message on the morning of 20.4.22 the mother wrote, "I'm always stressed and worried about Tim haha". Later that morning there were messages about the mother's exams and the mother wrote a message in a group chat with the father and Jane; "No screaming for Jane now baby Tim" accompanied by an eyes looking across emoji;
- (ix) In the early afternoon on 20.4.22 the father sent messages, "I'm so hungry... And tired... I nearly feel asleep at my desk while working... [three laughing emojis]... I bopped my head back up". Later the father asks, "How's baby? How are you both?... Bad mood... Has he been like this all day?" The mother replied, "Nooo";
- (x) In the early hours of 22.4.22 the mother messaged the father saying, "Baby come to bed to sleep";

- (xi) On 26.4.22 at 9.30am, the father wrote to the mother who was at university, “He woke up when I put him down... He looks confused... It’s funny but annoying he wakes up”;
- (xii) Later in the morning on 26.4.22, the father texted at 11.39 that, “He’s crying like mad now... He doesn’t want the milk... Putting him to sleep instead... He must be so tired... I’ll give him food... Until you come”. At midday, he wrote, “I put him down, we’ll see how long he sleeps... Just worried for nursery... He does keep dropping his head today when I sit him up... He hit his chin hard... He’s good tho”. The mother replied at 12.45pm, “It will get better each time you are with baby... He will get used to it”. She then sent messages at 1.14pm, 2.29pm and 2.36pm asking how things were, but did not receive the father’s response until 2.42pm: “Nightmare... But we’re on the way to pick up Sam now”. The mother later responds to a photo the father sent, “He looks so tired and upset poor thing”;
- (xiii) On 27.4.22 there was an exchange at 7.50am about Tim not being tired and just needing a change. The relevance of this is that the parents were not in the same room together with Tim when he was changed;
- (xiv) On 28.4.22 at 11.20am, the mother wrote, “I’m fine enjoying fresh air no baby crying or having to hold him haha”;
- (xv) On 28.4.22 at 5.04pm, the mother wrote, “...I hope we get nice pics of him at nursery and not him crying that they don’t take pics”;
- (xvi) At 1.15am on 30.4.22 there is an exchange when the mother writes “Baby is crying... I fed and changed him already” and the father offers to put him to sleep;
- (xvii) On the evening of 30.4.22 the mother texted the father saying, “Enjoy your food when you eat x” and the father replied, “There was rice at the mosque”. At 11.56pm, the father messaged, “I’m on the way home now”;
- (xviii) On 3.5.22, the mother wrote to the grandmother, “Don’t come today [the father] I think has the flu... Hes been in bed all morning not well”;
- (xix) On 4.5.22, the mother wrote, “[the father] got covid lol... Hes fine just sneezing and coughing”. Mother confirmed, “I have a headache but I tested negative”;
- (xx) On 5.5.22, the mother asked if Tim had taken any milk and the father replied, “Nope... I was patient for like 20 mins... Nothing... He ain’t in here mood”. The mother replied, “Understandable... I feel crap too”. The father then said, “His necklace might be giving him bruises on his neck... I found his necklace twisted so it was tight around the right side of his neck... You can’t tell because hes chubby... But it’s not bugging him... It’s honestly loose... You just gotta check it’s not twisted and tight”;
- (xxi) On 6.5.22 the mother wrote to the grandmother: “[the father] is better but me and baby still have temp and I have body aches and headache... Baby seems to be a little better today as in his mood but stil temp and a but whiney. But its hard me being so achey and weak cos I have to still be there for baby cos he is being very clingy for me”;
- (xxii) On 8.5.22, the mother wrote at 9.21am, “He wasn’t moody when he woke up at 6 either” At 12.04pm, she wrote, “He must’ve felt so ill so his appetite is back... He’s on the lower side for weight... It’s defo a feeding issue no wonder he’s so upset all the time... Poor baby”;

- (xxiii) On 10.5.22 the mother wrote at midday about Tim's time at nursery, "Yh just 30 mins before he was crying not taking milk and tired she managed to get him to sleep." At 4.36pm she wrote, "I feel like I haven't slept in days my body is still weak and my head hurts";
- (xxiv) On 13.5.22, the mother wrote, "Baby crying when I left him today [crying emoji] ... I could still hear him when I left the building" The father asked, "Did you tell them about his left hand yeah?" She replied, "No I forgot cos he started crying";
- (xxv) At 5.55pm, the father wrote, "His right hand will be stronger than his left at this rate... I'm so worried". The mother replied, "Yhh he's not even lifting his left... Same... I hope is something that can be sorted... We are gonna be here a while";
- (xxvi) At 7.41pm, the mother wrote, "He cries everytime I put him down... Its just so loud in here... No wonder he's agitated";
- (xxvii) At 1.59am on 14.5.22, the mother wrote, "I think we have to stay overnight... [B]aby needs to be admitted... I need to stay with him overnight... They wanna do more checks cos the fracture isn't normal for his age." The father replied, "Ohhhh... What should I do?... I am literally a sitting duck... It's only 1 parent allowed... And I can't afford to call in sick again";
- (xxviii) At 3.06am the father sent a series of messages, "I didn't know he had covid... He's suffering so much... He's not that moody but he's been better... Inshallah he'll be back to normal in time... I miss his laughs... I can't think straight because so much was going on in my head... I'm sorry if I did anything to upset or hurt you." The mother replied, "It's a really bad fracture for his age apparently that's why they want him to stay to investigate... But I really have no idea when it could've happened". The father replied, "Yeah same". Later in the exchange the father said, "I haven't been the best husband for a while now... And father... I feel like I'm not doing enough... It has been tough... On both of us";
- (xxix) Around midday, the mother messages to explain that Tim will be sedated for a CT scan and full body x-rays. "Its cos we don't know how he hurt his arm so they are making sure it's not our fault... I'm so scared for him... I'm so scared what if they take him from us..." The father replied, "Wait why... Why would they do that". Mother: "Cos they think it's suspicious". Father: "OMG". Mother: "I'm crying so much." Father: "This is so wrong... I can't breathe"; and
- (xxx) Around 2.10pm the mother wrote, "I'm going through my phone and I have video evidence of him using his arm fine... It was just Friday he was in pain and still... Stiff... Maybe that night when he woke up early crying it happened?" The father replied, "Maybe". Later in the exchange the father wrote, "Cause I was holding his arm when putting him to sleep the morning he was crying a lot... He was moving it a lot... So I kept it down thinking he was fidgeting". The mother replied, "It was impossible to get him to sleep that night... He didn't even fall asleep to boob." The father asked, "How long did it take?" and the mother replied, "I remember him crying for ages and everytime we put him down he would cry... I ended up baby wrapping him and he was okay". She also wrote, "I remember his left wrist got caught and I had to slowly take it out from the cot but I can't remember if that was Thursday night or ages ago... My mind is mushed".

116. In the father's written closing submissions, Mr Momtaz and Ms Ayub set the video and photographic evidence alongside the text messages. For example, on 26.04.22 when the father wrote "Nightmare", there are photos and videos at 9.28am of Noah smiling happily, at 11.19am of Noah babbling happily, at 11.49am of Noah sleeping in his father's arms, at 3.50pm of Noah playing with Sam, and at 4.21pm of Noah babbling in the bathroom.

117. I am mindful of how different media is used. Photos and videos are used to capture happy memories. It would be unusual and questionable if a parent wanted to record their child being upset, distressed and crying. Text messages to your partner can cover a wider range of bases, including blowing off steam or complaining. In my judgment, the positive images do not gainsay the messages, or vice versa. Considered together, the photos, videos and messages give a rounded impression of the parents' joy and delight in caring for their infant son as well as the challenges and difficulties that were also entailed.

### **Timing**

118. I accept Dr Olsen's evidence that the fracture of the left radius was a more recent injury than the other 3 fractures. The absence of any indications of callus formation or bone healing indicates that the injury had been sustained within 2 weeks of the time the x-ray was taken on 13.05.22.

119. The fractures to both collarbones and the right radius all showed clear callus formation, and I accept Dr Olsen's evidence that they were sustained about 2-5 weeks prior to the skeletal survey on 16.5.22.

120. The parents have given clear account that they identified a problem with Tim's left arm and that he was suffering discomfort on the morning of 13.05.22. I have seen the video of Tim being very unsettled and upset later that day at the nursery. In my judgment, Tim must have sustained the fracture to his left radius by the morning of 13.05.22.

121. I accept Dr Olsen's evidence that notwithstanding that the two windows for injury overlap, the left radius fracture must be a more recent injury than the others due to their different healing presentations on the x-rays.

### **The earlier injuries**

122. I am satisfied on the basis of the medical evidence that Tim had already suffered three fractures at least about one week prior to 13.05.22. There is no account of any accident or incident that explains how Tim suffered these fractures. There is no account of any person noticing anything untoward about Tim's presentation prior to 13.5.22.

123. An issue has been raised about Tim's pain threshold. The suggestion being that he has a high pain threshold such that he did not have an obvious response to having his bones broken. I accept Dr Michie's evidence about there being a dramatically wide level of variation in pain responses by infants. The parents point out that when Tim was seen by the GP on 13.5.22 it was not obvious to the GP that there was a fracture, nor was it immediately obvious at hospital until x-rays were taken. The evidence suggests that Tim was relatively content during his time with those professionals.
124. However, I have also seen the nursery video of Tim on that morning. He is clearly very upset. The nursery worker, no doubt unaware of his arm injury, vigorously rocked him causing his fractured and unsupported left arm to flail about. It is unsurprising that she struggled to settle him. On the basis of the evidence from the events of 13.05.22 and from the many months that have passed since then, I am not persuaded that Tim is a child who does not feel pain or masks his pain to the extent that an acute injury would not be obviously responded to at the time it occurred. On 13.5.22, Tim demonstrated with his parents that morning and later at nursery what I am satisfied is an expected response to pain.
125. On 13.5.22, it was obvious to both of Tim's parents that there was something wrong with his arm and he needed medical attention.
126. There is a difference between the two radii fractures, because the left one was complete and the right one was a partial fracture. It may be, therefore, that the left radius fracture was more painful. However, babies around Tim's age are bathed often and their clothes are frequently changed. In my judgment, it would be very unlikely for a parent to miss the signs of injury, whether it was the initial upset and distress, or the flinching when the injured arm was moved, or the bruising and swelling from the fracture.
127. It is difficult to understand how attentive parents could not identify the presence of three fractures. Firstly, there is likely to have been pain at the time they were sustained. I accept Dr Michie's evidence that it is possible for occult fractures to occur and that clavicles are known for this. However, Dr Michie did not consider that it was likely that a fractured radius could be missed.
128. If one parent has inflicted the injuries on Tim, the period of illness that affected the parents in early May in my judgment could provide some explanation for how the other parent failed to realise that Tim was injured. During that period the frequency of bathing of Tim reduced considerably and at times each of the parents were bed-ridden. I also note that the mother has been recently diagnosed with some hearing loss. If that condition was present in May 2022, it could have reduced her awareness of Tim crying.
129. In my judgment that period of illness affecting the family during April/May 2022 goes some way to explaining not only an increase in stress and demand on whichever parent was healthy at the time, but also a reduced level of awareness on the behalf of the other parent.

## **Medical issues**

130. I accept the evidence of Drs Saggar, Michie and Olsen. I have considered carefully the evidence of Dr Saggar and his identification of potential explanations and the possible inter-relationship of conditions having an effect on Tim's vulnerability to fracture.
131. However, I cannot ignore Dr Saggar's view that there would still need to be a noticeable event. In my judgment, given the absence of subsequently fractures, even if Tim did have some bone fragility it would still be likely that the application of forces that caused the fractures would have been a noteworthy event or events. It would also be likely that anyone present would have recognised that Tim was hurt and upset at the time of the injury.

## **Parenting and family dynamics**

132. There are multitude of positives about the family. The parents present as having a healthy, co-operative and supportive relationship. Their home is immaculate and well presented. They have engaged well with professionals throughout the court process. Prior to and during the proceedings, they have engaged well with professionals involved in Tim's life.
133. The parents present with no obvious risk factors. There are no mental health issues with either of them. There are no alcohol or drugs issues. There has been no domestic abuse. Prior to Tim's presentation in May, there were no professional concerns or "red flags" about the parents or the family. The parents rightly point to the absence of these factors as a positive when the court is considering whether either of them have caused significant harm to Tim.
134. Since the fractures were identified in May 2022, Tim has remained in the primary care of his mother, albeit initially in a mother and baby foster placement and subsequently in the maternal grandparents' home; with regular contact with the father, including at times periods of unsupervised contact. During that extensive period, now in excess of 18 months, there have been no concerns raised about the quality of care that Tim receives.
135. The family finances were modest, but well-managed. The father had steady employment. He predominantly worked from home, responding to customer enquiries through the company's live chat or responding to emails. There was some pressure in relation to work as there was an expectation that he would respond to a minimum number of customer enquiries each hour and on one occasion when he had prioritised the baby, he subsequently had to explain himself to his supervisors. In addition, his work was incentivised so that if he achieved certain criteria relating to efficiency, he would receive bonuses.

136. The mother had resumed her studies. She had previously dropped out of university when she had her first child. During her pregnancy with Tim, she had commenced a nursing course. During Tim's early months the mother had balanced her studies with caring for Tim. She was able to work online. However, there were periods of time when she had to attend at university and was not available to care for Tim. Typically, the father would care for Tim during these periods.
137. Tim was being introduced to the nursery in May because the mother was soon to begin her training placement. The mother told me that if she needed to she would have prioritised Tim and deferred her studies. That is something she did before for her daughter. The local authority identifies this as a stressor, either because the mother's career development was threatened by Tim's dependency on her, or because the mother's absence would leave the father with the very difficult task of caring for Tim in circumstances where he would not accept a bottle and would only take milk from the breast. I should make it clear that the father was not left entirely unable to provide Tim with sustenance – Tim had reached the point where he would eat purees and although he would not latch onto a bottle, he could still be given some milk as it would leak into his mouth. However, it is clear that the father was unable to replicate with a bottle, the soothing and calming effect of breast feeding.
138. The family have good support. Both parents have their parents in London. The mother's parents are a short train journey away. The father's parents are on the other side of London. Both sets of grandparents are involved with the parents and Tim. The parents had support from their good friend Sam.
139. The parents make the point that Tim was a very visible child during the dating window for the fractures. There is a library of photos and videos, albeit not covering every day of the period. Tim was seen by family, friends and some professionals, particularly the nursery. There was no suggestion that Tim was being hidden or kept away, such that an injury was being actively disguised. If the parents were engaging in a cover up, it would make little sense for them to hide the first set of fractures, but then to seek medical attention about Tim's arm.

### **The nursery**

140. I have read the evidence of three witnesses from the nursery. None were called to give evidence. The nursery had a very limited amount of involvement with Tim with an increasing pattern of attendance over 3 days until 12.05.22, which was Tim's first full day. In her statement the manager said, "It was when mother picked up Tim at the end of the day that I noticed his arm was stiff compared to how it was the day before. Tim cried a few times during the day but nothing out of the ordinary or hysterical. It appeared he got upset when he needed something, for example if he needed to be changed or fed."



141. I did not hear from the nursery manager. It is an unusual observation that his arm seemed stiffer than the day before and I do wonder to what extent the manager's subsequent knowledge that Tim had suffered a fracture has affected the account that she delivered over a year later in her statement, which was prepared long after the events – it is dated 6.06.23. In any event, on the CCTV there is a very marked observable change in the way that Tim presented on 12.05.22 when he appeared settled when compared with 13.05.22 when he was very distressed and difficult to settle. In my judgment it is likely that the manager is mistaken in her statement about her observation of Tim's arm on 12.05.22.
142. On 13.05.22, Tim attended nursery. The mother later informed them that his arm was hurting and it "felt weird". He was present from 9am to 12noon. I have seen the CCTV footage of that day. Tim was extremely unsettled. He spent a lot of time in the arms of one of the nursery staff. In trying to settle him, the staff member jogged him up and down and rocked him in a way that Mr Woodward-Carlton describes as vigorous. Having observed the video, it was done quite energetically. However, it was not, in my judgment, anything that would be inappropriate with a healthy and uninjured baby. However, I agree with Mr Woodward-Carlton that it was a type of movement that would have been unthinkable if it had been known that Tim had a fractured arm. For a lengthy period, Tim's injured left arm is stretched outside his body and flails up and down while he is rocked and jogged. His crying is audible on the video.
143. The nursery staff each report that Tim was not involved in any accidents during his time at the nursery and that he would have been in the cot, held, or with pillows around him.
144. Mr Woodward-Carlton points out on the nursery's CCTV footage there is another pre-mobile child who spent around 10 minutes on 12.05.22 without obvious supervision, whilst all the other children are moving around and staff are engaged with other things. I have reviewed that video. A child in a red babygro is not being directly interacted with by a staff member, however, there are 4 or 5 members of staff present in other parts of the room and the child in the babygro appears to be content and occupied. Mr Woodward-Carlton invites me to draw an inference about the quality of the supervision at the nursery with a view to the possibility that Tim could have suffered an accidental injury while at nursery.
145. Having viewed the CCTV footage, I do not consider the experience of that baby in the red babygro demonstrates any degree of neglect or lack of appropriate supervision by the nursery. There were a number of adults in the same room throughout.
146. Most of the time that Tim was at nursery, he was visible on the CCTV recordings. Nothing untoward occurs. There was a period of about an hour on 12.05.22, towards the end of the day, when he was taken outside and the outdoor space is not covered by CCTV. Mr Woodward-Carlton points to this as a window of possibility when something could have occurred to Tim, possibly without being observed by a member of staff.

147. While it may be possible that an unobserved accident could occur between small children in the nursery setting because the adults' attention was elsewhere, in my judgment it would be unlikely that the adults would remain completely oblivious of the accident and the likely reaction of the children involved.
148. The timing excludes the possibility that Tim suffered the fractures to his clavicles and his right radius at nursery, because the radiological timing of those injuries places them as having occurred before he started at nursery.
149. In my judgment it is likely that on 12.05.22, Tim's left radius remained uninjured. However, by the time he was observed in the nursery CCTV footage on 13.05.22, it had been injured. This accords entirely with the parent's own observations – their first concerns were on the morning of 13.05.22. I place little weight on the manager's observation of a stiffer arm at the end of nursery day on 12.05.22, because I am not persuaded that her account is reliable in that regard.
150. I do not consider it is likely that Tim received any of his injuries at the nursery. There is no evidence of any incident involving him. Most of the time he was recorded on CCTV and there are a number of members of staff in the vicinity at all times.

#### **Absence of subsequent fractures**

151. There have been no reported injuries since May 2022. Tim has not been regularly x-rayed, so it is possible, at least in theory, that he has suffered fractures that have not been identified.
152. The view of Dr Michie and Dr Olson is that the absence of subsequent fractures reduces the likelihood that Tim has some form of bone fragility, not least because he has developed in the intervening months to become a mobile and highly active child, walking, running and climbing and thereby exposing his skeleton to greater levels of force.
153. The mother points out that since May 2022, she has treated Tim as if he is made of glass and this ultra-cautious approach has mitigated the risk of further fracture.
154. However, the evidence is that Tim's behaviour is not similarly cautious. He is a rumbustious child who Dr Saggar commented, when he saw him, was, "particularly moving a lot and more active than other children of similar age.
155. In my judgment, the absence of further fracturing events since May 2022 is a significant factor as it reduces the likelihood that there is some undetected medical issue which has had an effect in the causation of Tim's fractures. Dr Saggar entertained the possibility of a genetic vulnerability that had an influence at the time of the fractures, but which, due to Tim's general bone development, no longer had such an influence as he reached the toddler stage. That is a possibility I have factored in as part of the "dark

corners” of medical science, but I note that there is no evidence of such a condition in Tim and that Dr Saggar nonetheless accepted that even if there was decreased bone strength there would still need to be an event that applied the force to cause the fractures and that the fractures would hurt as much as in a child without decreased bone strength.

### **Baby massage**

156. The parents have described having massaged oil into the baby’s skin. What they described amounts to no more than a caress – the light and gentle application of coconut oil to the baby’s skin using a flat palm. The mother told me he never showed any discomfort when massaged in this way.
157. Dr Olsen told me he had no experience of baby massage causing fractures and pointed out that the issue is whether the required magnitude of force was applied.
158. Dr Michie in his email responding to Dr Saggar’s report pointed out that massage for infants is widely practiced in special care baby units across the UK with infants, many of whom are at high risk of metabolic causes for bone fragility, however, this process is not recorded as giving rise to fractures.
159. In my judgment, it is not plausible that the sort of forces described by the parents for the baby massage could have resulted in Tim suffering any of the fractures he sustained.
160. I have been provided with a case report paper by Sowmya and others, titled “Vigorous Oil Massage in a Neonate: Cause for Fracture” dated 15.11.13. That report sets out the circumstances of a 15-day old baby who had fractures of the proximal radius and middle third of the ulna after the baby had been receiving daily “vigorous oil massage”. The basis on which the oil massage was identified to have been the cause of the baby’s fractures is not made clear. Alternative explanations were discussed with noticeable brevity, “Fracture in newborn can have many etiologies. Absence of family history and no other bone involvement made osteogenesis imperfecta and child abuse less likely. There was no history of fall and also that falls do not result in this type of fracture.” Even if this case report is taken at face value, it does not help in relation to Tim’s fractures because the massage he received was not “vigorous”.

### **Cot bars**

161. The mother described in her police interview an incident when she found Tim with his arms through the bars of his cot. She described a discussion with the father where he asked, “Did his arm get trapped in the cot?” to which she replied, “Yeah, but is that enough to like break your arm?” She told the police in relation to the cot, “His arm has been stuck, but not like, oh he’s crying, he’s just – his arms in and I just move it out.”

162. The suggestion of the cot bars causing Tim's injuries has not been pursued with any enthusiasm at the final hearing. The uneventful account that the mother gave to the police does not match with the injuries Tim suffered. The opinion of all the medics was that as a pre-mobile he would not be able to generate sufficient forces to be able to fracture himself – Dr Olsen described it as fundamental that, “In preambulatory children, fractures are not self-inflicted”. In my judgment the possibility that Tim's injuries were in some way caused by the bars of his cot can be discounted.

## **Sam**

163. Sam was spoken to at an early stage as part of the s.47 investigation. In the “Record of outcome of s47 enquiries” report that commenced on 13.05.22, it notes in relation to a discussion with Sam on 8.05.22: “She was articulate and chatty. She said she sometimes picks up her brother and carries him to the chair. She said she has dropped him and her mother “laughed”.

164. Subsequent discussions with Sam did not produce any more information. I have not heard oral evidence from the social worker who spoke to Sam.

165. The mother has consistently stated that Sam and Tim are not left alone together. The mother told social workers on 16.05.22 that Tim has never been alone with Sam and therefore she ruled out the possibility that Sam may have picked him up and dropped him. She told the police that she had never seen anyone else drop Tim or have an accident with him. She maintained that in her oral evidence.

166. The father's oral evidence opened up the possibility of very short periods occurring when the two children had been left alone together. He told me that it was possible he might have fetched something from another room for a very short period, about ten seconds. However, he could not recollect any situation when he returned to find Tim upset or distressed.

167. It is possible that if Sam, a 5-year old girl, had lifted Tim up and dropped him that this could have been from a height of about 50 centimetres, which would represent a sufficient drop to cause a fracture.

168. Mr Woodward-Carlton submitted that there should have been better investigation of what Sam had said. I do not understand why I have not been provided with a contemporaneous note of the social worker's discussion with Sam. The implication is that a careful note was not taken and all that has been preserved is a general overview of what Sam said, rather than a detailed note of what she was asked and what she said in reply.

169. It is well established that the first account of a child is crucial and a careful record should be prepared as close to the time as possible and should set out the child's actual words as much as possible.
170. Despite that shortcoming, in my judgment, the circumstances of the parents' supervision of Tim and Sam mean that there is no real possibility that Sam could have inadvertently caused Tim's injuries, or any of them. Sam's account is in stark contradiction to the mother's account. However, Sam's account is extremely brief. It is not clear when she said she dropped Tim or whether it was a significant fall or something trivial.
171. Sam's account suggests that the mother was present at the time because she says, "her mother laughed". That suggests that whatever Sam was talking about was not a serious incident because if it was, why would the mother laugh? In any event, it is difficult to imagine a fall from being carried by a five-year old that could explain all of the fractures that Tim suffered.
172. In my judgment on the balance of probabilities I can rule out the possibility that Sam caused the injuries to Tim.

### **The friend and her children**

173. Jane (not her real name) is a close family friend. She is an experienced parent with two children of her own. She regularly provided childcare for Tim.
174. On 12.04.22 from 9am to 1pm, Jane came to the family's home with her two children. She cared for Tim and Sam while the mother sat a university exam and the father was working from home. The father had breaks when he would see the children. The mother returned at 12.45pm. Jane is reported to have fed Tim and given him a bath. When she was leaving, Jane slipped and twisted her ankle. There is no evidence of any problems with Tim when Jane was there and no one noticed anything about Tim's arm or collarbones afterwards.
175. On 20.04.22, Jane cared for Tim from 9am to 1pm while the father worked at the office and the mother sat another exam. She is reported to have given Tim a bottle of milk which he refused or only took a little of. The mother breast fed him as soon as she returned. She wrote, "Jane understood my anxiety about leaving Tim since I rarely do so unless the father is caring for him." Tim is reported to have napped well for the rest of the day. In her oral evidence the mother told me that Tim had red eyes from crying and was upset when she got back, which she thought was because of the difficulty with him not being able to be breast fed.
176. On 11.05.22, the mother and Tim went to Jane's house to help her organise her kitchen – Jane was 8 months' pregnant. Jane's sister-in-law was also helping. Jane

watched Tim while the mother cleaned and tidied. Tim was reported to be upset when his mum disappeared from his view and she, “[H]ad to keep coming to him and comforting him. It seemed like separation anxiety because if he could see me, he was happy and settled.” Jane’s kids entertained Tim when they got home from school. The father later joined them and they all had dinner together. The mother was present throughout.

177. Jane only cared for Tim on three occasions during the window when Tim suffered fractures. The timings mean that only 11.05.22 could have been relevant to the left radius fracture. There is in my judgment no realistic possibility that on 11.05.22, Jane fractured Tim’s left arm while his mother was out of sight and tidying the kitchen. Tim’s upset would not have been settled by his mother simply returning into view. It is also inconsistent with his presentation at nursery on 12.05.22 when he appeared fine – compared with his significantly more upset presentation at nursery on 13.05.22.
178. There is a suggestion that the older children could have had an accident which caused the fracture when they were playing with Tim. There were three adults in the house with the children. There is no evidence that Tim was unsupervised by an adult during this time. Given the potential mechanisms of the injuries that Tim suffered, it is difficult to imagine how an older child could have accidentally inflicted them. It would take a series of applications of force. I do not consider there is a realistic possibility that Tim suffered any of his injuries while in the care of Jane.

### **Teething necklace**

179. The parents provided Tim with a teething necklace. There was on 5.05.22 a text message exchange where the father suggested that the teething necklace might be giving him bruises on his neck. The mother had not noticed. She told me in her evidence that it could cause “indentations”.
180. I am not persuaded that the teething necklace could have caused, or been implicated in the causation of, the fractures to Tim. It was in the wrong place relative to the sites of the fractures and would not be capable of generating the necessary forces.

### **Schedule & Findings**

181. How the fractures were caused has not been identified. I accept the medical evidence that the wrist fractures would have required an excessive bending and/or shearing force. I accept the medical evidence that the collarbone fractures would have required either a direct impact with excessive force, or an abrupt traction force with excessive force (e.g. by yanking on the arm). Dr Olsen suggested that one could theoretically consider a single encircling force causing both collarbone fractures simultaneously, by static loading to the shoulders.

182. None of the explanations offered provide a plausible account for how the fractures were caused. I do not consider it is realistic that Tim suffered a fracture at nursery. He can be seen on the video footage for a lot of his time at the nursery. Having considered the nursery workers' accounts and viewed the video footage, I do not consider it is likely that an unobserved accident involving another child has occurred and resulted in a fracture to Tim. In any event, the timings of the two collarbone the right wrist fractures exclude the possibility that they occurred at the nursery.
183. I exclude the possibility of baby massage inadvertently causing fractures to Tim. The description is of light contact such that if it could have caused fracturing, Tim would have such an extreme level of bone fragility that it would be inconceivable that he would not continue to suffer fractures after May 2022, particularly as he became increasingly active.
184. I exclude the possibility of the cot bars causing the fractures. I accept the medical evidence that at his age, Tim is unlikely to be able to generate sufficient force to break his own bones. Dr Olsen was absolutely clear, "In preambulatory children, fractures are not self-inflicted. Tim had very limited independent mobility and did not cause any injury himself.". Such a mechanism cannot explain the collarbone fractures.
185. I have thought carefully about Sam's role. She gave an account to the social worker of having dropped the baby. That account was not followed up by way of more detailed questioning. It is not clear when, or how, that drop took place. The parents' evidence contradicts Sam's account, on the basis that she has not been left alone with Sam in circumstances where Tim has become upset. The mother said she has never left the two children unsupervised. The father said he may have popped out for a moment to fetch something. However, if Sam picked up Tim and dropped him, even if he was uninjured, it is likely Tim would have been upset and cried immediately after. If he suffered a fracture, that is even more likely. Sam would also have likely been upset and affected about dropping her much-loved baby brother. The parents give no account of anything of that sort having occurred. I also note Dr Michie's opinion that at Tim's age, he is unlikely to put out his arms to break a fall. If a drop had happened, it would have been a memorable event for any adult or adults present in the home, even if they did not witness the drop. I am not satisfied that Sam has at any stage dropped Tim.
186. I have considered carefully Tim's potential bone fragility. Dr Saggar has raised two main theoretical possibilities. Firstly, whether the VUS allied to the mother's self-reported history of easy fracturing means that Tim also has a vulnerability to easy fracturing. Secondly, whether the mother's hEDS has been inherited by Tim and this has affected, possibly in combination with the VUS, his vulnerability to fracturing.
187. While Dr Saggar raised those possibilities, he was unable to be definitive about what would be the actual effect on Tim's vulnerability to easy fracturing. The absence of further fractures since May 2022, despite Tim developing into a highly active child (described but not diagnosed as hyperactive by Dr Saggar), mitigates against the possibility that Tim has such a condition.

188. I have factored in the possibility that there is some dark corner of medical science which is not known about, but which could explain Tim's presentation. The VUS to some extent already inhabits such a dark corner. It is possible there is something that in the future may become known about.
189. I have considered the broad canvass of the family. There are many positives. They have been seen by professionals to be capable parents. The mother is an experienced parent. Tim was the father's first child, but he had extensive child-caring experience from caring for his sister's children during her studies. There are none of the well-known risk factors present in the family, such as substance misuse, mental health or domestic abuse.
190. The finances of the family were modest, but they budgeted with care and managed their finances well. The mother's swap from working in retail to her nursing studies had not created financial stress as the mother's student finance package made up for the lost income.
191. However, in the period when Tim suffered fractures, there were a number of stressors on the family. Tim was not a child who slept well and often woke during the night. Tim struggled with feeding from a bottle. He was unable to suckle successfully from a teat. The parents sought professional help and utilised a range of strategies, but to no avail. Although attempts were made to feed him from a bottle, it relied on milk spilling into his mouth and was inefficient.
192. This meant that Tim maintained a high level of dependence on the mother. There was no easy alternative to breast feeding. This problem threatened the mother's career plans. She was training to be a nurse and was due to commence the work placement, part of her training, in June 2022 and was going to be regularly away from Tim for lengthy periods. This was the major motivation behind Tim commencing nursery in May 2022. The mother in her evidence was clear that she would have deferred her course if necessary because Tim's needs came first. She had a track-record of making similar decisions as she had stepped away from her first degree to care for Sam. However, it may be that history repeating itself could have exacerbated any frustration she may have felt about it.
193. The feeding difficult also impacted the father's care for Tim. When the mother was absent, he was left caring for a baby who, irrespective of how much he tried, he could not give enough milk to. It was not a case of Tim being left hungry, because he had started some pureed foods and so he was able to eat. However, breast feeding played a major role in calming and settling Tim, which could not be replicated by bottle feeding. During periods when the mother was absent, the father faced the task of caring for Tim without the ability to give him what he needed. Trying to deal with an inconsolable infant is stressful and difficult.
194. Ramadan took place for the entire month of April in 2022. It was only the second time the father had maintained a fast for Ramadan. For the father the physical demands of fasting meant at times he could have been hungry and thirsty. He was keeping



unsociable hours so that he could eat during the night. Caring for Tim had a negative impact on both parents' sleep as he was a baby who usually required attention during the night. As a result of Ramadan, the father is likely to have been even more tired than usual. The mother did not fast.

195. Tim was unwell at the start of April 2022, running a temperature and sleeping more than usual. During this period, the mother spent 3 days at university (6, 8 and 12.04.22) and the father was left with the challenge of caring for Tim without being able to breast feed him.
196. At the start of May 2022, the father was ill with Covid-19. He was off work from 3 to 6.05.22. The mother also became ill from 4 to 10.05.22. The mother was never tested, but it was suspected that she also had covid. The parents both told me that the mother was more badly affected than the father had been. They both took to their beds at times.
197. At the start of May, Tim was teething. He had painful gums where the tooth was emerging, and was suffering from diarrhoea and red cheeks. The tooth finally erupted from the gum when Tim was in hospital. He was unwell again around the same time - he did not attend nursery on 6.05.22 as he was running a temperature. He later tested positive for covid at hospital on 13.05.22.
198. The mother has long-standing health issues. Chronic pain and illness are debilitating and can have a negative impact in terms of how a person reacts to stressors and difficulties.
199. The parents had good family support, with both sets of grandparents in the London area. However, the level of support was reduced during Ramadan when the wider family were occupied and after Ramadan in May the parents' illness meant that the family support was at arm's length.
200. When I factor in all the circumstances of the case, I reach the conclusion, on the balance of probabilities, that Tim suffered four fractures as a result of at least two separate events while in the care of his parents. I am satisfied that, on the balance of probabilities, it is likely that these fractures were non-accidental injuries inflicted on Tim. There is no explanation for the two clavicle and right radius fractures and these were never identified by the parents.
201. While I recognise the many positives about the parents, in my judgment there were at least two occasions where circumstances arose during April or May 2022 where one of the parents lost their temper with Tim and handled him in such a way as to cause the four fractures.
202. Around that period of time there were a number of significant stressors on both of the parents. They and Tim were all affected by illness. The availability of family support was reduced because of Ramadan and the family's illness. They both had to face the uncertainty about the mother's career progression and whether Tim's feeding issues

would stymie her ability to attend her training placement. The father faced additional issues during periods when he was left to care for Tim, in particular there could be occasions when, irrespective of what he tried, he would have been unable to provide what Tim needed because of Tim's difficulty with bottle feeding.

203. I have considered carefully whether I am able to say which of the parents was responsible for causing the injuries to Tim. I am not able to do so. They each presented in a similar way in evidence. They both appear to be loving parents. They both are appropriately upset about what happened to Tim and the impact on their family. They both were exposed to the stressful demands of caring for Tim. They both were present in the home when Tim was hurt.

204. If I were to try to differentiate culpability between the parents on the basis of the different stresses that were impacting on them, I would be speculating rather than relying on the evidence.

205. My findings are:

- a. Tim suffered a complete fracture of the lower end of the shaft of his left radius between 12.05.22 and 13.05.22;
- b. Tim suffered an incomplete fracture of the lower end of the shaft of his right radius between about 11.04.22 and about 16.05.22;
- c. Tim suffered a complete fracture of the left collar bone between about 11.04.22 and about 16.05.22;
- d. Tim suffered a complete fracture of the right collar bone between about 11.04.22 and about 16.05.22;
- e. The fractures were caused by the application of excessive force;
- f. The fractures were not caused by normal handling;
- g. There is no medical condition that explains how Tim suffered the fractures;
- h. None of the explanations put forward adequately explain the fractures;
- i. The fractures to the two radii would have caused Tim immediate pain. In the aftermath, Tim would have been likely to display obvious manifestations of distress, such as screaming, crying and difficulty settling. Thereafter distress would have been evidence during activities that involved manipulation of the affected arms, such as changing clothes;
- j. It is likely that the causation of the fractures was not observed by the parent that did not cause them;
- k. Medical attention was not sought for Tim's fractured left radius and fractured collarbones;
- l. A carer who did not witness the fractures being caused would be likely to be aware that Tim was in pain and would be likely to seek medical attention for him. However, the period of illness that affected both parents in early April 2022 could explain why in this case the non-injuring parent did not appreciate that Tim was hurt at the time or in the days that followed;
- m. The fractures were all caused when Tim was in the care of one or both of the parents; and

- n. Tim's fractures were inflicted by either the mother or the father.
206. The local authority has sought findings to be made against each of the parents for failing to protect Tim from the physical harm and risk of physical harm posed by the parent who caused the fractures. In relation to the first set of fractures, the local authority has not established that the non-abusive parent should have identified a risk of harm from the other parent. In relation to the later injury to the left radius, the circumstances of the illnesses that affected each of the parents around the period when the earlier fractures are likely to have occurred means that this has not been established to the necessary standard. Thus, I do not make this finding.
207. On the basis of the findings I have made I am satisfied that the threshold criteria under s.31 of the Children Act 1989 has been established. At the relevant date, Tim had suffered significant harm and was likely to suffer significant harm attributable to the care given to him or likely to be given to him if an order were not made, not being what it would be reasonable to expect a parent to give to him.
208. I wish to express my gratitude to the advocates for the care, skill and attention they have brought to this case. I also wish to convey my apologies to the parties for the delay in my preparation of this judgment.

HHJ Oliver Jones

29<sup>th</sup> February 2024