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Re Felix (combined fact finding and welfare)

Neutral Citation Number: [2024] EWFC 302 (B)

IN THE FAMILY COURT SITTING AT OXFORD

Case No. OX23C50003

IN THE MATTER OF THE CHILDREN ACT 1989 AND IN THE MATTER OF [FELIX]

Date: 8 February 2024

Before: HHJ Vincent

Between:

OXFORDSHIRE COUNTY COUNCIL

Applicant

and

[EMMA]

First Respondent

and

[SAM]

Second Respondent

and

[FELIX]

(via his Children's Guardian, Nandi Sutherland)

Third Respondent

and

[LUKE]

Intervener

Vicky Reynolds and Nancy Marsh for the Applicant local authority

Elizabeth McGrath KC and Kara Cann instructed by Boardman, Hawkins & Osborne LLP for the respondent mother
Jayne Harrill and Maria Gallagher, instructed by Albin & Co, solicitors the second respondent father
Fiona Farquhar and Alice Darian, instructed by RWK Goodman, solicitors for the child
Helen Little, instructed by Reeds Solicitors, and Anne Davies, of Reeds solicitors, for the intervenor

Hearing dates: 20-24, 27-30 November, 1, 6-8, 11-13, 15 December 2023, 9 January and 8 February 2024

APPROVED JUDGMENT

*This judgment was uploaded to the National Archive, following handing down of judgment in the linked case **Re Bella (placement with family members)** [2024] EWFC 303 (B).*

The names of the parties have been changed. Key:

Felix:	subject child
Bella:	Felix's half-sibling
Emma:	mother of Felix and Bella
Sam:	Felix's father (in brief relationship with Emma at time Felix conceived)
Luke:	Emma's boyfriend at the relevant time, and Bella's father
Sean:	Emma's ex-boyfriend
MG:	social worker
MGM:	maternal grandmother
Ms G:	Luke's grandmother
Ms L:	support worker at the placement
Mr Y:	Luke's friend
Ms M:	fellow resident at the placement and on-off friend of Emma

Short judgment

[Felix]'s injuries

1. [Luke] said that [Felix] was with him when he had his injury on 12 January 2023. He said it happened when [Felix] rolled over on his play mat. He said that [Felix] really screamed. [Luke] said this to the doctors who saw [Felix], to the police, and he said it in his statement to the Court.
2. [Luke] found it very difficult to take part in the case. When he did come to Court he changed his story. He said he did not know what happened to [Felix]. He said when [Felix] rolled on the mat it was not a big deal and [Felix] was just crying normally.
3. [Felix] could not have got his injury from rolling on the playmat.
4. I did not think [Luke] was telling the truth when he came to Court. He knows what happened to [Felix]. He changed his story because he did not want anyone to blame him for hurting [Felix].
5. [Luke] caused the fracture to [Felix]'s right elbow. He hurt [Felix]. He was annoyed that [Emma] had been asleep for a long time. [Luke] had been looking after [Felix] and trying to get him to sleep. [Luke] wanted to play on his Xbox. [Felix] kept waking up.

6. On 28 December 2022 [Luke] was looking after [Felix] on his own for most of the day. It was hard looking after [Felix]. [Luke] and [Emma] had been arguing a lot. At the end of the day [Emma] saw bruises on [Felix]'s chest. He was really screaming, especially when she laid him on his back.
7. The doctors think [Felix]'s rib fractures were caused around this time, as well as the fractures to [Felix]'s left knee and left wrist.
8. [Luke] was the one to cause the rib fractures on 28 December 2022, and the fractures to the left knee and left wrist.
9. [Emma] saw another bruise on [Felix] on 8 January 2023. I think it is most likely that the fracture of the left elbow happened on this day.
10. [Luke] caused this injury too.
11. [Luke] gave [Felix] the bruises.
12. [Emma] has told some lies, especially about the fake phone messages. I did not think she was lying about [Felix]'s injuries. When she saw bruises or was worried he was hurt, she always showed pictures to her mum straight away.
13. [Emma] did not hurt [Felix]. She did not cause any injuries to him.
14. [Emma] and [Luke] should have taken [Felix] to hospital or called the GP earlier than they did.
15. [Emma] could not have known that [Luke] was going to hurt [Felix]. Everyone was telling her it was good to have [Luke] in hers and [Felix]'s life.

[Emma]

16. [Emma] loves [Felix]. [Emma] knows how to look after [Felix]. She can feed him, change him, wash him, dress him nicely, and give him baths. She knew how to look after [Felix] herself, but she liked [Luke] to take care of her and [Felix]. When she was feeling ill, she needed [Luke] to do more. This caused arguments between them.

17. There are lots of good things about [Emma] as a mum. But she was not always able to put [Felix]'s needs first. She was sometimes more focused on her social life than on [Felix]. She was not always able to think about how [Felix] might be affected by her choices. Often what she wanted to do came first and [Felix]'s needs came second.

18. This was dangerous for [Felix] and put him at risk of harm. It was hard for [Emma] at [the placement] because she was left to manage on her own for most of the time.

19. These are the main worries about [Emma]:

- She did not always tell the truth about what was going on with her and [Felix]. This makes it hard for social workers to know what life was like for [Felix]. That made it hard for social workers to know how to protect [Felix], and how to give [Emma] the support she needed;
- If [Emma] doesn't like a social worker she won't want to work with them. She has to be able to get on with the people who are trying to help her and [Felix];
- [Emma] has anxiety and sometimes feels overwhelmed. She has not yet learned how to manage her feelings. She can make impulsive or bad choices. An example of this is the fake messages she sent;
- She does not always understand how her choices have affected other people, particularly [Felix];
- [Emma] can form friendships and relationships that can quickly become very intense. But then she can have lots of arguments. She often gets caught up in relationship dramas. This can mean she gets distracted and loses sight of [Felix]'s needs;
- [Emma] and [Luke]'s relationship became very serious very quickly. She trusted him completely and did not think how that might affect [Felix]. She did not think that [Luke] could have been dangerous for [Felix]. She

did not think what it might be like for [Felix] to get to know [Luke] but then have to say goodbye if her relationship with him ended;

20.[Emma] needs therapy. These are the main reasons [Emma] needs therapy:

- to help her understand the experiences she has had, and how they have affected her;
- to help her manage her anxiety;
- to help her make good choices in relationships;
- to understand how her choices affect other people, especially her children.

21.[Emma] said that she will have some therapy because she wants to do everything she can to get her children back. This is good but she also needs to want to do the therapy for herself. Unless she understands why she needs therapy and really wants to do it for herself, it may not help make the changes she needs to make.

22.[Emma] got pregnant with [Bella] very quickly after having [Felix]. If she gets pregnant again, that might make it harder for her to do the therapy. She needs help to learn how to plan pregnancies so that she has time and space to do the work she needs for herself, and give herself the best chance of being a mum to her children in the future.

23.Therapy will take time. But [Felix] needs his future decided now. He cannot wait to see if [Emma]'s therapy helps her to make the changes she would need to before she could have him back in her care.

24.I have decided that [Felix] should go and live with his dad [Sam].

[Sam]

25.[Sam] loves [Felix]. His assessment was positive. His family can help him to take care of [Felix]. [Felix] should move to live with him as soon as possible.

26.[Sam] will need help and support from the local authority. I am going to make a supervision order for these reasons:

- [Felix] has had a difficult time and will need extra help to settle with his dad.
- [Sam] has not been a dad before and will need extra support.
- [Felix] needs to be allowed to see his mum regularly, but [Sam] and [Emma] do not have a good relationship.
- the local authority need time to make a plan for [MGM] to help with contact once the supervision order has ended.

27. The supervision order should last for 12 months. This is longer than the local authority suggested, but it is needed to make sure that [Felix], [Emma] and [Sam] are given the support they need.

28. To start with, contact for [Emma] and [Felix] should take place every two weeks. The local authority will monitor and review the contact and may suggest changes as they think is best for [Felix].

[Bella]

29. The decision about [Felix] is separate from the decision about [Bella]. [Emma] still has the chance to show she can be a mum to [Bella].

30. I have found that [Luke] hurt [Felix]. [Luke] is [Bella]'s dad. Although I have found that he hurt [Felix], that does not mean that he can never see [Bella].

31. But the local authority must be sure that it is safe. [Luke] will need to be open and honest with social workers and other professionals. If he is willing, there may be a course or other work he can do to help him see and understand the reasons that he hurt [Felix], and to find ways of managing his emotions so that he is not a risk to [Bella] or to any other child.

HHJ Joanna Vincent
Family Court, Oxford
9 January 2024

Long judgment

Introduction

1. This case is about [Felix], now fifteen months old.
2. His mum is [Emma]. She was seventeen when she gave birth to [Felix] in September 2022. She is nineteen now.
3. [Emma] has a diagnosis of autism and has had long-standing issues around attachment and her emotional development. She was placed in foster care at birth and adopted aged eight months old. Her mother, [MGM], suspects that [Emma] would also meet a diagnosis for ADHD. [MGM] has been a devoted carer and passionate advocate for both [Emma] and her older brother, also adopted. [Emma] and her family have had difficult times, but [Emma] and her mother continue to have a close relationship.
4. In September 2021 [Emma] became a looked after child under section 20 Children Act 1989. However there was difficulty finding an appropriate placement for her, and it seems that she remained living with her family, but also spending time at her boyfriend's home, or staying with other friends. Her mother has described her as 'drifting' throughout much of this time.
5. [Emma] was in a relationship with [Sam] for a few weeks in December 2021 to January 2022, during which time [Felix] was conceived. [Sam] was seventeen.
6. In May 2022 [Emma]'s social worker at the time, [WC], made a referral to children's services. The concern was a risk of harm to unborn [Felix] due to [Emma] not taking good care of herself, staying out late, living a chaotic life and putting herself and her unborn child at risk of homelessness.
7. In June 2022 [Emma] moved to [the placement], which provides supported living for young mothers. [Emma] was accommodated by the local authority with her own and her parents' consent, pursuant to section 20 of the Children Act 1989. [the placement] is owned and operated by [the housing association], which is paid by the local authority to provide the service.
8. There had been some discussion about [Emma] going to a residential placement, or to a mother and baby foster care placement. However, [Emma] strongly wanted to be living independently, but close to her own mother. In addition to support from her mother and from workers at [the placement], the local authority envisaged that there would be additional support from the family nurse partnership, [Emma]'s own social worker (later to become her leaving care PA), and [Felix]'s social worker. This was considered to be a sensible package to put around [Emma] to enable her to care for [Felix] independently, but with access to support from professionals.

9. There were early concerns that [Emma] was not staying all the time at [the placement], was allowing other people to stay without permission, was having arguments with the other housemates, and was not engaging with professionals.
10. At the end of August 2022 [Emma] reported to the police that an ex-partner, [Sean], was sending text messages containing threats to kill her. Over the next few months she continued to report to the police or to other people that she and [Luke] were receiving messages from [Sean], including threats to kill, threats to burn down their home, to smash her mother's car, and messages which indicated that the sender knew where they were, and was close by, watching them. Police were called to the home at least three times, and the home was placed on lockdown.
11. [Felix] was born on [X] September 2022.
12. [Emma] started her relationship with [Luke] in early October 2022. Very quickly into the relationship he stayed a number of nights a week at [the placement] with [Emma] and [Felix].
13. On 10 December 2022, [Emma] discovered she was pregnant with her daughter, [Bella], who was born in August 2023. [Luke] is [Bella]'s father.
14. [Luke] turned twenty in November 2022. [Emma] turned eighteen *[a week later]*. [Emma] immediately thereafter sought out her birth family. Before she could meet her birth mother, [Emma] found out that she had very recently died from cancer.
15. In January 2023 [Luke]'s sister's boyfriend died.
16. On 13 January 2023 [Felix] was taken to hospital presenting with a fracture injury to his right elbow. Scans of his body then revealed that he had fractures to his ribs, to his wrist, left arm, and both legs.
17. The police interviewed [Emma] and [Luke] about the injuries on 16 January 2023. On the same day, [Emma] was also arrested on suspicion of making malicious communications. It was alleged that she had sent the threatening messages purporting to be from [Sean]. [Felix] was placed in foster care under the police's powers of protection.
18. The local authority issued these care proceedings on 18 January 2023. On 19 January 2023 HHJ Lloyd-Jones made an interim care order; [Felix] remained with his foster carers.
19. Following her birth in August, [Bella] was also taken into foster care. This case is only about [Felix], but any findings and the decision that I make about [Felix] are likely to have an impact on [Bella]'s case.

Parties' positions at final hearing

20. In every care case the Court must ask two questions; (i) is the threshold for making public law orders crossed; and (ii) if so, what, if any orders should be made to meet the child's welfare.
21. The local authority's difficulties in formulating its threshold document has been the most troublesome issue in this case.
22. There were a number of case management hearings at which the issue of threshold took up most of the Court time. The local authority's original threshold document pleaded that [Felix] had sustained serious injuries, but it did not put forward a case about who had caused them. This made it impossible for [Emma] or [Luke] to know what case they were going to have to defend.
23. If the only question in the case was who caused the injuries, I would have been likely to have listed a separate fact-finding hearing quite quickly. But the local authority consistently asserted that there were wider concerns in the case, about neglect, domestic abuse, [Emma]'s choices around relationships and her mental health issues, all of which it was said had impacted on her capacity to care for [Felix]. However, none of this was pleaded in its threshold document. I repeatedly asked the local authority to consider its position and to file a threshold document so that other parties knew what was being said, and so that I could make a decision about case management.
24. A threshold document/schedule of findings setting out the local authority's case was provided on 4 July 2023 and revised on 1 October 2023. It is a somewhat unwieldy document, rehearsing a lot of medical and expert evidence, lists all the injuries found, but doesn't put any kind of coherent case forward about when or how they are alleged to have been caused. After all the evidence had been heard and the day before submissions, the local authority changed its position to plead that [Emma] was the sole perpetrator of the most serious fracture to [Felix]'s right elbow. The document does not clearly explain the connection between many of the allegations pleaded and the harm alleged to be caused to [Felix]. However, in general terms, it does set out the local authority's case that [Felix]'s injuries were caused either by [Emma] or by [Luke]. It is alleged that both [Emma] and [Luke] failed to seek medical attention for [Felix] in good time.
25. There is a short pleading of a failure to protect, which says that 'insofar as' either [Emma] or [Luke] knew or reasonably believed that the other posed a significant risk to [Felix], they failed to protect him from that risk.

26. It is alleged that [Emma] parented [Felix] in a way that was inconsistent, chaotic and neglectful, that she was over-reliant on [Luke] to care for him, and did not prioritise [Felix]'s needs.
27. It is alleged that [Emma] has a history of engaging in unhealthy and toxic relationships, and under the same heading of 'relationships', allegations are made against [Emma] about the sending of fake messages purporting to be from [Sean] and from [Sam].
28. Finally, it is pleaded that [Emma] has a history of poor mental health and emotional instability, has limited insight into her difficulties, how they may impact upon her parenting and on [Felix].
29. [Emma] denies that she caused any injuries to [Felix]. She says that [Luke] caused his injuries. She accepts that *'she should not have allowed [Luke] to care for [Felix] as that gave him the opportunity to harm him'*, but she denies that she knew or should have reasonably believed that he posed a risk to [Felix] before he was removed. She notes that all the professionals thought [Luke] was good with [Felix].
30. She does not accept that she delayed in seeking medical treatment, but followed the advice of her mum to wait until the next day, and then followed the advice of professionals once she woke up. She accepts some of the facts alleged in the section about her parenting, but she does not accept that any of those matters caused him or put him at risk of harm, nor that it fell below the standard reasonably to be expected of a parent. She accepts the history of poor mental health and emotional instability but denies this has had an impact upon [Felix], or that she has lacked insight into that. She accepts that her relationships with [Luke] and with [Sean] were toxic, and that she struggled to cope at the end of those relationships. In her response to threshold she denied sending fake messages, but within a few days of the start of the trial, did admit that she had sent the messages purporting to be from [Sean].
31. [Luke] did not give his responses to threshold until 16 November 2023. He denied responsibility for causing the injuries to [Felix]. To an extent he accepts fault for not taking [Felix] to hospital sooner, but says he deferred to [Emma]. In his witness statement he said that he had noticed [Emma] handling [Felix] roughly. In his response to threshold he accepts that he didn't raise this with anyone at the time, but says he never thought this would lead to the injuries found, or that [Felix] would be at risk in [Emma]'s care.
32. The whole of the threshold document is therefore in issue.
33. There are no allegations pleaded against [Sam]. He has been positively assessed by the local authority, and during these proceedings has spent increasing time with [Felix] in contact. The local authority's care plan is for [Felix] to live with his father in the long-term.

34. [Emma] says she never did anything to hurt [Felix] and that she took care of him well. She wants [Felix] returned to her care. She would be happy to take part in any kind of assessment or do any therapy or other kind of work that might enable her to look after him. If [Felix] can't live with her, then she would support him living with [Sam], but she would like to see him regularly and more often than the local authority proposes.
35. [Sam] wants [Felix] to come and live with him. He has some concerns about managing contact between [Felix] and [Emma] because he does not want to have anything to do with [Emma].
36. [Luke] denies that he caused any injuries to [Felix]. In time he would like to be assessed as a long-term carer for [Bella].
37. Having considered the evidence, the guardian concludes that both [Emma] and [Luke] should remain in the pool of potential perpetrators for [Felix]'s injuries. Irrespective of the findings the Court may make about that, the guardian does not think it would be safe for [Felix] to return to his mother's care. She does not see a need for any further assessment of [Emma]'s parenting. The guardian supports the local authority's plan for [Felix] to live with his father.

The law

Threshold

38. The Court may only consider whether to make a care or supervision order if satisfied that the threshold test is passed, as set out at section 31(2) of the Children Act 1989:
 - (a) *that the child concerned is suffering, or is likely to suffer, significant harm; and*
 - (b) *that the harm, or likelihood of harm, is attributable to –*
 - (i) *the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give him; or*
 - (ii) *the child's being beyond parental control.*
39. The relevant date for determining whether [Felix] was suffering, or was likely to suffer significant harm is 18 January 2023, the date proceedings were issued. Subsequent incidents may be pleaded in the threshold document as evidence of the risk it is said a parent would have posed to their child at the time protective measures were taken.
40. 'Significant harm' is defined as 'ill-treatment or the impairment of health or development' (s31(9) CA 1989), and must be '*significant enough to justify the intervention of the state and disturb the autonomy of the parents to bring up their*

children by themselves in the way they choose' (Re MA (Care threshold) [2010] 1 FLR 431. The Court must be satisfied that the harm is caused by the care given to or likely to be given to the children, not being what it would be reasonable to expect a parent to give the children.

Fact-finding

41. Drawing heavily from the well-known guidance about the judge's approach to fact finding hearings from Baker J (as he then was) in Re JS (Fact-finding hearing) [2012] EWHC 1370 (Fam), I [name redacted]r the following in mind.
42. The burden of proof is on the local authority making the allegations to substantiate them. The parents do not need to prove that they are not true.
43. I remind myself of Re M (fact-finding hearing: burden of proof) [2012] EWCA Civ 1580, in which the Court of Appeal warned against the dangers of inferring that because the parents had not given an explanation for an injury, the real explanation must be a sinister one. There is no requirement for those against whom allegations are made to satisfy the Court that the injuries were accidental.
44. The local authority must not only prove on a balance of probabilities the facts on which it relies, but must link the facts upon which it relies with the assertion that the child is at risk by demonstrating exactly why, on the given set of facts, the child is at risk of significant harm.
45. The standard of proof is the balance of probabilities. Thus disputed allegations only become proven facts if it is more probable than not that they occurred.
46. Findings of fact must be based on the evidence including inferences that can properly be drawn from the evidence and not on suspicion or speculation. (Re A (a child)(fact-finding hearing: speculation) [2011] EWCA Civ 12 per Munby LJ).
47. When considering cases of suspected child abuse the court must take into account all the evidence and furthermore consider each piece of evidence in the context of all the other evidence. As Dame Elizabeth Butler-Sloss P observed in Re T [2004] EWCA Civ 558, [2004] 2 FLR 838 at 33:

"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."

48. Appropriate attention must be paid to the opinion of medical experts, but those opinions must be considered in the context of all the other evidence:

'A factual decision must be based on all available materials; i.e. be judged in the context and not just upon medical or scientific materials, no matter how cogent they may in isolation seem to be.'

(A County Council v a mother & others [2005] EWHC Fam 31 Ryder J)

49. The Court must be careful to ensure that each expert keeps within the bounds of their own expertise, and defers, where appropriate to the expertise of others.

50. Some of the evidence before me is relevant and some of it is not. I remind myself of the direction that a judge gives to a jury in the Crown Court that the fact finding tribunal does not need to decide every point that is raised. It is only necessary to decide those points that will assist in determining the central issues before me.

51. I have to decide this case on the evidence before me at trial. Again, as in a criminal case, as the jury is directed, I may come to common sense conclusions based on the evidence that I accept. However I must not speculate about what evidence there might have been.

52. Hearsay evidence. Butler-Sloss LJ in Re P (child: compellability as witness) [1991] FCR 337 at 344; sub nom R v B CC, ex p P [1991] 2 All ER 65 at 72, said: *'A court presented with hearsay evidence has to look at it anxiously and consider carefully the extent to which it can properly be relied upon'*. When considering the evidence of the witnesses I must take care to identify those parts of their evidence which is part of their direct recollection, and those parts of their evidence where they are reporting what someone else has said, and to assess the relative weight of such evidence accordingly.

53. In their agreed statement of the applicable law, the parties' legal representatives have referred me to section 4 of the Civil Evidence Act 1995:

“(1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.

(2) Regard may be had, in particular, to the following—

(a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;

(b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;

- (c) *whether the evidence involves multiple hearsay;*
- (d) *whether any person involved had any motive to conceal or misrepresent matters;*
- (e) *whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;*
- (f) *whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight.”*
54. The evidence of the parents is very important and the Court must be able to form a clear assessment of their credibility and reliability.
55. The parties have cautioned me in respect of drawing conclusions about the reliability of a witness’s evidence based only on their demeanour in the witness box.
56. I further remind myself that credibility alone cannot decide this case and that, if a court concludes that a witness has lied about one matter, it does not follow that he or she has lied about everything.
57. More specifically, I remind myself of the direction that, in a criminal case, would be called the ‘Lucas’ direction because it is based on the case of R v Lucas [1981] QB 720. If proved that a person has lied, the Court must analyse the relevance of the lie to the issues in the case. A lie may be in relation to an issue that has no relevance to the real issues before the court. Lies may be told for many reasons. A person may lie out of a sense of shame, misplaced loyalty, humiliation, embarrassment, panic, fear, confusion, emotional pressure, a desire to conceal other misconduct or for many other reasons. I have been referred by the parties to H-C (children) [2016] EWCA Civ 136 at paragraphs 97 to 100 per McFarlane, and to Re A, B and C (children) [2021] EWCA Civ 451 per Macur LJ:

[57] To be clear, and as I indicate above, a “Lucas direction” will not be called for in every family case in which a party or intervenor is challenging the factual case alleged against them and, in my opinion, should not be included in the judgment as a tick box exercise. If the issue for the tribunal to decide is whether to believe X or Y on the central issue/s, and the evidence is clearly one way then there will be no need to address credibility in general. However, if the tribunal looks to find support for their view, it must caution itself against treating what it finds to be an established propensity to dishonesty as determinative of guilt for the reasons the Recorder gave in [40]. Conversely, an established propensity to honesty will not always equate with the witness’s reliability of recall on a particular issue.

That a tribunal's Lucas self-direction is formulaic, and incomplete is unlikely to determine an appeal, but the danger lies in its potential to distract from the proper application of its principles. In these circumstances, I venture to suggest that it would be good practice when the tribunal is invited to proceed on the basis, or itself determines, that such a direction is called for, to seek Counsel's submissions to identify: (i) the deliberate lie(s) upon which they seek to rely; (ii) the significant issue to which it/they relate(s), and (iii) on what basis it can be determined that the only explanation for the lie(s) is guilt. The principles of the direction will remain the same, but they must be tailored to the facts and circumstances of the witness before the court."

58. Any findings of fact are for the Court to make based on the evidence before it. No weight should be given to the opinions of others about the credibility of a particular witness.
59. The Court must resist the temptation to believe that it is always possible to identify the cause of injury to a child (R v Henderson and others [2010] EWCA Crim 1219).
60. Where allegations are made against more than one potential perpetrator, the court should adopt the following approach:

'The court should first consider whether there is a 'list' of people who had the opportunity to cause the injury. It should then consider whether it can identify the actual perpetrator on the balance of probability ... Only if it cannot identify the perpetrator to the civil standard of proof should it go on to ask in respect of those on the list: "Is there a likelihood or real possibility that A or B or C was the perpetrator or a perpetrator of the inflicted injuries?" Only if there is should A or B or C be placed into the 'pool'.;
(per Peter Jackson LJ at para 49 of Re B (Children: Uncertain perpetrator) [2019] EWCA Civ 575 and approved by Baker LJ in Re A, B and C (Fact-finding) [2023] EWCA Civ 437)

61. The rationale for having a pool of perpetrators was explained by Jackson LJ as follows at paragraph 46 of the same judgment:

46.the concept of a pool of perpetrators seeks to strike a fair balance between the rights of the individual, including those of the child, and the importance of child protection. It is a means of satisfying the attributable threshold condition that only arises where the court is satisfied that there has been significant harm arising from (in shorthand) ill-treatment and where the only 'unknown' is which of a number of persons is responsible. So, to state the obvious, the concept of the pool does not arise at all in the normal run of cases where the relevant allegation can be proved to the civil standard against an individual or individuals in the normal way. Nor does it arise where only one person could possibly be responsible. In that event, the allegation is either proved or it is not. There is no room for a finding of fact on the basis of 'real possibility', still less on the basis of suspicion. There is no such thing as a pool of one.

47. It should also be emphasised that a decision to place a person within the pool of perpetrators is not a finding of fact in the conventional sense. As is made clear in *Lancashire* at [19], *O and N* at [27-28] and *S-B* at [43], the person is not a proven perpetrator but a possible perpetrator. That conclusion is then carried forward to the welfare stage, when the court will, as was said in *S-B*, ‘consider the strength of the possibility’ that the person was involved as part of the overall circumstances of the case.

62. In their agreed statement of the law, the parties have also directed me to the case of *R v P (children: similar fact evidence)* [2020] EWCA Civ 1088. I have read and considered the case, but found it of limited relevance to the issues I have to determine. It has not been suggested that there is evidence that either the mother or the intervenor has inflicted injury on a child before, and no application has been made to me to adduce evidence of previous convictions, admitted incidents or patterns of behaviour.

Failure to protect

63. This is a threshold finding. I remind myself of *Re L-W (children)* [2019] EWCA Civ 159 and *G-L-T (children)* [2019] EWCA Civ 717, in which Lady Justice King cautioned against treating failure to protect as a ‘bolt-on’, to the substantive issues in the case. King LJ said courts and local authorities should approach allegations of failure to protect with ‘assiduous care’.

64. The Court must not make an assumption that a parent living in a household where significant harm to a child occurred must have been able to foresee the risk. Even if a risk is identifiable, it does not follow that the parent could or should have taken steps to protect the child.

65. To establish a failure to protect, it should first be established that the parent had, or should have had, knowledge of the risk. The risk should be specific and related to the harm that occurred. Secondly, it should be established that there was a clear course of action he or she should have taken. Thirdly, they failed to take that course. Fourthly, they are culpable for that failure, in that, in the words of section 31, this failure was ‘not what it would be reasonable to expect’ from a parent.

Textual analysis of material downloaded from phones

66. The police disclosure contains thousands of pages of messages between the parties. I remind myself that the messages give an indication of the ways in which the parties interacted, but they were private messages, sent in the moment without much thought or preparation, and are not to be pored over and analysed with the same attention that is paid to a formal witness statement, or answers given in a police interview. Further, they are evidence of this aspect of the parties’ communications, but not necessarily of all their interactions, and must be read and evaluated in that context.

Welfare

67. If satisfied that threshold is crossed for making public law orders, I must then consider what, if any, orders I should make, having regard to the matters set out at section 1 of the Children Act 1989.
68. The parties have submitted that I have only two options to consider; (i) placement with father; or (ii) placement with mother (whether for the purpose of further assessment or otherwise). I remind myself that in fact I must consider the whole range of powers available to the Court under the Act in the proceedings in question (section 1(3)(g) Children Act 1989), although I should limit my consideration to those options which are realistic.
69. In reaching my decision, [Felix]'s welfare is my paramount consideration (section 1(1) Children Act 1989). There is a general principle that any delay in determining the question of his upbringing is likely to prejudice his welfare (section 1(2)). I must have regard to all the circumstances, and in particular the factors set out at the welfare checklist at section 1(3) Children Act 1989.

The evidence

70. I have read the documents in the bundle, looked at a lot of message threads, social media posts, photos and videos from the parties' phones, and listened to oral evidence from the following witnesses:
- Dr Oystein E. Olson, expert consultant paediatric radiologist;
 - Dr Robinson, expert consultant paediatrician;
 - Dr Sonia Bues, psychologist;
 - Mrs Nicola Carty, independent social worker;
 - [MG], [Felix]'s social worker;
 - [Ms L], [Emma]'s support worker at [the placement];
 - [Sam], [Felix]'s father;
 - [Emma], [Felix] and [Bella]'s mother;
 - [Luke], intervenor, [Emma]'s partner at the time she was living at [the placement], and [Bella]'s father;
 - [Ms M], resident at [the placement];
 - [MGM], maternal grandmother;
 - [Mrs G], [Luke]'s grandmother;
 - [Mr Y], friend of [Luke]'s and visitor to [the placement];
 - Nandi Sutherland, children's guardian.

Expert witnesses

Dr Oystein E. Olsen, consultant paediatric radiologist

Dr David Robinson, consultant paediatrician

71. The expert reports from both these experienced clinicians were clear, helpful and I accept their conclusions. In oral evidence both Dr Olsen and Dr Robinson gave clear answers which were consistent with their written reports, and with one another. Their opinions were well-reasoned and founded on a thorough review of relevant evidence provided to them with their instructions. Both patiently listened to various hypotheses of potential mechanisms for causation of the fractures, and gentle exploration of time-frames, but none of this led to any shift in the clear opinions they had already given.

72. In summary, the scans taken of [Felix] at hospital showed that he sustained the following injuries:

- fractures to four ribs (left sixth and seventh ribs, right tenth and eleventh ribs), all close to the spine, likely to have been caused at around the same time, by a forceful compression or squeezing action. They could also have been caused by vigorous and repeated backwards and forwards shaking where the baby is gripped around the chest, thumbs against the breastbone and fingers against the spine. Whatever the mechanism, the fractures could only have been caused by excessive force, well beyond what a baby is expected to experience through normal handling. In the aftermath of the injury, [Felix] is likely to have screamed out in an unusual way, and continue to cry and scream when handled in the chest area for up to 72 hours. The person inflicting the injury would know that they had applied excessive force and that they had caused pain;
- Having regard to the extent of callus formation on the x-rays, Dr Olsen considers these fractures were most likely caused at least two weeks to a month prior to the x-rays on 13 January 2023;
- an extension fracture to the right elbow, which was acute, i.e. very recently caused on 13 January 2023, likely within the previous 48 hours. This was described by the experts as '*complex and rare*', a '*very very very unusual fracture in a baby*', and '*serious*', involving '*entire elbow displacement*'. It is caused by over-extension of the arm beyond its limit. It would have been caused by excessive force and the person who exerted that force would have known they were doing so, and that they had caused injury and significant pain to [Felix];
- this fracture was not caused by [Felix] rolling over or his arm being twisted or positioned awkwardly behind his back, as has been suggested;
- metaphyseal fractures to the left elbow, left wrist (x 2, on the distal end of the left radius and ulna respectively), and the left knee. The level of force to cause these

fractures, all in areas of bone growth at the distal end of a bone, is less than the force that causes a fracture to the shaft of a bone.

- Nonetheless, these fractures are also caused by the application of excessive force, and the person inflicting that force would know this was beyond normal or even rough handling. They would cause immediate pain at the time they are inflicted, and [Felix] would have screamed in pain. Thereafter if there is no swelling, it is not unusual that they are not picked up by a carer or clinician. These fractures could have been caused by shaking, gripping, pulling or twisting;
 - because metaphyseal fractures are caused in areas of bone growth they tend not to be visible on x-rays after thirty days. Dr Olsen gave a window of two weeks to a month before the scan (on 16 January) for the metaphyseal fractures of the left wrist and left knee. These fractures could have been caused at the same time as the rib fractures, as part of a shaking injury, or on another occasion;
 - Dr Olsen dated the left elbow metaphyseal fracture in a slightly tighter window of around two weeks before its scan on 18 January 2023 (so 4 to 18 January 2023).
73. Where a baby sustains brain damage as a result of being shaken, clinicians look for and consider a ‘triad’ of symptoms (subdural and retinal haemorrhage with brain damage) to assist with diagnosis and to assess the degree of force applied. But a baby who does not have any of the triad of symptoms may still sustain fracture injuries as a result of being shaken.
74. On 8 January 2023 [Emma] sent two photos to her mother, asking her about some marks that were not going away when she pressed them. Her mother sent a text back, remembering a time when [Felix]’s eye had ‘popped’.
- “thinking about the rash. It looks like little burst blood vessels that happen when you exert yourself. That means when [Felix] was crying and he was straining his muscles. That’s why the blood vessel in his eye popped. He may have had bad wind pain from trying the bits of food being offered to him. Probably best not to do that any more at the moment.’*
75. [MGM] wasn’t asked about the blood vessel in [Felix]’s eye and I do not believe it was something raised with either treating clinicians or the experts, so this does not take matters any further for me.
76. On 13 January 2023 [Felix] was also found to have the following bruises, which are more likely than not to be the result of inflicted injury:

- A single grey round bruise just below his knee, and three grey bruises to his left temple (likely to be caused by impact from an adult hand or other blunt instrument or impact against a hard surface);
 - A curved yellow brown bruise on his left cheek by his jaw (likely to be caused by impact from an adult hand or other blunt instrument or by squeezing);
 - A dark bruise in the fold of the left ear;
77. No explanation was given to suggest possible causes of any of these bruises. Each of these bruises was more likely than not caused by excessive force and the bruising would be likely to have appeared within an hour or two, and up to two weeks earlier. [Felix] could not have caused these injuries himself.
78. During the course of the evidence I was shown photographs of some significant scratches to [Felix]'s skin, photographed by his mother on 2 November. The photos show a scratch on his tummy, and another on his thigh. These photos are not taken by medical professionals and do not have measurements, but they show the skin broken, and look to be red, fresh and tender. I am not asked to make any findings about how or who inflicted these scratches on [Felix], but I note that when they were shown to Dr Robinson he was clear that these scratches were inflicted injuries, and [Felix] could not have caused them to himself.
79. There are further images of a faint scratch and apparent bruises to [Felix] on 28 December 2022 seen on either side of the crease at the top of his left leg. Again, I am not asked to make any findings about this, but again note that Dr Robinson (expressing caution in the absence of medical photographs or notes of a clinical examination) considered these to be more likely than not inflicted injuries.

[Dr Sonia Bues, clinical psychologist](#)

80. Dr Bues reported on 2 June 2023, having met with [Emma] for two and a half hours, spoken to her mother and to [Felix]'s social worker, and reviewed the bundle. Her report is clear, sets out the results of tests that she carried out, and provides a clear assessment, answering each of the questions she was being asked, and setting out the evidence base for her opinions. In oral evidence, she spoke with authority and clarity, and gave some further explanation for the views expressed in her report, which were not undermined by the questions put. I accept her conclusions, which are most relevant to consideration of [Felix]'s welfare, and will be revisited further later in this judgment.
81. In short, Dr Bues sees in [Emma] someone with complex emotional needs – not just autism and not an attachment based difficulty, but a combination of both. This brings with it a high level of anxiety that needs to be managed. Dr Bues says that [Emma] does not always choose good coping mechanisms and has had difficulties understanding the

repercussions of her choices on other people. She says that [Emma] is not always accurate in how she reports things to professionals – sometimes exaggerating certain problems, or else presenting things as better than they are. This makes it difficult for professionals to know what is going on, to risk assess, and to have confidence that [Emma] will be able to work openly and honestly with them in the future.

Nicola Carty, independent social worker

82. Mrs Carty carried out the parenting assessment of [Emma] and continues to work with her as she is carrying out a parenting assessment in respect of [Bella].
83. Mrs Carty met with [Emma] eight times between May and July 2023, completing her visits just before [Bella] was born on [x] August 2023. [Emma] was very anxious about [Bella]’s birth because [Felix]’s birth was frightening and distressing for her. However, she was well supported by midwives and her mother (who was also a midwife). Mrs Carty made reasonable adjustments to enable [Emma] to participate as best she could in the assessment, despite her anxiety around pregnancy and delivery of [Bella]. Mrs Carty visited at times that suited [Emma], took the assessment in stages, kept meetings to a manageable length and took time to build up a rapport. She said that after three sessions they had built up a good relationship. She is someone that [Emma] feels she can talk to, and she told me that [Emma] was receptive to her.
84. On any view the information provided by [the placement] was lacking, particularly in respect of the first six months of [Emma]’s time there. There are very few documents, no obvious plan on handover, no evidence of discussions held at key-worker or other meetings to review progress of a plan, and no daily logs. It was put to Mrs Carty that in the absence of evidence of what was happening on the ground, her assessment must be regarded as incomplete.
85. Mrs Carty acknowledged the lack of reliable information from that time, but nonetheless expressed confidence that her own assessment had been thorough, and that she had obtained sufficient evidence to form sound conclusions. I accept this. I found Mrs Carty to have carried out a comprehensive, balanced, and fair assessment and I accept her conclusions, which I found to be well-reasoned and supported by the evidence she obtained.

Lay witnesses

[Ms L]

86. [Ms L] started working at [the placement] on 13 November 2023. She was employed by [the housing association] as a support worker, and was [Emma]’s keyworker. There does not appear to have been any formal handover from the previous keyworker, [Ms L] was not sure who that had been. [Ms L] did not know that [Emma] had a diagnosis of autism

and had not had any conversations with any social worker about [Emma]'s situation or her history. She had exchanged some emails with [Emma]'s leaving care PA, but said to me that her only real source of information was [Emma].

87. [Ms L]'s job was to support young parents in gaining independence in the community. She was signposting them to various services, such as food banks or clothing banks, helping them to register with a general practitioner, or apply for benefits. Her priorities for [Emma] were helping her to apply for a provisional driving licence and making an application for housing. She was not employed to give [Emma] training or advice around parenting, or in practical skills like cooking, and did not have experience or qualifications to do that.
88. Her hours were 9am to 5pm Monday to Friday, but she was also working at two other projects in different parts of the county, both of which were demanding on her time. She was not at [the placement] every day, and if there often did not arrive at [the placement] until the later part of the day. In any event, she says that [Emma] would only appear around 3 pm or 4pm on most days. It is to her credit that nonetheless, in a relatively short time she had built up a good relationship with [Emma], who trusted her and felt able to confide in her. The difficulty was that their interactions were much more like those between friends than support worker and client. [Ms L] was in her early twenties, so perhaps [Emma] understandably saw her more as a friend than someone in a position of authority.
89. Having heard evidence from [Ms L] herself, [Emma], [Luke] and [Ms M], I am quite satisfied that [Ms L] did not smoke cannabis with them, and they would not have smoked in her presence. But the extent to which [Ms L] was expected to give guidance or set boundaries around behaviours in the house was a bit unclear. She said she didn't feel like she could intrude.
90. There were other workers who visited the property, and some of them were [Ms L]'s managers, but I have not had statements from any of them to tell me what was supposed to be happening at [the placement] around supervision and support of the residents. What is clear is that there was very little in the way of rules, very little monitoring or enforcement of such rules that were in place, poor record keeping, little or no supervision, and no real parenting support for the residents.
91. [Ms L] presented as an honest and open witness, doing her best to give an accurate account of events to the court. She was quick to accept criticism. This might be warranted with regard to some of the messages she sent to [Emma], which were perhaps over-sharing and more like messages between friends than support worker and client. She also accepted that although her managers encouraged her to go into the girls' rooms to tell them to get up and out of bed, she didn't feel comfortable in doing that, and did not want to intrude. But she should not be blamed for all the very obvious deficiencies

in the set up at [the placement], just because she was the only staff member to come to court to give evidence.

92. [Ms L] was working under difficult conditions, stretched thinly, without the benefit of an understanding of [Emma]’s history or having been given a clearly defined role. Worse than that, her principal source of information was [Emma], who has been found not to be the most reliable historian. A very significant issue that was preoccupying residents and professionals were the continued reports of threats and stalking behaviour purportedly by [Sean]. It was put to her that she should not have advocated for [Luke] to be spending more time at the property and should instead have been finding ways to support [Emma] to care for [Felix] independently. She explained that she had felt conflicted on this issue. On the one hand she saw the need for [Emma] to gain independence. On the other, she was concerned about [Emma]’s mental health, saw that [Emma] depended on the relationship for stability, wanted him to help with [Felix]’s care, and to be there so that she felt safe in the face of the continuing threat understood to be coming from [Sean]. Her view that on balance, the mother’s relationship with [Luke] was to be encouraged, was a view shared by the local authority and by [Emma]’s mother. [Emma]’s PA [name redacted], was also emailing [Ms L] stressing that [Emma] needed [Luke].
93. [Ms L] did in fact report concerns about [Emma] and [Felix] to the local authority.
94. On 8 December [Ms L] raised concerns about [Emma]’s mental health. [Emma] had just found out her birth mother had died and needed to stay with [Luke], but he had not been allowed to, so she had relied upon [Ms M] to stay up with her all night.
95. On 13 December 2022, [Ms L] sent an email to her own managers headed ‘concerns raised in relation to [Felix]’. In the email she mentioned concerns about how late [Emma] was sleeping in until, that this may affect [Felix]’s development and routines. She said she didn’t often see [Emma] or [Felix] downstairs in the playroom or living room and that more often than not [Emma] had her blinds and windows closed, making her room dark and stuffy. She expressed concern that [Felix] was more often than not lying on the bed. She was worried that [Emma] was going to hospital a lot and she had not seen her cooking or eating. At the time [Luke] had been told to stay away from the property, [Ms L] said she understood from [Emma]’s mother that [Emma] did not feel able to sleep on her own and needed someone with her. [Ms L] said this was causing her to be concerned about the plan for [Emma] to cope in a property with just her and [Felix], because of her need for comfort, validation and reassurance.
96. This email foreshadows a lot of what Dr Bues and Mrs Carty said in their later assessments of [Emma].
97. However, at a meeting only three days later, although this email was read out, the conclusions about [Emma] were whole-heartedly positive and the plan to progress the

search for independent accommodation for her were approved. [Felix] was to remain on the child protection plan ‘as an abundance of caution’ in light of her new pregnancy, but this was said to be ‘no reflection on [Emma]’ who was clearly not neglecting [Felix] and said to be doing an ‘excellent job in parenting.’ [Ms L] attended this meeting remotely, others were in a room together. In her statement to the police [Ms L] said she had not felt listened to at the meeting and felt that in general [Felix]’s social worker [MG] always defended [Emma], saying that she wasn’t physically well.

98. [Ms L] was the one who received the email from [Ms M] reporting [Felix]’s injury on 13 January, and she immediately raised this as a safeguarding concern with [MG].

99. When interviewed by the police, [Ms L] did describe a time when she saw [Luke] swaddle [Ms M]’s baby, who was not settling and [Emma] was reported to have said ‘give her to [Luke]’, who she said was good at swaddling babies to make them settle. [Emma] said that this was the only way that [Felix] would fall asleep. [Ms L] said she was shocked by the way [Luke] had then put one of the baby’s arms behind her back and tried to swaddle her but she was too wriggly and [Ms M] had taken over. [Ms L] told me that she would like to think she said something to [Luke] at the time, but did not remember. She says that she did escalate this and tell senior staff at the placement. I was not taken to a note of her making that report.

100. In general, the statement [Ms L] gave to the police was very negative about [Emma] and very positive about [Luke]. She said she could only remember three times where she had seen [Emma] hold [Felix], that [Emma] would be on her phone ‘24/7’, it felt like [Emma] had ‘disowned [Felix] and showed very little interest in him’. She said in the statement that [Emma]’s bedroom was extremely unhygienic for a baby to be living in’, with old food lying around, nappies on the floor and no fresh air as the windows were shut and the curtains were drawn. By contrast, she commented very favourably about [Luke]’s interactions with [Felix]. She said that [Emma] would always tell [Luke] to do things for her and was always ‘barking orders at him’. She says he always did what she said and on one occasion [Ms L] asked him ‘if he was going to keep taking this from [Emma], you are not her slave’. I am cautious about the weight that I give to this statement, as in cross-examination [Ms L] accepted that this statement was prepared in the immediate aftermath of the shock of finding out about [Felix]’s injuries, and that what she said was in response to questions from the police which were directed particularly to concerns she had about [Emma] and her care of [Felix]. However, much of what is said is consistent with concerns raised by [Ms L] in her earlier email and in contemporaneous notes made by her, some is accepted by [Emma], and some consistent with the evidence of other witnesses. Where her evidence chimes with others it does carry weight.

[MGM]

101. [MGM] gave her evidence in a measured, clear and straightforward way. She has been a consistent presence for [Emma] and has advocated for her tirelessly over the years. As described by others, she came across as highly empathetic, understanding, and well able to articulate both [Emma]’s particular needs, and the support she feels she has needed, but has never received. She has been able to spell out clearly when she has felt that the support [Emma] needed went beyond what she could give her. She has also been able to set some boundaries and say no to [Emma], for example when [Emma] asked her to come and collect her from a club in London in the early hours of the morning. She was able to see and describe times when [Emma] might have made mistakes, and she is very good at communicating directly to [Emma], setting out her worries, and what she thinks [Emma] needs to do. For example, in the following message she sent to [Emma] on 2 December 2023:

‘[Emma], I am very worried about your financial situation to the point of losing sleep. I cannot understand why you have no money left after last month. Your aim should be to have as much as possible left each month to be saved or carried over to the next month. I am not sure you really understand what will happen when you move out. £536.90 each month will be taken from your universal credit. I am not sure how much you get each month but that will be a huge chunk. Then you have to pay for living, food, heating, water. Then you have the car. Then you have your addictions/habits. It seems your habits are taking priority over living including looking after [Felix]. You should never not have enough to feed him, if the money I gave you was for milk. If it wasn’t for milk then you need to stop manipulating those around you to get what you want. I am aware of when you are manipulating me most of the time, others will take you at face value until they realise and then they will stop supporting you. I will not give any more money this month for anything. I will drive you to appointments, do occasional washing and help practically when I can, but you must learn how to budget and prioritise. You cannot always have what you want, but you must have what you need. I love you, but am really worried. You can only stay away from [the placement] for 2 nights out of 3. Remember I am on your side. This is getting very serious now. Love you xx’

102. At the same time, when she gave evidence, [MGM] was very rooted in seeing things from [Emma]’s perspective, and seeing all [Emma]’s experiences through the perspective of her diagnoses of autism, attachment difficulties, and her own feeling that [Emma] also would meet a diagnosis of ADHD. This could at times come across as making excuses for [Emma]. It seemed that she expected others to be as understanding of [Emma] as she was.

103. I share the concern of professionals including the guardian, that this perspective may still prevent her from being able to see the impact of some of [Emma]’s behaviours on other people, and to set clear boundaries as a result. An example was her attitude to [Emma]’s behaviour towards [Sam]. [MGM] made excuses for [Emma], suggested

many of the young people [Emma] was involved with behaved the same, and seemed to minimise what [Emma] had done. [Sam] summed it up neatly when he came to give his evidence. He said, [Emma]’s mum is *‘very on [Emma]’s side ... she is almost too nice .. she wouldn’t be able to stop [Emma] from doing what she’s doing.’*

104. [MGM] spent a lot of time with [Emma] and [Felix], particularly in the first weeks of his life when they were in and out of hospital, and she was visiting her a lot at [the placement], taking her to various medical appointments and doing her best to support her. She said she stepped back once [Luke] was there as that seemed to be what [Emma] wanted, but was still very much on tap for [Emma], and was continuing to raise issues for her with the local authority, to try and get more support in place. On 23 November 2022, she sent an email to [MG], in which she expressed a number of concerns. She started by reporting that she herself was not well at the moment, that she was supporting [Emma] as best she could, but *‘as ever she is running at 100 mph, and I am struggling to keep up especially as I am no longer party to much of [Emma]’s personal life. There are many things I am constantly thinking about regarding [Emma] and wonder if anyone would be able to help.’* She then sets out a list of various matters, including a concern that [Emma] has not yet claimed for child benefit for [Felix], that [Emma]’s wish to obtain a driving licence was taking priority over everything, although she had booked a theory test she wasn’t sure she had done any preparation for it, [Emma] had not been well and had been to the hospital or to her general practitioner for a number of issues about which [MGM] was not sure, but which were liable to cause significant anxiety for [Emma]. There were difficulties arising from [Emma] feeling some pressure from [Sam]’s family around contact.

105. In conclusion, [MGM] said that she had other family members to support, and that, *‘I realise that [Emma] is 18 now and has made her decision to be independent from us, and we are happy to support that, but our level of input is more or less the same as when she was living at home, but we only know what [Emma] chooses to tell us, which makes it very hard to give that support.’*

106. There was some confusion about the response she had received from MG, but it would seem that MG sent an email in which she sought to reassure [MGM] that while [Emma] had a lot going on, *‘from what I am seeing she seems to be coping very well and that is probably due to all of the hard work you have put in over the years.’*

[MG]

107. There is a significant discrepancy between the minutes of the child protection conference on 16 December 2022, which were overwhelmingly positive about [Emma] as a parent, and the allegations that the local authority has subsequently made against [Emma] in its threshold document.

108. [Emma] says that the local authority is judging her with the benefit of hindsight, heavily influenced by the knowledge that [Felix] sustained serious injuries. [Emma] says that the local authority blames her for the injuries, and now chooses to view [Felix]'s time in her care through the prism of her as an abuser.
109. MG's evidence was hampered by her not having had a full understanding of the situation as it was at [the placement] during the time that [Emma] was living there.
110. As a result, the local authority has been playing catch-up throughout the proceedings, formulating its threshold document long after it should have done. It now appears that the significant difficulties in formulating the threshold document were not just about legal drafting, but because the local authority had not come to any considered view at the time it brought proceedings whether or not this was a single issue case about the causation of fracture injuries, or whether there were grounds for pleading the wider issues of neglect that have eventually been levelled against [Emma].
111. A significant reason that the local authority did not have a full picture of [Felix]'s life and the care he was receiving, was that the placement was not providing that information. It was not required to be monitoring or reporting outside the hours of 5pm through to 9am in the morning or at weekends. Even between 9am to 5pm there are very few logs or notes of keywork meetings or other information being provided.
112. The local authority says that it was not aware of the full picture until later, because [Emma] was hiding a lot of what was going on, and was misleading professionals. [Emma] was not telling the local authority what was going on when they were not there, but it does not seem to me that the local authority was showing much curiosity about that. If difficulties were brought to its attention, it would seem that they were glossed over, as minor issues that would be managed in due course.
113. Even before the Court heard from [Ms L] it was becoming apparent that the placement was woefully inadequate to meet [Emma]'s and [Felix]'s needs. She was a very young, vulnerable, first-time mother. She needed help to understand every aspect of [Felix]'s needs, and how to go about meeting all those needs as a single parent, at the same time as taking care of herself, so that she was in a position to be able to carry out all aspects of his care. She needed support to get both [Felix] and herself into a routine that would ensure she could continue to meet his needs twenty-four hours a day, every day. Instead, she and the other residents were left entirely to their own devices, with no form of structured support, parenting classes, activities for babies, or supervision.
114. MG was assigned as [Felix]'s social worker in August 2022, and was not part of the decision-making around [Emma]'s placement at [the placement]. She explained the thinking behind that decision. She said that [Emma] had a supportive family, who wanted to be involved. The decision was made with [Emma] and her parents. In July, the assessment for [Felix] had been that things could be managed on a child in need plan.

MG referred several times to this being a placement under section 20 Children Act 1989. She said that left decision-making about [Emma] and [Felix]’s placement in the hands of [Emma] and her parents. She said the local authority was there to bridge a gap, which had formed because although [Emma]’s parents wanted to be part of her life, they could not have her at home.

115. With the benefit of hindsight, it seems that this understanding that the local authority’s role was really only as back up to [Emma] and her family led to a very light touch approach by MG.

116. From at least the time [Emma] first went to live at [the placement] there had become available a body of information that suggested more curiosity and more intensive involvement was likely to be required. There was information from the child and family assessment started in May and completed at the end of June 2022. This was followed up by the strategy meeting at the end of August 2022, which led to [Felix] being placed on a child protection plan. Throughout that period [Emma] was not staying at the unit all the time and was bringing visitors to the home. She was facing risk of eviction. She was not engaging with the family nurse partnership, nor with her keyworker at [the placement], and was falling out with her housemates. The initial child and family assessment identified [Emma]’s chaotic social relationships, diagnosis of autism, long-standing mental health issues, history of self-harm, anxiety and becoming overwhelmed at times, which could lead to her acting impulsively. At the same time, it was noted that she had sometimes lied about harming herself or being injured and would demand medical treatment through a need for attention or intervention. She was noted often to form friendships and romantic relationships that were described as *‘intense, volatile and shortlived’*. All this led to concerns that she would struggle to have a calmer, less chaotic day to day existence once she had given birth, and that this might mean she would struggle to prioritise her baby’s needs.

117. [Emma]’s mother was an important figure in her life and had a great deal to offer her and teach her, but there were good reasons that [Emma] was not living at home. [Emma] was in the care of the local authority. It was not her mother’s responsibility to provide the care and support that [Emma] needed. MG’ response to [MGM]’s email on 23 November 2023 was kind and gave an indication that MG was taking care of some practical matters, but did not give the impression that she shared, or understood the concerns that [MGM] was raising.

118. Similarly, [Ms L]’s concerns about [Emma]’s mental and physical health and its impact on [Felix], do not seem to have been given the weight that they should have been.

119. [Emma] was engaging well with Ms D, the nurse from the family nurse partnership, and her reports are consistently positive. It is right that this information was given due weight, and informed discussions at core group meetings, but it should have been balanced alongside other concerns. Now the reverse seems to have happened. I

can understand that throughout these proceedings it has been perplexing to [Emma] that the records from the family nurse partnership seem to have been almost totally disregarded by the local authority, whose case is now that [Emma] must have been putting on some kind of performance and was hiding the truth from her social worker.

120. What seems to be more the case is that [Emma] did get on well with Ms D, benefited from the work they did together, developed a good understanding of how to meet [Felix]'s basic care needs, and was able to do that with support and guidance. When left to her own devices, she was not able to provide a routine for [Felix] that was centred around him, was not always concerned with the need to stimulate him, by playing and engaging with him, and often felt overwhelmed by the demands of caring for a very young baby twenty-four hours a day.

121. She became dependent upon [Luke]. This relationship was actively encouraged by professionals. MG said she did not feel she could intervene in [Emma]'s relationship choices, and in any event, she did not see any risks that would have led her to intervene. He was seen by MG as a supportive person for [Emma], especially against the backdrop of [Emma] not being well, the perceived threats from [Sean], and [Emma]'s pregnancy with [Bella]. [Emma] did what she wanted to in the evenings and was not apparently told by anybody that she should be behaving differently.

122. It has been a persistent complaint of the local authority that [Emma] was 'masking' or dissembling. However, this was something known about [Emma]. It had been raised in meetings that despite appearances to the contrary, [Emma] would deny that she was anxious or having difficulties with her mental health, or that she would say she wanted help from professionals but struggle to engage with them. Her mother consistently raised with the local authority the difficulty of 'not having the whole picture' from [Emma]. These difficulties required thoughtful and intensive work from professionals to build up a trusting relationship with [Emma], and to develop greater curiosity about what was happening when professionals were not with her. [Ms L] was able in a very short time to build trust with [Emma], got to know her and understand her functioning. She was able to see that things were not quite as rosy as the professionals were accepting was the case at meetings.

123. MG was asked whether she was satisfied that [Emma] was ready to move out to live independently, as that was the conclusion reached at the child protection meeting on 16 December 2022. She said that she wouldn't necessarily say that, but her view was that [Emma] was an adult, she had a right to apply for accommodation, she had a right to choose her own partner, and she, MG, was not in a position to tell her that she couldn't do that. With the benefit of hindsight, this approach was one that put too much emphasis upon [Emma]'s rights and freedoms, and did not balance them against [Felix]'s need to be kept safe.

124. As a general proposition, there is nothing wrong with a strategy that seeks to avoid bringing care proceedings by putting in place a package of support around a young mother and child. However, if the case does not come to be in proceedings, the child is not separately represented by a guardian, and there is no oversight by the guardian or the court of the plan. That must create a high duty upon the local authority to check and cross-check that the child's welfare is safeguarded. In this case, it appears that some clear warning signs were overlooked.

[Sam]

125. [Sam] was supported throughout the hearing by an intermediary. His oral evidence was consistent with his written statement, and with evidence that later came to light from the disclosure from phone records. I found him to be a straightforward and reliable witness.

126. His experience of [Emma] was that she had a temper, had said some very cruel and abusive things to him, lashing out in voice notes, text messages and captions attached to images and videos she posted on social media.

127. [Sam] is a young, inexperienced father, but with support of his family, has developed a good relationship with [Felix], and is evidently proud to be his father.

128. [Sam] has built up a good relationship with [Felix]'s foster carer who has been a very good source of support to him to help him learn about how to look after a baby and how to manage [Felix]'s routine and particular needs. [Sam] and his family do not feel able to have any kind of contact at all with [Emma] but are willing for [Felix] to see her, provided this is supported by professionals. [Sam] did not seem to have taken in that the local authority's plan is only for a supervision order for six months and thereafter it will be for him to support, encourage and facilitate a relationship between [Felix] and his mother.

[Mr Y]

129. Mr Y was a friend of [Luke]'s. As with a number of other witnesses, his statement was not prepared for these proceedings but was the statement given to the police, once it was known that [Felix] had sustained fractures. He seems to have been asked a number of questions leading to him saying very negative things about [Emma], and raising concerns about her handling of [Felix], which he had not apparently been concerned about at the time. Other than describing a time when [Emma] had apparently lifted [Felix] by the front of his Babygro a short distance from the playmat and placed him gently on the sofa, he was not able to give any examples of rough handling or of seeing [Felix] being picked up by his arms or legs.

130. While I am cautious about the weight I give to this statement, I also note that there are some features that chime significantly with the evidence of other witnesses, particularly [Ms L]. To that extent, this statement assists to give some idea of the context. Mr Y said his parents were not happy with him spending time at [the placement], that he did not think it was a particularly healthy environment, and that from his perspective, [Luke] seemed rather put upon by [Emma].

[Ms M]

131. [Ms M's] statement was also one prepared by the police. [Ms M] was living at [the placement] when [Emma] first arrived there. She was caught up in some arguments with [Emma] and another resident in the house at that time. Her baby was born about two weeks after [Felix], and she then went to live in a different placement for eight weeks. She returned towards the end of November, at which time she and [Emma] were the only adult residents in the house and they developed a close friendship quickly. The friendship ended on bad terms within a couple of months because it was [Ms M] who reported to [Ms L] that [Felix] had an injury to his arm and both [Emma] and [Luke] were angry with her about this.

132. I approach her evidence with some caution because of her evident negative feelings towards [Emma] and the fact that the statement was prepared in response to questions from the police which appear to have been quite directive. However, at the same time, her oral evidence was clear, consistent with her written evidence, and chimed with much of the evidence found elsewhere in the case. As others have done, she described a relationship between [Emma] and [Luke] where [Emma] would ask [Luke] to fetch and carry for her, to tend to [Felix], would spend a lot of time on her phone rather than play or interact with [Felix].

133. [Ms M's] evidence about what she remembered of the night of 12 January 2023 was clear, consistent with her witness statement, and led to her reporting her concerns to [Ms L]. I found her to be a reliable witness and I accept the account she has given me.

134. She remembers that [Emma] asked her to come and look at [Felix] when he was lying on a towel on the bathroom floor. She could immediately see something was wrong, described him as 'hysterically crying', and 'screaming' when she gently lifted his arm. She advised [Emma] to ring 111.

[Ms G]

135. Ms G is [Luke]'s grandmother. He has been living with her since he was sixteen. She works shifts from 2pm until 10 pm. She has been very supportive of her grandson and is protective of him.

136. Her statement is also one prepared in response to questions asked by the police. She is negative about [Emma], but what transpired was that she hadn't seen an awful lot of them, although they had been living with her two days a week. She said [Emma] would tend to spend all her time in their room, would not be downstairs by the time she left for work and would be up in her room again by the time she came back. The concerns she raised in her statement about rough handling seems to have come from [Luke], who told her that his friend [Mr Y] had also seen this, but Ms G had no direct knowledge of this. Ms G knew that [Felix] had a social worker because [MG] had come round to inspect the house on the first day they stayed, but she had not raised any concerns about [Felix]'s care with the local authority or anyone at [the placement].
137. Ms G did go to collect [Emma] from her friend's house in the early hours of a morning in February 2023 when she had been to a club, but has not seen her since then.

[Emma]

138. [Emma] gave evidence over a day and a half supported by her intermediary. She attended every day of the trial, and listened to all the evidence. There is no doubt that she loves her children very much, is committed to them, and desperately hopes that they may be allowed to return to her care.
139. A few days into the trial, she provided a short statement in which she admitted that she had sent fake messages purporting to be from [Sean]. She did not give a sense of having an understanding of, or being able to confront, the impact on a large number of other people her actions had caused. When asked to think about this, or to reflect on why she had sent the messages, she was not able to give any other answer other than to say she had been '*stupid and immature*'.
140. A number of times in her evidence, she said things that suggested she has a tendency to normalise things that other people might view as quite extreme. When asked about the fake messages, she said well other people were doing it, or other people thought it was funny, so she went along with it. When asked about making allegations to the police about a previous partner, she shrugged and said we both tried to get each other arrested.
141. After she and [Luke] broke up, he was arrested in response to allegations she had made of assault, rape, and false imprisonment, and later in respect of distributing sexual images of her. He was interviewed and no further action was taken. [Luke] says [Emma] had sent him a message the day before he was first arrested, telling him to enjoy his meeting with the police. The police have not taken any of these allegations further.
142. I did not find her explanations about some of the messages she said she had received from [Sam] and from [Luke] to be convincing. It is of significance that the messages she has screenshotted were not found on her phone as part of the downloaded

material. I did not believe her when she said she had no explanation for why the phone she had provided had a missing sim card. She took a very long time to provide her password to snapchat and to give her phone to evidence matters. It was eventually provided on 31 July 2023, but on 26 July 2023 she had deleted some images from the phone.

143. I am satisfied to the standard of a balance of probabilities, that the messages she said were from [Sam] had in fact been sent by her. This is consistent with previous patterns of behaviour, and were plainly sent in order to stir up trouble between him and his girlfriend, and to hurt him.

144. In court we listened to a number of voice messages she had left for [Sam]. Her tone was angry, she was speaking loudly and fast, and using highly abusive and offensive language. She repeatedly said that she could not remember sending the messages. I find as a fact that she did.

145. I am satisfied to the standard of a balance of probabilities, that the three messages she has said were from [Luke], in which she says he hinted that he was sorry for what he had done, i.e. to be inferred that he was admitting to injuring [Felix], were sent by her.

146. I was not persuaded that her description of the relationship between her and [Luke] was accurate. She suggested that it was a toxic relationship, characterised by control and physical abuse from [Luke] towards her, and that she had repeatedly tried to leave him, probably about eight times, but every time he threatened to kill himself. This is not consistent with the evidence of [Ms M], who was living with them, or [Ms L], or [Luke]. The large volume of messages between [Emma] and [Luke] also paint a different picture from the one she has given. She was inconsistent in her evidence about when she said there had been physical abuse, saying that it only happened at the end of the relationship, then saying the first incident had happened on [Luke]'s birthday in early November, and that there had been too many incidents of violence to recall. The weight of evidence suggests a relationship that, similar to previous friendships and relationships, had developed very quickly to something intense and creating a mutual dependence. [Luke] and [Emma] were spending all their time with each other, and [Luke] was involved in [Felix]'s care from very early on. It seems that [Emma] had a lot of power in the relationship, and would be asking [Luke] to do things for her, which he willingly did, but increasingly became frustrated about as time went on. They seem to have had intense arguments, that led to one or the other of them saying they should break up for ever, but within hours or sometimes even minutes, reuniting and enjoying the intensity and drama of that.

147. The records of [Emma]'s interactions with Ms D the health visitor are very positive and show that she engaged well with the visits, and was keen to both learn new skills, and to show what she had learned and was putting into practice with [Felix]. Her

mother also described (and I accept) that there were many good things about the way she cared for [Felix], that she fed him, always had nappies ready for a change, washed and bathed him most nights and was generally attentive to his needs. [MGM] did note a concern that does come through all the evidence, that [Emma] was not always good at *'the singing and silliness of being a parent'*, interacting with him, and stimulating him, and that she did tend to be on her phone a lot.

148. I do not find that [Emma] was deliberately seeking to mislead anyone about what she was doing when professionals were not there. She assumed that as she and her other housemates were left to their own devices, they could choose what to do with their time. She was not being checked up on, there was no statement of expectations, there was nobody correcting her. At meetings she was being praised for doing an excellent job with [Felix] and she was being supported to find a new home for herself. Professionals around her were supportive of her relationship with [Luke]. I understand that she has now felt somewhat bewildered to have found every element of her care of [Felix] to have come in for criticism.

149. Notwithstanding that, it is now very clear that the environment in which [Felix] was living was not suitable for him, and was characterised by a certain element of chaos, instability, and where the preoccupations of his carers would often take priority over his needs.

150. [Emma] has been asked a number of times to give an account of what happened around the time that [Felix]'s injury was sustained. She told Dr C, the paediatrician who saw [Felix] at the hospital on admission, then told the police in interview three days later. Her witness statement, and the account she gave in Court has been broadly consistent with those early accounts. She says that she was asleep on the sofa on and off throughout the evening, that [Felix] had started off alongside her in his car seat, but there came a time when [Luke] took him upstairs and brought him down again, that he was then lying on his playmat while [Luke] played on the Xbox, there came a time when she went out to have a wee and came back to find [Felix] lying in an awkward position and crying (this detail is not mentioned in Dr C's note which just records she woke up to see [Felix] crying). She took him upstairs for a bath and he screamed when she lifted his arm (in her account to Dr C she said he carried on screaming from being picked up from the mat and while in the bath, at other times she said he settled when she picked him up and then it was only on the arm being moved in the bath that he cried again).

151. She did not have a good explanation for not following [Ms M]'s advice and calling 111. She waited a couple of hours before calling her own mother. She was not truthful when she told Dr C she had tried to call 111, nor when she said she had called the GP the next day. She did not, and got a call back from the GP because of a referral made by MG. The ambulance to take [Felix] to hospital was called by staff at [the placement]. Text messages sent at the time show that she had an immediate concern that [Felix] might be removed from her care, and that she might be accused of having hurt

him. This is also a concern she had expressed to her mum on an earlier occasion when sending her photos of marks on [Felix]'s body.

152. [Emma] said in evidence that [Felix] had quite a settled night, but the text message she had sent to her mother in the morning said that he had a very unsettled night, *'No he won't feed, he won't stop crying! That pic was before I called you I forgot. And he didn't even rly sleep just screamed and screamed x'*. I find the account she gave to her mother closest in time more likely to be reliable.

[Luke]

153. [Luke] was joined to proceedings as intervenor on 24 April 2023. He has been represented throughout proceedings. He was first directed to file a statement on 9 May 2023, but repeatedly failed to turn up to meetings with his solicitor, arranged out of office hours at his convenience, and in the event did not file his statement until 5 October 2023. He has never given a good reason for the delay.

154. It was extremely difficult to manage his participation at the final hearing. He attended at the court building on the first day of the hearing but left before the court began to hear evidence and did not return for the rest of the week. He was presenting to his legal team as highly anxious and struggling to manage that anxiety. I acceded to an application for an urgent intermediary assessment, which led to an intermediary being appointed to support him. He did then attend Court on a number of days but when it came to the day he was due to give evidence (a Wednesday), he became unwell with symptoms of chest pains and had to leave Court. He did not come to Court the next day, but saw a general practitioner who was able to give me a short report received on Thursday evening, indicating that he had a chest infection but that she assessed him to be fit to give evidence either in person or remotely. He did not attend on the Friday, but did respond to a witness summons requiring him to attend the following Monday. He then gave evidence over two days, well supported by his intermediary.

155. His presentation at Court was markedly different from his presentation in the police interviews, in which he presents as relaxed, calm, gave full, fluent answers in response to the questions asked. He asked to give evidence remotely from the witness suite, and with his hoodie up, as he felt uncomfortable at being directly aware of everyone in the court room watching. I am satisfied that these adjustments enabled him to give his best evidence to the Court.

156. Despite this, I did not find him to be a reliable witness. He made some significant changes to the detail of his account of when [Felix]'s elbow fracture was caused, but was not able to put forward any alternative explanation that was more convincing than the one he had resiled from.

157. He repeatedly said that he could not remember things, for example he told the police that there were times he and [Emma] had *'been angry with'* [Felix], but when asked to say when he had got angry, he said, *'I couldn't tell as I don't know – can't remember – don't think I did.'* That answer sums up much of the evidence that he gave.
158. He said in his witness statement that he had not seen [Emma] since the time they split up on 7 February, but had to admit that was not the case, he had seen her since, although he could not remember when that was. He said the reason for this was that he was *'quite frightened of how much trouble I would get into'*, but could not explain where he thought that trouble might come from. Later in his cross-examination he was able to remember that he had gone round to a property where she was staying on 2 March, that it was the day she had gone for a scan, and that he had heard there were some issues with the pregnancy. He then immediately said that wasn't the reason he had gone round and he didn't know [Emma] was there, he had gone because some of his clothes were at the house. He accepted that while there he had smashed a fire door, and this was because he had *'got beaten up by girls'* at the property. It was unconvincing that he had forgotten all about this when asked earlier in his evidence to remember when it was he had seen [Emma] since 7 February.
159. He said at the final hearing that the account he gave to the police about [Felix]'s injuries and the account in his statement were not true – that [Felix] had hurt his arm when he rolled over on a playmat. He said he had just said what [Emma] had told him to say and the reason he had done that, and continued to tell that lie was that he was scared of what [Emma] might do to him.
160. The source for this seems to be one message that he sent to [Emma] on 13 January 2023 an hour after the police and ambulance were called, *'I've said you was on the toilet and I was on Xbox and heard him scream so I turned round and he was on his arm funny so called you and you came in straight away'*. She responded, *'yh okay'*, and he replied, *'is that right?'*
161. This message could be interpreted as [Emma] and [Luke] *'getting their story straight'*, or [Luke] confirming to [Emma] that he had given an account in line with instructions given by her to him. There is no evidence anywhere else of her telling him to say that. In the context of the argument they had the night before in which [Emma] accused [Luke] of threatening to tell the police that she had caused [Felix]'s injuries, it could be him reassuring her that he was not going to do that, or simply it could just be him telling her what he had reported.
162. At the time he filed his statement in October, [Luke] did not suggest that [Emma] had told him to give a false account of what happened. In his oral evidence to the Court he could not give me any description of when or where they had been when she was supposed to have told him, he thought maybe in her room at [the placement], just before the ambulance came, but there was nothing at all convincing about what he said.

163. He has more recently suggested that he saw [Emma] handling [Felix] roughly, but he was not able to give any examples of that (I do not count his description of her swooping [Felix] up to the sky in her hands as rough handling). He has not said anywhere that he believes [Emma] to be responsible for causing [Felix]'s injuries.
164. There is no evidence to support his claim that he was or remains frightened of [Emma]. He appears relaxed in the interview on 16 January and has only praise for [Emma] as a mother, describing her special and close bond to [Felix]. At the time she made allegations that got him arrested in the early hours of the morning in February 2023 and he gave an interview to the police, he did not appear to be in the slightest bit agitated let alone frightened. He remained committed to her, said he was in love with her and wanted the relationship to work, and didn't really understand why she had alleged what she had.
165. To Dr C at the hospital, he said they had come back from the appointment and [Felix] was asleep in his car seat in the living room. After about an hour [Felix] woke and [Luke] took him up to his cot, but he wouldn't settle so [Luke] brought him back down, swaddled him and took him up to the cot again where he slept for another two or three hours. Then, *'[Emma] was already awake when [Felix] woke again, so they brought him downstairs and he was on his play mat on his tummy. [Emma] went to the bathroom, [Luke] was not looking directly at [Felix] but heard him cry and saw that he had rolled and seemed to be stuck on his side. He didn't see him roll into that position but could see that he was lying on his side with point of elbow on the ground, rolling on it. He was crying, so [Luke] called [Emma] who returned and picked [Felix] up. He seemed OK so [Emma] took him to his bath, and told [Luke] that [Felix] screamed when his right arm was moved.'*
166. In the police interview, his account minimises the rolling over incident, and he suggests that [Felix] then had a bottle and slept in his bed for a time before [Emma] woke up. He describes [Emma] being asleep on the sofa and [Felix] asleep in his car seat. He then says, [Felix], *'woke up for a bit, so I put him on his play mat and then next minute, he rolled over and started crying, so I just thought oh yeah, he might need a bottle. So I give him a bottle, put him to bed and he was – he was perfectly fine and then he woke up again, so we give him a bath and that's when we noticed his arm was swollen – and it was – it wasn't bad, bad. It just hurt him, so she noticed that one side she cleaned was fine. Then when she went to the other side, that's when he started crying.'*
167. A little bit later, he said that [Felix] had rolled on his arm and got stuck, he had noticed this and woken up [Emma], *'and she's like picked him up and cuddled him and made sure he was all right because he was really screaming.'*
168. In his witness statement, he said, that [Felix] had woken up around 8ish, he picked him up and took him out (I think this means take him out of his swaddling as I understand

that [Felix] was always swaddled to go to sleep). [Luke] goes on, *'he was playing around, on his play mat. It is a square mat with toys over the top. He was on [his] back and just playing with toys. Then I put him on his tummy for tummy time. After a minute or so, he rolled over and on his arm and it got stuck at his side, arm at angle. This really upset him and he was screaming. It woke up [Emma].'*

169. He was asked to describe how he had put [Felix] down for tummy time and said, *'he was just on his back, so like I just picked him up, turned him over and just like laid him down softly'*.

170. There are some discrepancies in the accounts he has given, but in those early accounts it is clear that he was there when something happened to [Felix] on the mat, that [Felix] was really screaming, and that it led him to wake up [Emma].

171. In his evidence to the Court, [Luke] modified the evidence about the way in which [Felix] cried. Where previously he said [Felix] was screaming, he said no it was more a cry for a bottle or a nappy change.

172. He is now very clear that he neither saw [Felix] roll on the mat, and that there was nothing noticeable about the cry. He said that he did not call [Emma] to pick up [Felix] when he was crying. [Luke] was unable to give any more detail. Other than saying that [Emma] had told him what to say, he could not explain why there was a difference between his most recent account and what he said back in January 2023.

173. I find that his change of evidence has come in order to try to convey an impression that [Felix] did not sustain the fracture injury on the mat, and it must have happened in the bath. This is a new account that came at the eleventh hour. I do not believe him when he says that the earlier accounts he gave were not true, but were just what [Emma] told him to say. I did not believe him when he said, twice during the course of his evidence, that he has not had much cause to think or reflect upon the events of that day.

174. I am satisfied to the standard of a balance of probabilities that [Luke] was lying when he gave this evidence to the Court. I find that the reason [Luke] is lying is that he now wishes to give the impression that [Felix] did not sustain his fracture injury when he was on the playmat.

Nandi Sutherland, children's guardian

175. Ms Sutherland was present throughout the trial and listened to the witness evidence. On her behalf Miss Farquhar and Miss Darian prepared a helpful summary at the conclusion of the evidence. Having heard the evidence she concluded that there is no single incident, in either causation window, that can identify a moment that the injuries, either separately or collectively, occurred. She says there is insufficient evidence to identify a single perpetrator for some or all of the injuries.

176. The main focus of her evidence was on the welfare issues in the case. Her evidence was given in a straightforward way and her opinions were well-reasoned. She had a good grip on all the professional and lay witness evidence and her written analysis is balanced, considers all relevant issues, and is in my judgment insightful and fair.

177. She agreed when put to her that [Emma] and her parents did not appear to have had the support they needed. She did not necessarily blame the local authority for that, but said it was all too often the case that the right support was not in place for families of adopted children, and by the time things have got difficult enough so that children's services were paying attention, there was often a limit to how effective their intervention could be. She said that in [Emma]'s case there had been attempts to offer bits of support, *'but it had not been possible for [Emma] to run with that for lots of reasons, there were already lots of other things going on'*. By the time she was fifteen, it was very difficult for her to engage meaningfully.

178. Ms Sutherland also agreed that the placement at [the placement] was completely inappropriate, and agreed with [MGM]'s description of it as providing a roof over her head, but little more. Ms Sutherland noted, having regard to all the evidence, that it was, *'difficult to say that if [Emma] had been in a different place whether she could have accessed more – but ... it is very clear that for the position [Emma] was in – it wasn't supportive enough – it wasn't proactive enough, there was not enough oversight and management – [Emma] was able to live in a way which at the time felt like the freedom she was looking for, but on reflection she has been able to see that it didn't help her to develop in the way she needed to.'*

179. Ms Sutherland accepted that there should have been a fuller understanding of [Emma]'s vulnerabilities, including her diagnosis of autism. She noted that because [Felix] had not been subject to care proceedings at birth there was no guardian involved in the decisions around placement or monitoring of the placement that was, and no court oversight. In the absence of that formal process, she had found it difficult to see evidence of the decision making around placement, and then how risks were being assessed and managed. In respect of [Emma]'s relationship with [Luke], it was put to her that [Emma] has received mixed messages from the local authority. At the time she was being told her relationship was a good thing and professionals were supporting her to spend more time with him. Later, she has been criticised for allowing him to take on too much of [Felix]'s care. My note of the guardian's response is as follows:

'I think it has been concerning to look at the chronology and not be clear at what point there was someone saying what risk assessment [are we] doing here - what is going on in the relationship – and it seems quite swiftly there is a sense that – probably a perfect storm with [Emma] becoming unwell and needing that support, and [MGM] feeling that [Luke] was very supportive – I imagine that none of that helped [Emma] to stop and

think actually should this person I have known for a matter of weeks be so involved in my life and my child's life.'

180. She was asked by Ms McGrath KC to consider on top of that [Emma]'s weakness and vulnerability and that it was, '*obvious to those who know her that she was going to come to rely on him in those circumstances.* Ms Sutherland responded, '*yes, that is a feature of her attachment difficulties – quick forming of relationships – and I am still conscious of that remaining a risk for her moving forward.*'

Schedule of findings

181. The schedule is very lengthy. I have found it quite disjointed and difficult to get to grips with. It feels as though a lot of separate facts have been itemised, but saying yes or no to whether those facts are proved does not necessarily answer the case. Further analysis has been required.
182. I have reviewed the evidence and pieced together a relevant chronology, focusing in particular on the evidence of times that [Felix] was noted to have injuries. I have considered evidence of the events around and leading up to those times, as well as the wider context that existed at that time. This has led to me departing somewhat from the structure of the schedule of findings so far as the allegations of inflicted injuries are concerned. I have not slavishly referred to each allegation on the schedule of findings but have stuck to the general headings in the order they are pleaded.
183. For the remaining findings sought, I have followed the structure of the schedule more closely.

Injuries

184. I find that each of the nine fractures identified by the treating clinicians and by Dr Olsen and Dr Robinson in their reports was the result of an inflicted injury.
185. The complex/displaced fracture to the right elbow was caused on the evening of 12 January 2023.
186. The rib fractures were most likely caused at the same time as each other, by a single squeezing or compression action, which could have been part of a shaking event. The window given by Dr Olsen is somewhere between 16 and 30 December 2022, and he said he would be very surprised if the fractures were any less than two weeks old at that point.
187. The metaphyseal fractures to the left wrist (radius and ulna), left knee (lower end of thigh bone) could well have formed part of the same shaking event, or could have been caused at a different time, but still within the same window of 16 and 30 December 2022.

188. The metaphyseal fracture to the left elbow was likely caused at a separate time from the other metaphyseal fractures, up to about two weeks before the x-ray, so in a window starting from 30 December 2022 up to 18 January 2023.
189. I find that each of the bruises identified on [Felix] when he was seen at hospital on 13 January was caused by an inflicted injury. I accept Dr Robinson's evidence that for the larger/deeper bruises, as described here, they could have been inflicted up to two weeks before presentation (30 December 2022 – 13 January 2023).
190. The two potential perpetrators of [Felix]'s injuries were his mother and [Luke].
191. I am satisfied to the standard of a balance of probabilities that the fracture injuries and the bruises were caused by [Luke].
192. I shall explain the reasons that I have come to that conclusion.
193. For the reasons explained above, I did not find [Luke] to be a reliable witness. His version of events came very late, was not consistent with the versions he had earlier given, and he then resiled from it at the final hearing. I find that he was not being truthful with the Court when he said that he had no recollection of these events and that he had not really thought about them since.
194. The context throughout the whole period is of escalating tension in the relationship between [Emma] and [Luke]. By December they were arguing every day and frequently into the early hours of the morning. Already by the time [Felix] was about a month old, [Luke] felt he was doing too much – washing bottles, changing nappies, getting him dressed and undressed, getting his bath ready for him, and getting him ready for bed, all while, he said, [Emma] was on facetime to her friends for most of the time. He said that he asked her why he was doing so much and she wasn't and she said that she was mostly ill. He seemed sceptical about that and said sometimes it seemed like she was ill, but not always.
195. He told the police that [Emma] could change very quickly towards him, one minute they would be cuddling, kissing and watching a movie, and the next moment she would say she didn't want to do that, and wanted to Facetime her mates. Then she would do that and *'she'll start with her mates, slagging me off, just laughing about it, and then I'd go out, go for a walk, come back and she'd be completely fine with me and it's like she'd go back to oh, do you want to finish this movie?'*
196. [Emma] had the recent experience of tracing her birth family, then discovering her birth mother had died, which was emotionally very difficult for her. Within a very short time she then discovered she was pregnant. She was suffering from repeated urinary tract infections and feeling increasingly unwell, and anxious about her health.

She was asking more and more of [Luke], both for emotional support and in terms of the practical help she wanted him to provide to [Felix]. She was asking him to look after [Felix] for periods of time on his own, which had not happened before. All of this was putting pressure on the relationship. [Luke] was feeling increasingly resentful of the demands that [Emma] was making on him.

197. The chaos, tension and distraction caused by the fake messages was adding to stress in the household. These messages often came to [Luke] at times when he and [Emma] were arguing, and she would then ask him why he wasn't offering her more comfort and looking after her. The police were called to the property, they were put on lockdown, and there were a number of occasions when [Luke] genuinely believed that [Sean] was in the garden of the property or had followed them to his grandmother's house, and meant to cause them harm. This was affecting [Luke] much more than [Emma], because she knew there was not a genuine threat, and she was not able to appreciate the consequences of the messages on other people.

198. I accept [Emma]'s evidence that there have been occasions when she has heard or seen [Luke] be rough with [Felix], and that on those times she took [Felix] away from him. She told the police that she had seen [Luke] lose his temper, not shout at [Felix], but *'just saying, 'he's really pissing me off' and stuff like that, when [Felix] was just crying because he was being swaddled'*. She gave similar evidence to me. Text messages between them during an argument on 10 December 2022 provide some corroboration, she said that she was going to take [Felix] home to her mum's, because he was unsettled. [Luke] asked if she thought he was good for [Felix], and she said yes, but, *'when he's crying like that cuddle him not hold him up'*.

199. On 31 December 2022 there seems to have been another incident when [Luke] was holding [Felix] in a way that gave [Emma] cause for concern. She raised it with him and he complained that this was one of a number of things she was getting at him for:

'When we first woke up you moaned that I was on your hair when I was asleep I can't help that I said sorry and you was still having ago at me I said sorry for what I did in [name of shop] and you was still having ago at me I just put [Felix] on the bed it was either fall over with him or put him on the bed but you just watched then complained''

200. [Luke] could not remember this, and to be fair, nor could [Emma]. However, this is an incident that is consistent in her recollection of there being times she took [Felix] from [Luke] because of concerns about how he was with him.

201. There is no convincing evidence of [Emma] handling [Felix] roughly or of losing her temper with him. There is a consistent thread throughout the evidence of [Luke] being the one to 'handle' [Felix] when they were struggling to settle him, and to use the technique of swaddling him, not just to sleep at night, but as a means of stopping him

from crying. There is evidence from [Ms M], [Emma] and [Ms L] that [Luke] could be quite firm in the way he did this, [Ms L] was shocked by how [Luke] attempted to swaddle [Ms M]'s baby. [Luke] told the police that [Emma] didn't like to do it because she was scared she would hurt him. [Luke] said to the police, *'if he really won't settle then we are swaddling him to put him down for a nap'*. He said, [Felix] could be *'a handful ... like, he just cries, won't take his bottle, he – we try and put him in the bath and sometimes he don't like it, he just screams even more. So we take him out and as soon as we swaddle him, he's fine. He just – he just goes into a deep sleep'*. What I take from this evidence is not that [Luke] could have caused harm to [Felix] through swaddling necessarily, but it is a repeating theme of the evidence that [Luke] seemed to find it difficult and sometimes overwhelming when [Felix] was crying and they could not settle him, and had a need in those circumstances for [Felix] not just to be comforted, but to be bound up tightly and made to sleep. This seems to me to be indicative of a need to control, or a real difficulty when presented with a crying baby.

202. On 7 December 2022 [Luke] became frustrated and punched a wall in anger, damaging his knuckles. This indicates some difficulty with managing his emotions when angry or frustrated.

203. [Emma] told the police that when she was in hospital, she was thinking of what might have happened, she couldn't think of anything that she had done, [Felix] had never been with any of her friends without her being there, but that [Luke] had him alone a couple of times, not long ago. She said, *'that's all I can think of. But I wouldn't blame [Luke], because every time I've seen him and [Felix] he's fine.'*

204. There were a number of occasions during the relevant period when [Luke] was alone with [Felix] and something of concern was then noted.

205. On Boxing Day, [Emma] and [Luke] were staying with [MGM]. She reported that [Emma] was really unwell and needed a bath. [Felix] was in the bedroom with [Luke] and was crying and unsettled. [MGM] said she initially thought best to let him and [Emma] deal with it, but after a time she did go and check. She found that [Luke] had left [Felix] to cry. He accepted in evidence that it had been about half an hour. He said he would have been, *'probably, if I was ill that day'*. He agreed with her account that he had told her [Felix] *'wouldn't take his bottle'*, and *'wouldn't settle'*.

206. This language is similar to his description to the police of when he would feel angry with [Felix]:

'He'll drink his bottle then he'd spit it out and then cry that he wants it again, and then spit it out and then want it again, and you'll try and burpy him and that's not the issue - So if we're getting a bit overwhelmed Pass to the other one.'

207. It describes a carer who is blaming a baby. This language is seen at other times throughout the text messages, *'he just keeps crying after I burp him'*, *'he won't even take the rest of [the bottle] he's got'*.
208. [Luke] said he left [Felix] to cry on Boxing Day morning because he had a migraine and stomach problems. This suggests he was unable to prioritise [Felix]'s needs before his own.
209. There is no evidence of [Felix] sustaining injuries on Boxing Day, but this incident forms part of the context.
210. On 28 December 2022 [Emma] had a hospital appointment, [Luke] was taking care of [Felix] on his own at his grandmother's house. In answers to cross-examination, he was unable to recall anything about this to mind. A chain of messages between him and [Emma] indicate that he was having quite a difficult time with [Felix]. He texted [Emma] to say that [Felix] *'has had another shit'*, and when [Emma] said he was going to have to change [Felix]'s nappy, he said, *'I'm not changing it I can't xxx'*. She sent three or four messages telling him to change it, but he said, *'Yeah if I don't change his nappie he isn't crying.'* [Emma] agreed to change it when she got back. Twenty minutes later she asked how [Felix] was doing and [Luke] said that [Felix] had thrown up on the bed.
211. Later that evening they had an argument and there came a time when [Luke] seems to have been upstairs with [Felix] saying he wouldn't leave him because he was ill, and [Emma] asking him to bring [Felix] to her, it seems as though she then goes out leaving [Luke] with [Felix]. During the course of the text messages that evening there is the suggestion that [Sam] has made a threat to damage [Emma]'s car. The argument escalates and [Emma] repeatedly tells [Luke] to leave, but by about 8.45 p.m. they have made up and she says she didn't mean it.
212. At 9.24 p.m. [Emma] texts her mother sending three photos and the following message:
- 'There like bruises but he hasn't been harmed by me or anyone to have bruiss'*
- 'And he's being sick loads and he's having a lot of diaria.'*
- 'There not painful if I touch either'*
213. Her mother says she should either call 111 or wait until tomorrow and see the GP. [Emma] replies, *'But what could it be, when he's being played with he's smily, if he's just laid down he's rly upset, he just wants attention I just don't want anyone thinking I've given him bruises when no one has there just random xxx'*.

214. [MGM] seemed to think from the photographs that the marks were from being squeezed. She replied, *'if he is OK in himself then take him to see GP tomorrow. Don't worry about what will be thought about bruises. They don't look like bruises caused by hurting him. Just love him, cuddle him.'* [Emma] reasonably asked, what do they look like then, and her mother replied, *'There are finger marks in the shape of where he has been squeezed.'*
215. The appearance of marks on [Felix]'s body, and the symptom of being upset and distressed, in particular, really upset when laid down on his back, are consistent with an injury having been inflicted upon him.
216. This injury fits squarely within the timescale for the fractured ribs and/or the associated metaphyseal fractures (save for the left elbow). [Luke] was looking after [Felix] on his own for most of the day, against a context of stressful interactions with him and [Felix], and then him and [Emma]. It seems that almost immediately after he was returned to [Emma]'s care, she gave him a bath and saw the injuries, about which she texted her mum.
217. I am satisfied to the standard of a balance of probabilities that [Felix] did sustain inflicted injuries during the course of 28 December 2022, and that these injuries were caused by [Luke], when [Felix] was in his sole care. Having regard to the timeframe for the injuries, the likelihood of the bruising relating to 'squeezing' and finger marks, I find that it is more likely than not that [Felix]'s ribs were fractured at this time.
218. Again, having regard to the timeframe given by the experts, I consider it more likely than not that the metaphyseal fractures of the wrist, left elbow and left knee were caused at or about the same time.
219. On 8 January 2023 [Emma] sent a message to [Luke]'s mother [*name redacted*], attaching a picture of [Felix]'s chest and asking for advice on the marks there, that did not go away when pressed. A few minutes later she sent two photographs to her mother also asking about the marks, to which her mother responded by saying they looked like little burst blood vessels, *'that happen when you exert yourself.'* [Emma] sent a further text to [Ms M] about half an hour later also asking what the marks could be, again describing them as a rash that *'don't disappear when press'*.
220. From the text messages [Emma] and [Luke] appeared to be arguing for most of that day, but I have not seen evidence to suggest that [Felix] was on his own with either [Luke] or [Emma] on that day, or to point to any specific event happening involving [Felix]. However, Dr Olsen suggests that the metaphyseal fracture to the left elbow occurred at or around this time (up to two weeks before 13 January).
221. On a balance of probabilities, I find that [Felix] did sustain inflicted injuries on this day, which are likely to have caused the metaphyseal fracture to the left elbow, and

bruising. This is a less clear finding than the other injuries, but there is clear evidence of [Felix] having sustained some form of inflicted injury, and we know from the expert evidence that he did sustain a metaphyseal fracture injury at around that time.

222. On 9 January there was a further escalation of '[Sean]' messages sent to [Luke], and [Luke] and [Emma] were arguing throughout the day.

223. On 11 January 2023 [Ms M] reported to the police that [Sean] had been sending messages suggesting he was nearby and was watching the property front and back. She understood him to have made threats to smash cars outside the property and to burn the property down. There was another report that [Sean] had said that he was inside the property and would kill [Emma]. The police attended and the property was put in lockdown.

224. [Emma] and [Luke] were arguing into the early hours on 11 January and then again in the early hours of 12 January.

225. The timing has become clear from the evidence of [Emma], [Luke], and [Ms M], who were all at [the placement] at the time [Felix] was injured.

226. There are some discrepancies here and there in the accounts, but piecing them altogether, I find that [Luke], [Emma] and [Felix] returned home from the hospital appointment via Sainsburys at around 4.00 p.m. [Luke and Emma] had sex in the bedroom. [Felix] was in his car seat. About half an hour later they were both in the living room with [Felix] still asleep in his car seat, [Emma] on the sofa and [Luke] playing on his Xbox. A '[Sean]' message was sent to [Luke] saying 'green blanket', the implication that he was watching them as [Emma] was covered with a green blanket.

227. For the next forty-five minutes to an hour both were sending messages to friends on their phones, [Emma] was arranging a driving lesson, but she then drifted into sleep. At 6.45 p.m. [Luke] promised to send someone a photo of the scan they had got in the morning, but was at that time trying to get [Felix] to sleep. That is consistent with previous evidence of [Felix] waking up, [Luke] taking him upstairs to try and settle him, then leaving him to sleep in his cot. [Emma] then continued to sleep on the sofa, and there came a time that [Felix] woke up and [Luke] went to get him and brought him down to the mat. At this point [Emma] was asleep but there came a time when she went out of the room to the toilet.

228. At this point [Luke] said [Felix] was on the mat and somehow rolled so as to cause the injury. [Luke] has not told the truth about what happened at this point. [Felix] did not sustain his injuries by rolling over in the way described, the expert evidence has confirmed.

229. [Emma] came in and found [Felix] crying and upset, on his back but with his right arm in an odd position, and in a different position on the playmat than he had been when she left the room.
230. [Luke] did not want to pick him up, as [Emma] says, *'because he was screaming and he didn't want to pick him up, because he was full-on screaming'*. [Emma] told Dr C that [Luke] *'was sat playing on the Xbox with a headset on and said he hadn't noticed. I shouted at [Luke] and asked him what had happened, he said he didn't know'*. This is [Emma]'s earliest account of what happened, and I find it is reliable. I find that [Luke] was putting on a performance for [Emma] of pretending not to notice. If he had done nothing wrong and [Felix] was screaming in that way, it is inconceivable that he would not have noticed and would have ignored [Felix].
231. [Luke] was clear that the injury happened when [Felix] was with him, [Emma] was not there (or not awake), that [Felix] *'really screamed'* and this caused him to call [Emma]. These essential elements are confirmed by [Emma] in her accounts to Dr C, to the police and in her evidence to the court. I find that [Luke] has much more recently tried to resile from that, saying that [Felix] did not seem to be crying in any significant way when he was with him, and implying that the injury must have occurred when [Felix] was in the bath. For reasons given, I do not accept this evidence, and find that [Luke] changed his evidence in an attempt to mislead the Court and direct attention away from him.
232. I find that [Luke] inflicted this fracture injury on [Felix] at this time, because he was frustrated that [Felix] would not settle. He had already spent time trying to get [Felix] to sleep so that he could play with his Xbox. [Emma] had been unavailable to assist with [Felix] for many hours as she had been drifting in and out of sleep or was texting on her phone. I find that as part of the assault on [Felix], [Luke] may have also caused bruising to him, because this incident is within the window given by Dr Robinson, and because [Emma] reported to the GP when she spoke to them at 2pm the next day, that [Felix] had bruising on his face.
233. [Emma] picked up [Felix], tried to settle him but he continued to cry, she took him for a bath and when she moved his right arm, he screamed.
234. [Emma] called for [Ms M] to come who advised her to call 111.
235. [Emma] phoned her mother for advice at about 11.20 p.m.
236. [Emma] and [Luke] argued into the night and well into the early hours of the morning.
237. [Luke] called his nan a number of times just before 1.00 a.m.

238. In the morning [Emma] texted her mother and told her that [Felix] had ‘screamed and screamed’ through the night.
239. By this time [Ms M] had told [Ms L] about [Felix]’s injury and [Ms L] had notified MG who came straight to [the placement], from where the ambulance was called.
240. After they had been to hospital and returned home, they argued once again, and into the early hours of the morning of 14 January 2023. [Emma] was distraught at the thought of [Felix] being removed from her care. She did make it clear to [Luke] that she knew [Felix] could not have got his injuries accidentally (*‘I’m not stupid [Luke] .. he has a broken arm/And he can’t get that from play mat’*). Later in the text conversation he challenged her and said *‘I can’t believe your even accusing me of this’*, she responded *‘I’m not ffs/But he’s broken his ribs somehow.’*
241. She was wholly invested in this relationship and the fact that she did not want to believe he was at fault or publicly accuse him does not suggest to me that she was covering up her own culpability. Nonetheless, her first reaction on finding [Felix] screaming on 12 January was to shout at [Luke] and ask what had happened, she challenged him again in these text messages, and she admitted to the police that she had been wondering whether [Luke] could have inflicted the injuries because he was the only other person to have been alone with [Felix] in the relevant time frame.
242. For reasons given, I find that [Luke] was the sole perpetrator of the injuries to [Felix] on 28 December 2022 and on 12 January 2023.
243. I have found that [Felix] sustained injuries on 8 January 2023, likely to be the metaphyseal fracture to the left elbow and bruising.
244. I have considered carefully all the evidence in the context of the whole of the evidence, and reflected carefully upon the question as to whether [Emma] should be placed in the pool of perpetrators for the injuries on 8 January 2023 and for the bruising.
245. I found that [Emma] has in many respects been an unreliable witness. There are parts of her evidence where I did not accept the account she was giving, and do not think she was assisting the Court.
246. However, her evidence in respect of [Felix]’s injuries has been consistent both in the accounts she has given, and the questions she appears to have asked herself, or others, about how [Felix] might have come by marks or injuries she has seen on him. She has been consistently quick to report concerns when she has seen them.
247. [Emma] delayed in getting medical attention for [Felix], and lied about having called 111 and the GP when she had not. I consider this further below. However, those

lies are fairly obviously told in order to cover up her own culpability in respect of not calling for medical assistance. It does not follow that those lies point to culpability in terms of causing the injuries.

248. [Felix] did have some scratch marks to his body photographed by [Emma] in early November, but I have not been asked to make any findings about them, nor taken to any other evidence than the photos that [Emma] took of them.

249. The witnesses who described [Emma] handling [Felix] roughly are not credible. None was able to give a convincing description of this.

250. There are a number of witnesses who have described [Emma] being preoccupied with her phone, not often picking [Felix] up, often leaving him on a bed or in his carseat, often appearing passive and not attentive, and wanting [Luke] to feed him or change him. Her mother says that [Emma] was not good at the sing-song type of care and interaction, and suggests that is to do with her autism.

251. This evidence does not tend to the view that [Emma] has lost her temper with [Felix], found it difficult to cope when he was unsettled, or has ever acted in a way that is violent towards him.

252. I was taken to evidence of [Emma], [Luke] and other housemates behaving irresponsibly, using bad language, playing loud music, making videos or photos with [Felix] as a prop, holding a joint, or a caption placed over the image using unpleasant language – calling him a ‘tramp’, or saying he ‘has shit himself’. There is a video of [Felix] being taken out late at night in a car. There was a complaint made that [Emma] was frequently taking [Felix] out to late night car meets, but I have not seen any evidence to substantiate that. None of this evidence does much credit to [Emma], but neither in my judgement does it tend towards a finding that she has inflicted injuries upon her son.

253. Having regard to all the evidence I have heard and read, and the conclusions I have formed about the incidents on 28 December and 12 January, I have come to the conclusion, again applying the standard of a balance of probabilities, that the injuries sustained by [Felix] on 8 January 2023 were also inflicted by [Luke].

254. If I am wrong about those particular dates for causation of the metaphyseal fractures and the bruises, then I am still satisfied that they were inflicted injuries, and that it is more likely than not that they were caused by [Luke].

Failure to seek medical attention

255. It is perhaps unfortunate that [Emma] did not take [Felix] to the GP or call 111 on 28 December, when she saw the bruises. However, she acted reasonably in following the advice her mother gave her. [MGM] gave evidence that she believes she came round

the next day to take a look for herself at [Felix]. The expert evidence is that after the initial infliction of injuries resulting in rib fractures and/or metaphyseal fractures the baby would be immediately distressed, but thereafter may well settle relatively quickly. It would not be obvious to another carer or a clinician that the injuries had been caused.

256. On 28 December 2022 and 8 January 2023, [Luke] knew that he had inflicted injuries upon [Felix], but did not report it. This prevented [Felix] from getting medical attention.

257. On 12 January 2023 [Luke] knew that he had caused a serious injury to [Felix] but did not tell [Emma] and did not take any steps to get him medical attention. [Felix] had a painful and unsettled night as a result, and his treatment was delayed.

258. I am satisfied that [Emma] was also at fault after 12 January 2023:

- [Ms M] immediately advised her to call 111 but she didn't;
- [Emma] was there in the immediate aftermath of an injury and must have recognised this as a different sort of crying. She chose not to call for medical help. She was preoccupied with arguing with [Luke] and she was worried that [Felix] would be removed from her care if she reported him. She already suspected that he had a non-accidental injury, but put her need to keep [Felix] with her before his urgent need for medical attention;
- On the morning of 13 January 2023, [Emma] did not call 111, nor did she call the GP, even though her mother had said that if [Felix] had not settled, she should seek medical attention. [Ms L] tried to get her to wake up and come out of her room, and [MG] was trying to ring her but she did not respond. When MG arrived, she was defensive and minimised the situation;
- [Emma] told a lie to [MG] that she had called 111 the night before and taken advice. She told a lie, which she maintained when giving her evidence, that she had contacted the GP in the morning.

259. [Emma]'s delay in seeking treatment caused [Felix] to suffer additional pain and put at risk the effectiveness of his treatment.

Failure to protect

260. The pleaded case is *'insofar as [Emma] and/or [Luke] knew, or reasonably believed, that the other posed a significant risk to [Felix] they failed to protect him by leaving him alone with the other and/or failing to alert professionals.'*

261. This reads to me as a ‘bolt-on’ pleading of the kind cautioned against by King LJ in *Re L-W (children)* [2019] EWCA Civ 159 and *G-L-T (children)* [2019] EWCA Civ 717, referred to above.
262. The pleading is now only relevant to [Emma]. It is certainly arguable that if she knew she had not inflicted the injuries, then she must have known that [Luke] did, and yet she allowed herself to disregard that possibility, and sought to continue their relationship. It is clear that she was contemplating the chances that [Luke] had caused the injuries the same night they were discovered.
263. Even though she had just argued with [Luke] about this, and had initially told him the relationship had ended, they fell back into their same pattern, and she asked him to stay because she did not want to be alone. Her decision then and over the next days and weeks to continue with the relationship when she must have known that he had caused [Felix]’s injuries would suggest that she was prioritising her relationship over the safety of her children.
264. Over the course of the next few days the ‘[Sean]’ messages escalated. [Emma] made reports to police that [Luke] had received a message saying, ‘*your missus was just smoking watch I will kill her 12am I am coming in with all my boys watch*’, and further similar messages on 15 January. I am satisfied that at this time [Emma]’s attention should have been focused on her son, but instead she was preoccupied with intensifying and escalating the drama generated by the messages, presumably as a lever to ensure that [Luke] would feel obliged to stay with her and protect her. She was plainly not prioritising [Felix] at this time.
265. Before 13 January 2023, I am not satisfied that there is evidence to support a finding that [Emma] knew or reasonably believed that [Luke] posed a significant risk to [Felix]. She may have had some suspicions about the marks that she had seen, but was reassured by her mother that they were not inflicted injuries. Professionals were actively encouraging her relationship with [Luke], and praising the way that he had been seen to take care of [Felix].

Neglect

266. Having regard to all the evidence I have heard and read, I have found the following threshold findings to be proved to the standard of a balance of probabilities:
- (i) [Emma] did not provide a consistent routine for [Felix]:
- He would often be taken out late at night and in the early hours of the morning;
 - [Emma] and [Luke] would often not get up until the afternoon, and her room would be dark with the blinds closed;

- [Felix] was left for long periods of time unstimulated. I accept that the staff at hospital noted that [Felix] appeared to be unused to sitting up and did not know how to interact with toys. On a balance of probabilities, and having regard to all the evidence, I draw an inference that this indicates he was left for long periods in his cot, car seat or on [Emma]’s bed;
- (ii) At times [Emma] has not sufficiently focused on and prioritised [Felix]’s needs before her own needs and pre-occupations:
- In the period leading up to and following [Felix]’s birth she became increasingly preoccupied with making allegations against her ex-partners. This resulted in multiple police call outs, an escalation of drama and an inevitable deflection of her focus away from [Felix];
 - She was not prioritising [Felix]’s needs when awaiting the ambulance. (Finding made, although I am not sure it adds much to the findings above in respect of failure to seek medical attention);
 - On 15 January 2023 [Emma] was more focused on issues relating to her ex-boyfriend rather than asking after [Felix];
 - [Emma] was often occupied with her phone for long periods of time while [Felix] was in her care.

267. The following matters were pleaded, and I find them proved, but I do not find that they are matters that establish either that [Felix] suffered significant harm as a result, or that they gave rise to a likelihood of him suffering significant harm:

- (i) At times [Emma]’s bedroom was cluttered, stuffy and unhygienic. She struggled to keep on top of this and often felt overwhelmed by the task of sorting it out. There is no evidence that this caused [Felix] significant harm or gave rise to a likelihood of significant harm;
- (ii) Sometimes [Felix] was wearing only a nappy in the house because it was very hot and stuffy in there. This did not cause him any harm. I accept [Emma]’s evidence that [Felix] was always appropriately dressed when they went outside;
- (iii) [Emma] and [Luke] would smoke cannabis or vape and would sometimes leave [Felix] on his own while they did this. [Emma] said they took a baby monitor with them. I have not been taken to an instance where [Felix] was said to have been caused significant harm as a result of this. It is for the local authority to establish its case to the standard of a balance of probabilities. I have evidence that there was some smoking of cannabis and vaping, but not about how often this

happened, nor of the impact on [Felix], because the placement was not monitored out of working hours or at weekends;

- (iv) [Emma] was heavily reliant upon [Luke] to provide basic care for [Felix]. On 1 December 2022 she was very distressed at the prospect of him being banned from [the placement] for two weeks and felt she would not be able to cope looking after [Felix] alone. It was a known concern that [Emma] struggled to be on her own and may struggle to cope with the demands of a newborn on her own. The response of [the placement], through [Ms L], and the local authority through MG, was to engineer a situation in which [Emma] was permitted to spend more time with [Luke], staying at his grandmother's house. This arrangement contributed to the instability of [Felix]'s routine, did not help [Emma] with keeping on top of her room, because she was moving in and out every two days, and confirmed in [Emma]'s eyes the professional view that it was appropriate for her to depend upon [Luke] to support her with [Felix]'s care;
 - (v) There is a note in the hospital records from an un-named member of staff (who did not provide a statement) noting that '*[Felix] seemed very uncomfortable around mum, crying, mum did not really interact with him, [Luke] did most of the care when here*'. I accept this observation was made. It is evidence that the person observing formed a more favourable view of [Luke] than of [Emma]. I find that there have been times when [Emma] has been seen to be more occupied with her phone, or quite passive in her care for [Felix]. This finding does not add anything to that made above about lack of stimulation.
268. The following matters were pleaded under the heading of neglect, but I have not found them proved to the standard of a balance of probabilities.
- (i) I am not satisfied to the standard of a balance of probabilities that [Emma] was overdosing [Felix] with calpol. This was a complaint raised by [Ms M] after [Felix] had been removed from [Emma]'s care at a time when she and [Emma] had fallen out. There is no evidence of anyone raising this as a concern with [Emma] before that time. I find that [Felix] was given calpol when he was teething and to soothe him;
 - (ii) It is alleged that [Emma] went out in her car on 9 January 2023 and she and [Luke] argued about it. She left [Felix] in [Luke]'s care. This does not represent neglect of [Felix] by [Emma].

Relationships

269. At section 8 of the threshold document, the local authority has pleaded as follows:

- (i) [Emma] has a history of engaging in unhealthy and toxic relationships:

- [Emma]’s three most recent relationships, with [Sean], [Sam] and [Luke], have all featured police involvement in the context of allegations and cross-allegations of abusive behaviour;
- [Emma]’s relationships become serious very quickly: she became pregnant within a few weeks of starting a relationship with [Sam]; within a few weeks of starting a relationship with [Luke] he was living with her, heavily involved in care of [Felix] and she again quickly fell pregnant;
- [Emma] struggles to cope when her relationships end: she self-harmed and took an overdose around the time that her relationship with [Sean] ended (Nov/December 2021); she struggled to cope with [Sam] having entered a new relationship; the day after separating from [Luke] (08.02.23) [Emma] took an overdose.

270. The phrase ‘police involvement in the context of allegations and cross-allegations of abusive behaviour’ is complex and difficult to unpick. [Emma] has made allegations of domestic abuse against both [Luke] and [Sean], and that she has made those allegations to the police. The reference given in the schedule is simply to ‘police disclosure’, I am not aware of any of the witnesses being taken to any specific part of the police disclosure in relation to this pleading. I am aware that both [Sam] and [Luke] have said that [Emma] was abusive and toxic in her behaviour towards them, but I am unsure about what if any cross-allegations [Sam] and [Luke] may have made to the police alleging abusive behaviour towards them by [Emma]. I am aware that [Sean] has denied sending the messages and alleged that [Emma] sent them, but am not clear if this is what is being referred to in the allegation. This allegation is broadly accepted by the respondents, but may need some revision so as to be more precise.

271. The other two parts of this heading are proved on a balance of probabilities. Contrary to [Emma]’s assertion, I do find that she struggled with [Sam] forming a new relationship and that she sent a text message to his new girlfriend with the intention of causing difficulties for that relationship.

Fake messages

272. I am satisfied that the following allegations are proved on a balance of probabilities:

[Emma] has created and sent faked messages to third parties purporting to be from [Sean] and [Sam] and has made false allegations against [Sean] and [Sam] thereby creating an unnecessary atmosphere of drama, stress and fear to which [Felix] was exposed and affected by, particulars of which include:

- i) In late August 2022 [Emma] made false reports to the Police that [Sean] was hiding in her garden, threw something at her window, is known to carry weapons and messaged her housemate threatening to kill himself;
- ii) On/around 29.08.22 [Emma] created a false rumour, supported by faked messages, that [Sean] was going to cause harm and/or kill residents at [the placement];
- iii) On/around 24.09.22 [Emma] created faked messages purporting to be from [Sean] in which he threatens to kill [Felix];
- iv) On/around 18.10.22 [Emma] created a faked message exchange between herself and [Sam] in which [Sam] says he still loves her and purports to admit telling her to kill herself and threatening to kidnap [Felix]. [Emma] then sent a screenshot/video of this faked message exchange to [Sam]’s new girlfriend, [Z] (which results in Z ending her relationship with [Sam]);
- v) On 09.01.23 and into the early hours of 10.01.23 [Emma] created several faked messages of a threatening nature (eg, ‘I’ll set the house on fire n burn you all dead’) purporting to be from [Sean] and sent them to [Luke]. Whilst she was doing this, she had blocked [Luke] on her account;
- vi) From 10 – 12 January 2023 the police were repeatedly called and [the placement] was in a state fear and of lockdown as [Emma] continued to create faked threatening messages purporting to be from [Sean], which she sent to [Luke] and other residents;
- vii) On 12 January 2023 [Emma]’s phone carried out the following google searches:
 - ‘what reasons can a house set on fire’
 - ‘will my house catch on fire if I accidentally leave my oven on’
 - ‘can the police track an Instagram account’
 - ‘can the police find out who owns an Instagram account’
 - ‘how to permanently delete an Instagram account’
 - ‘if you set fire to paper on carpet will house set on fire’
- viii) Following [Felix]’s admission to hospital, [Emma] continued to create faked threatening messages purporting to be from [Sean]. From 14.01.23 – 16.01.23 she continued to send such messages to [Luke]. On 15.01.23 [Emma] telephoned the hospital twice during the night shift and falsely reported to them that [Sean] had been making threats, knows that [Felix] is at the hospital and is going to kill [Felix].

273. The police are currently investigating [Emma] in respect of the allegations that she has made malicious communications in the name of [Sean]. The following evidence has so far been obtained, and has been disclosed into these proceedings:

- The police found the 'TextMe' app (an app used to send messages so it looks like they are being sent by someone else) on [Emma]'s phone, and noted that its use spiked in December 2022 and January 2023;
- The police established that an email address belonging to [Emma] (*[email address redacted]*) was registered to the Instagram account (*redacted*) which was sending some messages supposedly from [Sean];
- A '[Sean]' message was received when [Sean] was in custody being interviewed by the Police without access to his phone, so he could not have sent it;
- Many of the '[Sean]' messages sent to [Emma] or [Luke] gave details of where they were or what they were doing ([Luke] was on his Xbox, [Emma] under a green blanket, both of them at Burger King) so could only have been sent by someone who was there with them. There has never been any evidence to show that [Sean] was in the same place. When a police car was sent to [the placement] on 11 January, at a time the message said he was in the garden, another police car was sent at the same time to [Sean]'s house. [Sean] was at his house and could not have travelled from [the placement] back there in the time;
- The police have found that [Luke]'s nan's house (where [Emma] used to stay and had access to the wifi) was the IP address from which the Instagram account [*redacted*] was sometimes used.

274. Many of these messages were sent at times when there was increased tension between [Emma] and [Luke] and appear to have been sent with the motive of demanding his attention, and that he take extra special care of her.

275. The effect of all this is to establish well beyond a standard of a balance of probabilities that [Emma] is responsible for the messages she said were from [Sean]. [Emma] has now accepted making and sending the messages, but had continued to deny it right up until the first days of the final hearing. She continued to deny that she sent the messages purporting to be from [Sam], but for reasons given, I find that allegation to be proved to the standard of a balance of probabilities also.

276. [Emma] accepts the allegations in respect of her mental health and emotional instability, but does not accept she has limited insight into her difficulties, how they might impact her parenting and the effect they may have on [Felix]. Having considered Dr Bues' report and her oral evidence, together with the evidence from Mrs Carty, MG and [Emma]'s own evidence, I find that allegation also to be proved. Findings 10, 11 and 12 on the schedule are established, as follows:

[Emma] has experienced suicidal thoughts and has self-harmed and made attempts on her life on multiple occasions, including:

- a. August 2018 – [Emma] attended A&E due to having thoughts of suicide and self-harm;
- b. 24.06.21 – [Emma] was threatening suicide;
- c. November 2021 – reports of suicidal thoughts and self-injurious behaviour;
- d. December 2021 – overdose of 13 5mg Aripriazole;
- e. 08.02.23 – overdoses on 4 amoxicillin tablets with suicidal intent.

[Emma] presents with complex interpersonal issues, complex emotional needs and a high level of unmet emotional needs in the context of:

- a. A diagnosis of autism;
- b. An underlying attachment difficulty;
- c. Clinical levels of anxiety that are pervasive, deep-rooted and long-standing.

[Emma] has limited insight into these difficulties, how they might impact her parenting and the effect they may have on [Felix].

Welfare

277. The threshold for making public law orders is crossed. I must now turn to consider what, if any orders are required to secure [Felix]'s welfare.

278. I have had regard to all the circumstances of the case and each of the factors on the welfare checklist.

279. It can be assumed that [Felix]'s **wishes and feelings** could he express them would be to grow up within his birth family and to have nurturing and loving relationships with both his mother, father and extended families.

280. [Felix]'s **physical, emotional and educational needs** are the same as any child of his age and at his stage of development. Having had a disrupted start in life, he needs stability and security. These proceedings have been going on for a year, he needs his future to be settled now, and his welfare is likely to be prejudiced by any further delay.

281. There are **no additional particular characteristics** which are relevant to the decision on welfare.
282. [Felix] has suffered significant injuries inflicted by one of his primary carers, he needs to be protected from harm in the future, and to feel safe and that he can trust his carers.
283. No threshold allegations have been made against his father [Sam]. He has built up a good relationship with [Felix] through contact. [Felix] is **not at risk of harm from his father**. His father has been positively assessed as having the **capacity to care for [Felix]** throughout his childhood. He is young and inexperienced as a parent, and will need the support of his family. He, and they, will need significant support from the local authority to manage contact between [Felix] and his mother.
284. [Felix] **is at risk of suffering harm if he were to return to his mother's care**. This is by virtue of the threshold findings made against her.
285. It should be noted that throughout the evidence there have been many examples of very good parenting from [Emma] towards [Felix]. While she relied on [Luke], there are lots of examples of [Luke] deferring to [Emma], or [Luke] saying he does not want to change a nappy or get a bottle and [Emma] advising and encouraging him, or taking responsibility herself for doing what was needed. It was known that [Emma] loved to give [Felix] a bath every day. There is a body of evidence, primarily from the family nurse partnership, but also from [Emma]'s mother, suggesting that [Emma] was able to provide good basic care to [Felix], was capable of meeting all his daily needs, was attentive to them, and well-prepared to meet them, for example by always having nappies ready. [Luke] told the police about her special bond with [Felix] and her ability to pick him up and settle him, just by having him in her arms.
286. However, Mrs Carty's assessment of **[Emma]'s parenting capacity** is thorough, balanced and fair, and her conclusions have been reinforced by the evidence that I have heard and read throughout this final hearing. Underpinning that assessment is Dr Bues's opinion about [Emma]'s psychological make-up and the support that she needs in order to develop insight and understanding of her own experiences and functioning, the impact on other people, particularly any child that she is caring for, and intimate partners, and to make and sustain changes so that she would be able to care for a child in the future. This evidence is then compounded by MG' final evidence and the guardian's analysis.
287. The things that limit [Emma]'s parenting capacity can be summarised as follows:
- (i) She is not always able to give a truthful picture of what is going on, sometimes under-reporting, sometimes over-exaggerating, and sometimes not giving the full picture. This makes it difficult for professionals to understand what is going on,

and this affects their ability to understand and assess risks for [Felix], and give her the support she needs;

- (ii) She can work openly and honestly with some professionals, but if she doesn't get on with them so well, she tends not to go to appointments, or chooses not to be open and honest with them. For example, she said that she did not get on with MG, and so did not feel the need to share information with her. In the future, professionals would need to know that she could work with them, whatever her own feelings about who she was working with;
- (iii) [Emma] can often feel overwhelmed. She can use unhelpful coping strategies to manage her anxiety, and make impulsive decisions or bad choices. An example of this is the fake messages;
- (iv) She has limited capacity to reflect on her own situation or to understand the perspective of others. She is not able to see the consequences of her actions on others. This was shown very clearly when she was asked to think about the consequences of fabricating the [Sean] messages. The guardian described the risk as *'a significant concern, as it indicates that [Emma] is willing to draw her children into her attempts to gain attention and/or meet her needs. This could be extremely traumatic for any child in her care.'*;
- (v) There are a number of elements in the threshold document that highlight [Emma]'s difficulties with understanding and being able to prioritise [Felix]'s needs. She has sometimes been more focused on her social life than on [Felix]. Often what she wanted to do came first, and [Felix]'s needs came second. This was the case when she delayed in getting medical treatment for him. If she sees [Felix]'s needs as being the same as hers, then she can see things from his point of view, but she is not always good at separating his needs out from hers;
- (vi) [Emma]'s inability at times to see things from [Felix]'s perspective, and to put his needs before her own is a continuing risk to him if he were to return to her care now. An example given by Mrs Carty was a concern that [Emma] did not consider how it might have felt to [Felix] to be swaddled daily in such a tight swaddle that he was unable to move. It seems that [Felix] was swaddled much more often than just at night time, and that swaddling was used as a means of controlling and settling him, indeed [Luke] told the police that [Felix] seemed to have learned that placement on the blanket for swaddling was a cue for him to stop crying and stop wriggling. [Felix] was responding to the demand of his carer to settle, because that is what his carer wanted. His carer was not curious about what [Felix] might have needed;
- (vii) [Emma] has in the past formed intense friendships and relationships very quickly but then struggles to manage those relationships. She can get very caught up in

the drama of a relationship and this can cause her to get distracted and lose sight of [Felix]'s needs;

- (viii) [Emma] formed her relationship with [Luke] when [Felix] was only a couple of weeks old. She was completely trusting of [Luke] from the outset, and did not seem to think much about the impact on [Felix] of introducing someone completely new into his life when she could not have known whether the relationship was going to last in the long-term. There is a risk that if she had [Felix] in her care, she might once again form a new relationship very quickly and involve that person in [Felix]'s life, without stopping to consider the risks—both in the short term, if that person represents a danger to [Felix], and long-term, if that person is one of a number of people who come in and out of [Felix]'s life;
- (ix) [Emma] has had three unplanned pregnancies very quickly (sadly her first pregnancy ended in a miscarriage). She has not shown a good understanding of the risks of getting pregnant following birth, and at the moment it remains a risk that she may be pregnant again, which may take away her focus from the work she needs to do if she is to have the best chance of maintaining her relationships with [Felix] and [Bella]. (I appreciate that each of her partners could also have taken responsibility in this regard);
- (x) [Emma] has started to show some signs of engaging with professionals, but she is still presenting as very immature;
- (xi) [Emma] was indicating her willingness to engage with help but the ability to engage remains unknown. There is a difference between wanting to do everything that is asked of her in order to have the best chance of getting her children back, and recognising and understanding the need for work to be done.

288. The approach to therapeutic input needs to be staged. The initial period of therapy needs to accommodate the mother's emotional immaturity and very limited reflective capacity. Such therapy will be more focused on reducing her anxiety before more in-depth therapy could start.

289. The more in-depth therapy will need to address [Emma]'s relational difficulties which stem from her early trauma/attachment difficulties. It is not known at this time whether this therapy will be effective, or how long it will take. Dr Bues said:

'It is unlikely that there is any therapeutic input that could be provided within the next 6-12 months that will sufficiently improve [Emma]'s relational difficulties, which (as set out) pose a significant risk factor in terms of her parenting.'

290. I have to consider whether [Emma]'s parenting capacity could be improved by any measures of support that could be put in place. Specifically, it has been suggested

that [Emma] might benefit now from being placed in a residential placement together with [Felix], where she could be supported, monitored and assessed twenty-four hours a day.

291. This was put to the experts in the case and to MG, and considered by the guardian. I agree with their conclusions that this would not be a good option at the moment, for the following reasons:

- (i) [Emma] does have knowledge of basic parenting skills and has been able to demonstrate that she can provide excellent parenting for [Felix]. She does not need to be in a placement to teach her those skills;
- (ii) The risks for [Emma] are about her ability to work with professionals, not to repeat patterns of forming intense relationships that take up all her attention, to manage her anxieties, in particular by avoiding the drama and risk that comes from some of the coping strategies she has used in the past, and above all to prioritise the needs of her child before all else. These risks would not be lessened if she were in a residential placement in the short term, because they are issues that require much longer to work through;
- (iii) The delay and uncertainty for [Felix] if he were placed in a residential setting with his mum would be against his welfare interest;
- (iv) There is a significant risk that at the end of the placement it would not yet be safe for him to return to his mother's care full time at home, and he would then be at risk of another placement move.

292. Finally having regard to **the range of powers available to the court**. Having regard to all the circumstances, I support the local authority's plan for [Felix] to be placed with his father as soon as possible, pursuant to a child arrangements order.

293. The challenges that [Emma] faces at the moment prevent her from being able to parent [Felix] safely at this time, and she cannot make the changes she needs to within his timescale.

294. [Felix] needs to be settled with his dad, who has been positively assessed to care for him.

295. [Felix] does have an existing and loving bond with his mother, is used to seeing her several times a week, and will miss her very much. However, the risks of placing him in her care are too great at this time. He can still continue his relationship with her if he lives with his dad.

296. I consider that there should be a supervision order that lasts for at least as long as [Bella]'s proceedings continue, but in my judgement should remain in place for a year.

[Sam] is a young and inexperienced father. Dr Dowsett did have some concerns about [Sam]'s cognitive vulnerabilities, and considered he may meet a diagnosis of ADD (attention deficit disorder). It is not known how he will cope with caring for [Felix] full time.

297. [Felix] has suffered injury at the hands of his previous male carer and had at times a chaotic and disrupted routine in the care of [Emma] and [Luke] when his needs were neglected. His father will need support to understand [Felix]'s experiences and to give him the care that he needs to recover from them and to settle in his new home.

298. In addition, [Sam] and his family are likely to need considerable support to build some trust and to facilitate the relationship between [Felix] and his mother. I consider that six months to both start up a pattern of regular contact and then make the transition to contact that is facilitated without the support of professionals is too optimistic. I am mindful that at the end of these proceedings [Emma] will still be concerned with [Bella]'s case, which will take up a lot of her time and energy.

299. I would agree that [MGM] is likely to play a significant role in supporting [Emma] to have regular contact with [Felix]. She is a thoughtful, caring and loving parent and grandparent. She is an important figure in [Felix]'s life and loves him deeply. I would agree that some form of mediation work between the two families is likely to be needed, and some work with [MGM] to ensure that she is able to set appropriate boundaries for [Emma]. Again, I consider it optimistic to think this could be achieved within a supervision order that lasts only six months.

300. I agree with the guardian's analysis that the first priority for the local authority must be to support [Emma] in having therapy. That therapy may be provided to her on the basis that she was adopted, is a care leaver, is a mother who continues to be a party to care proceedings for her daughter, or is a mother who no longer has a child in her care (through an organisation like Pause), and needs support to sustain that relationship.

301. I agree that a family group conference should take place between maternal and paternal families once some groundwork has been completed on each side.

302. I agree with the guardian's recommendation that contact between [Emma] and [Felix] should be reduced to fortnightly in the first instance. I agree that the local authority should undertake work with the maternal grandmother with a view to her supervising contact in the future. Contact should be monitored and kept under review.

303. [Luke] is [Bella]'s dad. Although I have found that he hurt [Felix], that does not mean that he can never see [Bella]. But the local authority must be sure that it is safe. [Luke] will need to be open and honest with social workers and other professionals. If he is willing, there may be a course or other work he can do to help him see and understand the reasons that he hurt [Felix], and to find ways of managing his emotions so that he is not a risk to [Bella] or to any other child.

304. This case has taken a long time to reach its conclusion and the final hearing ended up stretching over a number of weeks, with the result that I had to reserve this judgment until January. I would like to thank the parties for their patience, and to thank all the legal representatives who have assisted me to wrangle this case to its conclusion, for their flexibility during the various twists and turns of the trial itself, and focused submissions.

HHJ Joanna Vincent
Family Court, Oxford

Draft judgment circulated: 9 January 2024

Approved judgment sent by email: 31 January 2024

Approved judgment handed down: 8 February 2024

Annex 1: Responses to requests for clarification

Requests made on behalf of the intervenor

Further reasons are requested in respect of the following:

1. Why the court rejected attaching any significance to the lies it found were told by [Emma], including:
 - (a) The allegation that support worker [Ms L] smoked cannabis with residents at [the placement] [para 89, alleged in evidence by [Emma], found not to be true];
 - (b) That [Emma] faked messages which she asserted were [Luke] admitting to harming [Felix] [found by the court to have been sent by her, para 145, alleged from late February];
 - (c) That [Emma]'s description of the relationship as one characterised by control and physical abuse by [Luke] was not accurate [para 146, court not being persuaded by the account].

I did find [Emma] to be an unreliable witness in a number of respects, including those matters outlined. I have directed myself in accordance with Lucas, and also reminded myself that I must consider the whole of the evidence, and not consider it in separate compartments.

- *That [Emma] lied about [Ms L] smoking cannabis did not lead me to conclude that it was more likely than not that she had inflicted injuries on [Felix];*
 - *[Emma] did send a number of fake messages. Some of the messages contained outright lies, some of them maybe not, but still were sent with the intention of causing trouble for the person from whom the fake message was supposed to be sent, or to provoke a reaction. Just because the message was fake does not mean that the content of the message was a pure fabrication. On balance, this piece of evidence did not persuade me on its own or in the context of all the evidence, that [Emma] sent these messages because she had caused the injuries to [Felix], and that she was attempting to make it look as although [Luke] had caused the injuries instead;*
 - *The relationship was not characterised by control and physical abuse by [Luke]. It was a relationship that was volatile and becoming increasingly unstable. That [Emma] sought to characterise the relationship in a different way did not lead me to conclude that it was more likely than not that she had inflicted injuries on [Felix].*
2. On what basis does the court conclude that swaddling [Felix] was indicative of a need for control, or real difficulty when presented with a crying baby [para 199] rather than an inexperienced parent using a particular technique to encourage sleep?

The swaddling was used not just to encourage sleep but frequently during the day in order to 'settle' [Felix] when he was crying. I do not believe I can expand further on what I have said in the judgment.

3. How does the Court extrapolate from a text message on 8th January reporting a mark to [Felix]'s chest that he sustained a metaphyseal fracture to his left elbow on that day?

I have concluded that there were most likely three separate days on which [Felix] sustained injuries. That fits with the evidence of [Emma] discovering marks on [Felix]'s body on three separate occasions, and with the windows given by the medical experts for the various injuries. Dr Robinson gave evidence that a metaphyseal fracture could be caused where a baby had been gripped round the ribs and shaken.

Having found that [Luke] was the perpetrator of injuries on two separate occasions, and concluding that there was a third occasion when [Felix] sustained an injury, I have drawn an inference that (i) on a balance of probabilities, [Felix] sustained the metaphyseal fracture to his left elbow at the time when marks were seen on his body; and (ii) having regard to all the evidence, it is more likely than not that [Luke] was the perpetrator of this injury too.

4. Did the court place any significance on the social worker's evidence that on discussing an anonymous referral of [Felix] being thrown in the air [Emma] said it had only happened once [I47; oral evidence].

No. The 'throwing' in the air was described as more like swooping him up into the air while still holding onto his body. Neither of the experts seemed to place weight on this as being a likely mechanism for the injuries sustained.

Requests made by the local authority

1. When analysing the issues of credibility/lies in relation to [Emma] (for example at paragraph 246 of the draft judgment), does the Court consider that (a) its finding that [Emma] faked 'confession messages' from [Luke] and (b) that she made allegations of domestic violence against him dating back to November 2022 upon which the Court did not make findings, to be of any significance and, if so, what?

Please see answer to question 1 above.

2. The Local Authority's case in closing (paragraph 25 of its closing submissions) was that [Emma]'s oral evidence *that on the evening of 12 January 2023 she undressed [Felix] of multiple layers of clothing and bathed him for 10 minutes without [Felix] displaying pain*, and the evidence of [Felix]'s presentation in the immediate aftermath of bathtime was significant evidence tending towards the likelihood of a causative incident around that time, potentially involving [Emma] at bathtime. Please could the Court give reasons for

having rejected the Local Authority's analysis, and address how it treats [Emma]'s oral evidence (as above) in the context of its overall analysis of causation of the right arm fracture?

[Emma]'s evidence about the layers of clothing was drawn out of her in response to suggestions put to her by Miss Reynolds with which she tended to agree, but did not seem to be volunteering much of this account freely. It is not something she had mentioned in her written evidence. The accounts given much closer in time to Dr C, and the police suggest that [Felix] was screaming in pain when he was on the playmat, and again in the bath when his arm was moved. [Emma] told Dr C that [Felix] carried on screaming from the time he was picked up from the mat and while in the bath. That would suggest he continued to scream while he was being undressed for the bath.

I accept that the fresh evidence that [Emma] undressed him and he had a bath for ten minutes without displaying pain does not sit easily with this evidence.

Having regard to the totality of the evidence I heard and read, this new piece of oral evidence, a year after the events, was not in my judgment sufficient to displace the weight of the other evidence, and not sufficient to lead me to conclude that [Felix] must have sustained his injury in the bath. The only other evidence relied upon by the local authority to corroborate this, was [Luke]'s changed evidence that [Felix] had not really cried or screamed when the incident that he was no longer able to describe occurred on the play mat. I found that this was a lie. I found that the reason for the lie was an attempt to mislead the court, and to try to persuade me that the injury must have happened at another time. For reasons given, I rejected this evidence.

3. In relation to paragraph 262 of the judgment and the Court's conclusions regarding any failure to protect, please would the Court consider:
 - (a) The message exchange between [Emma] and [Luke] in the period after [Felix]'s arm fracture but before his presentation at hospital when he is in [Emma]'s care overnight on 12-13 January 2023, which show that [Emma] told [Luke] she was done with him and asked him to leave, but then around 30 minutes later was begging him to come back [H466-H467]
 - (b) Its finding that the Court 'accept[s] [Emma]'s evidence that there have been occasions when she has heard or seen [Luke] be rough with [Felix], and on those times she took [Felix] away from him' (paragraph 196 of the draft judgment)
 - (c) the content of [Emma]'s witness statement of 27 February 2023 (and in particular paragraphs 25 and 26)

I find that [Emma] had suspicions and worry on the night of 12 to 13 January 2023, including a concern that he might have sustained a fracture. She did not know that

[Felix] had sustained a fracture to his elbow, nor did she know about the rib fractures. That she told [Luke] she was done with him, asked him to leave, and then around 90 minutes later was begging him to come back was consistent with a pattern of behaviour that had persisted throughout the relationship.

[Emma] was acting protectively of [Felix] when she took him away from [Luke] when she heard or saw him be rough with him. That does not mean she knew or ought to have known that [Felix] was at risk of inflicted injury perpetrated by [Luke].

At paragraphs 25 and 26 of her witness statement, [Emma] says, 'looking back I can now also see that [Luke]'s treatment of [Felix] was not what it should have been. He would sometimes get very wound up with [Felix] and did not have patience to deal with him when he was behaving as a small baby naturally does.'

This is consistent with the findings I have made about [Luke].

This evidence has not led me to the conclusion that [Emma] knew or ought to have known that [Felix] was at risk of inflicted injury perpetrated by [Luke].

I make it clear that as well as these few moments described by [Emma], recalled with the benefit of hindsight, there is a wealth of evidence that [Luke] was someone who could also be very caring, loving and kind towards [Felix], and was viewed by professionals as dependable and to be trusted. In all the circumstances I am not persuaded that [Emma] should have come to a different conclusion.

4. With reference to the Court's findings at paragraph 264 of the draft judgment, please could the Court confirm whether a finding of failure to protect has been made and, if so, what period of time such finding covers, for example:
 - (i) the period from which, according to [Emma]'s statement, '[Luke]'s treatment of [Felix] was not what it should have been';
 - (ii) the period following the causative event for [Felix]'s arm fracture;
 - (iii) the period following [Emma] forming a belief that [Felix]'s arm was fractured (she carries out a google search for 'I think my 4 month old has broken his arm' at 23.13hrs on 12 January 2023 – See LA's Search History Summary Document lodged with closing submissions)
 - (iv) the period from which she asks [Luke] to return at 01.30am on 13 January 2023 [H466] and remains in a relationship with him until 7 February 2023, on the basis that from this point she prioritised her need for a relationship above [Felix]'s safety and exposed him to a direct risk of harm by attempting to have [Luke] return to her

and [Felix] at [the placement] despite knowing he had caused [Felix]’s injuries, thereby exposing [Felix] to a risk of physical and emotional harm.

I do not consider I can add further to what I have said at question 3 above or within the judgment itself under this heading.

5. With reference to paragraph 213 of the draft judgment, please could the Court identify the evidence upon which it bases the conclusion that there was ‘the appearance of marks on [Felix]’s chest’ on 28 December 2022.

This is an error and has been corrected to ‘body’.

(Paragraph 213 is now 214, due to (i) insertion of missing paragraph number at 168, split of original paragraph 178 into two (now 179-180), and deletion of original paragraph 227.)

HHJ Joanna Vincent
Family Court, Oxford
Responses sent by email: 31 January 2024
Approved judgment handed down: 8 February 2024