



Neutral Citation Number: [2024] EWFC 68 (B)

Case Number: RG23C50069

IN THE FAMILY COURT SITTING AT SLOUGH

The Law Courts  
Windsor Road  
Slough  
SL1 2HE

Heard on 20-22 and 25 and 27 March 2024  
Judgment given on 27 March 2024

Before

HIS HONOUR JUDGE RICHARD CASE

Between

BRACKNELL FOREST COUNCIL

Applicant

and

MOTHER (1)

FATHER (2)

CA (THE CHILD) (3)

Respondents

Representation

For the Applicant: Stephen Crispin, (instructed by the Joint Legal Team) for the Applicant Council

For the Respondents: Neelo Shrvat, (instructed by Hoiles Solicitors) for the First Respondent Mother

Matthew Brookes-Baker, (instructed by Griffiths Robertson Solicitors) for the Second Respondent Father

Anthony Forde, (instructed by THP Solicitors) for the Third Respondent child by their Child's Guardian, Peggy Sipeer

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

## JUDGMENT

This judgment is deemed handed down electronically by email on 27 March 2024 at 8.00 am

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## Summary

1. I have summarised my findings below:

1. On 25 April 2023 CA was examined at Frimley Park Hospital and had the following marks on her body [F13]:

(a) Left deltoid region – 2cm x 1.5cm

(b) Beneath the left deltoid region – 0.5cm x 0.5cm

(c) Linear mark on left forearm near wrist – 2.5cm x 0.5cm

(d) Small mark posterior axillary line – 0.5cm x 0.5cm

(e) Left Leg, medial aspect shin, 2cm above ankle joint– 0.5cm x 2.5cm, linear

(f) 3cm below popliteal fossa left leg – 0.5cm x 0.5cm

**Admitted.**

2. Each of the marks described at 1(a) to 1(f) was a bruise.

**Not proved.**

3. Each of the bruises was caused between CA being seen by the Health Visitor on 14 April 2024 and the morning of 25 April 2023.

**The marks first appeared between 24 and 25 April 2023. They were not bruises.**

4. Each of the bruises was inflicted by Mother and/or Father by application of an impact force in excess of normal or rough handling.

**Not proved.**

5. The perpetrator of the injury, and any other adult present at the time the injury was inflicted would have been aware that CA had been hurt.

**Not proved.**

## Parties

2. I have set out the parties above. For anonymity I shall refer to the parents as the Mother and Father and the child with whom I'm concerned as CA. I mean no disrespect to any of them.
3. CA is approaching 1 year old and is female. She is living at home with the parents, but their care is supervised at all times. The parents share parental responsibility.

## Background

### Chronology

4. The Local Authority has set out a history in its case summary:

#### Background

4. CA was born [in April 2023] at 40 weeks 2 days gestation. She was healthy on delivery and discharged from hospital the next day with the only issue noted to be forceps marks on her face [J220-224].

5. CA was seen by midwifery on 6 April 2023 when advice was given to increase the milk offered to her. There were no other concerns [J192-193].

6. At a midwifery visit on 8 April 2023 CA again presented as healthy with no concerns. The notes record 'birth marks = none noted' [J177].

7. On 14 April 2023 checks for CA were passed over to the Health Visitor service. Again, noted no concerns for CA, and no birth marks [I5] [J159].

8. At 09:13 on 25 April 2023 Mother text two photographs of marks on CA's shoulder and forearm to Father with the message "Just found these on CA [C78]." Father replied, "They look so bad babe" and "I'm really worried I did it babe." Throughout the subsequent exchanges Father suspects himself as the cause of the marks. Father asked Mother to delay seeking advice from family members and medics, saying "No they will tell every one [C79]" and in reply to a message from Mother suggesting she see the doctor "Ok just scared to call them. Think it could make it worse [C83]."

9. Mother telephoned 111 at 13:24 that day and sought advice in respect of CA for "purple patches on skin" [K11]. The operator recorded the concern as 'easy or unexplained bruising' and 'abnormal bruising' and asked Mother to take CA to a treatment centre within one hour –

it appears the call ended 14:06. Mother took CA to Frimley Park Hospital, noted arrival time 14:52 [K16].

10. At hospital CA was examined first by Dr Gabrielle Todd in the presence of Mother [C180]. Dr Todd noted marks to the left shoulder, left wrist and left ankle. Mother having no explanation for the marks Dr Todd called the A&E Registrar Dr Arifa Ali, who in turn notified consultant paediatrician Patrick Aldridge. Mr Aldridge reviewed medical records in preparing his statement dated 30 June 2023 and considered the marks in keeping with bruises [C216].

11. Given the apparent bruising and lack of an explanation the hospital staff were concerned about non-accidental injury. At 19:30 CA was examined by Paediatric Consultant Maisara Soliman [C189], and Dr Nirubhan Veeraragavan, Paediatric Registrar [C208]. Dr Veeraragavan produced a full report including body map [F1]. The conclusion/diagnosis was “unexplained bruise in a non-ambulant child-? Cause” [F11].

12. CA was referred to dermatology and examined by Dr Sara Sherif on 26 April 2023 who considered the marks to be bruises and not in keeping with vascular malformation or alternative organic causes [C177] [J70].

13. Alistair Patton is a Paediatric Consultant. He saw CA on 26 April and 18 May 2023. He reviewed the medical records and prepared a report dated 18 May 2023 [F46] and a witness statement dated 16 June 2023 [C184]. He considered the marks to be more consistent with bruising than birthmarks or other vascular malformation.

14. CA was deemed medically fit for discharge and was therefore sent home with her parents under a safety plan agreed by the Local Authority.

15. A strategy discussion took place on 27 April 2023 attended by social care professionals, Detective Sergeant John Denard, Paediatrician Alistair Patton, and Stefan Mantke who is lead safeguarding doctor at Frimley Park hospital [F18]. There was discussion of the skeletal surveys and Dr Patton noted “on the second review there appears to be some abnormality around the surface of the bones within the left arm. These may well be nothing [F22].” Dr Mantke added “I’ve seen this description quite a few times now in the last two to three years ... it might be an incidental finding. But that’s the reason why we always need to do a completion of a skeletal survey [F23].”

16. A review strategy discussion took place the following day, again attended by Dr Patton and John Denard, but Dr Mantke was not present. The meeting discussed the significance of the radiology and was reminded of the comments made the day prior [F39-40]. Subsequently, on 31 May 2023 an Initial Child Protection Conference was held, attended by John Denard on behalf of the police. The minutes record that the police told the meeting “Another Paediatrician involved in one of the strategy discussions was not overly concerned about the markings, which isn’t in Dr Patton’s report [F72].” Dr Mantke is the only other medic to have attended a strategy discussion along with John Denard, on 27 April 2023. Dr Mantke does not appear to have had any other input, apart from seeing CA briefly on 27 April 2023, after her examination in ophthalmology, when he diagnosed periorbital cellulitis [J42].

17. CT scans and x-rays were carried out, including a follow-up x-ray on 9 May 2023. No evidence of injuries was identified [C198].

18. The Local Authority issued care proceedings on 4 May 2023 and applied for an Interim Care Order for CA and her parents to be placed in a residential unit.

CMO 1: 9 May 2023 [B47-55]

19. An urgent ICO hearing took place on 9 May 2023. The Local Authority was not granted either an ICO or ISO, and the family remained at home under a written agreement.

20. A police disclosure order was not made as disclosure had been requested under the protocol [A6].

21. The Local Authority issued a Part 25 application for a paediatric assessment prior to the hearing. The application was adjourned to the Case Management Hearing on 24 May 2023.

CMO 2: 24 May 2023 [B56-60]

22. At the hearing on 24 May 2023, the court approved the instruction of Dr George Rylance, consultant paediatrician.

23. The matter was listed for a contested ICO hearing on 9 June 2023.

24. The matter was listed for a pre-trial directions hearing on 15 September 2023 and a separate fact finding hearing on 9, 10, 16 and 17 October 2023.

25. The Local Authority was directed to file and serve statements from the staff at the hospital.

CMO 3- 9 June 2023 [B64-67]

26. At the contested ICO hearing on 9 June 2023 the application for an ICO was refused.

27. The local authority was directed to file and serve a schedule of findings sought at the fact-finding hearing by 31 August 2023. The parents were to file their responses by 12 September 2023.

...

CMO – 15 September 2023 [B90]

32. The hearing was listed as a pre-trial review. The Court considered Dr Rylance's recommendation that an expert paediatric haematologist be instructed, and Part 25 application issued by the Local Authority, and approved the instruction directing that the report be filed by 6 November 2023.

33. Extensions of time were granted for the SGO and parenting assessments – 5 January 2024.

34. A timetable was set for final evidence, and a final hearing listed split in to a fact finding hearing (19-27 March, seven days) and welfare hearing (22-29 April, five days).

...

43. Neither parent suggests there is any other person who had any opportunity to cause even one bruise to CA...

## Positions

### Local Authority

5. The Local Authority invites me to make the findings set out below:

1. On 25 April 2023 CA was examined at Frimley Park Hospital and had the following marks on her body [F13]:

(a) Left deltoid region – 2cm x 1.5cm

(b) Beneath the left deltoid region – 0.5cm x 0.5cm

(c) Linear mark on left forearm near wrist – 2.5cm x 0.5cm

(d) Small mark posterior axillary line – 0.5cm x 0.5cm

(e) Left Leg, medial aspect shin, 2cm above ankle joint– 0.5cm x 2.5cm, linear

(f) 3cm below popliteal fossa left leg – 0.5cm x 0.5cm

2. Each of the marks described at 1(a) to 1(f) was a bruise.

3. Each of the bruises was caused between CA being seen by the Health Visitor on 14 April 2024 and the morning of 25 April 2023.

4. Each of the bruises was caused by either Mother or Father.

6. At the outset of the hearing the Local Authority amended the allegations to re-plead allegation 4 and add a fifth allegation:

4. Each of the bruises was inflicted by Mother and/or Father by application of an impact force in excess of normal or rough handling.

5. The perpetrator of the injury, and any other adult present at the time the injury was inflicted would have been aware that CA had been hurt.

### Mother

7. The Mother accepts allegation 1. She does not accept the marks were bruises or that they were caused between 14 and 25 April 2023 saying that they appeared overnight from 24 to 25 April 2023. The Mother denies causing the marks by the application of an impact force in excess of normal or rough handling or being aware that CA had been hurt.

### Father

8. The Father accepts allegation 1. He does not accept the marks were “caused by inflicted trauma” or that they were caused between 14 and 25 April 2023 saying they appeared on the morning of 25 April 2023. The Father denies causing the marks or being aware that either he or the Mother had caused them.

### Child’s Guardian

9. The Child’s Guardian does not advance a positive case.

### Evidence Summary

10. I have had the benefit of considering a lengthy bundle and the following documents in particular:

a) Local Authority revised schedule of findings [Z28];



- b) Mother's response to the schedule of findings sought [Z31];
- c) Father's response to the schedule of findings sought [Z35];
- d) Statement of Mother dated 19 May 2023 [C68] including text messages [C77];
- e) Statement of Mother dated 15 March 2024 [C339];
- f) Statement of Father dated 19 May 2023 [C130];
- g) Statement of Father [Z23];
- h) Statement of EH, Maternal Grandmother [C327];
- i) Statement of CL, Maternal Great Aunt [C347];
- j) Statement of Dr Gabrielle Todd, accident and emergency paediatrician [C179];
- k) Statement of Dr Maisara Soliman, consultant paediatrician [C189];
- l) Statement of Dr Nirubhan Veeraragavan, paediatric registrar and safeguarding medical report [C208] [F1];
- m) Statement of Dr Sara Sherif, consultant dermatologist and corresponding notes [C176] [J70];
- n) Statement of Dr Alistair Patton, consultant paediatrician [C184] [F46];
- o) Paediatric report of Dr Rylance dated 22 August 2023 [E8];
- p) Amended addendum report of Dr Rylance dated 12 September 2023 [E40];
- q) Second addendum report of Dr Rylance dated 19 February 2024 [E148];
- r) Addendum haematology report of Dr Russell Keenan, consultant paediatric haematologist (incorporating the original report) [E97]; and
- s) Dr Keenan's response to questions [Z19].

11. I heard oral evidence from Dr Keenan, Dr Rylance, the Mother and the Father.

## Law

### Fact Finding

12. I remind myself of the fact-finding self-directions that I must give myself adapted from the helpful summary of Munby P in *Re X (Children) (No 3)* [2015] EWHC 3651:

20. ...The principles are conveniently set out in the judgment of Baker J in *Re L and M (Children)* [2013] EWHC 1569 (Fam), to which I was taken. So far as material for present purposes what Baker J said (and I respectfully agree) was this:

“First, the burden of proof lies at all times with the local authority.

Secondly, the standard of proof is the balance of probabilities.

Third, findings of fact in these cases must be based on evidence, including inferences that can properly be drawn from the evidence and not on suspicion or speculation ...

Fourthly, 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. The court invariably surveys a wide canvas. 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.

Fifthly, ... Whilst appropriate attention must be paid to the opinion of ... experts, those opinions need to be considered in the context of all the other evidence. It is important to remember that the roles of the court and the expert are distinct and it is the court that is in the position to weigh up the expert evidence against its findings on the other evidence. It is the judge who makes the final decision.

Sixth, ... 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.

Seventh, the evidence of the parents and any other carers is of the utmost importance. It is essential that the court forms a clear assessment of their credibility and reliability.

Eighth, it is common for witnesses in these cases to tell lies in the course of the investigation and the hearing. The court must be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear and distress, and the fact that a witness has lied about some matters does not mean that he or she has lied about everything (see *R v Lucas* [1981] QB 720 ).” [I address this further below].

13. Munby P continued:

21. To this admirable summary I add three further points.

22. First, that the legal concept of proof on a balance of probabilities “must be applied with common sense”, as Lord Brandon of Oakbrook said in *The Popi M, Rhesa Shipping Co SA v Edmunds*, *Rhesa Shipping Co SA v Fenton Insurance Co Ltd* [1985] 1 WLR 948, 956.

23. Secondly, that the court can have regard to the inherent probabilities: see Lady Hale in *In re B (Children) (Care Proceedings: Standard of Proof) (CAFCASS intervening)* [2008] UKHL 35, [2009] 1 AC 11, para 31. But this does *not* affect the legal standard of proof, as Lord Hoffmann emphasised in the same case (para 15):

“There is only one rule of law, namely that the occurrence of the fact in issue must be proved to have been more probable than not. Common sense, not law, requires that in deciding this question, regard should be had, to whatever extent appropriate, to inherent probabilities. If a child alleges sexual abuse by a parent, it is common sense to start with the assumption that most parents do not abuse their children. But this assumption may be swiftly dispelled by other compelling evidence of the relationship between parent and child or parent and other children. It would be absurd to suggest that the tribunal must in all cases assume that serious conduct is unlikely to have occurred. In many cases, the other evidence will show that it was all too likely.”

24. Thirdly, that the fact, if fact it be, that the respondent ... fails to prove on a balance of probabilities an affirmative case that she has chosen to set up by way of defence, does *not* of itself establish the local authority’s case. As His Honour Judge Clifford Bellamy recently said in *Re FM (A Child: fractures: bone density)* [2015] EWFC B26, para 122, and I respectfully agree: “It is the local authority that seeks a finding that FM’s injuries are non-accidental. It is for the local authority to prove its case. It is not for the mother to disprove it. In particular it is not for the mother to disprove it by proving how the injuries were in fact sustained. Neither is it for the court to determine how the injuries were sustained. The court’s task is to determine whether the local authority has proved its case on the balance of probability. Where, as here, there is a degree of medical uncertainty and credible evidence of a possible alternative explanation to that contended for by the local authority, the question for the court is not ‘has that possible alternative explanation been proved’ but rather it should ask itself, ‘in the light of that possible alternative explanation can the court be satisfied that the local authority has proved its case on the simple balance of probability’.”

14. In relation to experts in *Re B (Care: Expert)* [1996] 1 FLR 667 at 674 Butler-Sloss LJ said:

I agree with the judgment of Ward LJ. Family judges deal with increasingly difficult child cases and are much assisted in their decision-making process by professionals from other disciplines: medical, wider mental health and social work among others. The courts pay particular attention to the valuable contribution from paediatricians and child psychiatrists as well as others, but it is important to remember that the decision is that of the judge and not of the professional expert. Judges are well accustomed to assessing the conflicting evidence of experts. As Ward LJ said, judges are not expected to suspend judicial belief simply because the evidence is given by an expert. An expert is not in any special position and there is no presumption or belief in a doctor however distinguished he or she may be. It is, however, necessary for a judge to give reasons for disagreeing with experts' conclusions or recommendations. That, this judge did. A

judge cannot substitute his views for the views of the experts without some evidence to support what it is he concludes.

15. In his President's Memorandum on Witness Statements dated 10 November 2021 McFarlane P said:

14. Parties should understand that the court's approach to witness evidence based on human memory will be in accordance with CPR PD 57AC, Appendix para 1.3.

This states that human memory:

- a. is not a simple mental record of a witnessed event that is fixed at the time of the experience and fades over time, but
- b. is a fluid and malleable state of perception concerning an individual's past experiences, and therefore
- c. is vulnerable to being altered by a range of influences, such that the individual may or may not be conscious of the alteration.

16. I also direct myself to the judgment of Peter Jackson J (as he was) in *Lancashire County Council v The Children* [2014] EWHC 3 (Fam):

9. To these matters I would only add that in cases where repeated accounts are given of events surrounding injury and death the court must think carefully about the significance or otherwise of any reported discrepancies. They may arise for a number of reasons. One possibility is of course that they are lies designed to hide culpability. Another is that they are lies told for other reasons. Further possibilities include faulty recollection or confusion at times of stress or when the importance of accuracy is not fully appreciated, or there may be inaccuracy or mistake in the record keeping or recollection of the person hearing and relaying the account. The possible effects of delay and questioning upon memory should also be considered, as should the effect on one person of hearing accounts given by others. As memory fades, a desire to iron out wrinkles may not be unnatural – a process which might inelegantly be described as “story creep” – may occur without any inference of bad faith.

17. That should be borne in mind when considering perceived differences between accounts over time and generally when considering a witness' recall.

18. As regards demeanour I have regard to Peter Jackson LJ in *B-M (Children: Findings of Fact)* [2021] EWCA Civ 1371:

25. No judge would consider it proper to reach a conclusion about a witness's credibility based solely on the way that he or she gives evidence, at least in any normal circumstances. The ordinary process of reasoning will draw the judge to consider a number of other matters, such as the consistency of the account with known facts, with previous accounts given by the witness, with other evidence, and with the overall probabilities. However, in a case where the facts are not likely to be primarily found in contemporaneous documents the assessment of credibility can quite properly include the impression made upon the court by the witness, with due allowance being made for the pressures that may arise from the process of giving evidence. Indeed in family cases, where the question is not only 'what happened in the past?' but also 'what may happen in the future?', a witness's demeanour may offer important information to the court about what sort of a person the witness truly is, and consequently whether an account of past events or future intentions is likely to be reliable.

26. I therefore respectfully agree with what Macur LJ said in *Re M (Children)* at [12], with emphasis on the word 'solely':

"It is obviously a counsel of perfection but seems to me advisable that any judge appraising witnesses in the emotionally charged atmosphere of a contested family dispute should warn themselves to guard against an assessment solely by virtue of their behaviour in the witness box and to expressly indicate that they have done so."

...

28...There will be cases where the manner in which evidence is given about such personal matters will properly assume prominence. As Munby LJ said in *Re A (A Child) (No. 2)* [2011] EWCA Civ. 12 said at [104] in a passage described by the Judge as of considerable assistance in the present case:

"Any judge who has had to conduct a fact-finding hearing such as this is likely to have had experience of a witness - as here a woman deposing to serious domestic violence and grave sexual abuse - whose evidence, although shot through with unreliability as to details, with gross exaggeration and even with lies, is nonetheless compelling and convincing as to the central core... Yet through all the lies, as experience teaches, one may nonetheless be left with a powerful conviction that on the essentials the witness is telling the truth, perhaps because of the way in which she gives her evidence, perhaps because of a number of small points which, although trivial in themselves, nonetheless suddenly illuminate the underlying realities."

19. I was specifically addressed on *Stocker v Stocker* [2019] UKSC 17 in which Lord Kerr cautioned against "elaborate analysis of a tweet; it is likewise unwise to parse a Facebook posting for its

theoretically or logically deducible meaning. The imperative is to ascertain how a typical (i.e. an ordinary reasonable) reader would interpret the message. That search should reflect the circumstance that this is a casual medium; it is in the nature of conversation rather than carefully chosen expression; and that it is pre-eminently one in which the reader reads and passes on.” I have underlined those comments which are particularly pertinent in this case.

## Lying

20. I remind myself of the *Lucas* direction from *R v Lucas* [1981] QB 720, elaborated on by Macur LJ in *Re A* [2021] EWCA Civ 451:

54. That a witness’s dishonesty may be irrelevant in determining an issue of fact is commonly acknowledged in judgments...in formulaic terms:

“that people lie for all sorts of reasons, including shame, humiliation, misplaced loyalty, panic, fear, distress, confusion and emotional pressure and the fact that somebody lies about one thing does not mean it actually did or did not happen and/or that they have lied about everything”.

But this formulation leaves open the question: how and when is a witness’s lack of credibility to be factored into the equation of determining an issue of fact? In my view, the answer is provided by the terms of the entire ‘Lucas’ direction as given, when necessary, in criminal trials.

55. Chapter 16-3, paragraphs 1 and 2 of the December 2020 Crown Court Compendium, provides a useful legal summary:

“1. A defendant’s lie, whether made before the trial or in the course of evidence or both, may be probative of guilt. A lie is only capable of supporting other evidence against D if the jury are sure that:

(1) it is shown, by other evidence in the case, to be a deliberate untruth; i.e. it did not arise from confusion or mistake;

(2) it relates to a significant issue;

(3) it was not told for a reason advanced by or on behalf of D, or for some other reason arising from the evidence, which does not point to D’s guilt.

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

21. What I have said above in relation to memory applies to a consideration of whether a person is, in fact, lying; that is to say whether they are dishonestly not telling the truth.

## Hearsay evidence

22. Hearsay evidence is admissible pursuant to the Children (Admissibility of Hearsay Evidence) Order 1993 but I must assess the weight to be attached to it.

23. The provisions of section 4 of the Civil Evidence Act 1995 may be helpful:

4 Considerations relevant to weighing of hearsay evidence.

- (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.

## Injuries

24. Peter Jackson LJ summarised the questions to be answered in *Re S (A Child: Adequacy of Reasoning)* [2019] EWCA Civ 1845 at paragraph 3:

- (1) Had the local authority proved that the injuries were inflicted as opposed to being accidental?
- (2) If the injuries were inflicted, who had the opportunity to cause them?
- (3) Of those people, could one person be identified on the balance of probabilities as having inflicted the injuries (a conventional 'known perpetrator' finding)?
- (4) If only two people...could have caused the injuries, but the one responsible could not be identified it necessarily followed that there was a real possibility that each of them may have caused the injuries (an 'uncertain perpetrator' finding).

25. In *Re BR (Proof of Facts)* [2015] EWFC 41 he said the following:

## Risk factors and protective factors

18. On behalf of the Children's Guardian, Mr Clive Baker has assembled the following analysis from material produced by the NSPCC, the Common Assessment Framework and the Patient UK Guidance for Health Professionals.

### Risk factors

- Physical or mental disability in children that may increase caregiver burden
- Social isolation of families
- Parents' lack of understanding of children's needs and child development
- Parents' history of domestic abuse
- History of physical or sexual abuse (as a child)
- Past physical or sexual abuse of a child
- Poverty and other socioeconomic disadvantage
- Family disorganization, dissolution, and violence, including intimate partner violence
- Lack of family cohesion
- Substance abuse in family
- Parental immaturity
- Single or non-biological parents
- Poor parent-child relationships and negative interactions
- Parental thoughts and emotions supporting maltreatment behaviours
- Parental stress and distress, including depression or other mental health conditions
- Community violence

### Protective factors

- Supportive family environment
- Nurturing parenting skills
- Stable family relationships
- Household rules and monitoring of the child
- Adequate parental finances
- Adequate housing
- Access to health care and social services
- Caring adults who can serve as role models or mentors
- Community support



19. In itself, the presence or absence of a particular factor proves nothing. Children can of course be well cared for in disadvantaged homes and abused in otherwise fortunate ones. As emphasised above, each case turns on its facts. The above analysis may nonetheless provide a helpful framework within which the evidence can be assessed and the facts established.

#### List of perpetrators

26. The following summary of the law is taken from the Family Court Practice paragraph 2.282[19]:

Uncertain perpetrator cases—If the judge cannot identify a perpetrator or perpetrators, it is still important to identify the possible perpetrators by asking whether the evidence establishes that there is a ‘likelihood or real possibility’ that a given person perpetrated the injuries in question (*Re S-B (Children)* [2010] 1 FLR 1161, SC; *North Yorkshire CC v SA* [2003] 2 FLR 849, CA). In such circumstances, it is all the more important to scrutinise the evidence carefully and consider whether anyone, and if so who, should be included as a possible perpetrator (*Re S (A Child)* [2014] 1 FLR 739, CA). However, it is not helpful for the judge to give an indication of percentages as to the likelihood that one or other of the possible perpetrators was responsible and judges should be cautious about amplifying in this way a judgment in which they have been unable to identify a specific perpetrator (*Re S-B (Children)* [2010] 1 FLR 1161, SC).

In *Re B (A Child)* [2018] EWCA Civ 2127, and *Re B (Children: Uncertain Perpetrator)* [2019] EWCA Civ 575, the Court of Appeal gave further consideration to so called ‘uncertain perpetrator’ cases. In *Re B (Children: Uncertain Perpetrator)*, the Court of Appeal urged a change of terminology from ‘pool’ to ‘list’. The following principles can be drawn from the two authorities:

(a) The concept of a ‘pool’ of perpetrators is one that seeks to strike a fair balance between the rights of the individual, including those of the child, and the imperatives of child protection;

(b) A decision by a court to place a person in a ‘pool’ of possible perpetrators does not constitute a finding of fact in the conventional sense in that that person is not proven to be a perpetrator but is rather a possible perpetrator;

(c) Where there are a number of people who might have caused the harm to the child, it is for the local authority to show that in relation to each of them there is a real possibility that they did so;

(d) Within this context, the question is whether it has been demonstrated to the requisite standard that a person is a possible perpetrator. Approaching the matter by considering who could be excluded from a 'pool' of possible perpetrators is to risk reversing the burden of proof. The court must consider the strength of the possibility that the person was involved as part of the overall circumstances of the case;

(e) In doing so, in future the court should first consider whether there is a 'list' of people who had the opportunity to cause the injury;

(f) The court should then consider whether it can identify the actual perpetrator on the balance of probability [omitted]. At this stage, the correct legal approach is to survey the evidence as a whole as it relates to each individual in order to arrive at a conclusion about whether the allegation has been made out in relation to one or other on a balance of probability. Evidentially, this will involve considering the individuals separately and together and comparing the probabilities in respect of each of them. Within this context, the right question is not 'who is the more likely?' but rather 'does the evidence establish that this individual probably caused this injury?' In a case where there are more than two possible perpetrators, the Court of Appeal highlighted a clear danger in identifying an individual simply because they are the likeliest candidate, as this can lead to an identification on evidence that falls short of a probability;

27. In *Re A (Children)(Pool of Perpetrators)* [2022] EWCA Civ 1348 the Court of Appeal confirmed:

[33] The evaluation of the facts which will enable a court to identify the perpetrator of an inflicted injury to a child will be determined on the simple balance of probabilities and nothing more. Having considered the matter afresh in the light of Elisabeth Laing LJ's observation, I am of the view that to go further and to add that the courts should not "strain" to make such a finding is an unnecessary and potentially unhelpful gloss which has outlived its usefulness...

[34] I suggest, therefore, that in future cases judges should no longer direct themselves on the necessity of avoiding "straining to identify a perpetrator". The unvarnished test is clear: following a consideration of all the available evidence and applying the simple balance of probabilities, a judge either can, or cannot, identify a perpetrator. If he or she cannot do so, then, in accordance with *Re B* (2019), he or she should consider whether there is a real possibility that each individual on the list inflicted the injury in question."

28. The commentary in Family Court Practice continues:

(g) Only if the court cannot identify the perpetrator to the civil standard of proof should it then go on to ask of each of those on the list whether there was a likelihood or real possibility that they caused the injuries. Only if there is, should that person be considered a possible perpetrator;

(h) In order to ensure that an imbalance of information regarding each of those on the list does not distort the assessment of the possibilities, in uncertain perpetrator cases, at the outset the court should ensure by way of case management that: (i) a list of possible perpetrators is created; (ii) directions are given for the local authority to gather (either itself or through other agencies) all relevant information about and from those individuals; and (iii) those against whom allegations are made were given the opportunity to be heard.

It is important to note that the court remains under a duty to consider the welfare of the child under ChA 1989, s 1(3) where that child has suffered injury and thereby significant harm, even where it is not possible to say who the perpetrator of harm is (*Re S (A Child)*). Note that the Court of Appeal has suggested that, in the context of the requirements of the Children Act 1989, s 31(2), the terms ‘non-accidental’ and ‘accidental’ injury are, in addition to being tautologous and oxymoronic, unhelpful, the threshold criteria not being concerned with intent or blame but rather with an objective standard of care (*Re S (Split Hearing)* [2014] 1 FLR 1421, CA).

Where the court is satisfied that the child has suffered significant harm, the threshold conditions under ChA 1989, s 31(2)(b)(i) will be met in relation to that child even though the court is unable to identify who within the pool of possible perpetrators inflicted the harm: *Lancashire County Council v B* [2000] 1 FLR 583, HL, in which helpful guidance is given as to how evidence needs to be tested to establish the threshold criteria for the purposes of s 31 where the perpetrator is uncertain. In determining whether a person is properly included in the pool of potential perpetrators, it is essential that the court weighs any lies told by that person against any evidence that points away from them having been responsible for the injuries (*H v City and Council of Swansea and Others* [2011] EWCA Civ 195). In these ‘uncertain perpetrator’ cases, the correct approach is for the case to proceed at the welfare stage on the basis that each of the possible perpetrators is treated as such (*Re O and N: Re B* [2003] 1 FLR 1169, HL). The House of Lords held in that case that it would be grotesque if, because neither parent had been proved to be the perpetrator, the court had to proceed at the welfare stage as though the child were not at risk from either parent, even though one or other of them was the perpetrator of significant harm. The judge conducting the welfare hearing should have regard to the facts

found at the preliminary hearing when they leave open the possibility that a parent or carer was a perpetrator of proved harm and that conclusion should not be excluded from consideration.

## Findings

### Credibility

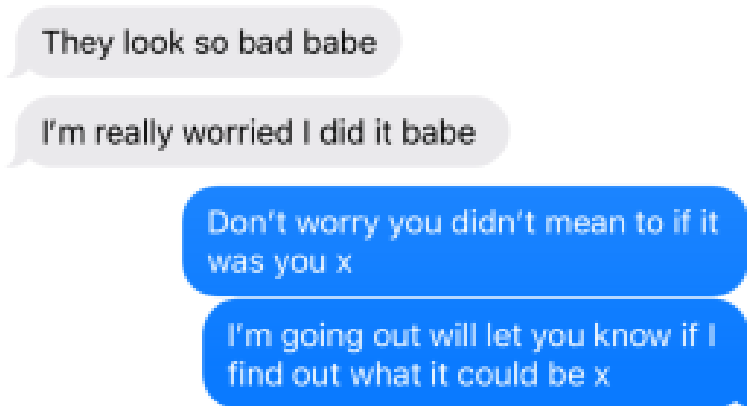
29. General observations of demeanour should never form the sole basis of any finding of fact, but they are part of the broad canvas of assessment of credibility and they feed into the assessment of the allegations.

30. When the parents gave their evidence they did so in a straightforward manner. There were inconsistencies to some limited degree, but they appeared to derive from a lack of recall rather than an attempt to mislead. There was no obfuscation and I gained the impression they were doing their best to recall in very granular detail the events of almost a year ago at a time of significant stress.

### Mother

31. The Mother's evidence is that having discovered the marks on the morning of 25 April 2023 there was a text message exchange. The Mother sent two photos to the Father showing marks on the left arm saying she had just found them on CA. There was the following exchange:

[C78]



[C79]

You said i was to ruth

Can we keep it to are self till I get home.

You don't want me to ask you mum?

Babe don't worry x

No they will tell every one

[C80]

Don't be sorry it could of been me x

No I think I no it was me last night. Feel so guilty xxx

32. The Father then asks the Mother to wait until he arrives home and then:

[C81-C82]

Wait I think I done it can t find out till I get home x

No you didn't

It doesn't look like a bruise now it looks the same as the other mark

Ok can it wait to see if it was me

33. The Mother asks if she should call a doctor and then:

[C83]

Don't no what to say

Ok I think I should call them

Don't think you should

Why

You didn't do it there are the same marks on her shoulder and leg

Not checking it by a doctor would be wrong?

Ok just scared to call them. Think it could make it worse

[C84]

If it can't wait do it

Well that's not fair putting it all down to me

Wait till I get home if it's not bothering her it fine to wait

Ok

...

Ok

You need to ring them babe

Why you change your mind now?

I think it could make things worse but it's better to be safe than sorry.

34. In summary the Father appears to have been reluctant for the Mother to seek assistance, he was worried he “did it”, that it was him “last night” but he needed to “get home” to “find out” and calling someone “could make it worse”.

35. The Mother was cross-examined about this at length. She said she was shocked and confused by why the Father would think he had caused injury but when asked why she had not asked him about that she said, for the first time in these proceedings, “We did have phone calls”. She could not remember how many or who phoned whom, she said she could not remember what was said. I found this exchange troubling, first because it had not been evidenced before and second that although it was asserted there had been phone calls in answer to the question “Why didn’t you ask him” [about his belief he may have caused injury] she did not go on to say she had asked in the phone calls. It begs the question why she had chosen to mention the phone calls in answer to that question at all. I later asked her about that:

JQ Why answer LA question about not challenging the Father about the text messages by saying you had phone calls A I was wrong, they do have relevance A I don’t remember what we spoke about on the phone, I was just being honest in saying we had them
---

36. This did not clarify the point for me.

37. It was put to her that she “didn’t ask him why he thought he might have caused marks” and her response was “No, I thought he was being ridiculous” and then:

Q ...a concerned parent hearing from their husband “I’m worried I did it” about marks they’re concerned about and don’t know what they are would have asked why they thought they were worried A I don’t remember if I asked but he wouldn’t have done anything
--

38. This showed a startling lack of curiosity.

39. She was then asked about whether she followed up on the message when she knew the treating clinicians were worried about an inflicted injury. Her answer was that she did not because “he told me he’d not done anything to hurt her”. Nor did she make any enquiries notwithstanding the Father’s assertions he would need to return home to “find out” if had caused the marks and had not done so.

40. There seem to be three conclusions that can be drawn from this: that the Mother knows more than she is letting on, she lacks curiosity or is very trusting of the Father.

41. A further piece of evidence which came to light in oral evidence was that there had been a conversation between the Mother and Father after the marks had been found about how the Father held CA. As with the phone calls, there was no reference to this in the witness statements. She was asked questions about this by the Guardian and said she did not recall telling anyone this and when asked whether she felt it was important said “For me I don’t feel it was important because the way he held her was nothing to do with [the marks]”. I also asked her about why it had not been mentioned at the time the text messages were disclosed with her statement dated 19 May 2023 and she said “We had already discussed we hadn’t done anything and discussed holding and [marks] were nothing to do with that”.

42. Against that evidence I am invited to guard against hindsight bias. The Mother has given extensive written evidence in both statements setting out the chronology of care to 25 April and I was referred to a note of the police interview recording “the Mother said that she and the Father were required to put together a timeline for Family Court for their hearings, and when doing so began to think about the days prior and what could have happened to have caused the marks on CA” (my emphasis) [Z67]. It might therefore be fair to say her focus was on the time leading up to spotting the marks rather than what happened thereafter.

43. I am also invited to take account of the fact that if this is an attempt to cover up something which the Mother knew about it is both “messy” with no clear exculpatory narrative and inconsistent with the text message responses she gave to the Father’s messages (which might otherwise perhaps have said nothing or I know you did it or words to that effect).

44. Finally, that the events of 25 April were in the context of the Mother having given birth 3 weeks earlier and in circumstances where (on her case) unexplained and frankly disturbing marks had appeared on CA and the hospital, Children’s Social Care and the police were suspicious. It must, I accept, have been a deeply upsetting time for her which may go some way to explain her responses to the Father in the text messages and the limits of her recollection of conversations thereafter.

#### Father

45. As to the text messages the Father says:

[C131/3]

I attach as annex 1 transcripts of the texts sent between me and the Mother that morning. I disclose these in good faith appreciating that they make me look bad. I felt extremely guilty and paranoid when I received the photograph and convinced myself that I must have done something to CA when I get her ready for bed that night. It was completely irrational as I did



not do anything abnormal. I did not handle her heavily or roughly and I did not lose my patience with her. At no point did she show distress or cry or flinch away.

46. A difficulty with this explanation is the Father did not say “I must have done something” but rather said I think I have done something and need to get home to find out which is very specific. That said, I remind myself these are brief messages sent at a time of likely heightened stress (injury to CA which the Father thought he had caused) and I must be careful not to regard them as carefully chosen expressions and the content of the statement whilst limited is not inconsistent.

47. During the course of his oral evidence he gave the following evidence:

- a) There was a telephone discussion with the Mother around the time of sending the text messages;
- b) He could not “recall the specifics”;
- c) He could not recall the content;
- d) He discussed why he was worried he might have caused the injuries;
- e) He could not remember if this was on the phone but it was definitely “brought up in hospital”;
- f) When discussed at the hospital he “showed her how I held CA by burping her, to see if the marks would line up with the way that I held her and none of them did”;
- g) He was worried he might have caused the marks because “I never held a new-born, always had that concern so when I saw the marks it reminded me of the concerns about holding a new-born, always thought they looked so fragile”;
- h) “I always held her in a particular way if cradling, burping or changing her nappy I was thinking if the marks lined up with the way I held her that could have been something I caused, when I saw they didn’t line up I realised how stupid that was”;
- i) When asked about what was said at the hospital he said “I was showing [the Mother] the way I would have held CA or burped her or changed her nappy and whether that lines up with any of the marks”;

48. In partial contradiction to (g) above he also said:

- j) He has 2 nieces and 3 nephews and “a lot of cousins that have a lot of babies” and described regular family meetings, when asked if handling those babies had ever been a problem he said “No, never”;

49. By contrast the explanation in the witness statement was very light in detail. He did not explain the origin of the paranoia, that his concerns were discussed on the phone or at hospital with the

Mother and that when he saw the location of the marks at hospital he realised that he was “being stupid”. He was asked why this information had not been disclosed either at the time the messages themselves were disclosed or at the time of the second witness statement on day 1 of the fact finding hearing. He said:

- k) “I never really thought it was of any interest”;
- l) Yet later agreed “if we knew what was in the phone calls it would change our impression of the text messages”;

50. When he was pressed on the matter he referred to a conversation with his solicitor and after a short adjournment in which I allowed advice to be given about waiving legal privilege he went on:

- m) “I believe my solicitor didn’t really give me the opportunity to put it in and I would have to deal with it later on;
- n) When asked if he had actually told his solicitor about the conversation he initially did not answer the question and then said “No” and then slightly contradictorily “didn’t get into the depths of it and he said it would come up later on”;
- o) He was asked why it was not in the second statement:

<p>Q You’ve recently had the chance to make another witness statement and you took that chance and you looked at it and told the judge it was true, that statement doesn’t mention that important conversation</p> <p>A It never come up, she said it was important to get the statement in for the expert</p> <p>Q You said in May last year only a short opportunity to make a statement and you were aware it didn’t include important information</p> <p>A Yes</p> <p>Q You’re saying you raised it and were told it will be done later and we’re in the week of this hearing and you did this statement and it’s now the court is going to be thinking about it</p> <p>A I presumed it would come up in court</p> <p>Q Were you saying the Local Authority were applying for CA to move to foster care and the texts were an important part of that, why not say to solicitor the witness statement doesn’t contain this important information</p> <p>A I believe that my solicitor...I don’t know how these things work</p>
---

- p) He agreed he had not told the social worker, the parenting assessor or the doctors about the conversation.

51. On the final day before judgment and just before submissions the Father produced a short statement from his solicitor which identified there had been a 40 minute consultation on 18 May 2023

and a “rough draft statement” was sent “for his comment, amendments and additions”. This tends to suggest the Father had rather longer to consider the addition of an explanation for the text messages than he was prepared to concede in cross-examination and does not support a contention he had intimated to the solicitor there had been a conversation with the Mother which might be relevant. As to the second statement the solicitor recorded it was agreed this was focused on disclosing photos of CA’s eczema for the medical experts to comment on when they gave evidence on day 1 of the fact finding hearing.

52. He was asked about another part of the messages:

- q) He was asked about the message that reads “you said I was too rough” and agreed it should be read as “you said I was too rough”. He said it was “not really rough, heavy handed, probably about sweeping up things” he was challenged that in the context it was about being too rough when holding CA but denied that.

53. This is not consistent with the messages being sent about how he may have caused the marks, it strains credulity to say that “you said I was too rough” was anything other than rough in handling CA.

54. The Local Authority invite me to conclude that the Father’s explanation that he felt he had been holding CA in such a way as to cause the marks is out of all proportion to his comments in the text messages, not wanting the Mother to seek advice or tell family members and that it is improbable if the Father is innocent that there would not have been a recalled conversation about what it was that the Father was so concerned about in the text messages.

55. I bear in mind the points already made above in relation to the Mother’s recall and the fact there is at least some corroborative, contemporaneous evidence of the parents having a discussion about the cause of the marks as it is referred to by the Mother in the summary of her police interview on 25 May 2023 [Z67].

56. Finally, as with the Mother, if this was the Father seeking to exculpate himself one might have expected a more precise purported recollection in fabrication.

## [2: Marks identified on 25 April 2023 were bruises](#)

57. Dr Todd describes examining CA on 25 April 2023:

[C181/3]

... I went on to examine her limbs I found multiple dark purple lesions on the side of her L wrist, across her L shoulder and on her L ankle (not completely circumferential). These marks where [sic] not raised, they were non-blanching and appeared to me to be consistent with bruising.

58. Dr Soliman describes CA having been “found to have several bruises on the left upper and lower limbs” [C190/7] but no details of examination are given.

59. The Child Protection Medical Report records:

Evidence of Injury: (continue on separate sheet if needed and use body maps provided):

1. Bruise left deltoid region - 2cmx1.5cm
2. Bruise beneath this (posterior deltoid region) 0.5cm x0.5cm
3. Small bruise posterior axillary line 0.5cmx0.5cm
4. Linear bruise, left forearm near wrist 2.5cmx0.5cm
5. Left leg, medial aspect shin, 2cm above ankle joint, bruise 0.5cmx2.5cm, linear
6. 3cm below popliteal fossa left leg 0.5cmx0.5cm

60. I note it does not expressly refer to the absence of blanching.

61. Dr Sherif saw CA on 26 April 2023 and ruled out “an organic cause” [C178].

62. Dr Keenan’s conclusion is:

[E120]

366 The testing of blood clotting is now complete as best as can be done in a child under 1  
367 year of age.

368 No blood clotting disorder has been identified.

369 Only mild platelet function disorders have not been able to be specifically tested for and  
370 therefore not diagnosed or excluded.

371 Mild platelet function disorders are very rare.

372 The bruising observed in CA should be considered to have occurred on the

373 balance of probabilities in a child with a normal blood clotting system.

63. In cross-examination he confirmed that testing for mild platelet function disorders is not undertaken in children under 1 year old because it is “difficult or unreliable”. Such disorders are individually very rare and collectively there is around a 1 in 1,000 risk. Such disorders would lead to mild symptoms and you “wouldn’t expect any bleeding problems in a non-mobile child” and “in a non-mobile baby even if there was the presence of mild platelet function disorder I would not expect there to be any bruising”. He was asked on behalf of the Mother if a child with such a disorder would be more vulnerable to bruising on heavy handed handling and he said:

...I would not expect normal handling in a pre-mobile child to cause any bruising symptoms even in an individual with mild platelet function disorder.  
There would be a spectrum of handling but within the normal spectrum of handling I would not expect to see bruising.

64. He was also asked about immune thrombocytopenic purpura (ITP). He said that is the only transient blood clotting disorder that children can get and that was excluded by the platelet count testing as 437 on 25 April 2023. The condition is “vanishingly rare under the age of 6 months”. He was asked if the count could have recovered to normal levels by the time of testing:

Q Could the cause recede after the symptoms so that platelet count is normal  
A The trigger might happen 5-7 days prior to the first observation of bruising, there may not be any runny nose at the time of signs of ITP, in ITP the platelet count is very low and to get bruises needs to be below 50, the platelet count recovers at a slightly variable rate but it takes a small number of weeks or months to recover to normal so the bruising seen on 25/4/23 and blood testing done on 25/4/23 so pretty shortly after presentation and it was 437 so these were not borderline, they were towards the upper level of normal reference range so in the few days there may have been before bruising starting and testing extremely unlikely a few days before testing it would have been less than 50, I can't absolutely exclude it but in my view it is very unlikely the platelet count was sufficiently low to cause bruising

65. He confirmed all the other testing, notwithstanding some of it was 9 months after 25 April 2023, was for underlying genetic disorders which would be present on testing at any point in life and all the results are normal.

66. Dr Rylance's evidence is:

[E16-E18]

General comments on bruising and bleeding

39 A lesion that looks like a bruise, does not blanch with applied pressure at the site, does not have the characteristics of other skin lesions, and resolves completely within three weeks (but for most within 10 days) is highly likely to be a bruise.

40 Most bleeding into the skin (bruising) is caused by trauma.

Mechanism/causation of the bruise

41 The following are general mechanisms of bruising in young children:

- trauma
- vasculitis and blood vessel wall disorders
- increased pressure within blood vessels
- underlying coagulation defect or bleeding disorder

42 CA's bruising has no characteristics of vasculitis or increased pressure within blood vessels

...

44... When a bruise develops from a red mark, the darker colour change and failure to blanch under sustained pressure which is characteristic of a bruise will take place in almost all developing bruises by 24h, in the great majority by 12h, many within 4h and frequently within an hour.

45 A particular characteristic of bruising is that it does not blanch on pressure. If blanching occurs, a lesion would not be a bruise. Direct examination is important and preferable to photographs. Doctors should generally be able to recognise most bruises on direct examination.

...

Underlying coagulation defect or bleeding disorder

48 This can be spontaneous or with minimal trauma. More intense bruising limited to a specific site can have a contribution from an underlying disorder of this type.

67. He was asked to comment on healing based on photos taken by the Mother on 29 April 2023 and 2 May 2023 compared to the photos taken at hospital on 25 April 2023 and recorded the following:

[E41-E42]

Mark	25.04.23 09:00	28.04.23 No time	29.04.23 No time	02.05.23 No time
	Age 00h	2d 16h – 3d 16h	3d 16h – 4d-16h	6d 16h – 7d 16h
1	+	+	+	+

2	+	Not identifiable as a separate entity		
3	+	+	+	-
4	+	No photograph of site		
5	+	+	-	-

Key + as of 25.04.23 + fainter/less intense + more faint/ even less intense  
+ very faint - Not apparent

68. In cross-examination on behalf of the Father he acknowledged that mark 5 was not present on 29 April and as there is no data for 28 April so he cannot be sure of its presence on that date, he agreed the report should say no evidence present for that day. The Local Authority confirmed agreement with the evidence of resolution in that timescale.

69. His analysis feeds in to his view expressed below (my emphasis):

[E42]

1.9 The resolving process/becoming fainter and/or smaller is a continuing process. The time for change evident on the photographs and shown in the Table is a bit more rapid than usual in that 'bruise' 5 has resolved (complete) by 4d-16h at most and by 3d 16h at the earliest. Occasionally, bruises resolve completely by 4-5 days and so any of these bruises could be like those but the intensity of the appearance on 25.04.23 would suggest that the period of resolution would be longer.

1.10 Considering the opinion in 1.9, it is relevant to reconsider whether the marks were definitely bruises or not. My acceptance of the marks as being bruises was based on the comment of the examiner 'no blanching', the appearance on photos, and the opinion of the observing examiner clinicians and their descriptive terminology. If they blanched, they would not be bruises. If they did not blanch [words omitted confirmed erroneous in cross-examination], they could be other lesions but that would be very unlikely, because their appearance does not readily conform to other skin disorders. Even when as is the case for may [sic] skin problems, the superficial appearance is an expression of a systemic disorder, there will usually be systemic upset. CA did not have systemic problems. She was well in that respect.

2. You make reference in your report (para 66) of it being uncommon for bruises to heal

within 4/5 days – how uncommon is this?

2.1 I stated “A bruise can be considered to be an injury to the skin that would be expected to resolve completely without there being any residual effect on the skin after a week or two”. I used the term occasionally in paragraph 1.9 above. My use of that term implies 5-10% of bruises.

70. What flows from this is that the healing process, whilst not inconsistent with bruising, was unusually fast and that was confirmed in cross-examination when he said he was “a little surprised the skin lesions disappeared in 4-5 days and in answer to my question (my emphasis):

...many lesions of cutis marmorata do go away in 3-4 days and it's really uncommon for any clear bruising to go away within 4 days  
JQ So more consistent with cutis marmorata than bruising  
A Yes, not typical of bruising and is consistent with cutis marmorata

71. Dr Rylance was asked about the significance of the unusual shape of the marks (my emphasis):

[E43]

5. What is the significance of the unusual shape of the marks?

5.1 They are unusual. I have previously commented on how some vasculitic lesions may appear to be similar. Another condition with like skin features, though usually widespread and not affecting local sites, is cutis marmorata (not cutis marmorata telangiectatica congenita). This condition can be present for a couple of days to a few weeks. In most cases, the lesions blanch but I have seen it where that is not clearly the case. There would not be expected systemic associated features in this condition.

72. He elaborated on this in his oral evidence. He first said that cutis marmorata images are similar to that seen in CA. Bruises “tend to be round, linear, straight linear or oval or a similar shape to an object that might have impacted on that site, I had difficulty with the shape appearance of what are called bruises on the photographs”.

73. He was asked on behalf of the Local Authority whether a clinician would be able to differentiate between bruising and cutis marmorata and said:

There's two layers and the deepest layer is a contraction of blood vessels and blood flow reduced and above that there's dilation and on pressing you can reduce the colour intensity but you're left with the deeper layer constriction of blood



74. This was more clearly explained in cross-examination on behalf of the Father with the following exchange:

Q Cutis marmorata and cutis marmorata telangiectatica congenita, on pressure you can move the blood from the top layer but not the bottom and it would look as a bruise would

A Yes

Q [Referring to the underlining I have added to [E43/5.1] above] so coming back to the description of the 2 layers you've seen that in your clinical experience

A Yes

75. The import of this is that in clinical practice Dr Rylance has seen cutis marmorata and cutis marmorata telangiectatica congenita marks appear not to blanch on pressure, consistent with a bruise and earlier in cross-examination on behalf of the Mother he had confirmed that "the blanching or no blanching test is insufficient to exclude cutis marmorata".

76. Cutis marmorata was explored in more detail in cross-examination by the Local Authority. Dr Rylance explained that cutis marmorata is seen in new-borns for 2-4 weeks, it can appear to come and go in that period but then goes away. Cutis marmorata telangiectatica congenita "can last for years and in a number of cases [later clarified as around 70% of cases] is associated with congenital abnormality of the skin, limbs, eyes, kidneys". He said that if the marks had gone away completely in CA and not returned that excludes cutis marmorata telangiectatica congenita. He was asked whether cutis marmorata could explain these marks and said:

If it had been present earlier in the first few days parents would have seen it, the fact it wasn't present is a problem because usually present shortly after birth in hours or in next few days and this one doesn't follow that pattern but the fact it was there for 3-4 days is consistent with the diagnosis and the fact it has not come back is consistent but it's unusual in my experience for this new-born type problem...so I had doubts because not present in first 2 or 3 days of life...

77. In cross-examination on behalf of the Mother he nevertheless agreed:

Q Absence of marks 2-3 days after birth doesn't exclude cutis marmorata

A No

78. In answer to a question from the Local Authority he said:

...I would expect them [examining clinicians] to say these are unusual marks, dendritic, and clinicians would be expected to say this is not like typical bruises but in a bruise test they satisfy that and I don't know what else they could be, I'm just suggesting that there is another condition where the appearance is more like this than bruising but it doesn't conform to the timing...

79. In answer to a series of questions on behalf of the Mother he said:

Q Cutis marmorata...the fact marks appeared at 3w is consistent  
A It is consistent with cutis marmorata by itself or with cutis marmorata telangiectatica congenita  
Q Resolved is consistent  
A Yes  
Q If no crying out in pain is consistent  
A Yes  
Q Fact transient and not occurred again is consistent  
A Yes

80. In answer to a question from the Guardian's counsel he said:

Q As part of your final addendum report at [E44/8.1] you say if they were bruises then the requisite standard of causation is met; does it remain your view that (a) these were bruises and (b) more likely than not inflicted or are you leaning towards cutis marmorata  
A I don't particularly have a view, I wouldn't say these were bruises, I don't have an opinion...

81. Where that appears to leave his evidence is that:

- a) The appearance of the marks is not typical of bruises;
- b) The blanch test for bruising may be insufficient to exclude cutis marmorata;
- c) The absence of marks 2-3 days after birth does not exclude cutis marmorata but it is unusual;
- d) The time to resolution would be unusual for bruising and is more consistent with cutis marmorata;
- e) The marks not appearing again in some form is consistent with bruising and cutis marmorata;  
and
- f) He is reliant on the diagnosis of bruising by the treating clinicians, if that is incorrect then he cannot express an opinion that the marks are bruising.

82. In closing counsel for the Mother identified, and I accept, none of the clinicians overtly considered cutis marmorata as a differential diagnosis of the marks nor commented on the unusual appearance of the marks. That would tend to suggest they were not alive to the possibility of cutis marmorata nor therefore to the risk of misidentification on applying the blanch test and it follows a degree of caution should be exercised when considering their identification of these marks as bruises. Yet it is upon this that Dr Rylance is almost entirely reliant. For the Father it was said that of course Dr Rylance has the benefit of the whole of the evidence (including the rapidity of resolution) which the treating clinicians did not have when they identified the marks as bruising on examination on 25 and 26 April 2023.

83. What follows from this is that the evidence for bruising is equivocal and there is evidence for an alternative cause of the marks which is more consistent with some of the evidence (shape and rapidity of resolution) but not other aspects (not apparent within first few days after birth).

84. Again, in closing counsel for the Mother said (I am paraphrasing but hope accurately) the court is entitled to take account of adverse inferences to be drawn from the parents' evidence (broadly set out under the heading Credibility above) but needs to be cautious in concluding those inferences point to bruising in the face of this medical evidence. Counsel for the Father (again I paraphrase) said that the Local Authority must adduce evidence sufficient to contradict the medical evidence. I accept those propositions.

### 3: Bruises were caused between 14 April 2023 and 25 April 2023

85. Dr Rylance's evidence is:

[E21]

Timeframe for bruise injuries

58 The most useful indicator of bruise age is from independent reporting of the time when bruising was first seen provided that the reporter is involved with the child's care continuously. In these cases, the impact (if that is the case) to cause the bruising will have occurred in the previous 24h, most likely within the previous 12h, and frequently within 4h.

...

60 The time taken for a bruise to disappear (resolve) may aid in the timing of injuries. Although this varies for most bruises, for those up to about 30mm diameter it is within 10 days and occasionally up to 14 days.

86. In relation to the first mark Dr Rylance says:

[E24]

80 Bruises uncommonly resolve completely within 5 days of first being evident but most do so within 10 days. It can therefore be presumed that the impact that caused the bruising occurred between the 14.04.23 (when she was last seen by her Health Visitor) and 25.04.23.

87. He did not consider the colour of the mark was helpful in more accurate dating [E24/79].

88. When CA was examined for the purpose of the Child Protection Medical Report both parents were present and the history given was:

[F4]

Mom, [] noticed mark on her shoulder while changing her nappy this morning (25/04/2023) at 9am. First time Mom had noticed this. Undressed her fully and then noticed mark on her left arm and left foot. No marks noticed yesterday while bathing her. Discussed with family members and advised to seek medical attention. Concerned that they may have been bruises. Slightly unsettled past few days but thought this was due to feeding. No concerns about CA being unwell. No concerns about limb movements . Generally sleeping in cot next to the bed at night and in Moses basket downstairs in the morning.

Have not noticed any injuries. No prolonged periods of crying.

89. The Mother's evidence is that the marks were not seen until the morning of 25 April 2023. In her second statement she says of the evening of 24 April 2023:

[C342-C343]

I do not remember if we fully changed CA's clothes that night. We did not bath her that night, but we did undress and change her...when we changed the nappy we would see her bare legs and her fists at the time were short so we would have seen her arms to and I would have noticed anything unusual.

There was nothing unusual and no marks.

90. The Father's evidence is that when he changed CA's nappy on 25 April 2023 "I saw nothing at all unusual or concerning" and "knew nothing about the marks until the Mother sent me a picture via text" [C131/2] but in his oral evidence he could not recollect seeing CA's upper body undressed between getting home from work and going to bed.

91. The evidence of the absence of marks until 24 April 2023 at the earliest is corroborated by the independent evidence of the Maternal Grandmother, Maternal Great Aunt and Paternal Grandmother:

- a) The Maternal Grandmother says that she did not recall any marks when she stood next to the Mother and CA when the nappy was changed on each of 2, 5, 9, 12, 19 and 23 April 2023 [C329/10];
- b) The Maternal Great Aunt says she saw CA having her nappy changed on 23 April 2023 and there were no markings on her tummy or legs [C348/7]; and
- c) The Paternal Grandmother says she saw CA having her nappy changed on 24 April 2023, her arms and legs were exposed and no marks were seen [Z51/1].

92. On this evidence I am satisfied on balance the marks were not evident until either 24 or 25 April 2023 and indeed in their closing submissions the Local Authority accepted there was no evidence of the marks appearing prior to the evening of 24 April.

#### 4: Bruises were inflicted by the Mother and/or Father by the application of force in excess of normal or rough handling

93. Dr Rylance's evidence is:

[E20-E21]

52 CA was [a few weeks] old when she first presented with bruises. These were unexplained in a child

who developmentally was unable to effect bruising herself.

...

Force to cause bruises

55 Children who are relatively immobile rarely have bruises and only then if a clear accident explanation is provided.

...

57 There is no literature source or experimental data which provides information on the force to cause bruising in what are commonly used physical units of force (e.g., Newtons). Paediatric experience demonstrates that bruising does not occur in normal handling or what is sometimes referred to as 'rough handling' in infancy and generally pre-mobile children. It does not appear to occur in common everyday activities like nappy changing, lifting in and out of seats or 'bangs' against cot sides or baths. Even fierce play activity with siblings rarely causes any bruising. Holding tightly or 'throwing up and catching' babies does not cause bruising. The force required to cause that bruising is significantly in excess of normal handling by carers at this age.

94. Dr Rylance considered the parents' explanations; in considering the first mark he said:

82 The mother described: Just before 18:00h on 24.04.23, the father passed CA who was wrapped in a blanket to his mother. He was standing; she was sitting. He was not sure that she had hold of her completely and for a split second it looked as though CA might fall. He grabbed hold of her, more than he usually would, to try and safely put her back in his mum's arms. CA did not stir.

82.1 The force as described in the episode would not be expected to cause any bruising particularly when swaddled in a blanket which would dissipate force.

...

88 In the absence of an explanation, it is more likely than not that this bruise was not caused by an accident.

95. He went on to repeat that evidence in relation to each of the other 5 marks and then addressed the marks collectively:

[E32-E33]

Likely cause of bruises 1-6 considered as a totality.

147 The marks seen on CA are highly likely to be bruises. They would be caused by impact.

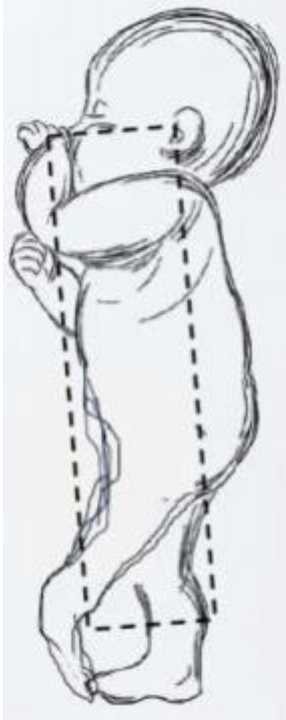
CA was [a few weeks] old and developmentally incapable of causing bruising herself.

...

150 The nature and pattern of the bruising is unusual in my clinical experience and in the literature for both accidental and non-accidental trauma with regard to the shapes of some bruises (1 and 5) and to sites limited to a postero-lateral 'band' extending from shoulder to ankle Figure 75 earlier). This band may be speculative as regards suggesting a particular mechanism approach as to effect this, CA would probably have had to externally rotate her left leg. At her age, a flexed foetal position like the rest of her body would be the norm.

96. Figure 75 is actually a reference to figure 74:

[E23]



97. Dr Rylance continues:

151 Bruises 3 and 5 are linear or have considerable parts that seem 'straight-edged' without there being a specific recognisable impact object cause.

152 The six areas of bruising are extensive in sites affected albeit in 'one plane or band' and in a child of relatively small length and girth.

153 In a child of [this] age presenting with six separate areas of unexplained bruising, an accidental cause is unlikely, and an inflicted cause by an adult more likely. I believe that a separate 'unknown' cause category, not included in either of the two groups above, is small.

154 Notwithstanding the above, and my concerns about the nature of some of the bruising and my inability to be more specific about likely causal impacting objects, inflicted injury by exclusion is the most likely explanation for CA's collection of bruises.

98. And in answer to questions he says:

[E44]

6. On the balance of probabilities is this an inflicted injury?

6.1 If the lesions were bruises and the evidence suggests that they were, on the balance of probabilities it would be an inflicted injury. However, I emphasise the basis upon which I considered the lesions to be bruises as in paragraph 1.10 [i.e. that they did not blanch on examination see [E42/1.10] also noted above]. If the no blanching entry in the medical record

were not confirmed, then much of what I have specifically opined regarding the skin lesion significance would not be sustainable.

...

8. Taken in the round looking at the marks holistically is it possible that we simply cannot tell the causation of the marks to the requisite standard?

8.1 If the marks were bruises - and I would conclude that to be the case if clinicians who saw the marks were to testify that they considered them to be bruises on the basis of clinical test and their experience - then I believe the requisite standard of causation would be met. Otherwise, I would be less than convinced.

99. The Mother's evidence is of nothing untoward until 23 April when CA was taken to see the Maternal Aunt when CA was "noticeably sad" [C71/15] but no marks were seen that evening or on the morning of 24 April 2023. Then on 24 April just before 6pm the Father passed CA to the Paternal Grandmother wrapped in a blanket and:

[C72/16]

...for a split second the Father wasn't sure whether his mum had hold of her completely. It looked like for a split second she was going to fall so he grabbed hold of her, more than he usually would, to try and safely put her in his mum's arms. CA didn't even stir.

Normal night/ evening routine and no noticeable marks on CA.

100. When asked about that in cross-examination by the Local Authority she confirmed, in light of the force Dr Rylance indicated was required, the incident could not have caused bruising.

101. The only other possible explanation proffered by the parents is contained in the police disclosure, in particular a summary of an interview of the Mother on 25 May 2023. At [Z67] she is recorded as saying the Father "said he felt that he may have fallen asleep whilst holding CA, but told the Mother that he woke up instantly and was still holding CA". They were recalled to give oral evidence on this. The Mother said she thought she had told the police the Father "had said he may have fallen asleep whilst holding CA" but thought she had told them "he woke up instantly while still holding CA" although she later went on to say the Father "said he wasn't asleep" and she had a clear recollection of that. The Father denied there was a time when he fell asleep holding CA but conceded there could have been a time when he momentarily closed his eyes and although his evidence was somewhat muddled I think he conceded that at some point he could have closed his eyes and his head could have dropped and then instantly jerked up again and he could not remember when that has occurred or whether it occurred on the night of 24-25 April but was clear that he did not come-to gripping CA. I



cannot come to any clear conclusion on this evidence but note if the Father had fallen asleep briefly it does not appear to explain the marks given he is adamant CA was not dropped and the Mother is adamant she was not told that.

102.The Mother gives written evidence that the normal routine was that she would go to bed at 9pm and the Father would care for CA and usually give the last feed at 1-2am and then come to bed and she would do the feed around 4am and from memory she took over care for CA “in the early hours of the morning” of 25 April 2023 but cannot recall the time of any other nappy change after the evening of 24 April until around 9am on 25 April. She describes noticing marks when changing CA’s nappy on the morning of 25 April after the Father had gone off to work and took the photos referred to above.

103.In her oral evidence she could not remember if she got up when the Father got up and left for work at around 6.30am on 25 April. Said that she remembered waking up and getting CA out of her cot (which was upstairs by the bed) and changing her nappy upstairs, she thought after the Father had gone to work.

104.In cross-examination on behalf of the Father she could remember a conversation with the Father “along the lines” of how he held CA. She was taken to the text message from the Father (within the series referred to above) which said “You said i was to ruth (sic)” and it was suggested it may have meant he felt he had been too rough; she said she did not understand what it meant and had never said to him he had been too rough with CA.

105.In his first statement the Father agreed the content of the Mother’s statement and about the evening of 24 April to morning of 25 April says:

[C131/2]

The Mother went to bed at about 9.00 and I took over at this point feeding and changing her and then settling her in her Moses basket downstairs. When I changed her nappy I saw nothing at all unusual or concerning. I then played on my play station until about 1.00-2.00 and fed her again. I changed her again and took her upstairs and put her in her cot in our bedroom. The Moses basket stays downstairs. I think I woke the Mother up. She is a light sleeper. I then went to bed and slept through until about 6.30. I am a very heavy sleeper. I got up had a shower and a cup of coffee and left for work. I knew nothing about the marks until the Mother sent me a picture via text.

106.I also bear in mind the uncontradicted evidence of the Mother being a light sleeper against her not having been woken by anything untoward in the night which might have been expected if the Father had inflicted injury.

107. By way of general evidence of demeanour the Maternal Grandmother says that on all occasions she saw the parents with CA they “showed confidence in handling CA with warm and gentle affection” [C329/9]. The Maternal Great Aunt’s evidence is that on 6 April 2023 she “did not see either [parent] acting unusually or inappropriately towards CA” [C348/5] and on 23 April 2023 the Mother’s “behaviour was normal and of a calm nature” [C349/8].

108. Finally, I note there is neither evidence of neglectful parenting prior to these marks appearing nor in the course of these proceedings during which the parents have been subject to supervision, regular social work visits and a parenting assessment; in fact the parenting assessment concludes that “CA seems to be the Mother and Father’s priority” [C302] and the assessment was positive. None of the risk factors identified in *Re BR* are present and there appears to be adequate housing, parental finances and a supportive family environment [C301-C303].

### Analysis

109. By way of summary of what is set out above the expert medical evidence that these marks were bruises is dependent on the accuracy of the treating clinicians’ reports of the same. There is no evidence they had considered cutis marmorata. Since the blanching test may be insufficient to exclude cutis marmorata (because it may not appear to blanch) there is a risk of misdiagnosis by the clinicians. The absence of marks a few days post-birth is less consistent with cutis marmorata but does not exclude it. The resolution of the marks is more consistent with cutis marmorata than bruising. The shape of the marks is unusual for bruising. Taken on its own this evidence would be insufficient to satisfy the test the Local Authority have to meet i.e. I could not be satisfied these were bruises on the balance of probabilities.

110. However, I do not approach the question in a vacuum and there are particular problems with the parents’ evidence, most starkly the Father’s text messages suggesting he caused the marks and the absence of a full explanation of what he was talking about or of a conversation thereafter about the same in any of the parents’ witness statements. But against this I weigh the following factors:

- a) There is no clear exculpatory narrative advanced by either parent, their evidence about the post-text message conversation is muddled and imprecise (“messy”) which points away from them having knowledge of the cause they are not prepared to share;
- b) The messages themselves are brief and sent at a time when, on their cases, they had no real idea what had caused the marks and in circumstances where they were new parents and in the Father’s case an inexperienced parent (the Mother was a nursery worker pre-birth);
- c) I remind myself the Father only had two small texted photos of the marks, I have the benefit of larger format photos, a greater number and a more organised arrangement of photos;

- d) Whilst the Father's explanation in his first statement is short and does not mention the specifics of what he now tells the court it is not inconsistent, he says he was "paranoid" and convinced himself he must have done something;
- e) That is also consistent with his mind being put at rest by seeing where the marks were on attendance at hospital; and
- f) It is such an "irrational" thing to think that holding a child in a particular way could cause these extensive marks that having satisfied themselves that was not the cause it is understandable they did not think to mention it to the clinicians.

111. The messages call for an explanation, but the burden remains at all times on the Local Authority. The parents have given an explanation, it is not without any credibility and when that is taken with the equivocal medical evidence, I cannot be satisfied the marks were bruises. It follows I cannot find they were inflicted by the parents.

112. For completeness I will consider the final allegation briefly below.

#### 5: Perpetrator and any other adult present at infliction would have been aware the Child had been hurt

113. Dr Rylance's evidence is:

[E21/62]

Most bruises that remain in or close to the skin will not be painful after the effects of impact which would not usually last for more than a few minutes. These impact effects of bruising relate predominantly to the action and force that causes it. The pain relates to the force of impact, and occasionally in repeated trauma, to fear related to the event. The common reaction of a child under 3y to a blow or sustained pressure leading to bruising would be to cry at the time of each impact.

[E24/81]

An impact force (sustained or short time hit) sufficient to cause the bruise would cause almost all infants of 23 days age to cry.

114. If I had found the marks were bruises and inflicted I would have found the perpetrator would have been aware CA had been hurt. I can go no further than that.

## Conclusion

115. I want to finish with these final comments:

116. Firstly, I acknowledge the deep trauma that these proceedings will have caused to the parents and, through the consequence of these proceedings, to CA as well. They have my sympathy in having to go through what must at times have seemed an endless nightmare. Notwithstanding this their presentation in court was never antagonistic of the process or those who properly probed and tested their evidence. This is to their enormous credit.

117. Notwithstanding the conclusion I have reached I do not criticise the Local Authority for pursuing this application. The marks called for an investigation and it was both necessary and proportionate.

118. In the circumstances the Local Authority are not able to satisfy the test in section 31(2) Children Act 1989 and the application is dismissed.