



Neutral Citation Number: [2016] EWCA Civ 798

Case No: B4/2016/2680

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
FAMILY DIVISION
MRS JUSTICE PAUFFLEY
FD12C00060

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29/07/2016

Before:

THE MASTER OF THE ROLLS
LORD JUSTICE McFARLANE
and
LORD JUSTICE BURNETT

C (A Child)

Jude Bunting (instructed by **Guardian News & Media Ltd & Others**) for the **Appellants**
Jacob Dean (instructed by **London Borough of Sutton**) for the **First Respondent**

Hearing date: 22/07/2016

Approved Judgment

Master of the Rolls:

Introduction

1. The central issue that arises on this appeal is whether the judgment given by Eleanor King J on 30 June 2014 (“the Judgment”) in care proceedings in respect of a child to whom I shall refer as “C” and which were conducted in private and subject to reporting restrictions should be put in the public domain. C is the younger sibling of Ellie Butler. The parents of the two children are Mr Butler and Ms Gray. On 28 October 2013, Ellie died as a result of catastrophic head injuries at the family home.
2. Following her death, Mr Butler was arrested on suspicion of her murder. C was removed from the care of Ms Gray and placed into police protection and care. Public law care proceedings were commenced and thereafter orders were made from time to time prohibiting any publication that would enable C to be identified. The first of these was made by Hogg J on 30 October 2013.
3. In the Judgment, Eleanor King J found that (i) Mr Butler had caused Ellie’s death; (ii) Ms Gray had failed to protect her from Mr Butler; and (iii) C had been the victim of physical and emotional abuse.
4. Following the handing down of the Judgment, Holman J made a further order for reporting restrictions on 11 July 2014. It included a prohibition on publishing or broadcasting any information as to the Judgment. Annexed to the order was an Explanatory Note which stated that a reporting restriction order was necessary (i) to prevent C from being identified and (ii) to ensure that there was a fair trial of Mr Butler and Ms Gray in the criminal proceedings. On 29 July 2014, Eleanor King J made a fresh reporting restriction order. On 14 June 2016, Bodey J discharged the orders of Holman J and Eleanor King J and made a yet further reporting restriction order which made elaborate provision as to which parts of the Judgment and the resulting Order dated 30 June 2014 were permitted to be reported. But the prohibition on reporting which might enable the identity of C to be established was continued.
5. Meanwhile, the criminal trial had been opened on 19 April 2016. On 21 June 2016, Mr Butler was convicted of murder and child cruelty and Ms Gray was convicted of attempting to pervert the course of justice and of child cruelty.
6. On 22 June 2016, seven media organisations applied to have the entirety of the Judgment put into the public domain. On the same day, Pauffley J dismissed the application essentially because of the possibility that disclosure of the contents of the Judgment would prejudice the right of Mr Butler to a fair trial. This right outweighed the public interest in open justice and the applicants’ rights to freedom of expression under article 10 of the European Convention on Human Rights (“the Convention”). I shall consider Pauffley J’s judgment in more detail later in this judgment.
7. At the time of the application, unsurprisingly neither Mr Butler nor Ms Gray had applied to the Court of Appeal Criminal Division (“CACD”) for permission to appeal against their convictions, although Mr Butler had intimated that he intended to do so.
8. The applicants appeal against the decision of Pauffley J with the permission of Burnett LJ.

The relevant law and legal principles

9. The first question is whether Pauffley J had the power to make the order sought by the appellants. She recorded at para 25 of her judgment that Mr Bunting had submitted that she had no such power because there were no “active” proceedings within the meaning of Schedule 1 to the Contempt of Court Act 1981 (“CCA”) for the purpose of the strict liability rule found in section 1. The judge did not rule on that submission. But there were no “active” proceedings, since the criminal proceedings had been concluded. If the power to postpone reporting were to be found in the CCA, it would be in section 4(2). That did not apply in this case because the potential retrial of Mr Butler was not “other proceedings” which were “pending or imminent”; and also because the power to postpone publication in section 4(2) applies to “legal proceedings held in public”. The proceedings before Eleanor King J were not held in public.
10. Before this court, Mr Bunting submits that Pauffley J had jurisdiction to make the order sought under FPR 12.73(1)(b) which provides that, for the purposes of the law relating to contempt of court, information relating to proceedings held in private may be communicated “where the court gives permission”. But as Mr Dean points out, rule 12.73(2) provides that “nothing in this Chapter permits the communication to the public at large, or any section of the public, of any information relating to the proceedings”. It seems to me, therefore, that the power to make the order sought cannot derive from rule 12.73(1).
11. In the alternative, Mr Bunting relies on what MacDonald J said in *H v A (No 2)* [2015] EWHC 2630 (Fam) at para 20:

“The Court of Appeal made clear in *Re C (A Child)* [2015] EWCA Civ 500 at [23] that the decision whether or not to publish the judgment constitutes a case management decision. In my judgment it is open to the court to remove the judgment from the public domain or otherwise make orders restricting its use in light of new evidence or changed circumstances as part of the courts’ case management powers regarding disclosure and the wide powers under FPR 2010 r 4.1(3)(o) to further the overriding objective of ensuring the case is dealt with justly.”
12. I doubt whether the court’s case management powers are a sufficient basis for holding that the power exists. But I am in no doubt that the court does have the power to order the disclosure of part or all of what takes place in private proceedings (including any judgment made by the court during the course of or at end of the proceedings). In my view the court has that power under its inherent jurisdiction. It had that power before the incorporation of the Convention by the Human Rights Act 1998: see *Kent County Council v The Mother, The Father, B* [2004] EWHC 411 (Fam) at paras 83 to 86 where Munby J summarised the relevant jurisprudence. The court continues to have that jurisdiction following the incorporation of the Convention. The domestic and Strasbourg jurisprudence is reflected in the *Practice Guidance (Family Courts: Transparency)* [2014] 1 WLR 230 (“the Practice Guidance”) issued by Sir James Munby P in relation to the publication of judgments in family courts and the Court of Protection. See also per McFarlane LJ in *In Re W (Children) (Care Proceedings: Publicity)* [2016] 4 WLR 39 at paras 32 to 40.

The exercise of the power

13. The Practice Guidance gives helpful guidance as to how the power should be exercised. Para 16 states that permission to publish a judgment should always be given whenever the judge concludes that publication would be in the public interest. Para 17 states where a written judgment relates inter alia to the making or refusal of a final care order:

“the starting point is that permission should be given for the judgment to be published unless there are compelling reasons why the judgment should not be published.”

14. Para 19 states that, in deciding whether and if so when to publish a judgment, the judge should have regard to all the circumstances, including any relevant provision of the Convention such as article 6 (right to a fair trial), article 8 (respect for private and family life) and article 10 (freedom of expression) and the effect of publication on any current or potential proceedings.
15. Mr Bunting submits that article 6 has no application in a case (such as the present) where the criminal proceedings have been concluded. He says that it is irrelevant that the convicted person intends to apply for permission to appeal against his conviction or even that he has been given permission to appeal or that his appeal has been allowed or that a retrial has been ordered. Once the original criminal proceedings have been concluded, article 6 considerations have no part to play in the decision whether to permit publication of any part of the private proceedings until and unless fresh criminal proceedings are commenced.
16. I do not accept that this uncompromising stand is a correct statement of the law. It is inconsistent with the carefully calibrated guidance given in the Practice Guidance which states in terms that the judge should have regard to all the circumstances. It will be a question of fact and degree how serious a risk publication will be in any particular case to the fairness of potential future criminal proceedings.
17. In my view, the more uncertain the prospect of future criminal proceedings, the less weight should be given to the article 6 rights of an individual who may be affected by the publication. And the converse applies too. Thus in a case where a person convicted of a criminal offence has appealed and his appeal has succeeded and a retrial has been ordered, it is of little significance that the formal steps necessary to start the fresh trial have not yet been taken. On the other hand, in a case such as the present where the convicted person has not been given permission to appeal and a retrial is no more than a speculative possibility, the court should usually give little weight to the article 6 rights of a person seeking to oppose the publication of private proceedings. The position may be different if the court is able to make an assessment of the prospects of permission to appeal being granted and the prospects of a successful appeal. But that has not been possible in the present case. Neither Pauffley J nor this court was provided with any material to enable such an assessment to be made.

The judge's approach

18. The judge noted (para 3) that the application was made on the basis that there is a “profound public interest in reporting the story of Ellie’s death, including, in particular, the history of the care proceedings relating to Ellie’s younger sibling”. She accepted that these care proceedings place the Family Court “under a particular spotlight and cry out for public exploration” (para 13). She made the point that, if she acceded to the application, there would be “the most widespread and extensive reporting of the content of [the Judgment]” (para 31). She said: “if there is any potential for a retrial”, the Judgment should not be released into the public domain for the same reasons as “underpinned the decision of Eleanor King J not to release [it] in 2014” (para 32). At para 34 she said:

“There is the potential for prejudice to, even the derailing of, the criminal process. That, to my mind, is manifest. The risk may be, as Mr Bunting suggests, small but the consequences for the criminal process could be incalculable.”

19. Finally, at para 36 she said:

“The arguments in favour of the release of King J’s judgment are powerful and strong. They will remain so. I fully expect that so soon as the criminal appeals’ process is at an end a full, suitably redacted version of the 30th June 2014 Judgment will be published.”

Discussion

20. Mr Butler and Ms Gray have not appeared in person nor have they been represented on the appeal. The court has received a letter from Messrs Bindmans LLP dated 15 July 2016 which asserts that the findings set out in the Judgment have been seriously undermined by evidence heard at the criminal trial. The letter concludes:

“If Mr Butler is successful in his appeal against conviction and a retrial is ordered, the prejudice caused by disclosure of the extensive ruling of Mrs Justice Eleanor King cannot be overcome and Mr Butler will be deprived of a fair trial.”

21. The London Borough of Sutton (“LBS”) has appeared and has been represented by Mr Dean. C’s Guardian has submitted a skeleton argument. Both LBS and the Guardian are neutral on the issue raised by the appeal. Both are concerned to ensure that, if the appeal is allowed, the interests of C are protected by ensuring that the publication of the Judgment does not enable C to be identified.
22. The judge rightly recognised at para 10 of her judgment that open justice is at the heart of our system of justice and vital to the rule of law. As she said, it promotes the rule of law by letting in the light and allowing the public to scrutinise the workings of the law. There is a particular need for the media to act as a public watchdog in care proceedings in the Family Court “because of the intrusion or potential intrusion into family lives of those concerned and what could be a serious interference by the state in family life”.

23. She rightly also recognised that this was a powerful argument in favour of publication. As the Practice Guidance makes clear, permission for the publication should have been given unless there were compelling reasons why not to do so. The Practice Guidance accurately reflects the law.
24. In what follows, like the judge I shall only refer to Mr Butler. So far as I am aware, Ms Gray has not indicated that she is intending to seek leave to appeal. The letter from Bindmans was written on behalf of Mr Butler. In balancing the article 6 rights of Mr Butler against the public interest in open justice and the article 10 rights of the applicants, I am in no doubt that the judge reached the wrong conclusion. If she had made a proper assessment of the risk that there would be a violation of Mr Butler's right to a fair trial, she would have been bound to conclude that the risk was minimal and was plainly outweighed by the countervailing considerations to which I have referred.
25. First, she made no assessment of the likelihood of a retrial. This was not the judge's fault. It is a striking feature of this case that no attempt was made on behalf of Mr Butler to demonstrate that he had real prospects of being granted permission to appeal, still less that any appeal would be likely to succeed. In these circumstances, the judge should have approached the article 6 issue on the basis that there was at best a speculative possibility that there would be a retrial.
26. But the second and decisive reason why the judge reached the wrong conclusion is that, even if there is a retrial, there is no real possibility that the publication of the Judgment will prejudice the rights of Mr Butler to a fair trial. This is clearly demonstrated by both our domestic jurisprudence and the jurisprudence of the ECtHR which are entirely harmonious with each other on this point.
27. Our domestic law is heavily influenced by section 4(2) of the CCA which provides that an order postponing the publication of a report of proceedings can only be made "where it appears to be necessary for avoiding a substantial risk of prejudice to the administration of justice". Such an order should only be made as a "last resort": *R (Press Association) v Cambridge Crown Court* [2013] 1 WLR 1979 per Lord Judge CJ at para 13.
28. In assessing whether there is a "substantial risk of prejudice", it is necessary for the court to have regard to three matters in particular. First, juries "have a passionate and profound belief in, and a commitment to, the right of a defendant to be given a fair trial": *Re B* [2007] EMLR 5 at para 31. The importance of trusting a criminal jury to comply with directions made by the trial judge has been underlined repeatedly. For a recent example, I refer to *Taylor* [2013] UKPC 8 at para 25. Criminal Practice Direction 26G.3 identifies what judges should cover in their opening instructions to jurors. This includes that the jury should try the case only on the evidence and no other material. In particular, juries are directed to make no internet searches relating to the trial and to avoid discussing the case with anyone outside their number, including on social media.
29. Secondly, broadcasting authorities and newspaper editors should be trusted to fulfil their responsibilities accurately to inform the public of court proceedings, and to exercise sensible judgment about the publication of comment which may interfere with the administration of justice: *Re B* at para 25.

30. Thirdly, the “fade factor” that applies in news cases. The “staying power of news reports is very limited”: Judicial College Guidance on *Reporting Restrictions in the Criminal Courts*, revised in May 2016 at p 29. The significance of this factor may have reduced a little in view of the staying power of the internet. But in my view, it remains a highly relevant factor.
31. It is clear from the Strasbourg jurisprudence that, even if there were a retrial of Mr Butler, his article 6 rights would not outweigh the article 10 rights of the applicants.
32. In *Beggs v United Kingdom* (app. No. 15499/10), the ECtHR adopted an approach which is entirely consonant with that adopted in our domestic jurisprudence: see paras 122 to 129. It noted, in particular, in cases concerning the fairness of criminal trials, the importance of directions given to juries. In that case, there had been a “virulent and prejudicial press and media campaign” against the applicant before his criminal trial took place. The complaint that the impugned publications had influenced the jury was declared inadmissible for a number of reasons. These included that in his directions the judge had warned the jury to disregard the prejudicial material and that it was reasonable to assume that the jury would follow the directions given.
33. *Abdulla Ali v United Kingdom* (App. no. 30971/12) was a similar case. There was what was described as “an avalanche of objectionable material” in prominent position in both broadsheet and tabloid newspapers. The court said at para 89 that a direction to the jury to disregard extraneous material “will usually be adequate to ensure the fairness of the trial, even if there has been a highly prejudicial campaign...”. At para 91, the court said that “it will be rare that prejudicial pre-trial publicity will make a fair trial at some future date impossible.” The applicant had not pointed to a single case where the ECtHR had found a violation of article 6 on account of adverse publicity affecting the fairness of the trial itself.
34. The judge acknowledged that, in the event of a retrial, the risk of prejudice to its fairness occasioned by the publication of the Judgment was “small”. In my view, it was so negligible that it should have been given little or no weight in the balancing exercise. The judge failed to take into account (i) the fact that the jury would be directed to ignore anything they read or heard outside the trial and that it should and would be trusted to follow the directions given by the trial judge; (ii) the fact that broadcasting and newspaper editors should be trusted to behave responsibly; and (iii) the fade factor (it would be many months and possibly more than a year before a retrial would take place). If she had properly taken these factors into account, she would have been bound to conclude that the Judgment should be put into the public domain. Mr Bunting makes the further valid point that it is difficult to see how the publication of the Judgment could create a separate substantial risk of prejudice given that much of what appears in it is already in the public domain. But I do not need to examine this point in detail since the Judgment should be put into the public domain for the reasons that I have already given, subject to the redactions necessary to protect the interests of C. These redactions have been the subject of further submissions and the Court has made an Order determining the way in which the Judgment should be redacted.

Conclusion

35. For all these reasons, I would allow this appeal and permit the Judgment to be published with the approved redactions.

Lord Justice McFarlane:

36. I agree.

Lord Justice Burnett:

37. I also agree.



Neutral Citation Number: [2014] EWHC 15 (Fam)

Case No: FD10C00060

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/06/2014

This version of the Judgment may be published following the order of the Court of Appeal in R (G) a Child, when allowing the appeal on 29th July 2016 from the order of Patten J. The reference below in the list of representation to "Merton" was a typographical error not noticed by the parties in June 2014.

Jane Burnett
29th July 2016

Before :

MRS JUSTICE ELEANOR KING

Between:

The London Borough of Sutton

Applicant

- and -

Jennifer Gray

1st Respondent

-and-

Ben Butler

2nd Respondent

and

[Redacted Name]

3rd Respondent

Alex Verdan QC (instructed by London Borough of ~~Merton~~ & Sutton) for the Applicant
Michael Edwards (instructed by London Borough of ~~Merton~~ & Sutton) for the Applicant
Paul Storey QC (instructed by Imran Khan & Partners) for the 1st Respondent
Alexa- Storey Rea (instructed by Imran Khan & Partners) for the 1st Respondent
William Tyler QC (instructed by Fisher Meredith) for the 2nd Respondent
Hannah Markham (instructed by Fisher Meredith) for the 2nd Respondent
Frank Feehan QC (instructed by Covent Garden Family Law) for the 3rd Respondent
Pauline Troy (instructed by Covent Garden Family Law) for the 3rd Respondent

Hearing dates: 6th June 2014 to 30th June 2014

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
MRS. JUSTICE ELEANOR KING DBE



No part of the redacted parts of
this judgment should be published
Jan Burnett

Mrs. Justice Eleanor King :

1. These are care proceedings brought by the London borough of Sutton in relation to [REDACTED] of Jennie Gray (dob 17 October 1979) and Ben Butler (dob 14 November 1979). The parents are not married, although the father has parental responsibility for [REDACTED].
2. The proceedings arise following the death of [REDACTED] full sister Emily May Gray-Butler dob 30 December 2006 who died from fatal head injuries on the 28 October 2013 aged 5years, 10moths.
3. The father has been charged with the murder of Ellie and awaits his trial, the mother has been charged with perverting the course of justice.

Procedural History

4. Ellie was the subject of earlier care proceedings issued by the local authority on the 5 March 2007 she having suffered injuries on the 7 February 2007, (burns) and again on 15 February 2007 (subdural haemorrhage, retinal haemorrhage and encephalopathy).
5. It was suspected by the treating physicians that the injuries were non accidental and that the injuries sustained on 15 February were caused as a consequence of the father having shaken Ellie whilst she was in his sole care.
6. Medical evidence was obtained and following a trial His Honour Judge Atkins made findings on 28 January 2008 that the father had caused non accidental injuries to Ellie and that the mother had failed to protect her. On 14 August 2008 Ellie was made subject to a Special Guardianship Order in favour of her maternal grandparents.
7. On 24 March 2009 the father was convicted of causing grievous bodily harm to Ellie in relation to the head injuries. The father appealed and on 17 June 2010 the conviction was quashed by the Court of Appeal in *R v Henderson and others* [2010] EWCA Crim 1269.
8. Meanwhile, [REDACTED], the subject of these proceedings, was born. The mother concealed her pregnancy from children's services. She relocated to Portsmouth where she lived under a false name. On 2 March 2010 the mother was arrested on suspicion of child neglect and [REDACTED] was removed from her care into police protection and [REDACTED]. When [REDACTED] was removed from [REDACTED] mother's care [REDACTED] was found to be of normal weight and development and clean and well cared for.
9. Care proceedings were issued in relation to [REDACTED] on 22 March 2010, initially [REDACTED] was accommodated under s20 Children Act 1989 and subsequently an interim care order made on 15 November 2011. During the course of these care proceedings in relation to [REDACTED], an application was made to reopen the original fact finding judgment of HHJ Atkins in the light of the father's successful appeal against conviction. The application was granted and the care case was transferred to Hogg J.

10. Extensive evidence was heard during the course of the re hearing in relation to the injuries that Ellie had sustained in February 2007. A number of experts who had given evidence at the original fact finding gave evidence at the rehearing; in addition a number of new experts were called some of whom had been instructed during the course of the appeal to the Criminal Division of the Court of Appeal including Professor Fleming, consultant paediatrician.
11. The burns sustained by Ellie whilst in the sole care of her father were dismissed by Hogg J as having been caused by naïve parenting on the father's part. In relation to the head injuries, at the time of the trial no unified diagnosis could be put forward by the various experts. The type of retinal haemorrhages were unusual for a shaking case, primarily because of their rapid resolution, however even if the retinal haemorrhages did not "fit" the normal pattern of injury seen in cases where children have been shaken, the subdural haemorrhages and the encephalopathy still required an explanation. There was a debate between the experts as to whether the subdural haemorrhages were all acute with darker patches being a mixture of CSF and acute blood consequent upon an arachnoid tear, or whether, alternatively the darker areas on the scan represented chronic blood dating back to birth with the acute blood representing re bleeds into old chronic subdural haemorrhages.
12. Neither theory could have accounted for the frank acute blood with no darker areas capable of being chronic blood which it was agreed to be present in the posterior fossa.
13. Professor Fleming put forward a theory that a combination of reflux and some minor obstruction to the larynx caused by a cyst (and identified by ENT experts instructed in the case), could have resulted in Ellie stopping breathing. The action taken by the father in lifting Ellie rapidly out of a car seat and putting her onto a bed could have caused the subdural haemorrhages and the encephalopathy, whilst the retinal haemorrhages would have been caused by the rapid increase in intra cranial pressure brought about by the apparent life threatening event (ALTE) when she stopped breathing.
14. This brief summary of the issues does not do credit to the lengthy, detailed and careful judgment given by Mrs. Justice Hogg on 6 July 2012 at the conclusion of which she exonerated the father in respect of any physical abuse of Ellie, and the mother in relation to allegations that she had failed to protect her. The learned judge, having heard the medical evidence and formed a highly favourable view of, in particular, the father in evidence, set aside the findings made against both parents. It followed that the threshold was not satisfied and care the placement applications were dismissed.
15. On 9 November 2012 Ellie and [REDACTED] were returned to the care of their parents.
16. On 28 October 2013 Ellie was admitted to hospital having suffered a significant head injury from which she died later the same day. Ellie had again been in the sole care of the father immediately prior to her collapse. The mother was at work. [REDACTED] was taken into police protection the same evening [REDACTED]. On being received into care it became apparent that [REDACTED] had suffered injuries, namely bruising to [REDACTED] back. The mother refused to consent to [REDACTED] being medically examined and consequently an interim order was made on 29 October 2013 to allow for [REDACTED] to be examined.

17. The head injury comprised a large scalp haematoma, a complex parieto-occipital skull fracture, subdural subarachnoid haemorrhage and bleeding around the spinal cord and optic nerves. The unanimous medical opinion is that the injuries resulted from one or more severe blunt impacts; with either the head striking a rigid surface or by [REDACTED] head being hit with a heavy blunt instrument.
18. In addition to the skull fracture, an old partially healed fracture of the scapula, inflicted some 2 – 4 weeks before Ellie's death on 28 October 2013, was discovered at post mortem. This fracture too would have been the result of substantial blunt force trauma to her back.
19. The father has wholly failed to engage with or to co-operate with the care proceedings. He has been in contempt of court time and again as he has failed to comply with court orders. He has throughout refused to file a statement setting out an account of how he says Ellie came to sustain the head injuries that killed her whilst in his sole care. In those circumstances the court made an order that he should give his evidence in chief on the first day before any other witnesses were called. The intention was that the parties would have an account from him of the events of 28 October 2013, and the experts would have an opportunity to consider any accidental explanation he might seek to give. The mother initially co-operated (in that she filed a statement), but more recently for extended periods of time declined to attend at her solicitor's offices or for consultation with her leading counsel and has refused to allow her counsel to give the court even simple uncontroversial information.
20. On Friday 6th June the parents made an application that these proceedings, listed to start on 9 June for twenty days, should be adjourned until after the conclusion of the criminal trial which is due to start, possibly in January 2015, but more likely March 2015 and is listed for 12 weeks. That application was refused.
21. On Tuesday 10 June, the court was informed by Mr. Tyler QC on behalf of the father that if required to go into the witness box, (whether it be on Wednesday 11 June or at any other stage during the course of the trial), he would decline to answer questions. I adjourned the case until Wednesday 11 June the date when, according to the witness template, the father was to give his evidence. I indicated that I would formally be requiring him, as a compellable witness, to go into the witness box on Wednesday morning.
22. On Wednesday 11 June immediately before being called into the witness box, the court was informed that the father intended to play no further part in the proceedings. He would not oppose the making of a care order and he would not oppose the making by the court of the findings set out in the local authority threshold document.
23. In summary the local authority seeks findings that:
- i) the father had inflicted the head injury and the fractured scapula on Ellie
 - ii) that [REDACTED] had sustained a non-accidental bruising to [REDACTED] back whilst in the care of the parents and
 - iii) that the mother was subject to extensive domestic violence.

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24. I asked Mr Tyler QC on behalf of the father 2 questions:
- i) Does the father accept that he caused Ellie's death?
 - ii) Does he accept that the injuries to ██████ back were caused non accidentally by him?

To each question the answer was 'No' and when the mother was asked whether she accepted that the father was responsible for Ellie's injuries and that ██████ had non accidental injuries caused by the father, she too said 'No'.

25. The mother immediately followed suit indicating that she too would play no further part in the proceedings. In relation to her the local authority seek a finding that she failed to protect Ellie in particular in relation to an alleged delay in seeking help for her and in relation to helping the father "clear up" after Ellie had been injured.
26. In the absence of any admissions by the parents in relation to any part of the threshold document, it has been necessary for the court to give a narrative judgment drawn from the evidence contained in some 24 lever arch files of written evidence.

The Law

27. The relevant law to be applied is well established.

In summary:

- (1) The burden of proof lies on the Local Authority.
- (2) The standard of proof is the simple balance of probabilities, neither more nor less (*Re B (Children)(Care Proceedings:Standard of Proof)* UKHL 35 [2008] 2 FLR 141).
- (3) The same test applies when seeking to determine the identity of the perpetrator of proven non-accidental harm; the seriousness of the allegation does not affect the standard of proof.
- (4) The inherent probabilities or improbabilities are simply something to be taken into account, where relevant, when deciding where the truth lies.
- (5) Whilst the court should endeavour to identify the perpetrator, it should not strain unduly to do so.
- (6) The court will bear in mind that a witness may lie for many reasons, such as shame, panic, fear or distress. The fact that he or she has lied about one thing does not mean that they have lied about everything (*R v Lucas* [1981] QB 720).

- (7) Medical evidence needs to be considered in the context of all the evidence and against the backdrop of all the circumstances, often called the broad canvas.
- (8) A parent is a compellable witness. Where a parent declines to give oral evidence, the court should usually draw the inference that the allegations made against him or her are true *Re O(Care Proceedings:Evidence)* [2004] 1 FLR 161

Medical Evidence

28. The medical evidence was unanimous and it is therefore unnecessary to address the detail of the injuries as contained in the voluminous medical reports.
29. On 2 June 2014 a number of experts who had filed reports in these proceedings namely Dr Cary (consultant pathologist) Dr Al-Sarraj, (consultant paediatric neuropathologist) Dr McCarthy (consultant paediatric ophthalmic pathologist) and Professor Risdon (the forensic pathologist who carried out the post-mortem on Ellie) attended the experts meeting in relation to Ellie's injuries
30. The questions put to the experts at the meeting were formulated in part by those representing the parents. Although they have chosen not to cross-examine the experts, they have tested the evidence of the experts to that extent. The issues and the responses can be summarised in the following way:
 - i) *Force*: a significant amount of force would have been required in order to have caused the skull fracture, contusions and subdural haematoma.
 - ii) *Short fall?*: it is very unlikely that a short fall, such as from a stool, could have caused the injuries in particular the experts felt, because of the nature, extent and complexity of the skull fracture and, put in the context of accidents in the home, fatalities from simple falls are either rare or simply do not occur.
 - iii) *Cause of the head injury – fracture*: severe impact either a blunt instrument brought into contact with the head or forceful impact by swinging the child against a surface. The injury to the spinal cord has been caused by movement by the head and neck so, overall, the injuries have been caused by impact with movement of the head.
 - iv) *Fracture of the scapular*: these are extremely uncommon, this was caused by a forceful blow of a similar type to the head ie either with an implement or against a surface. The child would be distressed and the carers would be aware something had happened.
 - v) *The 2007 incident*: would not make the child more susceptible to injury on this occasion.
31. The police obtained evidence from Dr Uglow, consultant Orthopaedic surgeon in relation to the fracture of the scapula. He deals with the scapula. Such fractures he

said, in children, are associated with high energy causation, often associated with multiple injuries and are recognised as being associated with abuse. Bruising on the surface of the skin is inevitable and there would be disuse of the associated arm due to pain. Dr Uglow explained that pain is a particular feature of fractures to the scapula as the muscles are contained in a tight fascial envelope which contains the swelling and increases the pressure which results in considerable pain.

32. The treatment for such an injury is to avoid pressure, use a sling for two to three weeks with oral medication on a regular basis. Ellie received no treatment and, significantly, was kept off school between 1 – 8 October a period within the timeframe for the injury.

Background and events leading up to Ellie's death:

33. The parents met in March 2006 and the mother became pregnant with Ellie almost immediately, she was born on 30 December 2006. The parents were not living together but were in some form of intimate relationship and it was in the context of the mother having taken the infant Ellie to the father's flat to stay overnight on her own with him, that she suffered burns to her fingers on 7 February 2007 and then again, more seriously; encephalopathy, and subdural and retinal haemorrhages on 15 February 2007.
34. Although the original fact finding hearing was heard by HHJ Atkins in January 2008 it was not until March 2009 that the father was convicted of s20 GBH and not until June 2010 that the conviction was overturned on appeal. In the meantime the mother had given birth in secret to [REDACTED], been tracked down and [REDACTED] received into care.
35. During the intervening period between the original proceedings and the rehearing held by Hogg J on 6 July 2012, the parents continued in a relationship. Each was involved in petty offending; shoplifting and benefit fraud and the father with a number of minor offences of violence. With the benefit of hindsight however there were some other more sinister matters of concern such as the mother attending at hospital on a number of occasions with unexplained lacerations, made more chilling by a Google search found on her computer *stabbed in leg during pregnancy*, and another Google search dated September 2008 refers to *Treatment of Broken noses*.
36. What can be extrapolated about the relationship both during the period prior to the hearing in front of Hogg J and continuing, comes from letters and documents found on the hard drive on the computer a number of which, whilst undated, clearly relate to this period – for example a letter from the father to the mother says *Please try harder with your mouth as it is a trigger for me... I had hope you would have learnt by now* and from the mother *Please don't let Ben leave me, but make him learn to like me, stop violence and make him want me*.
37. Throughout 2012 there are numerous diary entries from the mother referring to her and the father being *off our faces?* Clearly a reference to rendering themselves incapable as a result of drink or drugs. Most of the diary entries are sexual; they do not record a balanced, equal, loving sexual relationship but rather is a running log of the mother's desperate efforts to please the father by using sexual advances of various

types. The picture is one of violence and abuse coupled with a regular excess of drink and or drugs.

The 2007 Injuries

38. Following Ellie's death Professor Risdon Consultant Paediatric Forensic Pathologist carried out a post mortem on 31 October 2013. As is routine in such cases Ellie's brain was sent to a neuro-pathologist in this case Dr. Al-Sarraj to report. Dr. Al-Sarraj's report is dated 24 January 2014.

39. In his report Dr. Al-Sarraj expresses his opinion that there is an old head injury saying:

"The old head injury is represented by a thin film of old extradural haematoma and subdural haematoma in the dura over the brain, old contusions in the left temporal lobe, right temporal lobe and right frontal lobe (many of them mixed with new contusions), patches of old subarachnoid haemorrhage over the brain and old subdural haematoma in the thoracic and lumbar segments of spinal cord.

There is activation of microglia cells with a few collections forming microglia nodules in different parts of the brain which are consistent with damage to brain tissue due to old head injury with reactive changes. This would also have caused mild degeneration of white matter (including downward and descending cortico-spinal tracts in pyramids and the spinal cord)"

In relation to a mechanism for this old head injury Dr. Al-Sarraj said:

"The presence of old contusions in the temporal lobe and evidence of old subdural haematoma in the spinal cord also suggests similar mechanism of impact with or without additional forces of hyperextension and hyperflexion of the head and neck regions."

40. On 2 June 2014 the experts meeting was held in order for them to consider areas of agreement and disagreement in relation to the head injuries which caused Ellie's death. During the course of the meeting the experts had cause to consider the earlier injuries in the context of a question being posed to the experts as to whether the original injury had created any sort of susceptibility in Ellie to bleed.

41. Each of the experts including Dr. Cary and Dr. Al-Sarraj (who had been involved in the original proceedings), were of the view that Dr. Al-Sarraj's findings at post mortem established that the 2007 head injury sustained by Ellie was an impact type injury. The view was universally shared including Dr. McCarthy in relation to the ophthalmic evidence who commented that by the fact that there were not more extensive eye changes in the 2007 injuries fits more with an impact type injury than a

shaking injury which, he observed, had been the emphasis at the trial in front of Hogg J.

42. Following the court being informed that the parents no longer sought to oppose the making of a care order, the Guardian, supported by the Local Authority made an application, resisted by the parents, that I should reopen the findings made by Hogg J whereby the parents were wholly exonerated in relation to the 2007 injuries.
43. The President considered the principles which apply to reconsideration of findings of fact by way of fresh hearing in the matter of *Re ZZ, AZ, FA, ARA, AA and ASA (Children)* [2014] EWFC 9. In formulating the guidance he gave in *Re ZZ*, the President considered in particular three cases: in *Re B (minors care proceedings: issue estoppel)* [1997] Fam 117 (Re B); *Birmingham City Council v Hand others* [2005] EWHC2885 (Fam) (Birmingham No1); *Birmingham City Council v Hand others* [2006] EWHC 3062 (Fam), 95 VMLR 159 (Birmingham No2). Following the President's decision the approach to applications such as that now made in relation to the 2007 injuries was confirmed to be as follows:
 - a) The Court considers whether it will permit any reconsideration or review of or challenge to the earlier finding
 - b) If it does the second stage relates to and determines the extent of the investigations and evidence concerning the review
 - c) The third stage is the hearing of the review and it is at this stage that the court decides the extent to which the earlier finding stands.
44. In relation to the first stage of considering whether to permit a review of the earlier finding Hale J (as she then was) identified in *Re B* a number of factors to be borne in mind by the court when deciding whether or not to allow an issue of fact to be retried:
 - "i) *The court will wish to balance the underlying considerations of public policy:*
 - a) *that there is a public interest to an end to litigation*
.....
 - b) *that any delay in determining the outcome of the case is likely to be prejudicial to the welfare of the individual child*
 - c) *that the welfare of any child is unlikely to be served by relying upon determinations of fact which turn out to have been erroneous*
 - d) *the court's discretion like the rules of issue estoppel "must be applied so as to work justice and not injustice"*
 - ii) *The court may well wish to consider the importance of the previous findings in the context of the current proceedings. If they are so important that they are bound to affect the outcome*

one way or another, the court may be more willing to consider a rehearing than if they are of a lesser peripheral significance

- iii) *Above all, the court is bound to want to consider whether there is any reason to think that a rehearing of the issue will result in any different finding from the earlier trial. By this I mean something more than the mere fact that the different judges might on occasions reach different conclusions upon the same evidence. No doubt we would all be reluctant to allow a matter to be re litigated on that basis alone.*

As the President put it in *Re ZZ* [para 33]

“one does not get beyond the first stage unless there is some real reason to believe that the earlier findings require revisiting. Mere speculation and hope are not enough. There must be solid grounds for challenge.I would be disinclined to set the test any higher.”

45. I heard detailed submissions in relation to this and the local authority and Children’s Guardian went to a considerable amount of work in order to ascertain whether the original experts, and the experts in these proceedings, could be made available to give evidence in the time originally set aside for this finding of fact hearing. Having heard submissions I decided against allowing the application and, in reaching that decision must pay tribute in particular to the first class skeleton argument prepared on behalf of the father by Mr Tyler QC.
46. No party seeks a full judgment in relation to my decision that the first stage of the test is not satisfied but I simply indicate that my reasons include:
- i) That revised findings would have no impact on the outcome of the proceedings
- ii) The local authority said, (and Guardian agreed), at the beginning of the trial that *The LA is not seeking to reopen the historic case. Whilst it considers that there may well now be medical evidence to support a case that Ellie’s initial head trauma was likely to have been as the result of inflicted injury, the LA does not believe that such a course is necessary or proportionate given the facts of the case*
- iii) Notwithstanding this approach taken by the local authority and the Guardian at the commencement of the trial, I was, and remain, acutely conscious of the importance to [REDACTED] of having the clearest possible narrative with which [REDACTED] therapists can work to help [REDACTED] come to terms with everything that has happened to [REDACTED] in [REDACTED] short life. It is obvious that if, far from being the victim of a miscarriage of justice, the father had inflicted the injuries upon Ellie and thereafter successfully lied about them for years and by doing so subjected the family to wholesale disruption and the strain of endless proceedings (both criminal and family), then *if* that is the case it is in [REDACTED] interests for that to be done.

- iv) The Local Authority and Guardian submitted that in a little less than two weeks, the experts, old and new, could be instructed and attend court to give evidence. I simply do not accept that that could be achieved in such a way as to give the father and mother a fair opportunity to challenge the evidence - even if it could be put together in time; the old and new experts would have to 'read in' to the old evidence as well as considering the new evidence, there would have to be some form of experts meeting. Importantly it is clear from various emails sent by a number of the experts from whom the police have sought views, that this is not, (as it may have appeared following the experts meeting of 6 June), a case where the post mortem 'reveals all'. In other words the court has not got before it a situation whereby Dr Al Sarraj's dissection of the brain revealed incontrovertible physical evidence which provides a unified diagnosis which would, almost inevitably, lead the experts, (old and new) to conclude that the proper unified explanation for the 2007 injuries is one of a non-accidental head injury. That is not the case and it is likely that there would still be some disputed medical evidence, in particular, (as before) in relation to the ophthalmic evidence and whether a 'benign' explanation for the blood in the posterior fossa is still open as was found by Hogg J.
- v) That being said I must however be clear in saying that I disagree with the submission of Mr Tyler that there are no *'solid grounds for challenge'*, I think there are, and that a reassessment of the background issues revealed by the text messages together with the findings by Dr Al-Sarraj about contusions in the brain indicative of an earlier impact injury are highly relevant and were not available to Mrs Justice Hogg. Dr Al-Sarraj's post mortem findings amount to important medical information not known (for obvious reasons) to the experts or the court at the trial in front of Hogg J. I do not however accept the local authority submission that the case could be made ready and numerous medical experts be in a position to give evidence in a matter of days; to attempt to do so would be, in effect to ambush the parents in circumstances where the local authority, not days before had said such an exercise is neither necessary nor proportionate and will have no impact on the outcome of the case.
- vi) The fact that the parents and in particularly the father have been wilfully uncooperative and that he is in contempt of court by his refusal to give evidence, does not mean that they are any the less entitled to a properly prepared and conducted trial if the court is to allow the re opening of the findings in relation to the 2007 findings.
47. Whilst I am not bound by the earlier approach of the local authority as to the necessity of reopening the 2007 findings, I take the view that to conduct a fair trial in relation to the 2007 injuries would require an adjournment and substantial case management, including the filing of extensive medical evidence by a number of experts. In my judgment given that the exercise would have no impact upon the outcome for [REDACTED] such an exercise would be disproportionate in all the circumstances.

48. The fact that I decided in the exercise of my discretion not to allow the findings of Hogg J to be reopened does not prevent me from making a number of observations in the light of the evidence now available and in particular the text traffic, in the context of how it impacts upon the matters this court has to consider and in particular the dynamics of the household I am examining. It would not have been surprising had Hogg J had available the information that I have about the violent and abusive relationship as between the mother and father if she had regarded the "broad canvas" against which she considered the medical evidence as being of a very different hue:
- i) Both parents gave evidence categorically denying domestic violence or verbal abuse between them, the mother blaming botox for bruising to her face when domestic violence was suspected.
 - ii) The parents denied any ongoing relationship between them until just before they gave evidence to Hogg J in 2012. Both admitted to persistently lying to professionals about the nature and extent of their relationship and to concealing [REDACTED] birth and thereafter paternity,

Hogg J, denied as she was of the text messages and an understanding of the violence endemic in the relationship, found the evidence of the parents to be impressive and truthful. In fact what is now obvious is that both the mother and father were being untruthful about the nature and quality of their relationship.

49. This is relevant not least in assessing the nature and extent of the mother's failure to protect both her children from the father. The mother had an opportunity to separate from the father at this time; instead she sought the return of the children to their joint care knowing that she was a victim of chronic domestic violence and that the father was routinely violent, volatile and aggressive to her. She knew that she would be exposing her children to such behaviour and, despite having the assistance of an Independent Social Worker, maintained the façade that all was well and that she and the father could provide the children with a smooth transition and a safe and secure home with them.
50. On 9 November 2012 the children were returned to the care of their parents. The parents were not frank about the extent of their relationship prior to the children's rehabilitation to them, but it seems likely that the father had hardly lived with either of the children and had not had any meaningful contact with [REDACTED] since [REDACTED] was a baby. Ellie had been away from her mother since 15 February 2007, that is to say all but the first three months of her life; she had been living with her grandparents since she was 7 months old. [REDACTED]
51. Even without the evidence now available showing, beyond peradventure, that this was a highly dysfunctional and abusive relationship, this was, on any view, a very challenging rehabilitation programme, albeit carried out with the assistance of an Independent Social Worker. When they gave evidence to Hogg J the parents had been unclear about their future as a couple, their relationship was not settled and at the time of the trial they had no suitable accommodation in which to live with the children. The children had never lived together or effectively with their parents. Ellie in particular, aged nearly 5, was removed from her home and her grandparents who were her psychological parents.

52. The cracks were beginning to show as early as January 2013. The mother was pregnant again and was admitted to hospital with a bleeding, she lied to the hospital saying she was a single Mum whose husband worked in the North and she had no one to look after [REDACTED] who came with her to hospital.
53. There were worries that the mother had been subjected to violence as the consultant had noted bruising on the mother's thighs; she denied she was scared of the father or had been subjected to DV. She said she had given false details to the hospital as she wished the matter to be confidential. Her assertion to the doctors on 8 January 2013 that she had not told the father she was pregnant but that he would be supportive when she did, was ill-founded as a text message from him on 16 January 2013 reads: *im disg that urpreg again and think its irresponsible and shocking...had engh of ur weight and looks..and the trble u bring.*
54. Shortly after this the mother had a termination. By this time (March 2013) the father's resentment at having to care for the children whilst the mother worked was revealing itself through text messages for example: *I don't want this life... as for kids your dream not mine and I how dare you leave them on me... I never wanted this and then I am left with them*
55. The mother herself was struggling with the children; on the 8 March and on 12 March she sent the following texts to the father

".....I dragged [REDACTED] upstairs for being fucking bad. [REDACTED] was crying. I only shut the door when they both sat to eat....."

"OMG you are joking. I just tell [REDACTED] is having what we say and threaten bed and smacked bottom and [REDACTED] shuts up....."

56. The mother was readmitted to hospital some weeks later, again with bleeding on 16 March the mother texted the father saying:

"I am here for obvious reasons. No mention of preg so U have gone too far"

on 17 March:

F-M: Hosp for hitting someone. Nice to be told.U lied said nearly home half an hour ago

M-F Oh U poor thing. Your poor hand because U hit someone. Me I just killed my unborn baby

And on 19 March

F-M keep going onabt dead babies u mentak cunt... you ain't dying so fuck off"

".....you decide if you want [REDACTED] and Ellie or not.....you decide because you have left them too much.....you decide or I'll go ISW cos this is not right....."

And later that evening:

"Fuck you you cunt nobody leaves me with kids.....nobody expects me to look after kids I didn't want....."

57. On 22 March 2013 the mother sent the following text to the father:

"This is the last night I text you and got some things to say. U have destroyed my entire life and I have nothing no one. U R doing all these evil things because U don't like me or fancy me!. That isn't a reason when kids are involved. We should tell the trust that I faked names as U came to hospital twice and attacked me twice while I was in hospital, but I covered up for U again. I was hiding and scared and bleedings badtoo and ill. If U hadn't done what U done another time to mei wouldn't have gone to hospital but u did. U did bad and knew I was pregnant/miscarrying at the time and bleeding very badly"

58. M was readmitted to hospital on 27 March again with rectal and vaginal bleeding, again lying about her identity and saying she had no children. When the surgeon tried to broach her home situation and explore his suspicion of a traumatic, ie sexually abusive cause of the bleeding, she refused to engage. The mother was discharged on 4 April 2013. There is some evidence to support the surgeon's suspicion contained in a long text written by the mother on 12 September 2013 when the mother was in hospital with, it would appear a problem with a wisdom tooth she said

"U really show your hate towards me to a deep deep level. I should hate you for all the eight years of terrible stuff way worse than anything u say

Won't ever be able to get pregnant again, u saw to that why do you have to lie and become a victim when I have medical evidence"

59. On 3 July 2013 the father appeared at the Bromley Magistrates court for dishonestly claiming housing benefit for a period of two years between 2011 and 2013. As a consequence of the offending his benefits were stopped and the family were entirely dependant upon the mother's benefits/salary. A remarkably insightful pre-sentence report was prepared whereby an analysis of risk was undertaken, the conclusion was as follows:

"Mr Butler has a number of convictions for offences involving violence, five between 2004 and 2010. Since 2011, he has committed a further offence involving assault on a neighbour. There is clearly a pattern of impulsive violence committed whether within the context of impulsive actions or when in conflict with others.... I assess Mr Butler to pose medium risk of serious harm to members of the public and staff, specifically when he is under personal stress."

Ellie and [REDACTED]

60. Life cannot have been easy for Ellie. It should be remembered that, unlike a child in foster care who is always made aware that he or she will be moving on either home or to a permanent placement, Ellie was in a permanent placement. She was living with her Grandparents under a Special Guardianship Order, a form of order only made where it is anticipated that a child will live with the Special Guardian for the remainder of his or her childhood. It follows that the Grandparents, quite properly would treat Ellie accordingly and Ellie would have no reason to believe other than that she would always live with her grandparents. The court has no direct evidence but it would not be surprising if Ellie was unsettled and somewhat challenging when she first moved to live with her parents, not only had she left her grandparents but she was used to being the only child.
61. Regardless of whether that was the case, to move from the tranquillity and calm of her grandparents to the toxic and abusive atmosphere, (as I find it to have been), of her parents must have been deeply disturbing to this little girl. Not only does the court have the texts and letters but it also has an audio clip captured when the father thought the recorder was off capturing him speaking to the mother on the telephone in the most foul and abusive way in front of Ellie.
62. The court also has direct evidence as to how the children were viewed and treated in this house, the evidence is found in texts, written notes of the mother's and in things [REDACTED] has said [REDACTED] since [REDACTED] came into care. They present distressing and shocking reading to even the most case-hardened judge or practitioner.
63. The first reference is a long note written by the Mother headed *Ellie's Behaviour*. When considering the content of this note it should be put in context – Ellie was only a little over 5 when it was written:

Ellie's Behaviour

(1) Lying - Constantly lies and even for no reason

- *If you ask her a question she defaults to lying then admitting she lied*
- *She has said Ben said things to me and vice versa and tried to cause trouble*

(2) Not doing as she is told

- *She changes what she is doing then goes back to doing something she has been corrected for – she does not do things properly*

(3) Does not listen or pay attention and you are constantly having to say her name

(4) Constantly answers back when you correct or talk to her

(5) Argues with [REDACTED] and tries to tell [REDACTED] what to do

(6) Constantly manipulative and won't be helpful:

Does not dress or pull trousers up or put socks on

(7) Feel you can't trust her and constantly watch her

(8) Not asked or does not seem bothered about grandparents until bedtime when she isn't allowed her own way

(9) She acts like a child prior to her years – sits on floor in supermarket does not listen

(10) We feel she is aware that she is doing this

64. One of the disturbing things revealed in the text messages was that the mother repeatedly sought to ingratiate herself with the father in a pitiable and wretched way at the expense of her children; for example on 8 March 2013:

"I am sorry I woke U. I had call from recruitment woman and had to go in front room from kitchen so U couldn't hear constant talking. I only opened it then and when I dragged [REDACTED] upstairs for being fuxking bad. [REDACTED] was crying. I only shut the door when they both sat to eat. I would rather jump off a sky scraper than wake U and get this. I know how tired U R and tried to do everything I could to help u"

And on 23 August;

"...I really do want you more than anything I ever wanted even my kids..."

65. If the mother was incapable of putting the children first, the father spoke of the children in a shocking way – 12 March 2013 about [REDACTED]:

[REDACTED] being an abs cunt.. I want to knw y [REDACTED] pissrd [REDACTED] in front of dad and sat there sulking whole fucking time... No mre i shit u not"

...and about Ellie a few days later:

ur mental and prob r to blame for ellie....i 4on't cate abt u u abs bitchI

66. During the course of May and June 2013 Ellie was seen on a number of occasions by a number of people with bruising to her face: on 5 May contact took place with the grandparents, Ellie had a large bruise on her face which was covered over with face paints, on 22 June 2013 the grandparents went to the school fete – Ellie looked bedraggled her hair needed to be washed and she had an old mark on her face.
67. On 26 June 2013 Ellie was seen by the GP with bruising to the centre of her forehead and a graze and bruising across the bridge of her nose and around the left eye. The father gave an account of her having fallen on the stairs at home, which account was accepted by the GP.

68. On 14 October (14 days before her death) Ellie went to school having missed the previous nine days. Her teacher noticed that she had a plaster on her forehead and had a bruised bloodshot eye. Ellie said she was chasing her new dog and had fallen on to the stairs, a similar excuse as given in June to account for facial bruising.
69. Using the texts as a window into the dynamics of the household it is clear that things were very unpleasant in the household during July and August.

F : M [REDACTED] weed [REDACTED] went in ellies room when told not to and trashed [REDACTED] room so [REDACTED] having nothing

M replied:

"God knows who u will see next then mr bl X Babes 18on't be nice to Ellie to show [REDACTED] as they R both on boot camp x

"Get them to bed in boot camp and we can have time together

x x x

F: nutcase kid is acting up so so bad..jen its so bad emb still going on and hit herself

70. Meanwhile the father's abusive behaviour to the mother continued unabated:

Take ellie walk streets u aint coming here..il maim u bitch

So u know il walk to school... Il then come to sutton if u don't do wot i want im bashing u... Its sad u never legrn cos il never love or want u way u do me until u changed... How u want this when u know wot i think of u ..il b at school

Go die u prick.bitch il do u

(9)On the mother's hard drive is a note on 17 August which reads:

I am with a bully man who beats me and tells me I am ugly and fat and hurts me all the time urgent magic speall to stop his hate.

...and on 22 August another specific reference to violence

Was nice sexy and good and then U nutted me like a bloke

71. The mother is seen constantly trying to placate the father whilst coping with the children: 5 August:

I swear i wasn't being loud and I firstly said hurry up to [REDACTED] and that U were calling me, then I said that they were causing me trouble. I am fed up with them not doing what isay

when i say, so i mentioned U, I didn't do anything to U. I was rushing to put them to bed as they 19on't get in bed by themselves. Pls 19on't push me away, it was not meant how U thought at all. It was said to make them hurry nothing else. I wont use that again to hurry them. I am sorry. I just wanted to come back down and they were messing around. U haven't dealt with it for a while

72. On the 8 August a note on the mother's hard drive says: *urgent magic spell to make him ne sorry for hurting me and I wish I was dead because he hurts me so much and nobody really care about me*
73. The father's abusive attitude was not directed exclusively towards Ellie and the mother in August he said in relation to [REDACTED]:

"That kid [REDACTED] getting worse jen... [REDACTED] 19on't listen has bit of attitude and is [REDACTED].pisses me off 19on't let [REDACTED] sit near ellie

Although it seems that Ellie had to bear the brunt of his anger:

23 August 2013

"... Sick of this ellie thing too when i give u ant chance and u 19on't learn amd them u end up out ..ue her and i

hate u both... U 19on't c wot i think and neva chsnge d it

74. A birthday party was held for [REDACTED] at the family home on [REDACTED] the grandparents were allowed to come. This tea party is an example of how the camera can lie... I have watched a video of [REDACTED] with Ellie at the party playing pass the parcel, all seems entirely happy and normal (save that Ellie's face is again bruised and [REDACTED] face is scratched), the reality was very different. The grandfather gave the police an account of father being verbally abusive to him and, as mentioned above, after the video had been intended to be turned off, the father can be heard abusing the mother on the phone.

September/October 2013

75. On 3 September 2013 the new school term had began. Neither child went, [REDACTED] Ellie did not go back to school until 9 September. The parent's lied to the school saying that they had been away on holiday. I find that on the balance of probabilities Ellie was kept at home and the school lied to because she had been injured by the father and she could

- not go to school until the worst of the bruising still visible at the birthday party had resolved.
76. The school asked for medical evidence for the absence. The mother rang the school furious, saying the evidence had been submitted and the teacher had put it back in Ellie's bag. This was clearly a lie as Ellie had not been to the doctor and there is no evidence to suggest that she was in fact ill.
 77. The Head Teacher Mr Clerk tried to arrange a meeting with the parents to no avail, the father however came into school on 24 October, 4 days before Ellie's death and when asked for the medical evidence became so confrontational and aggressive that the head teacher brought the meeting to an end and, when a further meeting was arranged to see both parents, Mr Clark selected a day when he knew Police would be on the premises.
 78. ██████ finally started nursery on 11 September but ██████ attendance was erratic only 16 percent between then and mid October and ██████ did not attend nursery at all for the 4 weeks beginning with 23 September.
 79. The mother was clearly unhappy in the employment she had at that time. Money however was very tight and the father was not working. The texts show references to the bailiffs and the father urging the mother not to lose her job as they need the money.
 80. On 11 September 2013 the mother was in hospital again, this time it would seem with a problem with her teeth. The texts show that she had delayed getting treatment as the father was worried that she would lose her job if she had time off. She was kept in over night and returned to work on 13 September, over those few days the mother sent a number of deeply distressed texts to the father. Between 19 September and 30 September 2013 the father sent three texts to the mother at work each of which were deeply unpleasant about ██████.
 81. On 20 September 2013 the mother went for an interview for a job as a graphic designer at Octopus Investments. She got the job and started work on 14 October. This meant that the father continued to be responsible for sole care of the ██████ whilst the mother was out at work.
 82. On the 29 September 2013 the mother google searched *Treatment of Broken Noses*.
 83. Ellie missed school for the period 1 – 8 October. On the 8 October the mother rang the surgery asking for a note to cover the period. The letter from the GP records that Ellie had not been seen by a doctor during the relevant period. Another example of the mother being complicit in covering up for the father.
 84. On 14 October 2013 the mother started her new job with Octopus Investments. It must have been quite impossible for her to have concentrated and settled in to her new work; on 17 October she was subjected to a battery of foul and abusive text messages from the father; some 37 between 06.38 and 17.15 with a number of unpleasant remarks relating to the fact that it was the mother's birthday that day: *I am not fake so don't care it's ur birthday... little freak....* Certainly the evidence from Octopus Investments was that her work was unsatisfactory.

85. The following day 18 October the mother went to work with a bump/egg shaped swelling on her head. Against the backdrop of the events the day before, it must be a strong possibility that the mother had been assaulted by the father when she got home. When the mother was asked about the injury by a work colleague the mother said that she had slipped on some steps the day before. That day followed a similar pattern as the one before, with the father sending appalling vituperative texts to the mother; one simply had the one word: *Die* and another said *Take Ellie walk streets u aint coming here...il maim u bitch* and another *If u don't do wot I want im bashing u ...* and *Ur mth has got to much whacked everytime now I hear it.*
86. The pent, and not so pent, up violence spills from the page and on 19 October the father sent this frightening text:

"I cant cope anymre...woke up in a rage already... been in place so many times.... My hands r shgaking....One more mistake im going to lose it... ur pushing my hate...."

87. Bizarrely, on 24 October the father took Ellie to the GP asking for a referral for her to have her ears pinned back as he considered her ears to be too big. There is no other evidence in the papers as to where this came from, but I observe that the father is constantly and offensively critical about the mother's appearance and it would seem he was assuming a similarly critical approach to Ellie.
88. The situation at home was spilling over into the mother's work life; on a number of occasions the mother was seen having tense, intense, personal phone calls and on 25 October she didn't go into work, lying saying that the father's father had been taken seriously ill.
89. Sometime in the 2 – 4 weeks before 28 October Ellie's left scapula was fractured as a consequence of an impact of some sort. It cannot be said with precision when this serious injury was inflicted upon her, but she went to school on Monday 30 September and was then kept away until the 14 October when she returned to school with the plaster on her forehead and the bruised, bloodshot eye already noted above.
90. The last contact the children had with the outside world was on Sunday 27 October 2013. Half term had begun so there was no school the next day. In her statement of 25 November 2013 the mother describes the day as follows:

"I went to the High Street in Sutton and met my parents at the shopping centre. They gave the [REDACTED] a hug and bought them a bag of sweets each. They often bought the children treats. Ellie said she wanted a McDonalds and so we all went. I think we were out for 2 hours at McDonalds, had something to eat, chatted round the table, the children did some drawing and my dad got a coffee and bought the children an ice cream. My parents brought a cake with them for the children.

The children and I came home for the afternoon. I remember both [REDACTED] going to their rooms to play as usual and watch TV. They had TVs in their rooms. I was using [REDACTED] TV in my and Ben's bedroom.

I said goodnight to them both and I generally put them to bed. Sometimes I read them a story or helped them clear their rooms. Their bedtime varies a little bit and this night, we let the [REDACTED] stay up a bit later, as it was half term."

91. Mr Neal Gray, the maternal grandfather painted a very different picture to the police when a background interview was conducted on 2 December 2013 asked how the [REDACTED] were he said:

"Couldn't believe the state of them. They had all odd clothes on, they looked as though they had been dragged through a hedgerow and all unkempt, even Jennie looked unkempt. And I said do you mind me taking photos of Ellie and [REDACTED]... and she said "Yeas carry on" she said "I don't care anymore" and she said "I don't like my photo being taken but I don't care anymore and she just looked as though she'd lost it you know.

92. Mr Gray said that Ellie had a big bruise on her forehead and a scratch down her face in the middle. [REDACTED] had a bruise as well. Given the state of her relationship with the father, it is hardly surprising that the mother was saying that she *didn't care anymore*.
93. Mr Gray spoke of being in McDonalds for 45 minutes, not 2 hours, after which the mother said she had to cut the visit short, (the grandparents had expected a visit of an hour), the mother said they had to go shopping and meet people. During the time they were there the mother's phone kept ringing, he presumed it was the father as he *always did that*
94. As the children were saying good bye, Mr Gray describes Ellie saying that she *loved her Nanna and Graddad and missed them and wanted to come home*. Jennie, he said, said *Come on we haven't got time for this* and just pulled the kids and marched off. That was the last time Mr and Mrs Gray saw Ellie alive.
95. I accept the evidence of the grandfather and find that by October 2013 the mother was at the end of her tether; she was subjected to violence and ever more abusive and unpleasant texts. The father seemed determined to end the relationship and she was desperate not to lose him. The children were not being cared for properly; I accept they were dirty and unkempt and they too were subject to violence at the hands of their father. Ellie by then has been hit with such force that her shoulder blade (scapula) had been broken, and I am satisfied that the bruising seen on her face by her grandfather was caused as a result of being hit by her father. The bruises must have been relatively fresh as the GP had not seen anything untoward when Ellie was taken to the GP about having her ears pinned back on 24 October, three days previously.

28 October 2013

96. On 28 October 2013 London woke to the widespread disruption caused by St. Jude's storm which had hit the city overnight. The mother left for work and, in common with many other people, had significantly to vary her route that day. At 10.38 she sent the father a text saying *hi babes I'm just walking from Blackfriars to work*.

Loads of people about, I called work and they said people going in etc so couldn't take the day off xxx.

97. At 10.45 the mother arrived at work. At 11.20 she sent another text to the father saying *lots of people at work and busy! X miss you*. At 11.30 she sent another text saying *hope u ok*. At midday the managing director of the company talked to the mother about some poor quality work.
98. Things appeared to be relatively normal until at least 12.27 when the mother texted father saying *thinking about a nice chilli xx*. Sometime between 12.30 and 1 o'clock a work colleague, Victoria Harris, saw the mother making a telephone call. Miss Harris saw the mother on the telephone with her hand over her mouth looking agitated. Miss Harris said that she appeared not to want people to hear her conversation that it appeared to be a secret conversation and that *something was just not right I cannot say more than that*. At 12.47 the mother left the office without telling anyone where she was going, she simply *gathered up her things and walked out* At 12.49 she was seen leaving her work premises at 20 Old Bailey; her subsequent movements have been pieced together by the police analysing and putting together CCTV footage.
99. The mother is recorded in a noticeable rush, moving faster than the people around her. She had a mobile phone in her left hand and a large handbag over her shoulder. The mother is wearing a blue shirt. The mother hailed a taxi and black cab driver Derek Greenwood pulled in. Mr. Greenwood gave the following account:
- "I was driving down Ludgate Hill westbound when I saw a woman flagging me down on the pavement. She was by the junction with the Old Bailey. I drove past her and did a "u" turn and came back to her. By this time she was in the middle of the road. She appeared quite desperate to get a cab as she was waving her arms about and had an appearance of a stressed face. I stopped by the side of the road and she walked across to me. She asked me how much it would be to Sutton. I told her I didn't really know. She said "can you take me". I was just about to say no because I didn't want to go all the way out to Sutton but she said "can you take me, my child is really ill". She looked worried and I said I would."*
100. The subsequent journey in the cab took about an hour and 20 minutes. During the course of the journey the mother received a telephone call which seemed to make her agitated. Mr. Greenwood heard the words *you're joking* and then either *you've gone where* or *you've done what*.
101. At the end of the journey the mother paid the cab driver £50.00 in cash, a substantial sum for a household in economic distress. The mother arrived at the family home at about 13.50 or a little after. At 14.13 the mother sent a work colleague a text saying that she had had to go home as she was feeling *very unwell*.
102. Meanwhile the father was at home with the two children. As he has refused to file a statement in these proceedings and has given "*no comment*" interviews to the police, the court has only the account he gave the hospital of the events which took place

between the mother leaving the house at 9am and her arriving back at the house shortly before 1400. The father said that he had last seen Ellie at 11.30am when he gave her a jam sandwich; on his own account therefore this 5 year old had been left alone in her bedroom with no lunch and no one checking on her for over three hours.

103. The father rang his close friend Iain Hudson who returned his call at 13.49. At 13.51 the father sent a text to Iain Hudson. The mother's account of the events of the morning is contained in the statement that she filed pursuant to an order of this court and dated 25 November 2013. I am entirely satisfied that the contents of that statement are a complete fabrication, designed solely for the purpose of protecting the father. The mother said:

I decided I would probably go home at some point as no one was really in work. [in direct contradiction to the text already referred to] I texted Ben a few times to say I was ok and had arrived at work ok as he had been worried about the storm and if I would be ok getting to work. He replied a short while afterwards and said that he had been sleeping. He texted to say he would like it if I cooked a chilli for dinner that evening. I spoke to Ben not long before I left work and all seemed fine.

I felt I could not do much work as not many people had arrived and I thought it would be nice to spend the day with the [REDACTED] and Ben seeing as they were on half term. I noticed that it would be difficult for me to get home by train and tube and got a taxi instead from Ludgate Hill. The reason I got a taxi despite getting public transport to work is there had been problems getting to work, weather was still bad and I was also not feeling too well.

104. In relation to the fact that she had told the taxi driver that her child was seriously ill, the mother denied having said that, saying that she herself was feeling a bit groggy and that she had told Mr Greenwood that she needed to get home as she was not feeling too well. I accept the evidence of Mr Greenwood.
105. The mother's statement describes her arrival back at the house. The layout of the house was such that [REDACTED] and Ellie's rooms were at entry level and the kitchen and the parents' bedroom are downstairs. The mother said that as she passed Ellie's room she thought she heard her playing and noise coming from her room of a DVD, she went straight down to the kitchen not going into either [REDACTED] bedrooms, simply calling out 'hello' to both father and the children. The mother described going down to the bedroom taking off her coat, shirt and boots and sending the text to her boss at 14.13, she said in her statement that whilst she was feeling groggy, she was well enough to work but had not wished to be at work when the [REDACTED] were on half term and no one else had really made the effort to go into work (another lie contradicted by the text traffic).
106. The mother said that she went into the kitchen with the father and [REDACTED] and the father said *lets have some cake*. [REDACTED], she said, started laughing and said "yes" to cake, so the mother got out plates and cut four pieces. The parents called up to Ellie but she did not answer and [REDACTED] went upstairs to get her. The mother describes hearing

- ██████ saying: *Ellie wake up, Ellie wake up.* The mother went up the stairs to see what was keeping them and was met by ██████ saying that Ellie would not wake up.
107. The mother then describes going into Ellie's room and seeing the wardrobe door open. When she moved the wardrobe door Ellie was lying on her back *her legs were not lying straight and her arms looked bent one more than the other.* The mother describes dropping to the floor and screaming *Ellie.* The father called an ambulance. The call to the ambulance took place at 14.46, at least 45 minutes after the mother arrived home.
108. In my judgment what in fact happened in the ¼ hour or so between the mother getting back and the ambulance being called was far more sinister, and was spent by the mother and father instead of seeking help for their child, doing all they could to disguise the fact that Ellie had been the victim of an assault at the hands of her father.
109. Lucy Jackson lived in the maisonette on top of the maisonette of the parents at 14 Westover Close. Miss Jackson referred in her statement to there having been constant arguments between the parents with the father shouting and the mother trying to reason with him. On 28 October 2013 at about 14.30 she heard what sounded like a cross between a cry and a scream coming from the parents' home; it was a child's cry and sounded like the person was scared. Daniel Holland "Miss Jackson's partner" also heard sounds of a disturbance in the parent's home at about the same time.
110. Another neighbour Elaine Winston saw the father between 14.30 and 14.40. He was walking in the direction of his house. He had with him the family Jack Russell puppy. He made some observation about the weather to Miss Winston which was unusual as the father would not ordinarily have spoken to her. About five minutes later she looked out of her window and again saw the father with the dog walking down the slope towards the stairs that lead to the walkways. Ten minutes or so later the first response vehicle arrived on the scene. It seems clear therefore that the father left the house between the mother's return and the ambulance being called.
111. The first person to arrive after the 999 call was the paramedic team leader Sarah Hardy. The mother was carrying out CPR; Miss Hardy noticed that Ellie's hands feet and face were blue and that her hands were cold to touch. When Miss Hardy initially looked at Ellie there appeared to be no obvious cause of injury and it was not until Ellie was put into the ambulance that another paramedic felt the back of her head and the large boggy injury to the back of her head was discovered, accordingly the destination of the ambulance was changed in order to take ██████ to St. Georges Hospital and their major trauma unit. *Ellie* *typographical error*
112. Inevitably there is a measure of confusion about what happened in this period. A number of the paramedics believe that the mother gave an account of Ellie having been in, or on, the bed and of her having moved her onto the floor to carry out CPR. There is no evidence as to whom this was allegedly said. Miss Robson, another paramedic commented on the strangeness of the way Ellie was lying completely straight with her arms down her sides and straight legs which does not tie in with the description given by the mother.
113. Ms. Robson took Ellie's temperature and the thermo scan did not register a temperature despite trying on a number of occasions, eventually a recording of "low"

was shown which indicates a temperature of below 20 degrees C. To put such a low temperature in context; severe hypothermia records at below 28 degrees C. This reading would tie in with a number of the paramedics commenting on Ellie's blueness and the coldness of her body.

114. The thermometer used has subsequently been checked and is in good working order. The only conclusion therefore is that by the time the ambulance was called and attended Ellie had been in extremis for a sufficient length of time for her body temperature to have dropped to the low level recorded. This ties in with my finding that the father had caused Ellie's head injury by the time he rang the mother at work shortly before 12.47.
115. During the course of the attempts at resuscitation, an emergency care assistant Marcin Gmack saw, as he walked through the entrance to the bedroom a small children's table flying through the air. He said he could clearly see that one of the table's legs was damaged already and bent at an angle different to the others. He could see that it was damaged before it landed on the floor.
116. The mother, understandably deeply distressed, accompanied Ellie to the hospital in an ambulance. By this time it was 15.49. The paramedics having seen the nature of Ellie's injuries had already alerted the police. The father followed on with another paramedic arriving at the hospital at 15.55.
117. At 16.01 Ellie was pronounced dead.
118. At 21.20 the father was arrested at the hospital for suspected murder. At 22.20 [REDACTED] was taken into police protection and into the care of [REDACTED].
119. The following day the police were told by a neighbour that her ten year old niece had seen the father the day before walking towards the bins with a large number of carrier bags. The police subsequently recovered seven carrier bags from the bins. The carrier bags contained blood stained clothing, kitchen roll rubber gloves and a towel, as well as torn up paper which appeared to come from a diary containing sexual references to the father and also references to Ellie.
120. In due course the pink broken table leg from the table in Ellie's bedroom was recovered from the house. A full forensic investigation took place at the house:
121. Mr. Bell the forensic scientist concluded that
 1. Blood from Ellie had been deposited on the sofa cushions in sufficient quantity to create flows of blood down the front edge of the cushions. That blood from Ellie was on tissue paper and a pillow in addition, a bleeding Ellie or an object wet with her blood, had come into contact with a pink table leg.
 2. The mother, bleeding or an object wet with her blood had dripped on the floor of Ellie's bedroom into the hallway into the bathroom and onto the edge of the bath. She had expired blood, or there had been an impact to a bleeding mother, or an object wet with her blood, leaving blood on the downstairs toilet wall cabinet. There was blood from the mother on the

washing machine and in the kitchen, the blue shirt the mother had been wearing to work had been washed and was still in the washing machine. The mother subsequently lied about wearing that shirt but it is clearly visible from the CCTV footage examined subsequently.

3. There had been at least one impact to a bleeding father, or an object wet with his blood, or the father had expired blood creating the fine spots of blood on the right sleeve of his white shirt. (found in one of the bags disposed of in the bins)
122. I am satisfied so that I am sure that Ellie died as a result of the father either hitting her on the back of the head with the leg of the child's table, or swinging her with such violence that her head came so forcefully into contact with the table leg that the leg broke and she sustained the skull fracture from which she died.
 123. The picture presented by the toxicology evidence is quite horrifying; in trying to work out why the mother's blood was found in Ellie's bedroom, the bathroom and the downstairs toilet, the court must resist descending into the realms of speculation. The court can however conclude that this was not blood left over from some earlier violent incident, this was fresh blood on items of clothing, kitchen roll and the like which the father felt it necessary to get rid of the very day that Ellie died by distributing it round various bins on the estate.
 124. The likelihood is that there was some violent incident in Ellie's bedroom during which the mother and the father bled, the mother thereafter cleaning herself up in the bathroom. Whether such violence as between the mother and father took place, the mother having found the moribund Ellie upon her return from work, is known only by the mother and father.
 125. Ellie was at some stage bleeding in the sitting room. It is safe to conclude she was moved within the curtilage of the house after she was injured. What is clear, and I find, is that the mother went home expecting to find Ellie 'very ill' as indeed she was and that there was thereafter a significant delay of 45 minutes or so before an ambulance was called. I am satisfied that regardless of whether there was some violent altercation between the parents at that time, the time was used to clean the place up and for the father to dispose of incriminating, blood-soaked clothing and for the mother to clean herself up and change and wash her shirt. Had the blood related to an earlier incident of violence or was from some accident there would have been no need to delay calling an ambulance and no need to dispose of the items in various bins on the estate. One can only guess how frightening the whole incident was for [REDACTED] who was in the house throughout.
- [REDACTED]
126. [REDACTED] placed [REDACTED] with [REDACTED] on the evening of 2 October 2013; the [REDACTED] saw that [REDACTED] had suffered injuries to [REDACTED] back. The mother was asked, but refused, to consent to [REDACTED] being medically examined. As a consequence I made an interim care order on 29 October 2013 with a direction that [REDACTED] should be medically examined and photographs taken immediately.

127. ██████ was examined by Dr. Fitzpatrick on 30 October. Dr. Fitzpatrick is the only person to have given oral evidence in the proceedings. He saw:
- a) Dark red scabbed abrasion over the sacrum measuring 3cm long by approximately 2mm wide
 - b) An area of brown green bruising on the left buttock with brown dots.
128. Dr. Fitzpatrick said that the injuries represent forceful contact with an object, the injuries were serious, representing significant trauma in an unusual place. He said they would have been very significant events to have caused the marks which formed a pattern. There was a pattern on each buttock and the contact would have had to have been forceful to break the blood vessels under the skin to show the level of bruising. These were, he said, *significant bruises which you don't usually see on any child and there is no history which is important from a child protection point of view.*
129. On behalf of the father, Dr. Fitzpatrick was shown photographs of a toy "Peppa Pig House" it being put to him that it may have been that the marks may have been caused by ██████ sitting on or falling against the toy. Dr. Fitzpatrick disagreed.
130. Dr. Fitzpatrick saw ██████ only two days after Ellie's death and noted ██████ distressed and unusual presentation.
131. In these care proceedings a second opinion was sought in relation to ██████ injuries and a report was prepared upon the joint instructions of the parties by Dr. Michael Coren paediatrician. Dr. Coren concluded that the marks were most likely to be non-accidental injuries. He noted the impression of parallel linearity to the marks at the top of the left buttock raising the possibility of contact with a horizontally shaped object approximately one centimetre wide *the whole collection he said represented very significant and definite trauma.* ██████, he said may have been struck on more than one occasion by a hard object and it was possible that some of the injury may have been related to friction, for example if ██████ had been pulled along a carpet.
132. Unbeknownst to the court and the parties in these proceedings, the police had also obtained their own expert Dr. Ehrhardt whose report was disclosed into these proceedings. Dr. Ehrhardt expressed the opinion that ██████ had been hit hard with an implement, several times causing the pattern of bruising which he believed had been inflicted by an implement, possibly a belt.
133. A short experts meeting was conducted by telephone on 3 June 2014 attended by Dr. Coren and Dr. Fitzpatrick this meeting took matters no further other than to confirm that it was impossible to date the injuries from looking at them.
134. I have recently been given copies of the police photographs of these injuries which show significant damage to this little ██████ I am satisfied so that I am sure that these injuries were inflicted upon ██████, they were not caused by accident. Given the difficulties in dating the injuries, it is not possible to say when they occurred, which inevitably creates difficulties identifying the perpetrator.

135. Looking however at the totality of the evidence, and in particular the fact that the father was, in my judgment, both routinely violent to the children and the children were regularly in his sole care whilst the mother was at work, I am satisfied on the balance of probabilities that it was the father who inflicted the injuries. In reaching that conclusion, I do not rule out the possibility that the mother was present when the injuries were inflicted upon [REDACTED] given her wholesale failure to protect her children. Given the complete absence of a history to explain these injuries, it would not be right for me to make any findings as to the mother's state of knowledge save to say that she must have been aware of the bruising when she dressed and undressed [REDACTED].
136. As touched upon earlier in this judgment, [REDACTED] is a deeply traumatised little [REDACTED]. [REDACTED] is receiving regular therapy but there is a long way to go and at present it is felt by the local authority and the Guardian that [REDACTED] needs to stay where [REDACTED] is, with [REDACTED] excellent [REDACTED], and to continue living in that therapeutic environment. [REDACTED]
137. No one involved with this case can do other than have compassion for the maternal grandparents. It goes without saying that they have nothing about which to reproach themselves; they offered and gave Ellie a loving home when she needed it and, following the conclusion of the care proceedings in front of Mrs Justice Hogg, responsibly, although with understandable difficulty, co-operated with the rehabilitation process. Thereafter they did all they could to maintain contact with the children, even when it meant being subjected to abuse or having arrangements cancelled at short notice. The grandparents still have more to face; the criminal trial and the entire attendant and inevitable publicity is yet to come.
138. Understandably they have felt quite unable to put themselves forward as carers for [REDACTED] or even, at present, to have contact with [REDACTED]. I hope that as time passes and perhaps once the criminal trial is over, they may feel able to become part of [REDACTED] life in some way or another.
139. The [REDACTED] with whom [REDACTED] lives has kept a detailed log of things that [REDACTED] has said since [REDACTED] went to live with [REDACTED] in October 2013. There are a number of themes:
- a) That [REDACTED] is bad [REDACTED] was really bad at mummy and daddy's house and [REDACTED] got smacks
 - b) That when [REDACTED] 'weed' or 'pooed' [REDACTED] pants, [REDACTED] head was put down the toilet and the toilet flushed
 - c) Daddy really shouted at Mummy and made her cry, when daddy smacked mummy she cried
 - d) 'my house' is a 'bad' house
 - e) [REDACTED] speaks of the father hurting Ellie and of smacking [REDACTED] lots of times and how he hits [REDACTED] mummy and makes her cry

140. The police have carried out a large number of ABE interviews for the criminal proceedings. The local authority's do not rely upon them and I make no further reference to their contents. I have however read the [REDACTED] meticulously kept logs and I am satisfied that, as [REDACTED] settles more and more with [REDACTED], [REDACTED] is speaking the truth when [REDACTED] describes [REDACTED] father hitting [REDACTED] mother and making [REDACTED] cry and of [REDACTED] and Ellie being smacked 'lots'; what [REDACTED] describes all ties in with the parent's own 'accounts' as heard through the medium of the texts. Particularly distressing is [REDACTED] perception of [REDACTED] as 'bad' and of [REDACTED] hitting [REDACTED] and, on occasion, lashing out at other people.
141. [REDACTED] is having regular therapy and the [REDACTED] is being given guidance as to how to help [REDACTED] to have a healthier self image and to move away from a perception that violence is simply a routine part of life.

Conclusions

(A) Conclusions as to the relationship between the parents.

142. I unhesitatingly conclude:

- i) The mother has been the victim of domestic violence of the most serious type, including physical and psychological brutality and, I strongly suspect, but make no specific finding, in relation also to sexual abuse.
- ii) The mother is completely in the thrall of the father. I have no doubt that she loves [REDACTED] and loved Ellie, but she was/ and is so dominated and controlled by the father that she has been incapable of defying him, separating from him or protecting her children from him.
- iii) As a consequence the mother became part of a household whereby the expectations of behaviour by these very young children were impossible for them to achieve and it is clear from the texts that she too endorsed and enforced the *boot camp* approach to child care.
- iv) Even now the mother is as much in the power of the father as she ever was. I had hoped that when the text messages were disclosed by the police into these proceedings that, given the opportunity to take advice, and knowing she was physically safe as the father was by then remanded in custody for the murder of Ellie, the mother might now seek help to extricate herself from the relationship - for her own sake, but particularly for [REDACTED]. I gave Mr Storey and his team most of a day for them to take instructions following the disclosure of the texts; unfortunately, far from there being any movement or distancing of the mother from the father, and despite the overwhelming evidence the father killed Ellie, she continues to exhibit her unqualified support of him in the most deliberate and obvious way:
 - a) She visits him at prison several times each week, a long, difficult and expensive journey
 - b) During the course of the proceedings she has been seen blowing kisses to him when he has been brought up from the cells

- c) The mother's approach to the case is entirely driven by the father: she supported his application that the case should be adjourned until the conclusion of the criminal trial, she has 'walked away' from [REDACTED], accepting she would have no further part in [REDACTED] life, even though that need not necessarily have been part of the local authority care plan had she separated.

Finally she took no further part in the trial from the moment the father indicated that he would not contest the care order, immediately adopting the same course.

- d) During the course of submissions I asked an innocuous question about the mother's work history, the purpose being only to clarify the chronology. She refused to allow Mr Storey to give the court the information
- e) Even at the conclusion of the submissions when the father took exception to a submission made by Mr Verdan QC and caused a disturbance that meant he had to be taken down to the cells (after which he refused to come up again), the mother left the building without telling her Counsel and did not return.
- f) Today, for judgment, the father refused to get on to the prison van. The mother attended in compliance with the court's order but refused to come into court.

143. It is not hard to see how such a state of affairs has come to pass, the father has throughout these proceedings, sought to manipulate the court for his own ends and it is easy to see how the controlling behaviour he has exhibited during the case is replicated in a home environment.

144. This case presents a particularly stark example of the pernicious nature of domestic violence. The mother is clearly an articulate intelligent woman. I have read a great deal that she has written; often it is well written and thoughtful. She has ability and throughout the time the children lived at home, she was in skilled employment supporting the family financially, and yet her overwhelming obsession with a man who treated her and her children with violence and contempt has been the dominating focus of her life for the last 8 years, at appalling cost to her, but most of all to Ellie and [REDACTED]

B: Ellie's death

145. I am satisfied so that I am sure that the father inflicted the head injury which led to Ellie's death and, on the balance of probabilities, that he caused the fractured scapula 2 – 4 weeks prior to her death.

146. In my judgment the father's actions should not on any level be compared with those tragic cases where an exhausted parent has a momentary loss of self control and shakes a baby with tragic results. I am satisfied that Ellie and [REDACTED] were routinely smacked and shouted at, humiliated and demeaned. They were kept away from school or nursery and their physical care was deteriorating. As is revealed in the text

messages in the weeks leading up to Ellie's death, the father became more and more angry and frustrated about his relationship with the mother and resentful at having to look after the children. During this time the level of violence to which Ellie and [REDACTED] were subjected escalated, first to the fractured scapula and ultimately to the brutal assault which killed Ellie. [REDACTED] too was beaten in the days leading up to Ellie's death, leaving the marks seen on [REDACTED] back upon [REDACTED] reception into care.

147. As everything was falling apart in the last weeks of Ellie's life, I am satisfied that the children were being neglected in a more general way as was observed by the grandparents, they were unkempt and grubby. Why were they still in their pyjamas at 2 o'clock in the afternoon and why hadn't they had any lunch? I am satisfied that it signified far more than a relaxation of house rules during half term.

C. [REDACTED]

148. I find that the father inflicted the injury seen on [REDACTED] back and bottom on the day [REDACTED] was admitted to care, probably with a belt.
149. Further [REDACTED] has suffered emotional harm of a most serious type. Only the father knows whether [REDACTED] saw the final assault on Ellie on the 28 October, but [REDACTED] definitely saw Ellie moribund and was unable to *wake her up*. [REDACTED] suffered daily emotional abuse, the way the father (and often the mother) spoke about [REDACTED] and, (I have no doubt,) to [REDACTED] was cruel and has left [REDACTED], believing [REDACTED] is a bad person and that violence is an integral part of day to day life.
150. If [REDACTED] is to have any hope of growing into a well adjusted adult with sufficient self esteem to ensure that [REDACTED] does not follow [REDACTED] mother's path in seeking out dominating and controlling [REDACTED], [REDACTED] will have to have therapy for many years to come. [REDACTED] will carry the emotional scars for the rest of [REDACTED] life.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Jan Burnett
29th July 2016