Neutral Citation Number: [2024] EWCA Civ 1590

Case No: CA-2024-002204 / CA-2024-002219

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE CENTRAL FAMILY COURT
HHJ MARIN
ZC23C50247

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/12/2024

Before :

LORD JUSTICE LEWISON
LORD JUSTICE MOYLAN
and
MR JUSTICE COBB

- -

Between :

CW and DW	**Appellants**
- and -	
ROYAL BOROUGH OF GREENWICH	**Respondents**
-and-	
HW and JW	
(By their Children's Guardian	

- -

Re W (Appeal: Fact-Finding)

- -

Andrew Bagchi KC and **Rebecca Littlewood** (instructed by **RWK Goodman, Solicitors**) for the First Appellant (mother) (CW)
Stefano Nuvoloni KC and **Amanda Bewley** (instructed by **GT Stewart, Solicitors**) for the Second Appellant (father) (DW)
Christopher Poole and **Jemimah Hendrick** (instructed by **Local Authority Legal Services**) for the First Respondent (Local Authority)
Mark Twomey KC and **Tim Hussein** (instructed by **Goodman Ray, Solicitors**) for the Second & Third Respondents (the children by their Children's Guardian)

Hearing date : 12 December 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 20 December 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

The Honourable Mr Justice COBB :

Introduction

1. There are two linked appeals before the court. By those appeals, the Appellants challenge a number of findings of fact made by HHJ Marin ('the Judge') sitting at the Central Family Court. The findings are contained in a judgment which he delivered on 16 September 2024 at the conclusion of a lengthy hearing. I summarise the findings at §54 below.

2. The appeals concern J, now aged 2, but aged 8-9 months at the time of the key incidents. Care proceedings under Part IV Children Act 1989 ('CA 1989') are ongoing in relation to J and his older brother H (now aged 8). J and H are the two children of the First Appellant ('the mother') and the Second Appellant ('the father'); the children are currently in the interim care of the First Respondent local authority ('the Local Authority') and are placed with a member of the mother's family. J and H are represented in these care proceedings, and in this appeal, by their Children's Guardian. The appeals are opposed by the Local Authority and the Children's Guardian.

3. These appeals are brought with the permission of Baker LJ (24 October 2024).

4. Regrettably, the Part IV CA 1989 proceedings are already excessively delayed, and are now in their 80th week. Independent assessments of the parents and others are currently underway, and are scheduled for completion towards the end of January 2025. A final hearing is fixed for 31 March 2025 at which the Judge will make welfare decisions in respect of J and H.

5. For the reasons which I set out below, I would dismiss these appeals.

Background facts

6. The background facts, which I set out in summary below, are taken largely from the judgment under review; no challenge was raised by the parties about the manner in which the Judge characterised the history.

7. The parents have been in a relationship for many years; they are married. J and H are their only children. Prior to the incidents which led to this application both parents worked, the mother notably in the child care profession; the mother is indeed trained in paediatric first aid. At all material times, they lived in private rented accommodation. H was born in 2016, and J in 2022.

8. In 2022, a referral had been made to social services by H's school, when H was seen with bruising; H had reported that the bruising had been caused by his father. The father accepted that he had caused the bruising in 'playfighting'. The case was closed with no action taken.

9. For present purposes, the relevant history can be taken from 24 April 2023. On this day, J, then aged 8 months old, sustained an injury to his head while in the care of his mother. This was later described as a subgaleal haemorrhage ('SGH'). The mother gave an explanation in which she described J hitting his head on or near a wall-mounted radiator on to which he had pulled himself up before losing his balance, and falling face down to the floor. As I shall explain later (see §37 below), in fact a number of variations of this explanation were offered over the period under review. After the fall, the mother reported some 'body jerking' and then extreme distress from J for 30-40 minutes. It was said that J vomited twice while taking his bottle that morning.

10. The mother called the emergency services; the call handler undertook a video-check, and advised the mother to take J to the hospital herself. On arrival at the hospital, J was examined and found to have a large swelling over his forehead on the right side which significantly enlarged over the course of the day; a CT scan was reported as showing a "large extracranial scalp contusion of the frontal region mainly on the right side" but with no intracranial haemorrhage. The hospital notes recorded an "accidental head injury". J was admitted to hospital for observation as the bruising and swelling were increasing, he was vomiting, and he had not urinated for several hours. J was seen by the ophthalmic team, and nothing abnormal was diagnosed. No safeguarding concern was raised by the hospital. The hospital noted, and the Judge recorded in his judgment, that the parents had been "very appropriate" with J on the ward ([29]). J was discharged home. Sometime thereafter, the parents attached lagging pipes to the edge of the wall-mounted radiator as a form of protection.

11. The mother reports that J fell again on 27 April 2023, and hit his head. No medical treatment was sought.

12. On 3 May 2023, the mother took J to her General Practitioner, as J had gone off his food. The contemporaneous GP record (reproduced in full in the judgment) refers to the examination of J. The GP recorded (and the Judge found: [183] and [229]) that he had told the mother to go to the hospital immediately following the consultation. The GP was plainly concerned about J's poor urine output, and poor fluid intake. The GP prescribed an anti-fungal medication for J's tongue, which was affected by oral thrush.

13. The mother did not take J to the hospital. She denied receiving a letter from the GP. The Judge found ([176-182]) that the mother had in fact been handed the letter, and that she had been told to go to the hospital immediately.

14. At some point overnight on 3-4 May 2023, the mother reported that J had bumped his head again; she texted the father in the morning (he was at work) to tell him that the "swelling had come up again".

15. On 6 May, J suffered an anaphylactic reaction to something eaten, and was taken to the hospital. He was admitted once again; concerns were expressed about his

continuing drowsiness, and a material drop in his haemoglobin level which necessitated a blood transfusion. On 8 May a CT scan was performed which revealed a "a large galeal haematoma seen on the right side around the front, parietal and temporal regions with preseptal haematoma overlying the right orbit". It was noted that that "swelling and bruising bilaterally and periorbitally" had increased and there was "fluctuant swelling" in both eyes. On 17 May, J was discharged from hospital. At about this time, the parents purchased a helmet for J.

16. On 23 May 2023, the mother reported that J had hit his head again. However by 4 June, she said that the swelling to J's forehead had subsided.

17. On 5 June, J suffered further injuries; the mother reported that J had woken crying (I note that "screaming" was the word she used in her oral evidence), and that when she had gone to his cot, she saw that he had a fresh graze on his face (or a 'linear abrasion': per Dr Caldwell) and bruising on his head. She later attributed this to J having hit his head on a musical box which, since 24 April 2023, she had placed in his cot. The mother took J to the hospital; on the way there, J vomited. On examination, bruising was noted to the left parietal side of his head above the left eyebrow, with a new area of swelling above the right eyebrow; both ears were swollen and bruised and a small cut was seen on the left pinna. A further CT scan was performed which showed "residual, reduced swelling" at the site of the frontoparietal haemorrhage.

18. The mother and J were in hospital for much of the day. During the afternoon of 5 June, the mother asked the hospital staff if she could take J out of the building for a walk; the staff agreed. The Judge recorded that the nursing staff had observed that the mother had been compliant and appropriate in the hospital over the course of the day. In fact, the mother left the hospital altogether, and went home. Later that afternoon, she telephoned the hospital to enquire about the blood results; she was invited to return to the hospital. The Judge recorded (at [55]) her response as it had been written up in the medical notes:

> "She advised she was unable to do this, I enquired as to why and was advised that she cannot go into detail as the reason she cannot return is personal".

19. In her witness statement filed for the fact-finding hearing, I note that she said this:

> "My partner was getting distressed that this had happened, and he was not very happy with me, and just wanted to see J and for him to come home. He kept saying that he would never forgive me if something were to happen to J as it would be my fault for leaving him… my partner was getting increasingly aggravated, I decided to take [J] home…. I note that the Local Authority are concerned that I left the hospital with [J] against medical advice. This is not entirely true, they only advised me to not to go until his bloods. (sic.) I left after the first blood test was done so I thought it was okay to leave because they came back clear. They did not specify to wait until the second blood tests had come back".

20. The medical registrar telephoned the mother from the hospital and explained that the plan was for J to be admitted onto a ward for further investigation of his extensive bruising; the doctors were concerned that the notable swelling and bruising had apparently followed such an "insignificant" injury. The mother agreed to return. She then called back to ask what would happen if she did not return. It was explained to her that the police and social services would be called. The father spoke to the registrar; the hospital notes record that he was "very angry". The notes further record the father stating that "[h]e feels [J] is fine and there is nothing wrong with him. He was told to look out for boggy swellings which he does not have … [s]tated that he 'doesn't want to hand his child over to us'". Further discussions took place at the hospital; the parents were contacted again. The parents agreed to return with J, which they did.

21. On 6 June, J was seen by a consultant ophthalmic surgeon; he described "multiple bruises at different stages of healing" and that there was a "subconjunctival bleed". This was a new discovery. The ophthalmic surgeon recorded that the injuries were overall "consistent with NAI". The police were notified; they attended the hospital and arrested the parents who were then interviewed under caution. J and H were placed under police protection. Initially the children were separated, but they were later placed together with a member of the maternal family.

22. Care proceedings under Part IV CA 1989 were initiated by the Local Authority. The proceedings have been case managed latterly by HHJ Marin. He authorised the obtaining of a range of second medical opinions, including, late in the day, from a consultant geneticist.

23. The fact-finding hearing took eleven court days. We were told that 4,800 pages of documents had been filed, along with several video-recordings, and an album of up to three hundred photographs. The court heard from eight witnesses, including a consultant paediatric neurosurgeon (Mr Jayamohan), a consultant paediatrician (Dr Cardwell) and a consultant ophthalmic surgeon (Dr Lavy). The Judge also read expert reports from a consultant paediatric haematologist (Dr Keenan), and a geneticist (Dr Irving), whose evidence was not challenged. The Judge heard oral evidence from three of J's treating doctors, including the General Practitioner. There were numerous additional witness statements in the bundle of documents. Both parents were represented at the hearing, as they have been before us, by leading and junior counsel. The Judge reserved judgment.

24. We were told, and the Judge indeed recorded, that a police investigation into the matters set out above is continuing.

Judgment

25. The mother accepts, through her counsel, that the Judge delivered a "thorough and well-structured judgment"; this concession was accepted by Baker LJ when granting permission, and was explicitly reflected in his order.

26. The judgment follows a logical sequence, which takes the reader from: (a) an identification of the issues; to (b) a summary of the background facts; (c) a summary of the applicable law; (d) a discussion of the medical evidence; (e) the Judge's conclusions on the medical evidence; (f) a review of the lay evidence and the

evidence of the parents; (g) consideration of whether the injuries were caused deliberately; and finally, (h) identification of the perpetrator of the injuries. The judgment is indeed thorough, and extensively referenced from the core material.

27. In light of the submissions made in this appeal, I review the judgment by topic (broadly following the Judge's own sequence), as follows:

    i) Medical evidence; discussion and conclusions;

    ii) Identification of positives in the parents' case;

    iii) The mother's account of 24 April 2023;

    iv) The mother's visit to the GP: 3 May 2023;

    v) The injuries seen: 5 June 2023;

    vi) Leaving hospital: 5 June 2023;

    vii) Credibility generally;

    viii) Parents' failure to act in J's best interests;

    ix) Conclusions and factual findings.

28. *Medical Evidence: discussion and conclusion*: Mr Bagchi KC advised us (without challenge from other counsel) that "the judge's conclusions" in relation to the medical evidence "very much followed what was a broadly agreed consensus set out in the closing submissions of the parties". He further, separately, acknowledged on behalf of the mother that the judgment reflected a "detailed and through analysis" by the Judge, and that his conclusions in relation to the expert evidence were "uncontroversial". Again, no other party dissented from this submission.

29. As indicated above, the Judge had received evidence from a range of medical disciplines at the hearing, though he singled out for "special recognition" Mr Jayamohan who he described as "the most helpful" of the medical expert witnesses: "very impressive", and "a key expert" ([111]). The Judge rehearsed Mr Jayamohan's evidence by selecting a number of key points; it is not necessary for me to reproduce the list in full for the purposes of our determination, but I reference nine of the points highlighted by the Judge:

    i) SGHs are "rare" in toddlers [94(c)]; the unchallenged evidence before the court was that this type of injury was generally seen after difficult vaginal deliveries associated with instrumentation. Mr Jayamohan had in fact told the court that "if this was to have occurred from a low level fall then it must be incredibly rare" (my emphasis by underlining);

    ii) It is "possible", but it would be "unusual", for a child to sustain a SGH, following the mother's described mechanism of injury ([94](e));

    iii) The progression of J's symptoms after the incident was "unusual" ([94](d)); J should be considered on an "individualised" basis (ibid.);

iv) The injury would be caused by a "shearing or sliding mechanism… a sliding motion rather than a straight impact" ([94](g));

v) After the SGH had been suffered, "the tissue [around the SGH] remained vulnerable to reinjury from normal handling" ([94(f)]); and "[r]einjury could not take place by the further significant force being inflicted but by the application of a lower force; this would include those seen in a domestic environment. However, the presentation would appear to be abusive" ([94](h));

vi) "An impact between the head and the side of the cot or on the music box in the cot could account for the June injuries" ([94](j)); (though Mr Twomey took us to the report of Mr Jayamohan in this regard wherein it had been said that it was "unlikely but possible" that a further impact in June in the cot may have set off further scalp and subgaleal collections);

vii) The radiator "incident" (by which it is assumed that the expert and the Judge were referring to the final version of events given by the mother) was a "potential cause of the injury" ([94](l));

viii) "One possibility for J's injuries could be a head injury inflicted on J when he was hit multiple times over a period of months… Another possibility was that there was an impact such as the one described by M in April that was followed by evolution of injuries caused by the redistribution of bleeding from the subgaleal haematoma" ([94](a)/(b)]);

ix) The Judge reproduced an extract from the transcript of Mr Jayamohan's contribution to the experts' meeting; in this extract Mr Jayamohan is recorded to have accepted that he could not say that non-accidental injury was more likely than accidental injury; they would both be "unusual". The progression of the swelling on 24 April 2023 was "really rare", but it was also "really rare" to have a child with multiple or significant swellings from impacts ([95]).

30. The Judge went on to record medical opinion from the other disciplines:

i) J's blood clotting results were normal (referencing the view of Dr Keenan [96]);

ii) There was no underlying genetic disorder (Dr Irving [100]);

iii) The subconjunctival haemorrhage could have resulted from the April injury, or could have been caused by an intervening injury ([98](d)) (Dr Lavy);

iv) The subconjunctival injury was not necessarily the result of inflicted injury ([98](g)) (Dr Lavy).

The Judge acknowledged that Dr Cardwell had considered that some of J's injuries could be accidental and some non-accidental ([97](d)); and that if the mother's account of the incident on 24 April 2023 was accepted "it could explain the injuries to J that day" ([97](e)). The Judge recorded Dr. Lavy's view that it was hard to attribute the injuries sustained in April to a fall against a radiator ([98](l)).

31. The Judge's conclusions on the medical evidence were set out at [113]-[124]. In summary these were:

    i) J's condition was unusual "and should be considered on its own merits" ([114]);

    ii) There were two possibilities to explain J's injuries; (a) an impact on 24 April 2023 followed by an evolution of injuries caused by the redistribution of bleeding, or (b) that J was hit multiple times over a period of months. A third option emerged, namely that some injuries were accidental and others were non-accidental ([115]-[117]);

    iii) On the medical evidence alone it was open to the court to decide whether the injuries evidenced were accidental, non-accidental, or a hybrid ([118]);

    iv) It is a matter for the court to decide actually what happened, and the parents' evidence was crucial to forming an understanding of events ([119]);

    v) As to the subconjunctival haemorrhage, the opinion evidence was equivocal, and reliance could therefore be placed (and was so placed) on the photographic evidence, which did not show a subconjunctival haemorrhage in May 2023, but did in June 2023 ([120]-[124]).

32. I therefore turn to the Judge's ancillary findings which served to inform his ultimate decision.

33. *Identification of positive in the parents' case*: The judgment contains a number of important positive reflections about the parents; included among them are:

    i) The Judge's recital of the evidence of the mother's work colleagues, who were complimentary of the mother's skills with children; one of whom described her as "brilliant" with children ([129]);

    ii) Prior to the events in question, there had been no adverse findings against the parents ([137]);

    iii) The mother had called the emergency services promptly on 24 April 2023 ([214]);

    iv) After 24 April 2023, the parents had fitted a radiator protector to the sides of the radiator on which the mother states that she saw J climb; they had purchased a helmet for J ([214]);

    v) In April 2023, the hospital had shown no concern about the parents ([212]), as they had presented as "caring and loving"; the father had shown care in returning J to the ward after his arrest in June 2023 ([214]);

    vi) That it was "in the parents' favour" that there was such a good documentary and photographic record of the scalp changes while J was in hospital ([94](i)) as without it, Mr Jayamohan would have pushed less hard the possibility that this was merely an 'exuberant reaction; to a relatively less serious injury.

34. The Judge recorded the parents' denial that they had lied about what had happened to J ([136]).

35. The Judge rejected the Local Authority's case that messages which had been found on the father's mobile phone suggested that he was being unfaithful to the mother ([158]). The Judge further recognised that (contrary to common experience of cases of this kind) the forensic analysis of the parents' electronic devices had revealed no message suggesting anything sinister or untoward ([213]) (there was no 'smoking gun' within the messages, as Mr Nuvoloni KC put it).

36. Insofar as the mother may have suffered any disadvantage or vulnerability in giving her evidence, or recounting events, attributable to her dyslexia, the Judge specifically recognised this ([212]). In his concluding comments, he again referred to the "positive aspects" which he attributed to the mother ([254]).

37. *The mother's account of 24 April 2023*: In relation to the events of 24 April 2023, and the causation of the first injury, the Judge identified a number of inconsistencies in the mother's supposed eye-witness account; among the most obvious are:

    i) That (per the mother's initial statement filed soon after the incident) J hit his head on the radiator valve; she later said that he fell on the side of the radiator ([168]); (in passing, I pause to observe that the mother in evidence, and Mr Bagchi in his submissions, sought to explain the reference to the radiator valve as merely one of terminology, though she never sought to correct it);

    ii) That J had hit his head on the wall, with 'multiple impacts'; this was inconsistent with a later account (in oral evidence, having heard the expert evidence) of a 'sliding motion' ([169]);

    iii) The mother told the ambulance crew that J did not cry after the incident; but to the emergency services handler she said that he did ([170]);

    iv) The mother had said that the older brother (H) had seen everything that happened, but when interviewed by the police, she said that H was in the shower at the material time ([170]);

    v) The mother reported that J had started to pull himself up during the weekend of 7-10 April, later saying that it was only on 22-23 April (the day before the incident) that he had first done this ([171]).

38. The Judge recorded ([172]) evidence about whether the radiator was on or off at the material time (i.e., when J was said to have pulled himself up on it). The mother's case was that she had turned off the radiator between 4.30am and 5.00am. The Judge observed that this "made no sense at all", adding:

> "This also raised the question of whether the radiator was hot when J fell against it and if it was, why M left him near that area or did not remove him quickly when he started to topple".

The Judge continued:

> "[173] Of even more concern is that the picture of J's injuries on 24 April does not fit with M's description of what happened. It shows two vertical grazes present on the head. That does not fit with falling onto a radiator nor sliding down a radiator and/or a wall".

Later he added in the same respect:

> "[223] The photographic evidence of J did not fit her description of what happened on any basis".

I return to these important paragraphs later (see §73 below).

39. The Judge summarised the mother's inconsistent accounts of the events of 24 April 2023, by indicating that he would have expected:

> "… a normal parent to recount consistently and clearly albeit with the odd embellishment or error, the events surrounding J's injuries. M did not. As I have explained, her account of key events was often contradictory" ([223]);

This observation is perhaps all the more noteworthy, given that the mother had told the Judge (oral evidence, taken from the transcript) that the events of the day were "stuck in [her] brain".

40. The Judge declared that he 'struggled' to understand (as the Judge records that the medical experts in their joint meeting had also "had trouble trying to understand") the mechanics of the fall when picturing it in accordance with the mother's account ([174]/[175]). In her final version, the mother described how J:

> "…tried to pull himself up on the left corner of the radiator. His legs then went wobbly and after losing his balance, he fell onto the side of the radiator. He then hit the same part of his head on the wall.... then he hit the carpeted floor."

In her oral evidence, she introduced a 'sliding' mechanism too. The Judge's view was that this sequence of events "made no sense".

41. When reviewing the mother's account later in his judgment, the Judge indicated that he could not ascribe the "contradictions and deficits in M's evidence as being down to story creep, nerves when giving evidence or dyslexia. Her evidence revealed serious deficits which cannot be ignored" ([222]). Later, he added:

> "… I find myself completely unable to accept M's account of what caused J's injuries. Instead, I was left with accounts that are so questionable that I simply do not believe what I was told" ([246]).

42. *The mother's visit to the GP: 3 May 2023*: The Judge commented on the mother's visit to the GP on 3 May 2023 (see §12-13 above) as follows:

> "I really fail to understand how M could have misunderstood such that she decided to wait and see how J's health progressed, that she believed that his medication was an antibiotic and that also believed that she did not need to go to hospital immediately. But this is what she messaged to others; M, a person well educated and practised in childcare" ([183]).

Within this short passage, the Judge identifies no fewer than three inconsistent explanations offered by the mother for her failure to take J to the hospital following the GP consultation : (i) misunderstanding, (ii) decision to wait and see if the antibiotics worked, (iii) conscious choice. Later the Judge described this "a complete failure to act appropriately in J's best interests" ([227]), and condemned her for failing to follow the advice of the GP ([255]). I remind myself that, as the Judge recorded, the mother is trained in paediatric first aid.

43. *The injuries seen on 5 June 2023*: The Judge described further inconsistencies in the mother's accounts of the events of this day leading to the discovery of further injuries:

i) In her witness statement, and to the hospital registrar, the mother said that J was asleep in his cot while she was in the shower; she told the police that J was awake or stirring (the same inference is to be drawn from a contemporaneous message to the father) ([185]);

ii) When initially interviewed, the mother said that there was a teddy bear and blanket in the cot; when later interviewed by the police she referred for the first time to the presence (and possible significance) of a music box (with hard edges) in the cot ([188/190]).

44. The Judge returned to this evidence in the concluding section of his judgment at [235]:

> "There can be no basis for M's unclear account. A genuine parent would know such basic details of whether their child was awake or not and recount exactly what happened. Once again, there is no issue of "story creep" or other factors".

45. *Leaving hospital: 5 June 2023*: The Judge rejected the mother's explanation for leaving the hospital on 5 June 2023 prior to the completion of the medical investigations (see §18-20 above). He recorded in his judgment that the mother had said that "she thought it was alright to go home" ([196]), an assertion (made in oral evidence) which was consistent neither with her written statement, nor with her message to the father of the same day (recorded by the Judge in these terms: "[they] advised me not to go" [196])). The Judge condemned both parents for their behaviour on this day in this regard ("her actions put J at risk and neglected his health needs" [197]) and concluded that:

> "None of these events on 5 June were the actions of committed and caring parents. Once again, J's welfare interests were second to the wishes of M and/or F in not wanting to return" ([240]).

46. The Judge attached weight to the fact that the father had been angry and rude on the phone to the hospital on 5 June ([145-6]), and (in his finding) placed pressure on the mother to leave the hospital; the Judge drew on the mother's statements to the police to the effect that the father was "shouting, being controlling, sometimes angry and rude" ([148]).

47. *Credibility generally*: The Judge specifically addressed the import of *R v Lucas* [1981] 1 QB 720 ([74]); in reaching adverse findings about the parents' credibility he considered a range of reasons why the mother and father may not have told the truth to the authorities and the court ([205] – [211]). Having given himself a clear self-direction on the law, and having undertaken a diligent review of possible reasons for their lying, the Judge made a number of adverse findings about the parents' credibility and conduct; he found that the "deficits" in their evidence were "many and serious" ([245]). In addition to those I have already identified:

    i) The father had described the parents' relationship as "perfect" ([142]); the Judge expressly and firmly rejected as inaccurate this description ([161-162]), particularly having regard to the father's single-minded (the Judge used the phrase "one-sided") attitude to his social and domestic life; he described the father as "controlling" of the mother and "angry … at times" ([219]);

    ii) The father's evidence was that the parents had not discussed J's injuries between themselves, and the father had not read the mother's witness statements. The Judge did not accept this ([143/144]); the Judge remarked with surprise that the father: "… was adamant that he never questioned M's version of events which some may feel any normal person would do in the circumstances F found himself in with J coming to harm when he was not at home" ([210]);

    iii) He returned to this again later in his judgment:

> "Despite F being a person who felt able to tell M freely what to do and do as he liked, it made no sense that he never discussed the events surrounding J's injuries with M and he never questioned M about what happened" ([220]).

48. *Parents' failure to act in J's best interests*: The Judge identifies several ways in which the parents failed to act in J's best interests including:

    i) That they did not take him to the hospital on 3 May 2023 (see above) ("a complete failure to act in J's best interests" ([227])… "there was a failure to act responsibly and in J's welfare interests" ([231]);

    ii) Leaving hospital on 5 June (again, see above): "None of these events on 5 June were the actions of committed and caring parents. Once again, J's welfare interests were second to the wishes of M and/or F in not wanting to return" ([240]).

49. Additionally, the Judge was critical of the fact that the parents did not take J to the hospital on 27 April after another alleged fall, even though he had been discharged from the hospital only on the previous day ([224]); "the very least M and F could

have done was to contact the GP or dial 111 to seek advice. Instead, they did nothing" ([225]);

50. *Conclusions and factual findings*: As I earlier indicated (§29 and §31), J presented to the medical emergency services on 24 April 2023 with an unusual injury for a toddler, which developed in an unusual way. The Judge recognised and recorded this in his finding that the case is indeed:

> "… so unusual that it led the medical experts to offer alternative opinions and state that J's situation needed to be considered in its own right" ([243]).

51. Having completed his survey of the evidence relevant to 24 April 2023, the Judge expressly considered ([215]) that:

> "… the medical evidence supported a view that the injuries could be the result of an accident and were evolving which was observed under the eyes of the doctors in hospital when there was no opportunity for J to be harmed by his parents".

However, he considered that this point, and the many positives which could be identified (which I have extracted from the judgment at §33-§36 above), were outweighed by the evidence of the parents' worrying behaviour in this way..

> "Standing back … and looking at the wider canvas, there are other matters of serious concern which cannot be ignored, and which place the so-called positive points in perspective to the point that in my judgment, they heavily weigh the scale against the parents" ([217]).

In reaching the conclusion that the injuries were "deliberately inflicted", he specifically relied on the important fact that the mother, indeed both parents, had not been truthful with the court ([204]).

52. Having reached conclusions about the causation of the 24 April 2023 injury, the Judge considered the sequence of events in the subsequent 42 days. Against the background of the 'unusual' medical presentation generally, the Judge concluded that these injuries were caused non-accidentally "albeit" (reflecting the medical evidence in this regard) "by a lower level of trauma" ([243]). Weighing all relevant considerations:

> "Everything leads me to conclude that J was injured on more than one occasion. He did not have any accident or accidents" ([246]).

53. The mother was, on any account, the only parent with J in her care at the crucial times ([250]/[251]), and against the judicial findings of dishonesty and inconsistency, the Judge identified her as the perpetrator of the injuries. In relation to the father, he concluded that it was:

> "… more likely than not that his behaviour on 5 June was borne out of a concern that the truth of the situation would emerge especially when messages revealed that he was

> quick to blame M and concerned that the children would be taken into care which was of itself a strange reaction" ([253]).

54. There is no formal recording of the Judge's factual findings on the face of an order, as there should be. However, for present purposes, while not intending to provide a comprehensive or authoritative account of the findings made, it is convenient for me to summarise the Judge's key findings as they appear from the judgment, thus:

    i) When he was 8-10 months old, J suffered a number of serious non-accidental head injuries;

    ii) On 24 April 2023, J suffered an SGH;

    iii) On 5 June 2023, J suffered a further inflicted head injury;

    iv) When he was about 10 months old (around June 2023) J suffered a subconjunctival haemorrhage; this was also an inflicted injury;

    v) The likely perpetrator of these injuries was the mother;

    vi) On 3 May 2023, the mother failed to follow medical advice to take her child to the hospital for assessment; on 5 June 2023, the mother left hospital with J before all necessary clinical assessments had been undertaken (or completed) and was reluctant to return;

    vii) Prior to Local Authority intervention on or about 5 June 2023, the father became aware that the mother had inflicted the injuries.

The Grounds of Appeal

55. In these appeals, the mother and father raise altogether eighteen grounds on which they collectively argue that the Judge was in error. The helpful Skeleton Arguments filed in support of the appeals have sensibly addressed the grounds of appeal in clusters. Adopting that cue, and without, I hope, diminishing the impact of any individual argument, I have taken the same approach, focusing first, as counsel has done at the hearing, on what they argue are their three strongest grounds:

    i) In wrongly rejecting the mother's account of the accidental fall on 24 April 2023, the Judge erred in interpreting, and placing apparently significant weight on his interpretation of, a photograph of J showing his evolving haematoma and in particular two significant linear marks which were described in the hearing as 'grazes' (see [173]); the Judge's conclusions on the significance of the grazes seen on the said photograph were: (a) not aired or tested during the oral evidence (notably not in the medical evidence), and (b) not put to the mother in cross-examination, depriving her of the chance to answer to, or seek to explain, them. This had the effect of creating a process which was fundamentally unfair to the mother, and his approach in this regard undermined his finding of inflicted injury on 24 April 2023; [Mother: Grounds 1 and 2]; (I refer to this later as *Ground (i)*);

ii) That the Judge had failed to apply the requisite focus, and/or forensic thoroughness, to his assessment of events which followed the injury on 24 April 2023, leading him erroneously to conclude that further appearances of injury were inflicted. The Judge failed to consider that, given the existence of the SGH since 24 April 2023, a much lower degree of force (including normal handling) could have explained the recurring displays of swelling and other marks and injuries [Mother: Grounds 5 and 7; Father: Ground 2]; (later referred to as *Ground (ii)*);

iii) That the Judge had insufficient evidential basis for his finding that the father knew that the mother had inflicted the injuries on their infant son ([Father: Grounds 8 and 9]); (later referred to as *Ground (iii)*).

56. The remaining grounds of appeal can be summarised thus:

i) The Judge was wrong to reject the mother's accounts of the events of the morning of 24 April and 5 July 2023 [Mother: Ground 1], in particular because no specific mechanism of inflicted injury been put to her [Mother: Ground 4]; (later referred to as *Ground (iv)*);

ii) The Judge reversed the *burden* of proof when declaring that the mother's account did not 'make sense' [Mother Ground 3; Father Grounds 5 and 6], and failed faithfully to apply the correct *standard* of proof when finding that injuries "could well have been" inflicted on other occasions [Father: Ground 3]; (later referred to as *Ground (v)*);

iii) The Judge formed an adverse view of the mother's credibility in large part attributed to his review of her inconsistencies, holding her to account to an "unreasonably high standard" [Mother: Ground 6]; the Judge condemned the mother unfairly because of her poor memory [Father: Ground 7]; (later referred to as *Ground (vi)*);

iv) The Judge fell into error in his analysis of the medical evidence, in failing to identify what was more likely as the cause of the presentation of injury [Father: Ground 1]; (later referred to as *Ground (vii)*);

v) The Judge failed to have sufficient regard to the positives in the parents' case and attached too much weight to the ancillary evidence which raised concern, including their failure to obtain medical advice in a timely way [Father: Ground 4, Ground 8, and Ground 9]; (later referred to as *Ground (viii)*).

57. Counsel agree that if we were to conclude that there had been a material error or errors in the manner in which the Judge had reached his conclusions in this fact-finding exercise, then a re-hearing would be necessary. It was suggested by Mr Bagchi (without demur) that any such re-hearing could, however, be abridged given the broad consensus of medical evidence which had emerged by the conclusion of the hearing before the Judge, and the availability of transcripts of the key evidence which the Judge had heard.

Discussion and conclusion

58. The Appellants, through their counsel, have rightly acknowledged the challenge they face in persuading this court, in these appeals, to disturb a trial judge's findings of primary fact; rarely will such an appeal succeed. In presenting their clients' individual, but affiliated, arguments, Mr Bagchi and Mr Nuvoloni have accepted the relevance and force of the judgments in *Re B (A Child)* [2013] UKSC 33 at [52], in *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5 (in particular paragraph at [114-115]) and in *Volpi & Anor v Volpi* [2022] EWCA Civ 464 at [2] to their appeals. They recognise the considerable uphill climb they face in seeking to persuade us to interfere with the Judge's findings of the primary facts, the evaluation of those facts and the inferences to be drawn from those facts. I see no benefit in reproducing here lengthy extracts from the judgments in *Fage* or *Volpi*; the parties will need no persuading that they are well-known to this court.

59. It is acknowledged that the trial judge has had sight of a far bigger evidential picture than is available to us; more than once the Judge expressly averred that he took opportunities to step back and look at the "wide canvas". Although counsel has taken great pains to analyse the language used by the Judge, his expression, the articulation of his views, and what he has omitted to say, we remind ourselves that reasons for any judgment, even reserved, will almost always be capable of having been better expressed and the Judge cannot possibly reference all of the documents read, nor the videos and/or photographs reviewed. Moreover, "cases like this are not driven exclusively by the process of reasoning" (Sir Mark Hedley in *London Borough of Southwark v A Family* [2020] EWHC 3117 (Fam) at [187]). This Judge had the unrivalled opportunity to see and hear *this* mother and *this* father give oral sworn evidence over the course of one court day each, an opportunity plainly not afforded to us.

60. The particular fact-finding challenge for the Judge in this case was elevated by the existence of four individually (and certainly cumulatively) "unusual" features, namely:

    i) the appearance of a SGH in a child (a toddler) of J's age;

    ii) the "exuberant" (per Mr Jayamohan, and cited by the Judge at [94](i)) evolution of the swelling on or over the SGH over the following days;

    iii) the number of head and facial injuries over a 42-day period (24 April – 5 June 2023) in a child in respect of whom there had been no prior social work concerns;

    iv) the fact that, on the mother's case, her 8-month old toddler suffered repeated serious self-inflicted injuries.

    However the fact that J *did* suffer such unusual injuries, and given their unusual development thereafter (i.e., the noted increase in the size of the swelling and bruising while in hospital), this plainly opened the door to consideration of all possible causations. The medical evidence on its own left the ultimate question evenly poised.

61. Accordingly, and rightly, the Judge expressly approached his decision on the basis *either* that the injuries over the period 24 April to 5 June 2023 were accidental, *or* that they were all non-accidental, *or* they were a combination of the two. Given the

delicately counterbalanced medical evidence, the determination of the ultimate issues in the case depended on the Judge's assessment of the parents, having regard also to the wider context of the relevant environmental factors for J at the crucial times. It is of course clear from the judgment (reference my comments at §37-41, §42, §43-44, §45, §47 above) that the Judge was unable to repose any, or any real, confidence in the mother as a historian, having found that she was inconsistent in, and had lied on, a number of material matters.

62. I propose to address the three principal grounds of appeal (see §55 above) before turning to the others.

63. *Ground (i) The Judge's reliance on the photograph of J.* A number of photographs of J taken at key points in 2023 were included in the appeal bundle; this was a significantly smaller selection than had been filed with the court for the fact-finding hearing. We were invited by Mr Bagchi to review a number of the photographs of J taken on 24 April 2023, which clearly show two linear vertical marks overlying the emerging swelling. Mr Jayamohan described these marks as 'grazes'. I too shall refer to them, as the Judge did, as 'grazes', although they appear from the photographs at least to have been more than merely superficial abrasions.

64. We were told by counsel that there was little or no consideration given at the fact-finding hearing either to the causation, or the significance, of the grazes seen on 24 April 2023 and/or in the days thereafter. The medical experts did not focus on them in the preparation of their reports; counsel did not cross examine upon them; the parents were not asked about them. This much is indeed apparent from the medical reports and the transcripts of the oral evidence which we have read. It was, argued Mr Bagchi, therefore a considerable surprise to him and his client to read in the draft judgment circulated on 9 September that the Judge had found that the grazes "undermined [the mother's] account" of J pulling himself up on the radiator. Indeed, Mr Bagchi argued that, by the specific language used, the grazes seen in the photograph had plainly been pivotal to the Judge's thinking. In this regard Mr Bagchi focused on the Judge's emphatic words in introducing the topic: "of <u>even more concern</u>…" in [173] and the expression in [223]: "The photographic evidence of J did not fit her description of what happened <u>on any basis</u>" (emphasis by underlining added); Mr Bagchi suggested that this revealed the greater weight which the Judge attached to this evidence than the balance of the evidence (see again §38 above).

65. Given the lack of attention given to the existence and/or aetiology of the grazes on J at the fact-finding hearing, consideration was given at the appeal hearing to the provenance of the Judge's view. It is at least possible that the Judge was unwittingly encouraged down this path by counsel for the Children's Guardian who, in his closing written submissions, had suggested that:

> "… [t]he two vertical grazes present on the swelling combined with the description by M of how the fall happened make it difficult to see how that injury may have been caused by falling on the radiator".

In fairness to counsel, this extract was part of a longer paragraph which also included, by way of appropriate balance, the difficulty which the Children's Guardian had in picturing a mechanism which could have caused this injury in an inflicted way.

66. The mother, through Mr Bagchi, submits that the parties had had no forewarning of the Judge's thinking in this regard; it had not been foreshadowed in any way. Mr Bagchi would, he says, have wished to challenge the Judge's interpretation of the grazes. Further, he argues that the mother might have been able to identify how the grazes could have been caused, or at the very least, the issue could and should have been addressed by her and/or by the medical experts. While Mr Bagchi accepted that he could have replied orally to the written submission on behalf of the Children's Guardian (see §65 above), the point raised by counsel for the Children's Guardian in the closing throes of the case had not been advanced with any particular prominence. Mr Bagchi asserts, in short, that the way in which this important point had emerged was not fair to the mother, and that the Judge's reliance on the photograph of the grazes in establishing a finding adverse to the mother vitiates his conclusions in relation to the infliction of injury on 24 April 2023.

67. In seeking to persuade us of the unfairness of the process, Mr Bagchi relied on *Re A (No.2)* [2019] EWCA Civ 1947. We were specifically taken to the important passage of the judgment of Peter Jackson LJ from [94] through to [99]. At [96] Peter Jackson LJ had acknowledged that "[t]he court is not bound by the cases put forward by the parties, but may adopt an alternative solution of its own"; if doing so, the court should be "cautious" before "making findings of fact that have not been sought". The authorities cited by Peter Jackson LJ in that section of his judgment all helpfully illuminate this point; at [97], reference was made to *B (A Child)* [2018] EWCA Civ 2127 at [15], in which Peter Jackson LJ had also said that:

> "It is an elementary feature of a fair hearing that an adverse finding can only be made where the person in question knows of the allegation and the substance of the supporting evidence and has had a reasonable opportunity to respond."

68. In addressing Mr Bagchi's submission, I take that last point (at §67 above) first. When relying on J's presentation in the photograph to discount the mother's account of the 24 April 2023 injury, the Judge was not, in my judgment, making a finding that had not been sought by any of the parties, nor was he promulgating a new theory about causation. On the contrary, it was very clear from the Scott Schedule, which had been conscientiously completed by the parties to the case and filed with the court, that the Local Authority had specifically sought a finding that the mother or father had perpetrated the injury to J on 24 April 2023. At [173], the Judge was explaining how he had referenced, and had drawn conclusions from, evidence which had been placed before him to reach one of the pleaded findings sought, albeit that the particular feature of the evidence on which the Judge had placed reliance had not been in particular focus at the hearing, either in evidence or argument.

69. Secondly, it was not necessarily unfair, of itself, that the mother had not been cross-examined about the grazes; it should be remembered that not every point has to be put to a witness in these or similar circumstances (see *Chen v Ng* [2017] UKPC 27 at [52]). I have already alluded (§34) to the Judge's recording of the fact that the parents had been challenged generally about lying, and they had denied doing so. Of course, the general rule is that a party is required to challenge by cross-examination the evidence of any witness of the opposing party on a material point which he or she wishes to submit to the court should not be accepted, and the "judge should only rely on a ground for disbelieving a witness which that witness has had an opportunity of

explaining" (*Chen* at [52]). But as Lord Neuberger and Lord Mance observed in delivering the judgment of the Privy Council in *Chen*:

> "Even in a very full trial, it may often be disproportionate and unrealistic to expect a cross-examiner to put every possible reason for disbelieving a witness to that witness, especially in a complex case, and it may be particularly difficult to do so in a case such as this, where the Judge sensibly rationed the time for cross-examination and the witness concerned needed an interpreter. Once it is accepted that not every point may be put, it is inevitable that there will be cases where a point which strikes the judge as a significant reason for disbelieving some evidence when he comes to give judgment, has not been put to the witness who gave it." ([52]).

70. That all said, I agree with Mr Bagchi that the mother had, materially, been denied the chance to comment on, and if appropriate provide an explanation for, the vertical grazes overlying the swelling as seen on the photograph on which the Judge placed reliance. None of the medical experts had been asked about the appearance or significance of the grazes. Moreover, it seems to me that the Judge was not entitled, on the evidence before him, to conclude that the linear marks pointed *away* from J having fallen onto or against the radiator, even if it was not as clear as Mr Bagchi sought to persuade us that the contrary conclusion (i.e., that the grazes "convincingly" match the edges of the radiator, and that the linear marks point *towards* a fall on the radiator) should inevitably have been drawn. In this limited regard, I agree that the process was unfair to the mother.

71. I depart, however, from Mr Bagchi in his description of this flawed process as fundamentally undermining of the Judge's finding as to the causation of the injuries on 24 April 2023. The Judge's reliance on, and interpretation of, the grazes seen on the photograph, on my reading of the judgment, merely served to buttress a number of other significant (indeed more significant) findings which he had made about the incident, and in particular in his rejection of the mother's account of the accidental fall. Notably, the Judge had already:

    i) Discussed the mother's extraordinary level of inconsistency as the only supposed eye-witness to this fall (see again §37 above);

    ii) Rejected her account of turning off the radiator at 4.30-5.00am on the morning of 24 April 2023 (see again §38 above).

72. Inevitably, counsel in the appeal argued about the weight which the Judge appeared to attach to his conclusions drawn from the photograph. In this regard, taking Mr Bagchi's cue (see §64 above), they focused on the opening words of [173]: "of even more concern….", and each sought to resolve the ambiguity – whether in expressing the comparative quantifier ('more') the Judge was referring to the evidence discussed in the immediately preceding paragraph (i.e., [172]: where the Judge had addressed, and rejected, the mother's account of turning off the radiator between 4.30-5.00am), or was referring to the whole of the section from [168]-[172].

73. Taking the judgment as a whole, and in particular the Judge's reliance throughout his analysis on the dishonesty and unreliability of the parents (a point to which he often returns), I am satisfied that the opening words of [173] ("even more concern") refer back only to the immediately preceding paragraph, [172]. The Judge's conclusion about the double vertical grazes was not, on my reading of the judgment of "even more concern" to him than his 'concern' about the parents' untruthfulness, and his incomprehension of the asserted mechanism of an accidental injury which the mother had urged on the court. Those components to the finding remain intact, and more than amply in my judgment on their own support the Judge's conclusion that the mother perpetrated the injuries on 24 April 2023. It follows that I am satisfied that it is possible to discount the Judge's conclusion referred to in [173] altogether, while still leaving secure his finding in relation to the causation of the injuries on 24 April 2023.

74. *Ground (ii) Failure to consider the events subsequent to 24 April with proper forensic diligence*. The Judge was clearly aware of Mr Jayamohan's view that the tissue around the SGH remained vulnerable to re-injury from normal handling (the Judge recorded this at [94(f)]: see §29(v) above). He also understood that any re-injury would be the result of the application of a lower force ([94](h)) (see §29(v) above). More than once the Judge reminded himself that he needed to consider J and his particular situation, including this vulnerability, in his/its "own right" ([94(d)] / [243]). However, the Judge did not regard the evolution of the 24 April 2023 injury as the explanation for the emergence over a number of weeks of further manifestation of injury, through (a) swellings to other parts of the head, (b) at least one further graze to the other side of the face, and (c) the subconjunctival haemorrhage. As to the timing and causation of the subconjunctival haemorrhage, the mother, through Mr Bagchi, makes subdued criticism of the Judge for relying on photographs of J in order to help him to reach a conclusion on what is otherwise equivocal medical evidence:

> "A picture of J on 6 June clearly showed J with the subconjunctival haemorrhage. A clear picture on 19 May did not reveal anything. By May, the effect of the subgaleal haemorrhage was observed; if the eye was to follow the same course, the subconjunctival haemorrhage should also have been present by that time. It was not…"

While the Judge's conclusion based on the photographic evidence is I accept susceptible to challenge, the finding on the balance of probabilities, and the route by which it is achieved, are not, in my judgment, wrong.

75. By 5 June 2023, a hard-edged music box had been purchased and installed into the cot. The Judge observed ([190]):

> "In the context of parents purchasing a helmet for J and being concerned for the safety of his head, it made no sense to put a hard object such as a music box in J's cot".

The Judge was obviously aware of Mr Jayamohan's view that an impact between the head and the side of the cot or on the music box in the cot could account for the injuries seen on 5 June; he specifically quoted this (see §29(vi) above). The Judge recorded the mother's "assumption" that J had "either bumped his head on the

musical box" or on the side of the cot (see [50]). However, the Judge was wholly unimpressed by the mother's account of what occurred in the home on the morning of the 5 June; as with her history of 24 April 2023, it was riddled with inconsistencies (see §43 above).

76. In forming a view about what happened on the morning of 5 June 2023, the Judge was further entitled to take into account the mother's failure to take, or follow, medical advice in the period since 24 April 2023, including on 27 April 2023 and 3 May 2023, with the effect that J was not medically assessed as he should have been. That fed into his overall conclusion (at [246]):

> "…I was left with accounts that are so questionable that I simply do not believe what I was told. The overall picture of events in those few weeks between 24 April and 5 June is so worrying. Everything leads me to conclude that J was injured on more than one occasion. He did not have any accident or accidents".

77. *Ground (iii) Finding that father knew of the mother's culpability*. There is, it is accepted, no direct evidence that the father was aware that the mother had lied about inflicting injury on J; the Judge's finding that "… that F was aware at some point of the truth of what happened" ([253]) was based on a collection of inferences.

78. Crucial to this finding was the Judge's incredulity at the father's avowed lack of curiosity in his discussions with the mother at the material time at how J had sustained these serious injuries (see §47(ii) and (iii) above). As I earlier mentioned, the father had proclaimed himself to be "adamant" that he believed the mother's accounts ([143]/[144]), though admitted frankly that he had never asked the mother what had happened to J, nor had he read her witness statements (ibid.). In this regard, we were taken to father's oral evidence before the Judge in which it is recorded that he told the court:

> "I've never had to question her on her accounts, because I have never even questioned -- she's never gave me any reason to distrust her the whole time we've been together".

79. The adverse inference which the Judge drew from the father's lack of enquiry of the mother was reinforced by his finding that the father had not been honest with the court on other matters relevant to their relationship, including materially his assertion that it was "perfect" (see §47(i) above).

80. Against that background, the Judge went on to consider the father's offensive manner with the hospital staff on 5 June (described as "angry" and "rude" [145]/[146]), and his clear resistance to submitting J for further hospital investigation at that time, from which a clear inference could be drawn. The father does not dispute that he vented his anger at the hospital; however, he was disbelieved by the Judge in relation to an apology: "[h]e said that he apologised but … it was never recorded, and I do not believe him" ([146]/[200]).

81. In the Judge's finding, the father placed pressure on the mother to return home from hospital on 5 June 2023 ([145]); this chimed with the mother's evidence (in her

interview with the police) that the father was "controlling, sometimes angry and rude" ([148]). The Judge was entitled to conclude from the text/WhatsApp messages passing between the parents that the father "was quick to blame M and concerned that the children would be taken into care" [253]; the Judge cannot be legitimately criticised for concluding that this "was of itself a strange reaction" (ibid.).

82. When these pieces of evidence are considered together (§78-81 above), I am satisfied that the Judge was entitled to conclude that the father was concealing his true state of knowledge of what had happened to his infant son.

83. I turn briefly now to address the remaining Grounds of Appeal. At the hearing of the appeals, these were not pursued with any great vigour.

84. It was not necessary (see *Ground iv* above) for the Judge to find a precise mechanism of inflicted injury; the Local Authority needed only to prove that the injury was inflicted which, for the reasons given above, they did on the Judge's finding. There was no requirement on the applicant to explain exactly how the injuries were inflicted, only that they were, and that the mechanism must have been inflicted, in that no reasonable parent would have undertaken the relevant act.

85. The Appellants contend (see *Ground (v)* above) that the Judge reversed the burden of proof and/or failed to apply the correct standard of proof. The Judge (at [68], [69] and [70]) specifically addressed his mind to the burden and standard of proof, and in this regard gave himself an unchallengeable legal direction. In his finding that the mother's case did not in some respects 'make sense', the Judge was doing no more, in my judgment, than rejecting her account; I am not persuaded that he was specifically looking to the mother to make good a 'sensible' explanation (i.e. which could be said to have reversed the burden). In this regard, I note that he specifically cautioned himself against the very failing with which he is now challenged ([70]), and referenced in this regard the decision of this court in *Re M (Fact Finding: Burden of Proof)* [2012] EWCA Civ 1580.

86. By the matters set out in *Ground (vi)* the father challenges the Judge's assessment of the mother's credibility, and that, specifically, he was wrong to base his adverse finding on her inconsistencies and her apparently poor memory, and set too high a standard of expectation about her reliability. I reject this submission. The Judge had correctly given himself the *Lucas* direction (see §47 above), had explicitly acknowledged that human memory is fallible ([75]), and had cited appropriately both *Gestmin -v- Credit Suisse* [2015] EWHC 3560, and Peter Jackson J's comments in *Lancashire County Council v The Children* [2014] EWFC 3. The Judge addressed issues of credibility specifically in relation to the 24 April 2023 incident, and I have discussed those in §37 above, when considering *Ground (i)*; the Judge's conclusion that the mother's evidence was as "unsatisfactory as it was worrying" ([165]) is incontestable given his specific factual findings. The Judge explicitly considered a number of reasons for why the mother lied (see §49 above), and in assessing the mother's credibility and in drawing inferences from her conduct in and around the injuries more generally, the Judge was entitled to:

i) take into account that the mother rejected or ignored advice from the GP to present J to hospital immediately in May,

ii) find that the mother sought to keep J away from objective medical scrutiny on 5 June (by leaving hospital and only returning under threat of police/social work involvement).

I accept Mr Twomey's submission, which can reasonably be inferred from the Judge's judgment, that delay in the presentation of a child who may or may not have been abused is a significant issue in determining potential causation and culpability in fact-finding hearings.

87. The Appellants' argue (see *Ground (vii)* above) that the Judge had failed sufficiently (or at all) to recognise that on the medical evidence there was an equal possibility that J had suffered from a series of non-inflicted injuries or inflicted injuries. I do not accept this criticism. The Judge had opened his review of Mr Jayamohan's evidence with a recital of the range of possibilities, including the possibility that there had been an impact "such as the one described by [the mother] in April that was followed by evolution of injuries caused by the redistribution of bleeding from the subgaleal haematoma" ([94](a)/(b)]) (see §29(viii) above). The Judge had recited an important extract from the experts' meeting to similar effect (see [95]) (see §29(ix) above); this demonstrated ample judicial recognition of the point.

88. But the Judge had the advantage over the doctors, which I am satisfied that he took, of surveying the whole 'canvas' of the evidence; he explicitly referred more than once to standing back and considering the bigger picture ([200]/[217]). In doing so, the Judge appropriately referenced ([77]) Charles J's helpful distillation of older authorities discussing the competing roles of expert and judge in public law enquiries of this kind in *A County Council v K D & L* [2005] EWHC 144 at [39]: the roles of the court and the expert are distinct, and that the court has the advantage of being "in the position to weigh the expert evidence against its findings on the other evidence".

89. By *Ground (viii)* it is argued that the Judge failed to have sufficient regard to the positives in the parents' case, and attached too much weight to the other evidence which had flagged concerns about them. I have referenced the Judge's fair reflections of the positive aspects of the parents' case at §33-36 above. I am satisfied that the Judge weighed these positive findings against his contrary findings, which he found put them "in perspective". He was entitled, having undertaken that exercise, to conclude that the multiple adverse findings against the parents "heavily weigh the scale against the parents" ([217]).

Outcome and order on appeal

90. It is of course perfectly possible that another judge might have come to different conclusions on many aspects of the facts in dispute, but the Judge's conclusions have not been shown by my analysis to be wrong, nor can they be said to be contrary to the weight of the evidence. It is well-established in the appellate process that a judge is uniquely placed to assess credibility, demeanour, themes in evidence, perceived cultural imperatives, family interactions and relationships; this is amply demonstrated here. Indeed, I am satisfied that this "thorough and well-structured judgment", as I find it to be, more than adequately explains how and why the Judge came to his ultimate conclusions, and that those conclusions are supported by the evidence.

91. The fact that, as a matter of medical opinion, the mechanisms for the injury were "equally unlikely" was significant, but was of course only part of the story. It was the function of the Judge to go on to consider the wider canvas of evidence keeping in mind the evidence of Mr Jayamohan (which the Judge expressly referenced) that "J's case should be considered on an individualised basis" ([94](d)). The Judge did so, having directed himself appropriately and accurately on matters of law. It is apparent that the Judge did indeed stand back to survey the wide canvas of material before reaching his ultimate conclusions; he considered carefully the parents' relationship, and their inter-action with professionals, and their lack of honesty; he plainly had regard to the many contributions to this enquiry including from family members, colleagues, health and police records. It is notable that the Judge described how he had:

> "… spent considerable time going over not only the extensive papers in this case but the evidence as a whole and more particularly, the parents' evidence. I have arrived at my decision after giving consideration and anxious thought to this matter" [203]

92. As I have made clear above (§70), Mr Bagchi has successfully demonstrated to this court, in my judgment, that in one respect the Judge reached a decision in a way which was unfair to the mother. I have taken that into account in my overall review of the material; that error did not vitiate the finding to which it applied for the reasons set out at §72-73. Overall, I am satisfied that the Judge's conclusions and reasoning on all of his key findings can be amply sourced and supported within the commendably detailed and well-referenced judgment particularly when it is read as a whole; even when paragraph [173] of the judgment is taken out of account in the overall conclusion, the findings remain secure.

93. For the reasons set out above, and as indicated at the outset of the judgment (§5), I would dismiss this appeal.

Lord Justice Moylan

94. I agree.

Lord Justice Lewison

95. I also agree.