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IN THE FAMILY COURT SITTING AT OXFORD

Case No: OX18C00144

IN THE MATTER OF THE CHILDREN ACT 1989 AND IN THE MATTER OF X and Y

Date: 18th March 2019

Before: HHJ Vincent

Between:

OXFORDSHIRE COUNTY COUNCIL

Applicant

and

M

First Respondent

and

F

Second Respondent

and

X and Y

(by their Children's Guardian)

Third and Fourth Respondents

Emily Rayner, instructed by the local authority
Nicholas Williamson, instructed by Fairbrother & Darlow, solicitors for the First Respondent mother
Corinne Iten, instructed by Griffiths Robertson, solicitors for the Second Respondent father
Sara Granshaw, instructed by Oxford Law Group, solicitors for the children

JUDGMENT

Hearing dates: 12th, 13th, 14th, 15th and 18th March 2019

Introduction

1. I am concerned with X, a girl aged 18 months, and Y, a baby boy aged six months.
2. The children's mother is M, who is twenty-two. Her partner, and father of both children is F, aged twenty-eight.
3. On 25th October 2018 Y, who was then a month old, presented at the hospital with a spiral fracture of the right femur. He had been in his parents' care at the time his leg was fractured. His treating clinicians did not consider that the accounts given by his parents about how the injury may have happened provided a satisfactory explanation, and were concerned that Y's injury may have been caused non-accidentally, i.e. inflicted upon him by one of his parents. A referral was made to the local authority.
4. Proceedings were issued on 12th November 2018, shortly before Y's discharge from hospital. I made interim care orders on 14th November 2018 approving a care plan that the children should remain at home with the paternal grandparents as their principal carers, but with the parents being involved and supervised in assisting with the children's care.
5. A full kinship assessment of the paternal grandparents has been completed and is negative, it has raised some significant concerns about the paternal grandparents' own relationship, their relationship with their children and their ability to act protectively. At the last fostering panel the paternal grandparents were not approved as ongoing local authority foster carers and the placement therefore became unregulated. Senior management have approved the unregulated placement pending the conclusion of the fact-finding hearing.
6. This fact-finding hearing is to determine whether or not the threshold test at section 31(2) of the Children Act 1989 is crossed, and to try to identify as precisely as possible, the nature of the harm suffered or risk of harm faced, to inform any subsequent assessments of risk and how it may be managed.
7. The local authority alleges that Y's injury was caused by his father, either deliberately or recklessly. It is no longer seeking a finding that Y's mother had any part in causing his injury, but alleges that she failed to protect him from his father, and that both parents caused Y harm by failing to seek medical treatment for him sooner.

The Law

8. The Court may only consider whether to make a care or supervision order if it is satisfied that the threshold is crossed, namely that at the time protective measures were taken, the children were suffering or were likely to suffer significant harm, attributable to the care given to them by their parents or likely to be given to them if the order were not made, not being what it would be reasonable to expect a parent to give him.

9. The approach the Court should take when invited to make findings of fact is summarised by Baker J (as he then was) in *Re L and M* [2013] EWHC 1569 (Fam) at §46 to 58:

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

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

48) Third, findings of fact in these cases must be based on evidence, including inferences that can properly be drawn from the evidence and not on suspicion or speculation. I have borne this principle in mind throughout this hearing.

49) Fourthly, when considering cases of suspected child abuse the court must take into account all the evidence and furthermore consider each piece of evidence in the context of all the other evidence. The court invariably surveys a wide canvas. A judge in these difficult cases must have regard to the relevance of each piece of evidence to other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward by the local authority has been made out to the appropriate standard of proof.

50) Fifthly, amongst the evidence received in this case, as is invariably the case in proceedings involving allegations of non-accidental head injury, is expert medical evidence from a variety of specialists. Whilst appropriate attention must be paid to the opinion of medical experts, those opinions need to be considered in the context of all the other evidence. It is important to remember that the roles of the court and the expert are distinct and it is the court that is in the position to weigh up the expert evidence against its findings on the other evidence. It is the judge who makes the final decision.

51) Sixth, cases involving an allegation of non-accidental injury often involve a multi-disciplinary analysis of the medical information conducted by a group of specialists, each bringing their own expertise to bear on the problem. The court must be careful to ensure that each expert keeps within the bounds of their own expertise and defers, where appropriate, to the expertise of others.

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

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

54) Ninth, as observed by Dame Elizabeth Butler-Sloss P in an earlier case:

"The judge in care proceedings must never forget that today's medical certainty may be discarded by the next generation of experts or that scientific research would throw a light into corners that are at present dark."

55) This principle, *inter alia*, was drawn from the decision of the Court of Appeal in the criminal case of R v Cannings [2004] EWCA 1 Crim. In that case a mother had been convicted of the murder of her two children who had simply stopped breathing. The mother's two other children had experienced apparent life-threatening events taking a similar form. The Court of Appeal Criminal Division quashed the convictions. There was no evidence other than repeated incidents of breathing having ceased. There was serious disagreement between experts as to the cause of death. There was fresh evidence as to hereditary factors pointing to a possible genetic cause. In those circumstances, the Court of Appeal held that it could not be said that a natural cause could be excluded as a reasonable possible explanation. In the course of his judgment, Judge LJ (as he then was) observed:

"What may be unexplained today may be perfectly well understood tomorrow. Until then, any tendency to dogmatise should be met with an answering challenge."

56) With regard to this latter point, recent case law has emphasised the importance of taking into account, to the extent that it is appropriate in any case, the possibility of the unknown cause. The possibility was articulated by Moses LJ in R v Henderson-Butler and Oyediran [2010] EWCA Crim. 126 at paragraph 1:

"Where the prosecution is able, by advancing an array of experts, to identify a non-accidental injury and the defence can identify no alternative cause, it is tempting to conclude that the prosecution has proved its case. Such a temptation must be resisted. In this, as in so many fields of medicine, the evidence may be insufficient to exclude, beyond reasonable doubt, an unknown cause. As Cannings teaches, even where, on examination of all the evidence, every possible known cause has been excluded, the cause may still remain unknown."

57) In Re R, Care Proceedings Causation [2011] EWHC 1715 (Fam), Hedley J, who had been part of the constitution of the Court of Appeal in the Henderson case, developed this point further. At paragraph 10, he observed,

"A temptation there described is ever present in Family proceedings too and, in my judgment, should be as firmly resisted there as the courts are required to resist it in criminal law. In other words, there has to be factored into every case which concerns a discrete aetiology giving rise to significant harm, a consideration as to whether the cause is unknown. That affects neither the burden nor the standard of proof. It is simply a factor to be taken into account in deciding whether the causation advanced by the one shouldering the burden of proof is established on the balance of probabilities."

58) Finally, when seeking to identify the perpetrators of non-accidental injuries the test of whether a particular person is in the pool of possible perpetrators is whether there is a likelihood or a real possibility that he or she was the perpetrator. In order to make a finding that a particular person was the perpetrator of non-accidental injury the court must be satisfied on a balance of probabilities. It is always desirable, where possible, for the perpetrator of non-accidental injury to be identified both in the public interest and in the interest of the child, although where it is impossible for a judge to find on the balance of probabilities, for example that Parent A rather than

Parent B caused the injury, then neither can be excluded from the pool and the judge should not strain to do so.”

10. In its threshold document, the local authority pleads that the injuries to Y were ‘non-accidental’. Miss Iten has helpfully referred me to the case of Re S (A Child) [2014] EWCA Civ 25, in which Ryder LJ considered the use of the terms accidental and non-accidental injury:

The term ‘non-accidental injury’ may be a term of art used by clinicians as a short hand and I make no criticism of its use, but it is a ‘catch-all’ for everything that is not an accident. It is also a tautology: the true distinction is between an accident which is unexpected and unintentional and an injury which involves an element of wrong. That element of wrong may involve a lack of care and/or an intent of a greater or lesser degree that may amount to negligence, recklessness or deliberate infliction. While an analysis of that kind may be helpful to distinguish deliberate infliction from, say, negligence, it is unnecessary in any consideration of whether the threshold criteria are satisfied because what the statute requires is something different namely, findings of fact that at least satisfy the significant harm, attributability and objective standard of care elements of section 31(2).

The court’s function is to make the findings of fact that it is able on the evidence and then analyse those findings against the statutory formulation. If, as is often the case when a clinical expert describes harm as being a ‘non-accidental injury’, there is a range of factual possibilities, those possibilities should be explored with the expert and the witnesses so that the court can understand which, if any, described mechanism is compatible with the presentation of harm.

The threshold is not concerned with intent or blame; it is concerned with whether the objective standard of care which it would be reasonable to expect for the child in question has not been provided so that the harm suffered is attributable to the care actually provided. The judge is not limited to the way the case is put by the local authority but if options are not adequately explored a judge may find a vital piece of the jigsaw missing when s/he comes to look at all the evidence in the round.’

11. I have had these cases in mind when considering the evidence in this case.

Findings sought

12. The local authority contends that the threshold criteria under Section 31 of the Children Act 1989 are satisfied on the basis that, as at the date protective measures were taken Y had suffered and was likely to suffer significant harm, and X was likely to suffer significant physical and emotional harm, attributable to the care given and likely to be given to them by their parents. In summary the local authority seeks findings that:

- Y’s father either deliberately inflicted an injury on Y or else recklessly used excessive force when handling him, so as to cause his leg fracture;
- Y’s father must have been aware of having caused the injury at the time;

- He failed to ensure that Y received medical care promptly and did not give a true and full account to medical and child protection professionals about how the injury was caused;
 - Y's father failed to protect X, because she was in the house when Y was injured;
 - Y's mother failed to protect Y and X by failing to prevent the father from injuring Y;
 - Y's mother failed to get medical assistance in time;
 - Y's mother failed to give a true and full account to professionals of how the injury was caused;
 - Both the mother and father collaborated to conceal the true account of how Y's injury was caused.
13. The last two allegations are in respect of the parents' respective personal difficulties. It is pleaded that the father has attention deficit disorder and has suffered from depression, paranoia and low self-confidence and has a history of abusing steroids. The mother is alleged to have had a history of depression, suicidal thoughts and self-harm. It is alleged that these issues have compromised the parents' ability to consistently meet the children's needs and to protect them from harm.

The evidence

14. I have read and considered the contents of the bundle which includes statements from the parties, and the maternal grandmother, a report from Dr Watt, paediatric radiologist, and Dr Yadav, consultant paediatrician. I have read Y's and X's medical records, health visitor records and a small bundle of police disclosure.
15. I heard oral evidence from Y's general practitioner, Dr B, from Dr Yadav, and from each of the parents.

Dr B

16. Dr B was the general practitioner who saw Y on the morning of 25th October 2018 and made a referral for him to be seen in hospital. She had made notes of the consultation which appear in Y's medical records, but was also able to rely upon her own memory of events. She gave her evidence clearly, and freely admitted that some of the finer details of the short consultation might have escaped her. It took place in the course of a typically busy day in which she was dealing with a large number of patients. Under cross-examination she fairly conceded some matters, for example that the family could have all attended in their pyjamas. However, in general she had a good recollection, and I found her to be a reliable witness. She recalled that she had spoken to the paediatrician in the presence of the parents and told me that he had accepted very quickly the need for Y to go to hospital and that the paediatric team would be waiting for him on arrival. To Dr B this clearly indicated that her assessment that Y needed to be seen right away had been acknowledged. However, she fairly accepted that the family may not have understood from her that Y needed to be seen urgently. Dr B told me that when she saw Y she suspected that he had a dislocated hip and she had no thought that this might be a fracture, let alone a non-

accidental injury case. If she had thought that, she told me that she would have been likely to have called for an ambulance to take Y to hospital. As it was, she agreed that Y did not present as being in acute distress, she regarded a suspected hip dislocation as needing to be seen that day, but not necessarily immediately, and she trusted the parents to take Y into hospital.

17. She was clear however that she would not have communicated to the parents that this was a case where Y should only be taken to hospital 'to be on the safe side', or that there was any choice about it, she said he needed to be seen and following her call, the consultant was ready and waiting.
18. I am satisfied that her recollection of the parents' and Y's presentation during this visit is reliable. She recalled that the father was agitated and nervous and dominated the conversation, and that Y's mother was fairly silent. Also in the consultation room was X, and S, the mother's eight-year-old brother, who was staying with them.

Dr Watt

19. Dr Watt, Consultant Paediatric Radiologist, has provided a medical report dated 22nd January 2019. He identifies Y's injury as a spiral fracture of the right femur with displacement. On a balance of probabilities, he identifies that this fracture is likely to have occurred on the afternoon of 24th October 2018. Such fractures are rare in non-mobile infants like Y. This type of fracture is usually caused by indirect bending (for example if a pushing force is applied to one end of the bone causing it to bow) or twisting of the bone. The fracture was displaced (i.e. a complete break of the bone). Dr Watt considered the father's description in his witness statement of feeding Y, and then while he was winding him, Y tensing his body and jerking backwards. The father wrote, '*instinctively, in an effort not to drop Y, I held both his legs, near his shin bone in my right hand and supported his back with my left hand ... As Y jerked I heard a click at the top of his right leg. I was concerned, as I thought I had hurt Y, but I could not think what I could have done to have caused it.*'
20. Dr Watt could not identify within this description an abnormal bending or twisting force being applied to Y's leg and therefore did not regard it as an adequate explanation for the fracture. However, Dr Watt subsequently viewed a short film clip of the father demonstrating with a doll how he says Y was injured. In the film, the father is sitting up in the left-hand corner of a sofa, with the doll placed on his left knee. The father has his left hand on the doll's back, his right on its tummy. He demonstrates how he says the baby straightened up and then slipped down off his father's legs, and the father grabbed at his right leg (not both legs as he had previously thought) and effectively hauled him back up again to sit on his lap.
21. In an email dated 6th March 2019 Dr Watt writes:

'The video shows the father grabbing the right leg only and pulling Y back up to his lap. It appears that the leg may have been bent back to some degree during this episode whilst the father was not fully in control of Y. This was not clear to me from the initial statements provided at the time of my report.'

The description and video of forcibly grabbing the leg whilst Y was falling to the floor is consistent in terms of timing, mechanism and force from my perspective to account for the fracture.'

22. No party sought to bring Dr Watt to Court to challenge his report nor the conclusions expressed. The report is clearly expressed, logical and well-reasoned and Dr Watt has indicated the evidence upon which he relies to form his expert opinion. His extensive experience both as a treating clinician and expert are set out in his CV. I am satisfied that his conclusions can safely be relied upon.

Dr Yadav

23. Dr Yadav reaches the same conclusions as Dr Watt in respect of the nature of the injury and its timing.

24. Like Dr Watt, he did not at first consider that the father's explanation for the cause of the injury made sense, but once he had seen the film clip with the doll, he reached the same conclusion. In an email on 7th March 2019 Dr Yadav wrote:

'If the event as shown in the video is accepted as what occurred on the 24/10/2018 then in my opinion during the process of bringing Y up twisting force on the leg could have caused the spiral fracture of the right femur.'

25. Giving his evidence by video link Dr Yadav's evidence was clear and concise, and he indicated the evidence upon which he relied to inform his opinion. Like Dr Watt, he is a clinician of very significant experience both as a treating consultant and an expert witness. I am satisfied that I may rely upon his evidence and conclusions.

26. Dr Yadav reported that a fracture of the femur with displacement will cause significant pain at the time of the injury and after that, whenever the limb was handled, he would be in pain and distress. However, he accepted as plausible the parents' evidence that in the aftermath of the injury Y was settled at times, and that being fed could have provided a distraction from the pain. This is consistent with Dr B's report that when Y and his family first arrived to the consultation with her, he was settled in his car seat and it was only when she tried to examine him that it became clear he was in a lot of pain.

27. Dr Yadav concluded that it must have been apparent to the parents *'that Y had sustained some injury or was in discomfort with his right lower limb on 24/10/18 I would have expected a usual carer to seek medical attention by taking advice either from their GP or taking him to A&E for advice and assessment. In my opinion there was a delay in seeking advice from medical professionals, although the parents did seek advice from maternal Grandmother who advised them to go to their GP the next morning.'*

28. Further, he says, at the time the fracture occurred, *'it would have been very apparent to the perpetrator that significant force was applied and Y was in distress at the time of the injury and afterwards. The force required would have been significantly more than that used in the usual handling of young children of his age.'*

29. Dr Yadav wrote, *'a perpetrator would have been aware that an injury had been caused and any other non-perpetrator witness who was present would have also noticed that Y was crying and was in distress at the time the injury was caused. A non-perpetrator who had not witnessed the event handled the child after the injury was caused, it is also likely that they would have noticed the swelling of the right limb and the pain and distress on handling the right limb which would have been noted when Y was being changed or given regular care.'*

The father

30. I have watched the father's police interview, read his statement, reports and statements of other people who have described their knowledge of the father, and heard him give evidence to me at Court. The impression I formed is that he is a kind, friendly and decent man who loves his partner M and their children more than anything, and who is very proud of them and the life they live together. At the same time, he often appears to feel overwhelmed, highly anxious and stressed. The mother described him as an over-worrier and he agreed with that description. Generally, and particularly when he is nervous, he talks quite a lot and finds it quite difficult to stay focused on the question he was originally asked. This was apparent in the police interview, when he was clearly nervous, tired and anxious about the situation in which he found himself. He does not have a lot of self-confidence and, it seemed to me, tends not to trust in his own instincts and judgment, but looks to other people to guide him. So far as the children are concerned, he looks to M to show him what to do.
31. He and the mother told me that he had not had very much to do with looking after X when she was small because he was out at work a lot, because the mother was naturally good at taking care of a baby, and they were both used to households where each partner had taken on traditional roles with the mother being the home maker and primary parent. The father described to me that he feels that his tendency to worry comes from his mother, but also that when he, M and baby X were living with his mother, she could at times take over and this left him feeling even more lacking in confidence. He was worried that M might think he was not doing his fair share of childcare and housework and when Y was born, he wanted to do more to help her. However, by the time Y was a month old, his father did not think that he had changed his nappy more than twice and had fed him on less than ten occasions.
32. I have been taken to all the descriptions of what happened that the father has given since the date the fracture was sustained, and inconsistencies and omissions have been highlighted to me.
33. Having reviewed all those descriptions it is right to note that they are not always consistent, and that the father has also at times put forward alternative theories for what might have happened. His final description, assisted by him being able to show with actions rather than words what happened, has now been accepted as plausible by the experts. This explanation came only shortly before the final hearing.
34. However, there is nonetheless a very significant thread of consistency throughout the father's evidence.

35. In the police interview, he is asked at the outset to say what happened. This was his first opportunity to make a formal statement after it had been confirmed that Y had sustained a fracture. He says as follows:

'Basically I was feeding him, holding him like this in my arm like this and then everything, all the milk was going fine, you know, feeding him normal. And then obviously I had to burp him. So I burped him once, he was fine, but he didn't really burp at all. So I did it again, like that gently and rub his back a bit. So he went forward like this and then obviously when I was doing this, his body, like his stomach tensed and his legs tensed and he shot back like this so I tried to stop his fall because otherwise he would have hurt himself. And then I just heard both of his legs – well, I know one of them clicked, because I heard the sound. And then he just went back to sleep afterwards.'

36. This description includes him saying that he tried to stop Y's fall, but this was not picked up on by the police interviewer. He did not explain that he had used his hand to stop Y's fall, and was not asked. In my judgment this account is entirely consistent with the account that the father gave in the film clip, in his witness statement and in his oral evidence to me at Court.
37. Later in the interview he is asked whether he has ever dropped or almost dropped Y, whether he has held him by one or both legs. The father says no, and talks in general terms about how he handles Y. It is not obvious to me that the father thought he was being asked about the specific incident at this stage.
38. The father is asked what might have happened to have caused the break and he says, *'obviously I know to break a bone like that you would need serious sort of injury really. But I can't think how it occurred because I was feeding him at the time. I heard the click and everything. But I don't think he got trapped under anything do you know what I mean. I don't know how because obviously I was holding him like that as well when he shot back as well, so.'*
39. He said, *'I'm just very confused because I was just feeding him and then I heard the click. I just, it was just very confusing because we didn't think anything of the injury really. So, it was a bit of a shock to us, so. It's a bit of a – it's upsetting as well because we were crying like yesterday and stuff. Because we just worry about them so much, you know.'*
40. Throughout the interview the father is clear that an injury or incident, specifically the 'click', happened while he was feeding Y. He is clear about the time of the incident, around 4.30 p.m. He has been consistent about Y having tensed and straightened. His explanations have been difficult to picture or piece together, but when describing what has happened he has always volunteered that the injury happened when Y was in his care, and that he heard a click. A number of times throughout the police interview he said that he blamed himself, that he thought he had done something wrong, that he felt bad because he was the one feeding him and he didn't want to hurt him. Other possible explanations have been provided at the invitation of others. He has not ever sought to avoid responsibility, or deflect blame onto others, but has simply presented as perplexed and confused about how the injury was caused.

41. He said, and the mother accepted, that after feeding Y he had handed him to the mother and told her about the click he heard. She accepted that he had continued to worry and talk to her about the click over the course of the afternoon. He accepted that he had typed five times into the search bar on google, *'I think my baby boy of 4 weeks has a broken leg'*, and *'what are symptoms of a broken leg'*. He had then pointed out to the mother later in the day that he thought one of Y's legs looked shorter than the other and he had tickled Y's toes as a test. He knew if one leg looked shorter than the other and if Y's leg did not move if his toes were tickled that these might be symptoms of a broken leg.
42. The weight of the evidence points towards a conclusion that the father knew something had happened, and he thought he had broken Y's leg, but he could not really understand *how* it had happened, and he therefore struggled to be specific when he was telling others. In every account he has given he has described the click. He told me a number of times he would never forget it, that a noise like that stays with you. It was a significant event for him. The father's account could have been much clearer, and on any view he should have spelled out his worry to the mother and to the general practitioner that he thought Y's leg was broken, rather than waiting and giving hints, apparently hoping that others might pick up on it for themselves. However, having regard to all the evidence in the case, I am not persuaded that the father has deliberately sought to mislead the Court, nor anyone else about what happened to Y. I accept the submissions made by Miss Iten on his behalf that a number of factors combined so as to prevent the father from giving a clear, full and consistent account throughout. In particular:
- He does have difficulty expressing himself clearly, particularly when feeling anxious and under pressure. This was supported by the cognitive assessment carried out by [redacted] and is manifestly clear from his presentation in Court and in the police interview, where he found it difficult to focus on the questions, misunderstood questions, or started giving an answer but found his train of thought running away with him;
 - the incident happened very quickly, and as I will find, at a time when he was not fully concentrating, or otherwise distracted, and therefore was unlikely to have been aware of his exact movements in the split second in which it occurred, let alone recall them precisely and describe them to others;
 - he was genuinely frightened of being judged badly by others if he told them his fears that he had hurt Y and was therefore unable to say it out loud. He said in evidence, *'straight away I was scared'*. He thinks the world of M and wants only her good opinion of him and he was terrified that she would think badly of him if he admitted what he had done. He said *'I knew in my head something was wrong'*, and, *'I wanted to say it, but the words wouldn't come out'*. He told me also that he had felt very judged by his own mother and he was worried that she would be in effect proved right in her criticisms of him, that he wasn't a good dad. It is also clear from the police interview that he had been affected by the thought of social services intervention and aware that if he were judged to pose a risk to his children then the family unit would be at risk;

- He was not confident to say that he had broken Y's leg because he could not see how it had happened. He did raise concerns with M, with maternal grandmother, the GP and the police. All of them in one way or another communicated to him that he couldn't have done anything wrong. In some ways this confirmed his own feeling that maybe he hadn't because he didn't understand how the way he handled Y had caused his leg to break. The father was used to deferring to the mother. She reassured him that he couldn't have done anything wrong, and by focusing on her worries about Y having trapped wind, he is likely to have questioned whether he was right to think there was something wrong with Y's leg. The father also heard the GP say she thought it was a dislocation. The police reassured him a number of times that no one was saying he was a bad dad, and his evidence to me was that he understood them to be saying it was not his fault. The experts did not think that the father's explanation of a click while feeding was plausible, so he tried to think of alternative explanations.
43. The father was thus confused and then even more anxious because he was carrying the knowledge in his head that he thought he had done something wrong, but receiving conflicting messages that he hadn't. All this was underpinned by being unable to understand how he could have caused the fracture by handling Y as he had.

The mother

44. The mother gave a no-comment interview to the police.
45. My impression of her was that she loves the father and her two children very much, and her family is everything to her. She has invested everything she has into her relationship. She risked separation from her own family when she was young - moving in with the father at a time her family was not convinced it was the right thing for her. She lived with the father and her baby in one room in the paternal grandparents' house which was very difficult. The dynamics in the household were challenging; in particular because the father's brother G has mental health issues and the paternal grandmother is his full-time carer, the paternal grandparents have a difficult relationship and the father himself does not have a good relationship with his brother. There were some issues around paternal grandmother's involvement in baby X's care. She wanted to help out, sometimes the couple felt she was interfering. None of this can have been easy for the mother to deal with but she did, because she was putting the needs of her own family unit first.
46. The mother's relationship with the father has also had its challenges. He was addicted to steroids for a time and this caused his behaviour to her to be aggressive and angry. He has since received treatment for this and both she and he told me that their relationship is now in a good place. She has been the primary carer for the children, with very little help from the father. This has been what she has wanted, but has also been a lot of work for her. She was the one to always get up in the night for the children, to sort out their feeding, their nappies, giving them baths, settling them to sleep, and also providing all the meals in the house and doing the housework. The day before Y sustained his fracture the father had been to a Manchester United football match, returning home at around 2.00 a.m. He had been to another match when Y was only two weeks old. On any view, it is a lot to leave a young mother to deal with a newborn and an eighteen-month-old. She accepted this was the case but

did not blame the father she told me that this situation was in part of her own making and she recognised that she needed to learn to let go a bit and let others help her.

47. The mother had some issues with her mental health in around 2014 and entirely properly and as would be expected, was asked during her pregnancy with Y about any mental health issues (I expect she would have been asked that question even without the history of issues in 2014). Despite various pressures in her life there is no evidence of any issues that the mother has been struggling with her mental health since 2014.
48. The two children are happy, healthy and thriving and apart from the fracture injury, there have never been any concerns raised by health visitors or any other professionals about the mother's care of her children. She worked with children before having children of her own, she is a loving older sister to her younger brother S, and all her interactions with her own children have been regarded by professionals as warm, loving and entirely appropriate.
49. I have had regard to the statement of maternal grandmother, which was not challenged by any party. She was at the house on the evening of 24th October at which time Y was crying and unsettled. She settled him in her arms but noticed that when she moved, he would start to cry again. Later in the evening the mother changed Y's nappy and grandmother says that the father pointed out that one leg was shorter than the other and M noticed this too. She says M noticed that if she moved Y's leg, he cried a lot. The maternal grandmother however says that she couldn't see anything out of the ordinary except that she thought his stomach was bloated. She thought he was crying from being bloated.
50. I have looked at the text messages exchanged between the maternal grandmother and the mother on the evening of 24th October, after the grandparents had returned home, as follows:

24 Oct at 21.38 Hi M, yes we got back OK thanks hope everyone is OK, has Y settled now bless him hope S is OK too x

24 Oct at 22.03 Hi mum, S is good bless him, had his drink and set his bed up, had a very noisy stage where they were both crying. X asleep now, Y is still crying, now F mentions it, his leg might be the problem, glad you got back ok thank you for the dinner x

24 Oct at 22.14 Hi M I would get him checked out and mention his leg try and get him an appointment tomorrow if you can, you are very welcome for dinner, hope Y is OK let me know if you get an appointment hope F has a nice birthday tomorrow x

Yeah, when hes asleep seems to be when he moves he crys and we watched his legs earlier when he was crying he was moving a kicking his right one but left was doing nothing still bent up. Also seems a bit floppy to the other one when you touch the right he has like reflex it back but left just flops. But could be anything still, will ring up tomoz and let u know x hopefully he will do

51. I have read the messages exchanged between the father and mother on the evening of 25th October and the days thereafter, when she was in hospital and he was at home with X. I have listened carefully to the mother's evidence about the father, and about the circumstances as they existed on the day the injury was caused and in the hours thereafter. The mother told me that the father was an over-worrier, and that she did not think that him describing a click having happened as a sign that Y had a fracture or any injury to his leg. Although she later came to think that the problem was with Y's leg, during the course of that afternoon and evening, it took her some time to identify this. Even then, she did not have any clue that he had broken his leg. I found the mother to be doing her best to help me and to tell the truth and I accept her evidence that while she had identified there was a problem with Y's leg, she had no clue it was broken until she was given that diagnosis at hospital the next day.
52. The mother does not have a particular memory of them having a bad night with Y on 24th October. The father told the police that he had been crying all night. There is evidence that there were periods of time when he was settled and sleeping and this is confirmed as consistent with the injury sustained by Dr Yadav and by Dr B's observations of Y the following morning. The maternal grandmother described Y crying a lot more than he had the first time they had met him and clearly was sympathetic to the mother's concerns later on in the evening, but she does not describe the crying as something wholly out of the ordinary. She thought he had wind. She does not describe piercing cries or Y being inconsolable as one might imagine in a child of this age, with a fracture of this severity. I have to decide the issues based on the evidence in this case and not speculate. On balance, I am satisfied that Y was crying much more than he ever had, that he was difficult to settle, and seemed in pain, but that there were also times when he was quiet and settled and that he slept for periods of time in the night.
53. The mother was loyal to the father and defensive of him. She was reluctant to criticise him. When asked the sort of question which seemed designed to get her to confirm she would always prioritise her children before her relationship with their father, she did not seem to pick up on that. However, I came to the conclusion that it was not because she does not prioritise her children's welfare beyond her relationship with him, but that she could not really envisage a situation where she would ever have to. She could not really imagine relying on the father to look after the children without her help. Until 24th October 2018 when she stayed in the hospital with Y, she had never spent a night away from X. She said that she would always prefer to be with her children.

Analysis and findings

54. Over the course of three days the evidence of the various witnesses and the contemporaneous notes came together to form a clear picture of what happened to Y.
55. The parents gave their evidence honestly and openly and were doing their best to assist the Court. Their evidence was not undermined by cross-examination, but was corroborated by other witnesses, the contemporaneous records and expert opinion.
56. I have found there to be a significant gap between the threshold findings sought and the highest point of the evidence. The local authority acknowledged this at the end of

the hearing by withdrawing its allegation that the mother had deliberately or accidentally harmed her children. However, there was no realistic basis upon which this allegation could have been proved at the outset of the hearing.

57. Nor was there any evidence available before the hearing nor adduced during it to suggest that X could be regarded as at risk from either of her parents.
58. The suggestion raised by the local authority that father had in the past found it difficult to manage his emotions when struggling with his addiction to steroids falls a long way short of establishing a basis for drawing an inference that he had lost control of his temper and deliberately harmed his child. It is for the local authority to prove its case. Inferences may only be drawn from facts which have been proved.
59. I now turn to deal with each of the specific allegations.
60. The first few paragraphs of the threshold document setting out the nature of the injury sustained are accepted by both parents, and the evidence from treating clinicians and the experts support findings in this respect.

Y has suffered a significant non-accidental injury inflicted upon him whilst in the care of the mother and father.

- *On 25th October 2018 Y was seen by medical professionals at the [name redacted] Hospital with swelling on the posterior lateral aspect of Y's right thigh with the leg externally rotated and abducted and a spiral/oblique fracture of the midshaft of the right femur with moderate angulation and overlap;*
- *The leg injury was caused in a single event between 23rd October 2018 and 25th October 2018 when Y was in the care of the mother and father.*
- *The leg injury was most likely caused by an indirect force applied to the femur, through an inflicted twisting action being applied to the femur through the lower limb.*

61. I find that these allegations are proved.

62. It is then pleaded:

The leg injury was deliberately inflicted by ~~the mother or~~ the father or, in the alternative, the leg injury was caused by a reckless use of excessive force by the father, in conjunction with the father not using handling skills when feeding and winding Y which would be expected of a reasonable parent when feeding a young child of Y's age.

63. Having regard to all the evidence I have read and heard, I am satisfied to the standard of a balance of probabilities that Y's injury was caused by his father in the manner described by him in evidence, and demonstrated in the short film clip using a doll. I find that the father's account has in fact been broadly consistent but he has struggled to provide a clear explanation for the reasons I have set out above. Although at the first opportunity in the police interview he mentioned stopping Y falling, this vital

sentence got lost in the multitude of questions and answers that followed thereafter, and the father's anxiety and bewilderment is palpable. I do not blame him for failing to be clearer in those circumstances.

64. I am satisfied that the injury occurred when the father was trying to wind Y, balancing him on his knee. I find that the father's technique fell short of what would reasonably be expected of a parent feeding a young baby of Y's age in the following ways:

- He should have positioned and held Y much closer to his body, and not so far down his leg, so that there was less chance of Y toppling away from him;
- He should have had his legs together so as to provide a safe place for Y to sit. Perching Y on the edge of his thigh presented a risk of slipping and falling;
- He should have made sure that he was properly supporting Y's head by holding his right hand across Y's chest and gently under the chin. He should not have let go of Y with his right hand at any time while he was holding him in that position;
- He should have maintained his focus and attention on Y the whole time. He accepted that there must have come a time when he took his right hand away but he was not able to say where it was or why he had done this. On behalf of the local authority and guardian there was some speculation that he may have reached for his phone or the TV remote. Both the father and the mother accepted that he was never far from his phone and he took pride in taking photographs of his children. The sofa on which he was sitting had a view of the TV. However, I must not speculate, and am not able to say on a balance of probabilities what the reason was that the father let go of Y with his right hand. I am satisfied however that the father lost concentration or was otherwise distracted and did let go of him;
- I accept that Y may have tensed and stretched his body. However, I do not accept this was unforeseeable or such an unexpected situation that the father could not have dealt with it. He should have been holding Y properly so that he could have safely contained him when he stretched or tensed. As it was, his father left him balancing precariously on one knee, and because he was not supporting him with his right hand, Y slipped down between his legs towards the floor;
- He should not have handled a tiny baby by grabbing at him in a panic, and using only one hand to direct him and to push him up by the leg. He should have used both hands to hold Y by his torso and lift him up;

65. I find that the father was negligent in his care for Y. Having regard to Lord Justice Ryder's scale of non-accidental injuries, the father's conduct could not on any view be described as reckless, which imports an element of wrong. Recklessness is 'a gross lack of carefulness, with complete disregard of the adverse consequences.' It is knowing about a risk but deciding to go ahead anyway and having no care for the consequences. There is no evidence to support any finding that this father deliberately injured his son.

66. I amend this allegation and find it proved as follows:

The leg injury was caused by a negligent use of excessive force by the father, in conjunction with the father not using handling skills when feeding and winding Y

which would be expected of a reasonable parent when feeding a young child of Y's age.

The leg injury was caused by ~~the mother or~~ the father using force significantly more than that used in the normal handling of young children of his age.

67. I am satisfied to a standard of a balance of probabilities that the father grabbed at Y's leg and pushed him upwards. I accept Dr Yadav's opinion that in doing so Y's femur would have been subject to two opposing forces; Y's weight bearing down and at an angle and the force exerted upwards as the father grabbed Y by the shin bone and pushed up. I am satisfied on a balance of probabilities that in this way the femur was subject to both a bending and twisting mechanism, putting such pressure upon it that it snapped, or clicked, thereby causing the fracture which is seen on the x-rays and diagnosed by treating clinicians and the experts.

68. I am satisfied, and the father accepts, that the force he exerted was significantly more than that which might usually be used in the handling of a young child. The evidence of Dr Yadav and Dr Watt was not challenged in this respect.

The perpetrator would have known that he or she was using significant force beyond normal handling and outside reasonable parenting.

69. It is clear that the father knew immediately that something had happened to Y and that he had grabbed hold of Y's right leg in panic. Within a relatively short time he was carrying out google searches about broken legs. However, I am not persuaded that it could be said that he knew at the time he grabbed at Y's leg he was using a level of force outside reasonable parenting. This allegation is not proved as drafted but this could be amended to read:

The perpetrator would have known or suspected immediately after the injury was caused that he had used significant force beyond normal handling and outside reasonable parenting.

70. I accept the father's evidence that he didn't have time to think, he simply grabbed at Y's leg to try and stop him from falling to the floor. However, because he had lost his focus on Y, and therefore gave himself no time to think and no time to react, he placed himself in a situation where he did not have the option to lift Y gently to safety, he could only swipe at him in a panic and grab at his leg.

71. On a balance of probabilities, I am satisfied that this injury was an accident in the sense that the father had no intention of causing any harm to Y. However, the father was negligent, and the accident foreseeable, because the father positioned Y on his lap in an unsafe way, and was not able to maintain his concentration on him, or otherwise became distracted. This meant that when Y tensed or stretched, or otherwise lost his balance, the father was not holding him safely, and was unable to protect him from falling. The father then panicked and grabbed at him, handling him clumsily and with excessive force.

Y would have experienced significant pain at the time that the injury was caused, he would have been distressed and cried, with a prominent or memorable pain response.

72. Both parents accept this allegation and I am satisfied to the standard of a balance of probabilities that Y would have experienced significant pain at the time the injury was caused, would have cried and this would have been a significant response. That is consistent with the expert evidence and the father's recollection of the click being something that has stayed with him and which he immediately knew was significant although he was not able to articulate why. The mother's and father's evidence about Y's crying has not been consistent, but in general there is an acceptance, and the weight of the evidence establishes to the standard of a balance of probabilities that Y was crying more than usual during the course of the afternoon and evening, and that, for example, when the family went to Tesco, and Y was lifted out of his car seat, he was very distressed.

Any carer present or within earshot of the infliction of these injuries would have known either from observation of the infliction of the injuries or from observing and / or hearing Y's distressed reaction that significant force was being used upon Y.

73. I do not accept on a balance of probabilities that the mother must have known that significant force 'was being used' upon Y because of his pain response. On a balance of probabilities, the fracture was sustained very quickly as he was pushed back up onto his father's lap. Further, Dr Yadav supports the parents' case that Y would have had periods of being settled, and could have been soothed as his father gave him the second half of his bottle of milk.

74. Both parents have suggested in their responses that Y would often cry during and after feeds. It is mentioned that Y has now been diagnosed with reflux although there is no suggestion in any of the medical evidence that this was a concern raised by the mother at the time of the fracture injury.

75. The mother said that she did check Y over after the father had passed him to her and told her his worry about the clicking but she did not see anything to worry about. Dr Yadav's evidence was that the fracture would not necessarily be identifiable by a lay person and the external rotation of Y's leg out of his hip as identified by the general practitioner was not something he would expect parents to be able to notice. As the day went on the mother did make a connection between Y's distress and an injury to his leg.

76. On a balance of probabilities, I am not satisfied that this allegation is proved.

Following the infliction of the injury, any carer would have been aware of Y's distress from observation of Y's right limb and the pain and distress on handling of the right limb, which would have been noted when Y was given regular care.

77. I accept the evidence of the parents, supported by the maternal grandmother, and effectively endorsed as likely by Dr Yadav, that Y was distressed for the rest of the day, upset and crying throughout the afternoon and evening, but did also have periods when he was settled, for example on the way to Tescos, when feeding, sleeping and when being soothed by his grandmother. I also accept their evidence that as the day went on they associated his distress with his right leg. The father had this realisation

much sooner than the mother but doubted himself. The mother doubted him at first, but over time came to the view that there was a problem with Y's leg.

78. The mother says that while she was aware of Y's distress she could not reasonably have known that this was due to his having sustained a fracture. The father says that he was aware of Y's distress and that it was also apparent to the mother and maternal grandparents. In hindsight, he accepts that he should have given a fuller account of what happened and his fears that Y's leg was broken, and should have pressed to take Y to the doctors or A&E.

79. I am satisfied on a balance of probabilities that this allegation is proved.

The perpetrator of the leg injury caused significant harm to Y and failed to protect him by:

- *Inflicting a significant injury upon Y;*
- *Failing to seek timely advice from medical professionals;*
- *Failing to give a true and full account to medical and child protection professionals of how the injury to Y was caused.*

80. It is proved that a significant injury was inflicted upon Y by his father and that his father failed to ensure that he received advice and treatment from medical professionals, notwithstanding his father had serious concerns about whether or not Y had sustained a fracture. The father accepts that he failed to give a true and full account of the injuries and that this caused Y harm and put him at risk from consequences of delayed treatment. For the reasons given above, I accept the reasons given by the father for his failure to give a true and full account to others. Each element of this allegation is proved.

The perpetrator of the leg injury failed to protect X by inflicting a significant injury upon Y when X was in the house.

81. The threshold document does not set out what the specific risk of significant harm to X is alleged to be. I am not satisfied to the standard of a balance of probabilities that X was at risk of significant harm, or any harm, as a consequence of the injury suffered by Y. She has been cared for extremely well principally by her mother but also by her father since her birth and there is no evidence that she has suffered any adverse effects as a consequence of the injury her brother sustained.

The other parent who did not inflict the physical injuries upon Y failed to protect Y and X by:

- *Failing to prevent the perpetrator from inflicting the injury on Y;*
- *Failing to protect X from the risk of being exposed to the violence perpetrated upon Y, which took place when she was in the household;*
- *Failing to seek timely advice from medical professionals;*
- *Failing to give a true and full account to medical and child protection professionals of how the injury to Y was caused.*

82. The unchallenged evidence was that the father had sought guidance from the mother before about how to feed Y and that he had successfully managed to do so up to ten times before without incident. His evidence that when he was feeding Y he was holding him safely in the crook of his arm is not challenged, nor is the mother's evidence that she popped in from the kitchen every now and again to check on him and saw nothing wrong. The father's evidence is that he put Y on his lap half way through the feed and tried to wind him and then Y slipped down. I do not consider the mother ought reasonably to have taken any steps to prevent the father from feeding Y, or that she should have insisted on supervising the father throughout the feeding and burping.
83. I have not made a finding that any violence was perpetrated upon Y. The injury was not deliberately inflicted. There can be no finding that the mother failed to protect X from the risk of being exposed to violence perpetrated upon Y.
84. The mother accepts that she failed to seek timely advice from professionals. With the benefit of hindsight, she could have taken him to the general practitioner or the hospital sooner, or at least rung 111. It is arguable that her answer in evidence that she was 'not 100% sure' what was wrong was not good enough; if she had a doubt, she should have checked with a professional. She could have listened to the father who was trying to tell her about his worries about Y's leg.
85. Once she had made the connection about Y's leg and his distress it was late at night and I did not understand it to be the case that Y was inconsolable or his crying was getting worse. She had two other children in the house to think about and I accept both hers and the father's evidence that neither of them would imagine paying a visit to a general practitioner or hospital on their own, they would always go together. They are a couple who value and need each other's support. I note that the maternal grandmother didn't see anything amiss when she saw Y and in the text message exchange, she suggested a trip to the doctor in the morning would be ok. The unchallenged evidence is that Y was settled for some periods of time and did not have a terrible night. The father had not managed to communicate to her his fears that Y had a broken leg.
86. In all the circumstances, while the basic fact is proved that the mother did not seek timely advice from professionals, in my view the mother should not be criticised for failing to take Y for medical treatment sooner than she did. I accept the evidence she gave to me that when she wrote '*now F mentions it*' she meant it in the way people say, '*now you come to mention it*', i.e. indicating that is the moment when things fall into place and a connection is made. It was only then that she was beginning to think that as the father had been saying, there was something wrong with Y's leg.
87. I do not think the parents should be criticised for choosing to go home with Y, X and the mother's brother S once they had seen the general practitioner, to get themselves organised, and to give the children some food, before setting out for the hospital. They could well have been criticised for turning up at the hospital with three children, in their pyjamas and with no nappies, provisions and things to keep them occupied. I accept that the mother, who did not drive, and is not a very confident person, would not have thought of going to the hospital on her own, nor would she have thought it a

good idea to leave the father at home in charge of S and X. This family did not think of anything but going together.

88. I accept the evidence of the general practitioner that while she was clear that Y needed to be seen at hospital, she did not communicate the level of urgency she would have done had she suspected a fracture. In all the circumstances a trip home for an hour or so to get organised seems to me to be understandable and eminently sensible.
89. So far as the allegation is concerned therefore, I find that the mother did not seek timely advice from professionals, but in all the circumstances of the case, I understand the reasons why she delayed and I accept her evidence that on 24th October 2018 she did not think that Y had sustained any serious injury.
90. I accept the mother's evidence that she was not in the room when the injury was sustained and therefore was not in a position to give professionals a true and full account of how it happened.

Both the mother and father collaborated to conceal the true account of how the injury to Y was caused.

91. Having regard to all the evidence in the case and in particular having listened to and assessed the credibility of the mother and father in evidence, I am not satisfied that they collaborated in any way to conceal the true account of how the injury to Y was caused. They did not know. The father had a strong feeling that Y had indeed broken his leg and that he thought he was most likely to blame, but I accept that he did not understand how this might have happened. My assessment of the father was that he was trying to raise his concerns with the mother and with the police and with medical professionals, but for the various reasons I have set out, he simply could not find the words. As a consequence, Y did suffer for longer than he should have done and his fracture remained undiagnosed and untreated for nearly twenty four hours more than it should have been.
92. The text messages exchanged between the parents on the night Y was in hospital are significant and in my judgment a finding of collusion is not sustainable when they are analysed. The mother was in hospital with Y, the father at home with X. In a series of messages the parents seek to comfort and reassure one another. The father hints again that he is blaming himself and tells the mother that she is a great mum. The mother talks of how upset she is to feel judged by social services and doctors for being a rubbish mum, and that she has managed successfully to look after X with no breaks or any illness at all.
93. Over the next few days the mother asks questions, *'if we were so abusive where are the marks? If we would have done it on purpose why no other injuries? Why hasn't he got any bruises or marks on his leg from any force. Don't they look for that and see we've got nothing to do with it?'*
94. Later she asks, *'what type of monster would you be to break a 4 week old leg on purpose. Yeah but what was it me when I slept with him cause that's the only thing I can think of'.*

95. The father replies, *'I don't know bubba it might be because he sleeps with his legs in the air bubba xxx and I was feeding him and his whole body tensed his leg only has to over bend and It can break because he's so little xxxx'*
96. The mother says, *'with a baby that still seems content and it could have been other things, it's not that easy I would of never of guessed'*. She says *'if it was us he would be screeching in pain'*. I am not sure exactly what she means here, whether she is saying if we had done something to hurt him he would be screeching in pain. However, it is clear that she is saying, as she has consistently maintained, that his presentation did not make her suspect that he had suffered a significant injury.
97. It is notable that in this exchange the father is again trying to tell her that something happened when he was feeding Y.
98. There is no evidence to suggest that these parents had any fixed understanding of what had happened that they had shared, and had made a decision to collude or collaborate so as to mislead professionals and thereby protect themselves, putting their own interests before their son's. None of the text messages supports such a finding.
99. The parents were taken to some text messages, including one where the mother said she was sorry, another where the father said, 'I won't get angry'. They both gave wholly plausible explanations for the language they had used and the context for the messages. The mother had been saying sorry to the father because it was his birthday and they had not been able to celebrate but had instead found themselves in the awful situation of their baby being in hospital and being separated from one another. The father explained that he had said he wouldn't get angry, referring to his feelings about his brother and parents. The interpretations contended for by the local authority of more sinister motives (the mother perhaps apologising for causing an injury to Y, the father perhaps hinting that he did have issues with his anger) were speculative and wholly unsustainable, when these messages are looked at in the context of all the other messages, the parents' behaviour towards one another, their children, and professionals.
100. The allegation that these parents collaborated to conceal any information from professionals or medical practitioners is unsustainable and is not proved.

The father suffers from Attention Deficit Disorder. He has suffered from depression, paranoia, low self-confidence and has a history of abusing steroids all of which compromise his ability to consistently meet the needs of the children and protect them from harm.

101. The father's response to this allegation is as follows:

'I accept that I have suffered from depression and paranoia as a result of abusing steroids. These are historical issues, which are no longer relevant. I accept that I suffer from low self-confidence. I was diagnosed with ADD as a child, but my parents tell me that I never took medication for that diagnosis. I do not accept that the only current issue, that of my low self-confidence, prevents me from being able to consistently meet the needs of my children and protect them from harm.'

102. Having regard to all the evidence I have heard and read, I accept the father's response. I accept the evidence of the father and the mother that the father does not have any current issues around steroid misuse. I have no evidence before me to support a finding that at the time protective measures were taken, or since, the father has any condition which would prevent him consistently being able to meet the needs of his children and protect them from harm, or that in fact the children's needs in general were not being consistently met. The local authority has not established to the standard of a balance of probabilities that the reason the father lost concentration or was otherwise negligent in his care of Y was because of historical issues of depression, paranoia, low self-confidence and a history of abusing steroids.

103. This allegation is not proved.

The mother has a history of depression, suicidal thoughts and self-harm including an attempt to take her own life in 2014 by taking an overdose of citalopram and ibuprofen all of which compromise her ability to consistently meet the needs of the children and protect them from harm.

104. The mother has successfully cared for her children and no concerns have ever been raised about her care for them. On the night that she was in hospital with Y she was understandably exhausted, distressed, anxious and concerned about him, and also about X, from whom she had never spent a night apart. She was expressing how miserable she was to her partner by text message, but that is not evidence of any mental health condition. There is no evidence that she was suffering from any mental health issue in or around October 2018 such that would compromise her ability to consistently meet the needs of her children or protect them from harm, and certainly no evidence that the children suffered harm or were placed at risk of harm as a result.

105. This allegation is not proved.

Conclusions

106. I have found that the father did cause the injury to his son but he did not intend to cause him any harm, nor was he reckless as to whether harm would be caused. He was lacking in confidence and experience and did not take sufficient care of Y when he propped him on his knee to wind him. A baby of this age needed to be held extremely carefully, and the father was negligent in his handling of him.

107. The parents could have taken Y to the doctors or the hospital sooner. The father knew that something bad had happened and suspected a fracture. He should have trusted his gut instinct and told the mother his worries. In all the circumstances, it is understandable that the mother did not see a need to take Y for medical assessment until the following morning, but the fact remains that there was a delay which caused Y harm and put him at risk of further harm in the event that the delay had an impact on treatment.

108. The threshold for making public law orders is crossed in respect of Y because he suffered significant harm in his parents' care which was below the standard one would reasonably expect. His father caused the injury, and both parents were slow to

respond and to act in his best interests by taking him to the doctor, out of hours clinic or hospital.

109. The threshold for making public law orders is not crossed in respect of X. She has thrived in her parent's care. I do not accept that the father's poor handling of newborn baby Y, without any intention of causing harm, represents a risk to X. At the date protective measures were taken she had neither suffered, nor was at risk of suffering significant harm, as a consequence of the care given to her by either of her parents.

110. I would hope that discussions may now be had about the progression of these proceedings, and what if any assessments are now required. I would also expect there to be a reappraisal of interim arrangements so that the mother may resume her care of her children unsupervised, the father may resume his care of X unsupervised, and some thought is given as to the level of support and supervision which may be required in respect of the father's care of Y, pending conclusion of these proceedings.

Joanna Vincent

18th March 2019

HHJ Vincent
Family Court, Oxford