

**IMPORTANT NOTICE** This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the child[ren] and members of their [or his/her] family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Case No: OX19C00079

IN THE FAMILY COURT SITTING AT OXFORD

IN THE MATTER OF THE CHILDREN ACT 1989 AND IN THE MATTER OF C AND D

Date: 22<sup>nd</sup> May 2020

**Before: HHJ Vincent**

**Between:**

**OXFORDSHIRE COUNTY COUNCIL**

**Applicant**

**and**

**A mother**

**First Respondent**

**and**

**A father**

**Second Respondent**

**and**

**C and D**

**(by their Children's Guardian KC)**

**Third and Fourth Respondents**

Emily Rayner, instructed by the local authority  
Anna Pugh of Jackson West (formerly of Brethertons), solicitors for the First Respondent mother  
Lorraine King, senior legal executive, from Trueman's solicitors, for the Second Respondent father  
Victoria Smith, of Oxford Law Group, solicitors for the children

## **JUDGMENT**

Hearing date: 22<sup>nd</sup> May 2020

*Editorial note: this short judgment was handed down on 22<sup>nd</sup> May 2020 at the final hearing. The longer fact-finding judgment dated 13<sup>th</sup> January 2020 is annexed to this judgment.*

HHJ Vincent:

1. These proceedings started in June 2019. C is three and D has had his first birthday since I last saw the parties.
2. After the fact-finding hearing in January, I found that on two separate occasions during the first three months of D's life, his father had lost control, handled D in a way that was well in excess of what would be considered reasonable, and caused two serious injuries - a rib fracture, and on another occasion, a fracture to D's collar bone.
3. On 16<sup>th</sup> January the mother separated from the father and the children returned from foster care to her care. The foster carer they lived with until the end of the fact-find had looked after the boys extraordinarily well, had built up a very good relationship with both the parents, and was very generous and flexible in making arrangements. This enabled the boys to continue to spend extensive time with their parents for the period they were not living with them, usually five days a week including at weekends and for extensive periods of time. Other family members helped to supervise contact, so that the children's relationship with their parents was supported as much as it could possibly be.
4. The children's mother is managing brilliantly as a sole parent, and the boys are doing extremely well, thriving in her care, as they always have. The local authority has no concerns about her ability to meet all the children's needs and to protect them from harm. Their social worker RB describes the relationship as strong and nurturing, that the children go to their mother for guidance, comfort and reassurance, and she is always there to provide it. Despite the enormous stress she has been under and the huge changes their family has undergone, she has protected the children from being exposed to any issues between her and their father, and her relationship with the children is upbeat, happy and full of affection and laughter.
5. The mother has a strong network of family and friends around her, particularly her aunt H, another person who throughout these proceedings has gone above and beyond to support the boys and their mother. The mother has continued to be in regular contact with RB, and in her final position statement, expresses her gratitude both to him for the support he has given to her throughout these proceedings, and to the guardian for her valuable input.
6. The father has continued to have regular contact with his children, although much less often than when they were in care. This contact is supervised by his parents, and includes overnight stays. The current arrangement is alternate weekends. In due course, and once Covid19 restrictions are reduced, other members of the paternal family will be able to supervise as well. Making arrangements has not always been easy and there have been a few issues between the parents along the way, but they have managed to move forwards, focus on the boys' needs, and have been well supported by the social worker. The boys are enjoying the time they spend with their father and grandparents.

7. The father has been assessed by Dr Jonathan Dowd, consultant forensic psychologist. He concluded that the father does not have a personality disorder, but is vulnerable to experiencing intense feelings of anger and responding inappropriately to those feelings. His personality is one that means he becomes more unstable should his routines become disturbed, whether through sleep deprivation, dealing with stresses associated with children or drug use. Dr Dowd described the father's personality as one of narcissism and impulsivity, coupled with a raised level of social desirability. This means that other people around him may be unaware of his arousal levels.
8. The father does continue to maintain that he does not know how D's injuries were caused and that he poses no risk to the children because, following a series of incidents over ten years ago when he caused very serious injuries to an older child, also when less than three months old, he had some therapy. Dr Dowd did not consider that these three brief sessions would have resulted in any fundamental benefit to the father. Dr Dowd has assessed the father's risk for future violence as low, but identifies a clear risk:

*“Given his personality traits being associated with expressive impetuosity and fickle temperament, risks are perhaps more likely to arise in very unique and specific circumstances during which his preferred life routines and patterns are interrupted and the father experiences himself emotional instability. The parental stressors associated with caring for an infant child may very well have offered him significant challenges in terms of accommodating and adjusting too over short periods of time, potentially resulting in maladaptive behavioural responses.”*

9. So there remains a serious issue with anger management that is untreated, and although the father is willing to do whatever is asked of him, he himself does not acknowledge that risk. In these circumstances, I agree that for the foreseeable future the father's contact with his sons must remain supervised.
10. Dr Dowd recommends that the father undertakes twelve to fifteen sessions of anger management work and psychotherapy over the next twelve to eighteen months. FASS (Family Assessment and Safeguarding Service) in the local NHS has offered him a place on its Lighthouse Programme, which requires 20 weeks of group work and 1:1 therapy. There is some hope this could start in August. The local authority's view is that contact should continue to be supervised until the father has undertaken the work recommended by Dr Dowd. The father is committed to doing whatever he can to progress the time he spends with the boys from supervised to unsupervised. It is a concern that after the Court proceedings in respect of the father's older son, that the father had only the briefest level of support. It is extremely positive that this social worker who has built up extremely good working relationship with both parents and has the trust of both, will continue to be assigned to the family under a child in need plan, and if FASS is not a possibility for whatever reason, is committed to working with the father to find a suitable alternative.
11. The local authority does not seek any public law orders, and has every faith in the children's mother to continue to give her children the very best care, promoting their relationship with their father and extended paternal family, but setting clear expectations and boundaries so as to ensure they are safe. She is relieved that professionals trust her to make safe decisions about her children's welfare.

12. Both parents agree to the Court making a child arrangements order which will provide that the children live with their mother and shall spend regular time with their father. They agree to continue to engage with children's services under the child in need plan while the father completes the work recommended by Dr Dowd and they will welcome advice from professionals about when the need to supervise can be reviewed and progress made. Both recognise that it is difficult to provide any certainty, particularly while all our lives are so changed by Covid-19, but have set out in the recitals to the order a general framework of expectations, which is helpful.
13. Even if the child in need plan has come to an end, the local authority has committed to supporting the family if needed in the future, to review arrangements and assess the risks around reducing supervision, once the father has completed the recommended work.
14. I have read the contents of the bundle, including Dr Dowd's assessment and supplementary letter, the social worker's final evidence and care plans and the guardian's detailed position statement.
15. Like the guardian I am impressed with the work the allocated social worker has done to continue to support the family, thinking creatively and supporting the very extensive contact arrangements when the boys were in foster care, helping the parents as they separated to make arrangements that would enable the boys to continue to spend time with their father, including convening a Family Group conference with paternal relatives in March and helping the father to find the right therapy for his needs, supporting his referral to FASS. RB's final evidence and care plan show his knowledge and understanding of the family, and demonstrate the open-minded and balanced approach that he has shown throughout his involvement in this case. He has discussed need for supervision order with the IRO and the guardian and carefully weighed up relevant factors in the balance. They initially had some concerns and thought a supervision order may be needed, but both have considered fully all the arguments, and have come to the same view as the social worker. I too have confidence in his judgment and both his abilities to provide continuing support to the family, and in the parents' ability to work with him.
16. Credit is due to the parents who have suffered the stress of these long proceedings and are still coping with the practical and emotional impact of their separation, but have continued to work very well with one another, their focus always on the welfare of their children.
17. In all the circumstances, I agree that there is no need for any greater level of intervention from the local authority in this family's life. I approve the final care plan for a child arrangements order to be made in the terms drafted.
18. The father has today given an undertaking to the Court that he will not consume illicit drugs when the children are in his care or at least five days in advance. Over the video link I warned him of the potential consequences of him breaching that order and satisfied myself that he understood the promise he was making, that he felt able to keep that promise, and understood the consequences of him breaking that

promise. A signed document from him recording the terms of the undertaking is to be filed at court and will be appended to the Order.

Joanna Vincent

22<sup>nd</sup> May 2020

HHJ Vincent  
Family Court, Oxford

**Annex: fact-finding judgment of 13<sup>th</sup> January 2020**

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**Before: HHJ Vincent**

**Between:**

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**Applicant**

**and**

**A mother**

**First Respondent**

**and**

**A father**

**Second Respondent**

**and**

**C AND D**

**(by their Children's Guardian KC)**

**Third and Fourth Respondents**

Matthew Brookes-Baker, instructed by the local authority  
Kate Mather, instructed by Brethertons, solicitors for the First Respondent mother  
Simon Miller, instructed by Truemans, solicitors for the Second Respondent father  
Alex Perry, instructed by Oxford Law Group, solicitors for the children

## **JUDGMENT**

Hearing dates: 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 13<sup>th</sup> January 2020

## Introduction

1. I am concerned with C who is three and a half, and D, who is nine months old.
2. The children's mother is [name redacted]. Her partner and father of both boys is [name redacted].
3. The proceedings came about after it was discovered that D had a fractured collar bone (clavicle). On 10<sup>th</sup> June 2019 when he was twelve weeks old, the parents took D to see the general practitioner. They reported D was not using his left arm and that he had cried out in pain when lifted him with hands held under his armpits. The GP did not identify any problems on examination but agreed to make an appointment for the following day if the parents were still concerned. The mother brought him back for that appointment, again the GP could find nothing wrong but agreed to make a referral to hospital, where the mother took D later that day. X-rays taken on 11<sup>th</sup> June and 12<sup>th</sup> June revealed an undisplaced fracture of the left clavicle.
4. Dr Oates, the expert paediatric radiologist instructed by the parties in this case, has reviewed these x-rays and identified a further undisplaced fracture on D's left posterior eighth rib.
5. Upon identifying the clavicle fracture the treating clinicians made a referral to social services. Proceedings were issued and District Judge Jenkins made an emergency protection order on 18<sup>th</sup> June 2019.
6. I made interim care orders for the boys shortly after that. Initially they were placed with their aunt, but she had three children of her own to care for, C in particular struggled with the placement, and it broke down. The boys returned home and their great aunt H moved in to care for them but that placement also broke down. Following an urgent hearing before me on 23<sup>rd</sup> July 2019 the parents acknowledged that they could not put forward a viable proposal for an interim family placement and the children moved to their current foster care placement on 24<sup>th</sup> July 2019.
7. It is disappointing that this fact-finding hearing has taken over six months to list. The reasons for the delay were that the expert paediatric radiologist and paediatrician are both overwhelmed with work and needed time to complete their reports, and then lack of judicial and Courtroom availability was such that it was impossible to list before Christmas.
8. It is to the credit of the boys' parents, their social worker, family members in particular the boys' great-aunt H, and their foster carer, that in the months leading up to this fact-finding hearing, they have built up a very good working relationship. In particular the foster carer and great-aunt H have been generous with their time and this has enabled the parents to spend extensive time with their children, although supervised.
9. The local authority seeks findings that both the rib fracture and the fractured clavicle were injuries inflicted on D by one or the other of his parents and that as a result he

suffered significant harm, and that both he and C are at continuing risk of harm from their parents as a result.

10. Apart from the fractures, no other concerns are raised about the care the boys have received from their parents. C is a happy, if boisterous three-year-old. He loves his brother dearly. D is a happy contented baby. The children have a lovely time with their parents in contact, and have been seen to receive attentive, attuned and loving care from them.

### **Findings sought**

11. The local authority seeks findings that D sustained the following injuries:

- (i) Sometime between 26<sup>th</sup> March 2019 and 23<sup>rd</sup> May 2019, a fracture to the posterior aspect of his left 8<sup>th</sup> rib (7 to 11 weeks prior to his presentation to hospital on 11<sup>th</sup> June 2019);
- (ii) Sometime between 7<sup>th</sup> May 2019 and 4<sup>th</sup> June 2019, a fracture to his left clavicle (1 to 5 weeks old prior to his presentation to hospital on 11<sup>th</sup> June 2019);

12. It is asserted that both injuries were ‘inflicted non-accidentally’ by either the father or the mother in two separate traumatic events, that the perpetrator would have known their actions went beyond usual handling in childcare and were likely to cause D pain, distress and injury. It is pleaded that the perpetrator failed to seek appropriate and prompt medical attention for D. It is not pleaded that the other parent failed to protect D and neither is it suggested that either one of the parents is covering up for the other one.

### **The law**

13. 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.

14. 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 Cs [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 Cunnings 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."

15. With reference to the case of Cunnings, cited above, Mr Miller reminds me that the Court in that case emphasised that (where there is no scientific explanation of the cause of an injury), 'recurrence is not in itself probative'.

16. In Re S (A Child) [2014] EWCA Civ 25, 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.'*

17. In Re M (fact-finding hearing: burden of proof) [2012] EWCA Civ 1580, the Court of Appeal warned against the dangers of inferring that because the parents had not given an explanation for an injury, the real explanation must be a sinister one. There is no requirement upon the parents to satisfy the Court that these injuries were accidental.
18. With this all in mind, I turn next to the evidence, and then set out my conclusions and analysis in respect of each of the disputed matters on the threshold document.

## **The evidence**

19. I have read and considered the contents of the bundle which includes statements from the parties, and the paternal grandmother, a report from Dr Oates, paediatric radiologist, and Dr Yadav, consultant paediatrician. I have read D's medical records and extracts from the police disclosure which contains transcripts of police interviews and a huge volume of text messages downloaded from the parents' phones. I have watched the police interviews.
20. The father has two older sons from separate relationships. His oldest son is living independently. His son G, now nearly fourteen, was in his father's care when he was a baby and sustained injuries on four separate occasions when his father violently shook him, as found by His Honour Judge Corrie. I have read HHJ Corrie's judgment and selected documents from the proceedings in 2006 concerning G.
21. I heard oral evidence from Dr Oates and Dr Yadav, both attending by video link, from the boys' foster carer [*name redacted*], great aunt H, and from each of the parents.

## Medical evidence

22. Dr Oates' report is comprehensive, and illustrated with helpful diagrams and annotated images which make his opinion and the reasons for it clear. He was cross-examined on behalf of all parties, gave straightforward, authoritative evidence and maintained the views expressed in his report.
23. Dr Yadav's initial report comes to conclusions which are not consistent with the radiological evidence but in a subsequent report and in his oral evidence he deferred to Dr Oates so far as the timing of the injuries are concerned. He had a good grasp of the clinical notes. He was careful not to comment on matters outside his expertise and emphasised that he was not in a position to speculate as to the mechanism by which these injuries were caused in any more than general terms, because, in the particular circumstances of this case, he has not been given any direct account of circumstances that would explain the injuries.
24. While deferring where necessary to the expertise of the other, their combined evidence was consistent.
25. I have also read and considered D's medical records which include a letter from Dr Pal, consultant paediatrician, in which he sets out the history given at hospital, tests undergone and the results, and D's presentation on examination.
26. Dr Oates explained the essential stages of bone reformation following a fracture. For about a week after the break is sustained no healing process is seen radiologically. Thereafter callus starts to form around the break and can be seen on radiographs as additional mass. That activity continues for about four weeks. The final stage of the healing process, where the bone has effectively gone back to normal, happens at around eleven weeks.
27. The two separate injuries were clearly at very different stages of healing on 12<sup>th</sup> June and in Dr Oates' expert opinion, they were caused on separate occasions. Follow-up x-rays taken two weeks later also help to date the fractures.
28. Dr Oates describes the x-rays on 12<sup>th</sup> June and refers to particular research into the healing and dating of rib fractures. The images of the rib fracture show evidence of well-formed callus and the fracture line is not perceptible. By the follow-up imaging of 26<sup>th</sup> June there has been on-going remodelling and the bone has returned to a more normal appearance. That would suggest that the fracture was in the final phase of healing on 12<sup>th</sup> June and at or close to its final recovery i.e. at or close to the 11-week stage on 26<sup>th</sup> June. Dr Oates' view, having examined both sets of images, is that on 12<sup>th</sup> June the fracture was most likely around 7-9 weeks old, possibly slightly older. That gives a window between 10<sup>th</sup> to 24<sup>th</sup> April, possibly stretching further back as far as 27<sup>th</sup> March.
29. He emphasised that radiology is not an exact science and the possibility that this could be a birth injury, i.e. twelve weeks old on 12<sup>th</sup> June, could not be excluded. However, both he and Dr Yadav plainly do not regard this as a plausible explanation

for the rib fracture. Both referred to research<sup>1</sup> which carried out a comprehensive assessment of five different studies – a combined data pool of 115,756 live births – which showed no cases of posterior rib fractures resulting from birth trauma. The authors then went on to discuss thirteen known cases of birth related fractures, all of which were cases where at least one of three risk factors were present; larger baby, shoulder dystocia, difficult delivery. None of those risk factors was present in D's case.

30. The images taken on 11<sup>th</sup> and 12<sup>th</sup> June show the clavicle fracture in the initial stages of callus formation, which makes it at least a week old by that date. By the follow-up radiographs on 26<sup>th</sup> June there has been further extensive callus formation, i.e. it is still in the stage of the healing process where the bone is actively regenerating. Dr Oates says with confidence that the fracture was no more than five weeks old on 12<sup>th</sup> June. I note that the radiologist who took the initial x-rays was of the opinion that the fracture was *'at least 5 days old, more likely about 2 weeks at presentation, but not yet healed so likely to be less than 6 weeks.'* This is consistent with Dr Oates' expert opinion.
31. D saw the general practitioner and health visitor on 22<sup>nd</sup> May 2019 for his six-week health check and to be given immunisations. This was three weeks before the 12<sup>th</sup> June. On examination no concerns were noted and his mother reported that he was a happy thriving baby. If he had very recently sustained a fracture to his clavicle one might expect the GP to have noticed this – it was a comprehensive examination and no signs or symptoms of a fracture identified.
32. I accept that the GP who saw D on both 10<sup>th</sup> and 11<sup>th</sup> June did not identify any signs or symptoms of a fracture. Dr Yadav says that while he might expect a baby to be unsettled and not himself, he wouldn't expect the parents to identify that he had a fracture in the days or weeks immediately following the injury. However, considering this evidence in the round, it does tend me to the conclusion that it is more likely than not that the clavicle fracture was caused after 22<sup>nd</sup> May but before 4<sup>th</sup> June.
33. I note that signs and symptoms of the rib fracture were not picked up on the health check although the fracture must have occurred by then. On Dr Oates' evidence, by 22<sup>nd</sup> May the rib fracture was likely to be at least four to six weeks' old, and could have been older. Both Dr Oates and Dr Yadav agree that rib fractures in infants are difficult to identify. Any symptoms are likely to have settled since the time the fracture was caused, so in the circumstances it is not perhaps surprising that no signs or symptoms of this were picked up.
34. The fact that each of these fractures is described as subtle is not an indication of the level of force required to cause them. Dr Yadav said, 'a fracture is a fracture.' Both experts are clear that these fractures could not occur during routine handling of a baby.
35. Accidental rib fractures in babies are extremely rare. A rib fracture in a non-mobile baby is likely to have been sustained by a forceful blow to the chest or alternatively a

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<sup>1</sup> *Birth-related mid-posterior rib fractures in neonates: a report of three cases (and a possible fourth case) and a review of the literature*, R van Rijn, R Bilo, S Robben, 22 October 2008

forceful compressive action. A common scenario for a posterior fracture is from being picked up in both hands, held around the ribs and squeezed around the chest.

36. The mechanism for causing a fracture to the clavicle could be a forceful compression over the clavicle alternatively a forceful yanking of the arm, although this is less likely.
37. The presence of two fractures in a twelve-week-old baby raises significant concerns for inflicted injury.
38. Dr Yadav's view is that both the rib and clavicle fractures would have been memorable events in that D would have cried out in pain, and been in visible distress. I accept that a baby who suffers a broken bone is likely to cry out loudly in pain, but I am not sure that their carer would always recognise it as a different cry, for example in circumstances where the baby was already screaming or crying. I would accept that a baby who was relatively settled and then suffered a fracture injury, for example by something or someone falling on him, would cry out and a carer would recognise something had happened.
39. I accept Dr Yadav's opinion that a carer who has caused a fracture injury in their child by the way they handled them would have known that their actions went well beyond usual handling in childcare.

#### ***Great aunt H***

40. H is the mother's aunt. She has given the family an exceptional level of support since June, supervising contact on a very regular basis and for whole days at a time.
41. I am satisfied that she was doing her best to give a truthful recollection to the Court in her statement about a time she was supervising contact and, she reports, that C said he had hurt D and made him cry. Her recollection was that this was in June and C said this in response to his mum telling him that D was in hospital with a poorly shoulder. I am not sure that can be right as H did not start supervising contact until July, long after D had left hospital. H's account is not consistent with the mother's version of this conversation, which the mother says took place in July. The mother says that she asked C directly whether he had ever fallen on D and he said yes he did and made him cry.

#### **Foster carer, J**

42. J is the boys' foster carer. She has given the boys an extremely high level of consistent and attuned care. She has kept weekly logs for the benefit of the social worker and the family, recording events in the boys' lives and their emotional, educational and physical development. She has been exceptionally generous to the parents, being flexible, and selflessly adapting her daily life and plans for the boys so that they can spend as much time as possible with their parents.
43. She has noted that C is quite a bouncy boy, who likes to climb on furniture, jump, or slide backwards onto his bottom, off a sofa, dance and play, and that he has not yet developed a good sense of his own safety or for that of his brother. His father

described him as a bull in a china shop and his mother said he was outdoorsy, always on the go and wanted to climb trees or run up and down steps. J has told him not to jump off furniture and to be careful and to make sure that he is giving D enough space. She said that she wouldn't normally leave C alone with his brother, for example if she had to go upstairs or into another room she might take D with her or pop him into his cot for example if she needed to visit the bathroom.

44. None of this behaviour sounds particularly out of the ordinary where a small baby needs a great deal of attention from his carer and his healthy, lively older brother also needs and wants some attention too. Consistent with the parents' evidence, J reports that C has never hurt his brother or shown any indication of wanting to hurt him. Very recently a note in her log describes C very gently pushing D away when he tried to grab one of his toys.
45. J described a conversation that she had had with C in which he had told her that he hurt his brother and demonstrated how he had dropped to his knees then fallen forward. This evidence tells me about what C may have said, but given that I know his mother suggested this to C at one point, I cannot know whether it was said as a recollection, or in response to an idea that his mother had (consciously or unconsciously) put in his head, or that if C has ever fallen on his brother, that this caused a rib or clavicle fracture.

### **The mother**

46. The mother's own mother died from cancer when she was just thirteen. She had a few difficult years and left school young, but then, through determination and strength of character, turned her life around. She found work in stables and built herself a career and a future. She has had a difficult relationship with her dad, who remarried, and she is not in contact with him at the moment. Although well supported by extended family and a network of good friends, her family unit of her sons and her partner is the centre of her world. That world has been torn apart by the events of the last six months. She is devastated to have been separated from her children and to find the security of her relationship and her family unit under threat.
47. She said she has never hurt either of her children. She has never seen anything in her partner to give her cause for concern, and has seen only a loving, committed and caring father to her children. She considers the most likely explanation for D's injuries is that they were inflicted accidentally by his brother C. She recounted how she asked C if that is what happened and says that he told her yes he did fall on D and that D cried.
48. When giving evidence she listened carefully to the questions put to her and answered naturally and instinctively. There was no sense that she was thinking what she should say, or trying to work out what the questioner was aiming for her to say, or what might sound better in the circumstances. She was challenged on having described her partner as perfect, her baby as perfect, when, it was suggested to her, the reality was not nearly so perfect. My impression was that she was trying to describe that she was happy in her relationship, and that her baby had as far as she was concerned been an easy, happy baby to care for. I think she did tend to minimise

difficulties and I haven't been able to come to a conclusion as to why that is, but I did not form the view that she was actively trying to mislead the Court.

49. During the hearing a lot of attention was given to the father's nightshift working pattern and the difficulties he has with a routine where he is working nights Monday to Thursday then has to switch to a daytime routine on a Friday for the weekend, and back again on Mondays. However, this is a pattern he has worked for the past fourteen years and is well-adjusted to it. He is committed to and prioritises his family; from his schedule it is clear that in the few hours of the week when he was not at work or sleeping he was caring for the children, either for short periods on his own while the mother was at work, or together with the mother as they spent time as a family together. He had one night off away with friends on Sunday 26<sup>th</sup> May but otherwise his life revolved wholly around work and the family.
50. The mother seems to have had a pretty relentless time of it from the moment of D's birth. She was on her own four nights a week with a newborn, and it seems that she was also the one who was up in the night with him the other three nights even when father was there. She says a number of times in her witness statement that the father has seven hours' sleep in the day times Monday through to Thursday, so she had to make sure the children were quiet or had to go out to soft play centres or to visit friends and family so that the father could get some proper sleep. The mother said to police that she hadn't been sleep-deprived at all, but I cannot see that she ever had any chance to sleep at all during the day to make up for her interrupted nights. Even though she said D's routine was generally to go down at seven, wake up once in the night around 1am or 2am for a feed and then up at 6am, there were times when he was up more than that, and anyway, it doesn't add up to much sleep for her.
51. Notwithstanding that she had given birth on 20<sup>th</sup> March, she went back to work after two weeks, riding and grooming horses.
52. As in any busy family household the mother described a lot of coming and going; the father would come back from his nightshift and she would 'fly out' to get an hour and a half's riding in before coming back so that he could sleep for the afternoon. C was at nursery two mornings a week, on Tuesdays and Fridays.
53. When they were together in the home, the mother and father were spending family time together, doing bath times and bedtimes together, sharing cooking, cleaning and ironing.
54. During this eleven-week period the mother had two nights off. One to go and support a friend who was running the [redacted] marathon, on the weekend of 13<sup>th</sup>/14<sup>th</sup> April 2019. The second was on the late May bank holiday weekend when she went with a friend to an equestrian event in [redacted], staying over Friday 24<sup>th</sup> May and coming home on Saturday 25<sup>th</sup>.
55. To the police she described the father as *'amazing, honest to God, like it's really hard, it must be really hard for you to believe, but he is perfect. My friends want relationships with people like [the father]. Like he's so perfect, he does everything for me. Like I could ask, you know, I say to him, ah I'm going to [redacted], my*



*friend just run in the [redacted] marathon .. and I was like, I'm going away for the weekend and he was like okay fine. Like he's great.'*

56. The police asked her if they had ever had an argument, and she said, *'No. Yeah, well me and him are like, but not, like not, we're both stubborn, but we're both sort of, we're like, I've actually been a lot better at, regardless of the situation, just being uh, sorry, because otherwise we're so stubborn, that both of us will just not talk to each other.'* She is asked if there is a reason why she started to back down and she replied, *'No, it's just easier isn't it, like, it's just easier and like it's not, you know, the kids don't want to see, so we don't ever argue in front of the kids and we don't argue often.'* She describes the father as so laid back and placid, in fact says that is an understatement, *'he really is. Really like he's like oh, while you're away, I might take the kids swimming. No, you're not taking both kids swimming, like on a hot bank holiday to a very busy swimming pool, stop it. Like, but he's just like, got this, so in control, and, he's, he's amazing. He's amazing. Like, he really is.'*
57. A trawl through the text messages which form the large part of the extensive police disclosure would suggest that they have had quite a lot of arguments, in particular in its early stages and that they have been on the brink of separation a number of times. Many couples entertain a certain amount of drama in their relationship, even thrive on it. I accept that a relationship that has endured a certain amount of conflict can be made stronger for it. A lot of the many text messages I have seen show mutual support with the daily chores of life, shopping, childcare, as well as listening, understanding, checking in to see how the other is feeling or how the children are, expressing empathy and sympathy.
58. However, there are more than just a few arguments, and the impression given from these texts is very different from the mother's description of the father being *'amazing', 'perfect', 'so in control', and 'so laid back and placid'*.
59. There are a large number of text arguments in 2014 including a big argument just before they moved in together. In general the tone of these arguments is that the mother is hurt at something the father has done or she feels he has done, he then apologises - but criticises her for not being satisfied with his apology, or for provoking him to behave in the way he did in the first place, and says she should be able to draw a line and move on.
60. This is also the theme of an argument in August 2015. The mother texted the father saying she has nothing to apologise for, that every time she looks at him she is *'disgusted with Friday nights behaviour ... how dare you now try and make me feel bad for still being mad at you. You obviously don't see how inappropriate your actions truly were. Never on this earth was a simple sorry going to make it ok! Nor make me not look at you and wonder if you will turn again. This saddens me!...!'* The father responds, *'Oh we turning back to this are we just because you can't say a simple sorry, always bring up the past because your too fucking stubborn to say sorry for your own wrong doings!!'* He says, *'I've promised you it would never happen again and I'm always a man of my word.'*
61. The mother says, *'Also think about this [father's name redacted]. If I hit or pushed you ... would you love me?? Would you be able to look at me the same way??'* The

father says yes - *'I've made one mistake and couldn't apologise enough for it ... you just need to forgive and forget because I've promised I won't drink like that again.'* He says, *'This argument was down to you and the way you spoke to me so until you apologise I don't want to talk to you!!'* The mother responds, *'your pathetic and I'm worth more!! This is because of your uncontrollable actions!!'*

62. Both the mother and father said they couldn't remember anything about this. The father said that he had once pushed past the mother to get to the kitchen during an argument, but that does not seem to match the circumstances of this incident, and he thought it was about two years ago, whereas these texts are about something that happened four and a half years ago.
63. The mother told me that in 2016 she was having a tough time. She lost her job early in her pregnancy with C and couldn't find a new job. She was stuck at home feeling miserable and unfulfilled, anxious about money and lacking self-confidence. There are a lot of text arguments around this time where she says the father has made her feel bad about not having a job and is not sympathetic to her. They have a big argument about the father using porn during which the mother says she cannot trust him, she cannot be lied to and fears about the future of the relationship and whether he should be present at their son's birth.
64. In August 2017 she tells her friend that she and the father have had another massive row, that he is hungover, being an arsehole and the idea of being single seems appealing.
65. In July 2018 the mother texts, *'what on earth are you thinking!!! Snorting a bit of it occasionally I get but doing this is ridiculous!! I come home expecting you to be here. ... Your not 18. Your 38 and have a hell of a lot of responsibilities!! Pull a stunt like this again and I'll be gone!!'* She is in the early stages of pregnancy with D.
66. In September 2018, she texts her friend [*name redacted*] again and says she is having big rows with [*the father*], and her relationship is on the rocks.
67. There are comparatively few texts from 2018 and 2019. It seems that the parents shifted to using WhatsApp or other social media communications which do not form part of the disclosure. There is a sense that the mother over the years has more confidence in the relationship and the father's commitment to her. However, there is also a sense that she has also challenged less, questioned less, and as she said to the police, perhaps got into a habit of backing down more. She said the father went to a rave at the end of May 2019. She was asked in cross-examination if she asked him if he had taken drugs she said no, she didn't feel she needed to, then added, *'perhaps I didn't want to start an unnecessary argument.'*
68. This sense of not wanting to delve into matters which might rock the boat is seen in her response to the judgment of HHJ Corrie. She was sent it a few months ago and says that she skim read it but only read it properly more recently. The father's evidence, not challenged, was that she had only read it properly on the second day of the trial. She told me that she had been incredibly upset to read it, that she was

shocked, disappointed, and hurt. She said she could not really process it and she simply could not work out how anybody could take their anger out on a child.

69. The father said that he had a conversation with her in the past in which he told her about the injury to G. The mother said it had been a brief conversation in the early days of the relationship from which she had understood he had been found guilty on a balance of probabilities of injuring G in some way but knew no more detail than that. The father did not disagree that this was probably the extent of what he had said and that over the years he had not felt the need to tell her anything more and as things moved quite fast, they were in love and things were going so well it didn't cross his mind to mention it again, and he thought if she had wanted to ask questions then she could have done.
70. The mother's approach to getting help for D once she knew something was wrong with him was exemplary. She recognised immediately the cry she heard from him as one of pain and immediately went to wake the father. She called 111, took their advice and went to see the GP. Even though he told her there was not a problem, she persisted and said she knew something was not right. At the second appointment she pressed for a referral to hospital. Her internet searches as disclosed by the police documents show her seeking information about babies with sore shoulders. Her conduct is consistent with a worried mother who has only just found out something is wrong and is doing all she can to make sure he gets the right treatment.

### **The father**

71. In his police interview the father did mention the Court proceedings involving him and G and I think gives a pretty fair summary:

*'Uh when G was first born we had another case with Social Services um they found a bleed, we went to the doctors, for his um injections and there was a bruise on his chest I think it was which neither of us could explain so we've then gone to the hospital pretty much gone through the same procedure with the Social coming up um you know obviously we've gone through the whole procedure and they've gone and done their X- Rays and everything and it all came back apart from they found bleeding on the eye um yeh it went to Court as well because none of us could explain why um I sort of said to them that the only thing I was doing differently in my life then was the way I was holding him and obviously rocking him to sleep um but the conclusion was at the end of that was that they think that maybe I shook him too hard and that's probably what caused it didn't know for definite um but I've then gone to [place name redacted] to go through rehabilitation um we had to do is it [name redacted] Centre in [place name redacted], years ago I think.'*

72. The judge found that on between two and four occasions, the father *'treated his baby with sufficient vigour, and excessive vigour, whether by rocking or by some other means such as direct shaking, in such a way as to cause these serious (as they were at the time) SDHs<sup>2</sup> and RDHs<sup>3</sup>, so they occurred, I am quite satisfied, on more than one occasion due to the way in which the father handled G.'*

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<sup>2</sup> Sub-dural haematoma;

<sup>3</sup> Deep retinal haemorrhage

73. HHJ Corrie concluded that the father did not deliberately set out to hurt his baby, but that the context for the injuries was the father being stressed, he identified G's mother as being tired and *'only too keen to hand over to dad when he came home and it was not a responsibility which he neither relished or was capable of properly fulfilling and the result was that he was more likely than others to lose his temper and he did so in the court's judgment on more than one occasion and handled his child much more roughly than he should, using a technique which was plainly likely to cause injury.'*
74. Fortunately there were no long-lasting physical effects of the injuries upon G. Thereafter he saw G regularly, but unfortunately is not seeing him at the moment. The relationship between the father and G's mother is not good. A dispute arose over G's use of his PlayStation at his father's house. G said he did not wish to come over anymore and at the same time made an allegation that his father had assaulted him. The local authority investigated and considered no further action needed to be taken, but neither G nor his parents have found a way past this at the moment.
75. The father said that after the fact finding in 2006 he went to three group sessions on anger management but otherwise had no individual therapy or other work. He just had supervised contact for about a year until the local authority said it wasn't needed anymore. It is accepted by the local authority that he engaged with them and did all that was asked of him at the time.
76. He said he had a very different relationship with C and D's mother compared to the one he had with G's mother. He said at the time G was born he was feeling tired, down, trapped, with nobody to turn to and very alone and stressed. By contrast he said he hadn't experienced any of those sorts of feelings when either C or D was born. He did accept when questioned that he had been responsible for the injuries to G.
77. The impression I got was that he was somewhat passive about the whole situation; that it was something that had happened a long time ago and caused by external factors – mostly the difficulties of that relationship and being tired, stressed and alone. He said that social services had monitored his contact with G for a period of time and then when they gave the ok, the contact became unsupervised. He did not describe having had any sort of realisation that he himself had a difficulty in managing his behaviour when tired and stressed, or that he needed to, or had in fact made any changes in the way he coped with his emotions.
78. When questioned by Mr Brookes-Baker he said he was a lot calmer now. He said that if he feels things are getting overheated in an argument then he walks away and distracts his mind for about five minutes. He didn't say what he does if he finds himself in a situation where he does not have the opportunity to take a break.
79. He has prepared a detailed timeline of events, although it does not start until Monday 15<sup>th</sup> April 2019. At the time he prepared the statement Dr Oates had not prepared his report identifying the rib fracture so there was not thought to be a need to look at earlier events, and neither parent has updated their statement.

80. He looked after the boys on the night of 13<sup>th</sup> April when the mother was at the [*place name redacted*] marathon with her friend.
81. On his schedule, between 15<sup>th</sup> April and 4<sup>th</sup> June 2019 (the last date the clavicle fracture is likely to have been caused) the mother was working at the following times, and he looked after the boys while she was out:
- every Saturday morning from 6.30 a.m. to around 11.30 or 12pm. Usually he would take D to his mother's or another relative while he took C to mini rugby;
  - every Monday morning from around 6.30 or 7am until around 12 or 12.30;
  - a couple of hours on Tuesday 23<sup>rd</sup> April, a couple of hours on Tuesday 21<sup>st</sup> May and on Tuesday 28<sup>th</sup> May between 6.30 a.m. to 2pm and again 3pm to 5pm. C is at nursery on Tuesday mornings;
  - 7.30 to 8.30 a.m. on Thursday 16<sup>th</sup> May and Thursday 23<sup>rd</sup> May.
  - every Friday for a few hours but at varying times. C is at nursery in the mornings.
82. On the second bank holiday weekend in May the mother went to the horse show in [*place name redacted*] on Friday 24<sup>th</sup> leaving the boys in the care of their father. C went to nursery, D to his grandmother's but the father had them both in the afternoon and took care of them over night. On Saturday 25<sup>th</sup> he took C to rugby, D to his mum's then took both boys shopping for clothes for him then returned to his mother's house for the afternoon. The mother was home by the evening. The next morning the father looked after the boys between 6am and 9am while she went to work then he left to go to London at 9.50 a.m. He went out for the day and evening with his friends then returned on Monday 27<sup>th</sup> at about 3pm. The mother went out to work between 3.30 pm to 5pm and he looked after the children. On Tuesday 28<sup>th</sup> May he had a day off and stayed at home with the children when the mother worked a double shift.
83. He looked after the boys for the morning of Saturday 1<sup>st</sup> June, between 6.30 to 11.30 a.m. and 2.30 to 4.30 p.m. while the mother was working on the Sunday and again between 6.30 to 11.30 a.m. and 4 to 5pm on the Monday. On the Tuesday morning the boys went to their grandmother's.
84. The majority of text messages disclosed are from 2014, 2015 and 2016, there are very few in 2019. That may be because some have been deleted, it seems more likely that the parents were communicating by WhatsApp more frequently. The WhatsApp messages from their phones or other social media messages do not form part of the disclosure. The parents said that when the father was working a nightshift and the mother woke in the night they would often chat to each other on the phone rather than send text messages. They both have jobs where they can speak to each other on the phone pretty freely.
85. Most of the text messages in 2019 are pretty normal interactions between parents juggling busy working lives with the needs of their family; requests for shopping, checking in to see how the children or the other one is, checking the other will be back to relieve the other, sometimes mentioning they are tired, and providing reassurance that this is a tough time for the family but they will get through it.
86. On 5<sup>th</sup> May 2019, on the father's schedule he and the mother were having a family day together. It seems however that the mother did leave him with the children at

some point as he texts her at 5.30 p.m. asking her what time did D have his last bottle? She replies that it was 4pm and says, *'don't give him more. He will get gut ache.'* Father responds, *I thought that was the case. He kicking off again the little shit xxxxx*'. The mother doesn't question this negative language, and in evidence said yes the father did sometimes refer to D as a little shit. She advises he gives him some infacol.

87. There is no text message from him during the evening or night of 24<sup>th</sup> May 2019 when the father is looking after the boys. There is no response from him to text messages from the mother the morning of 25<sup>th</sup> May at 6.27 or at 10.29. At 11.25 she writes, *'love you!! Are you receiving my what's app??'* He responds a couple of minutes later saying, *'we all love you too xxxxxx'*. She sends a message at 13.41 asking what they are up to and he doesn't reply for nearly two hours saying it's been manic and he is now at his mum's having a barbeque. They are reunited early evening on Saturday 25<sup>th</sup> then on Sunday 26<sup>th</sup> he goes to London with friends and goes out at lunchtime until about 1am, then texts to say the party is carrying on in the hotel room. In the morning he texts around 9 to say he is feeling fine just a bit tired, she says she is tired too because D was up at 1 and 4. He is back in the afternoon on the Monday 27<sup>th</sup> and looks after the children from 3.30 to 5. He looks after the children again on 28<sup>th</sup> May between 6.30 and 2pm and 3pm to 5pm while the mother is out at work. In a text sent to her at 9.38 a.m. he says, *'D won't stop crying again and wants feeding again every two hours. I've been sick loads this morning but feel a bit better for it.'*
88. These two messages – 5<sup>th</sup> May and 28<sup>th</sup> May - suggest he is a bit fed up, that he is blaming D for crying and wanting to be fed, he is wanting a bit of sympathy. On their own these messages are not an obvious sign that the father is at the limits of his frustration or close to losing control, but they form a part of the overall picture.
89. The father answered questions but not in a particularly forthcoming way, I think that is probably his natural manner. The impression I formed was that he, not unlike the mother, did not care to dwell on difficult feelings or situations and preferred to put things to one side and carry on. It is not for him to prove what happened, and because there is no clear window for the fractures he was not asked to go over the particular details of any particular time. However, I did find him at times to be evasive, he couldn't recall details of certain events that one might expect to be significant.
90. He said in his witness statement that he had in the past had a full conversation with the mother about the injuries he had caused to G because he was *'wanting to make sure that everything was in the open and [the mother] knew about my past'*. He accepted that actually he had given her only a very basic outline of what had happened, left it to her to ask him if she wanted to know more, but effectively put it to one side and never thought to mention it again. This is consistent with the mother's recollection. I can fully understand how this would have happened and think it is unrealistic to think that the father would have been keen to confess all the dark moments of his past to the mother. However, it is not consistent with his description of himself as someone wanting everything to be clear and in the open.

## **Analysis and findings**

### **Allegations 1 to 7**

91. The parents accept findings 1 to 7 as follows:

- (i) *D suffered a fracture to the posterior aspect of his left 8<sup>th</sup> rib, which most likely occurred sometime on or between the 26th March 2019 and the 23<sup>rd</sup> May 2019, i.e. it was between 7 to 11 weeks on his presentation to hospital on the 11<sup>th</sup> June 2019;*
- (ii) *D suffered a fracture to his left clavicle, which most likely occurred sometime on or between the 7th May 2019 and the 4<sup>th</sup> June 2019 i.e. it was between 7 to 35 days old on his presentation to hospital on the 11<sup>th</sup> June 2019;*
- (iii) *There is no underlying medical condition that would predispose D to fracture;*
- (iv) *Between the 20th March 2019 and the 10th June 2019 D spent periods of time in the sole care of each parent;*
- (v) *The most likely mechanism for the rib fracture is a sustained forceful blow to the chest or alternatively a forceful compressive action to the chest wall which was not caused by birth;*
- (vi) *The most likely mechanism for the fracture to the left clavicle is a secondary or indirect blow or very forceful compression over the clavicle area or alternately a forceful yanking of the arm;*
- (vii) *D would have shown some signs of discomfort either at the time he sustained the fracture to his clavicle and rib or when handled subsequently by his carer.*

92. So far as allegation (vii) is concerned I understand this to be in line with Dr Yadav's evidence that when the fracture happened it is likely to have been a memorable event in that D would have cried out in pain. Thereafter he may have exhibited some symptoms or signs of discomfort, in that he might have been unsettled or fretful, not his normal self, but the nature of these fractures were such that a carer could not reasonably have known that he had a broken bone.

### **Allegation (viii)**

- (viii) *The fractures were most likely inflicted non-accidentally by either the father and or the mother in two separate traumatic events.*

93. I have had regard to all the evidence, considering each piece of evidence in the context of all the other evidence, and as a whole. I am satisfied to the standard of a probabilities that each of these two injuries occurred separately. On a balance of probabilities, I am satisfied that both injuries were inflicted upon D by his father. I consider that the mother can be excluded from the pool of perpetrators.

94. Having regard to LJ Ryder's analysis in the case of Re S, I think a better phrase than 'inflicted non-accidentally' would be '*inflicted by the father, either negligently, recklessly or deliberately*'.
95. I have come to these conclusions for the following reasons.
96. The combined weight of the medical evidence is cogent, coherent and clear. On a balance of probabilities D sustained two separate fractures at different times.
97. In a non-mobile baby less than three months old, the nature of the fractures, and that they were separate events raises very significant concerns for inflicted or abusive injury in the absence of an explanation of a significant accident.
98. There is no evidence to suggest any organic cause.
99. There is no cogent evidence to support a finding that the rib fracture occurred at birth. That would put the fracture about a month outside what Dr Oates's identifies as the most likely time frame for the fracture. Such fractures are exceptionally rare. The birth was a normal delivery with no complications and D was not a large baby. D did not exhibit any signs or symptoms compatible with having sustained an injury at that time.
100. The injuries were caused by an event that exerted force well outside what one would expect to see from normal handling in childcare.
101. The father had sole care of both children at night on only two occasions during the eleven weeks before D and C were removed from his care. Those two occasions fall respectively within the probable windows when each fracture was caused.
102. The clavicle fracture was at least a week old, treating clinicians at the hospital thought around two weeks was most likely, and that would be consistent with Dr Oates's analysis and the research, although he does allow for a bigger window. It is unlikely that D's fracture was in the acute phase at the time he had his health check on 22<sup>nd</sup> May. That makes the most probable window between 23<sup>rd</sup> May to 4<sup>th</sup> June. The father had sole care of the children on the night of 24<sup>th</sup> May, during the day on 27<sup>th</sup> May and again for the whole day on 28<sup>th</sup> May, which was still in the aftermath of his big night out on the 26<sup>th</sup>. On that day he texted mother to tell her that '*D won't stop crying again and wants feeding again every two hours. I've been sick loads this morning but feel a bit better for it.*'
103. Dr Oates puts the most likely window for the rib fracture at seven to nine weeks before the 12<sup>th</sup> June. The mother was away at the [place name redacted] marathon eight and a half weeks before that date.
104. In this case no one piece of evidence has been determinative, but I have found the coincidence of most probable fracture windows with the times the father was caring for the boys overnight on his own to be significant. I have gone into some detail to try and establish the day to day pattern for looking after the children throughout the whole period of time. It appears to have been pretty consistent. These two weekends when the mother went away stick out as a change in the



arrangements because they are the only two nights that he looked after the boys on his own. Over that second weekend and the following days the father had much more time with the children than usual, and on the Sunday night had been out for his only night off since D was born.

105. There is a body of evidence to suggest that there is a side to the father's character which means he does not react well when challenged or under pressure and that he has in the past had a tendency to lose control. Although to the police the mother said he was 'so in control', to him directly she has expressed concerns about his uncontrollable actions. The evidence I have seen is that this part of his character has not really abated over the years. He has not taken any steps to manage it and the impression I get is that the mother has adapted to it by changing her responses to him.

106. In 2006, on four separate occasions when caring for G in the past, he lost control and violently shook his son, in the moment being unable to have regard for G's safety. Within the text messages in the past a pattern of behaviour is seen with the father reacting angrily when challenged, wanting things to end there and his language becoming accusatory and angry way when he does not get the response he wants. In 2015 the mother identifies the root of their argument to be his uncontrollable actions and wonders if he will turn on her again. Flashes of temper are seen in 2016. Over time it appears that in their relationship the dynamic has become that the mother does not seek to push those buttons; she does not ask questions that may cause an unnecessary argument by challenging the father about his behaviour, she did not bring herself to read the judgment about G until this week. I am satisfied that in the weeks and months leading up to these proceedings, the parents were still having arguments. The mother said to police in the first instance they didn't have arguments at all, essentially because she had found it was easier for her to back down and that she had become better at saying sorry. She then fairly quickly accepted that well they do have arguments but not in front of the children.

107. I am satisfied that C did not cause either of the fracture injuries to his brother for the following reason:

- Dr Yadav's evidence is that the most likely mechanism for the fracture of the posterior rib is a compressive force while the child is being held rather than the injury being inflicted while the baby is lying on the floor;
- Dr Yadav says in theory the clavicle fracture could have been caused by a child falling onto D's shoulder, however the force needed to cause the fracture was significantly more than the playful activities of a child;
- Both Dr Yadav and Dr Oates were very sceptical of the notion that C could have been responsible for both fractures;
- Dr Yadav's evidence is clear that on both occasions the parents would have been aware of a significant event. Even if not in the room, they would have heard D cry out;

- Both parents (and other family members who cared for the children) say that there has never been a moment where C has been left with D for more than two or three minutes. If out of the room, D has remained in earshot. None of them can recall a single occasion, let alone two, where they have heard D cry out. Nor could they recall a time when they had come upon the aftermath of some sort of incident where one might perhaps expect C to be crying or worried or tangled up in D some way having tripped over him or jumped on him or fallen on him;
- If D was out of sight for a minute or two he was always on his playmat which has a foam arch over the top of it. It is very difficult to conceive of how C could have, on two separate occasions, fallen on C in such a way as to cause a rib fracture or a fracture to the clavicle and not been stopped by the arch. Dr Yadav considers this is *'a highly unlikely scenario in such a short life'*;
- C said he fell on D in response to his mother asking him, 'did you fall on D?' He was not even three at the time. I accept that he said it and that he repeated it to his foster carer. However, in light of the medical evidence, and in the absence of any other evidence to support this scenario, I cannot give this statement any significant weight as evidence that he did actually, on two separate occasions, in the time space of a two or three minutes when out of sight of his parents, fall on his brother and cause him two separate fractures, in circumstances where, on both occasions, they were completely unaware that any sort of incident had occurred at all.

108. Apart from the fact of the children having been in her care, there is no evidence to support a finding that the mother has caused an injury to D. No sign of her struggling to manage with the demands of her schedule, or, apart from sometimes saying she was tired, was finding D a difficult baby.

109. Upon discovering something is not right with D, she takes him for treatment and persists in getting the referral to hospital, even when the doctor tells her he is not concerned. The internet searches she carried out were only made after the father had pointed out the problem with D's shoulder to her. She was searching up questions about sore shoulder, and even Erb's palsy, which is a congenital not acquired issue.

110. I find that she has minimised the father's character flaws and not found herself able to confront the possibility of his having inflicted D's injuries upon him, but this does not lead me to a conclusion that she is somehow generally dishonest and knows something about how D came by his injuries that she is not sharing. I accept that she has never seen anything herself in the father's care of the children to give her cause for concern.

111. The fact of the previous findings forms part of the overall picture in this case but again has not been the determinative factor. They are relevant in that they, along with the incidents referred to within the text messages, are evidence of a part of the father's character whereby he is subject to loss of control when stressed or angry. I am satisfied that these injuries were inflicted by one of D's parents. The weight of the evidence clearly in my view tends to the conclusion that it is the father who is responsible, and not the mother.

112. On a balance of probabilities, I find that the two separate injuries occurred at times when the father had sole care of the children. I find that the rib fracture was likely to have been caused on or around the weekend of 13<sup>th</sup>/14<sup>th</sup> April 2019 when the mother was away at the [place name redacted] marathon. I find that the clavicle fracture was likely to have been caused on or around the time of the night of 24<sup>th</sup> May, when the mother was again away, or in the days immediately following. I consider it likely that on each occasion he would have been feeling tired, there is some evidence from text messages that he could react negatively to D ‘kicking off’ or ‘wanting feeding again’. I consider it likely that he found himself in a position where he could not settle D, could not stop him crying, and that he did feel stressed or angry and lost control so that he handled D in such a way that caused him to inflict fracture injuries on two separate occasions.

113. I cannot say whether those injuries were inflicted deliberately, and he squeezed and/or struck him or pulled his arm out of rage and frustration, or whether in trying to rock D to calm him he shook him too hard, in his panic losing the ability to judge the level of force he was using. It may be that the injuries were inflicted some other way. However, I am satisfied to the standard of a balance of probabilities that the injuries were inflicted by the father handling D in a way that was well in excess of what would be considered reasonable in the course of ordinary parenting.

#### **Allegation 9**

*The father or mother, if found to be the perpetrator of one or both of the fractures, would have known that their actions went well beyond usual handling in childcare and that their actions were likely to cause D pain, distress and injury.*

114. I have some difficulty with this allegation because I do not know the circumstances in which D came by either of his injuries. However, I accept the medical evidence that a carer who caused these fracture injuries would have done so by handling a child in a way that went well beyond usual handling childcare and that they would have been aware of this. In my judgment the father either knew outright that he was likely to cause pain, distress and injury, or was reckless of the fact i.e. he did not or was not able to think about the possible consequences of his actions but continued anyway, having no regard to the harm he might cause to his son.

#### **Allegation 10**

*In the event that the court finds the fractures were deliberately inflicted by either the father and or the mother the perpetrator also failed to seek appropriate and prompt medical attention for D.*

115. I find that the injuries could have been negligently, recklessly or deliberately inflicted. In Dr Yadav’s words, I accept that the infliction of a fracture is a ‘memorable event’ in that it would cause significant pain and a baby to cry. I am satisfied to the standard of the balance of probabilities that the father knows that there have been at least two occasions when he has handled D well beyond what would be regarded as usual handling in childcare, and at the time he was either deliberately intending to injure him or was giving care to him that was below the standard of what one would expect a parent to give – he was negligent or reckless as to whether his child would be injured.

116. I am not persuaded in all the circumstances that I can find on a balance of probabilities with respect to either fracture that the father would have known either at the time or in the days and weeks following that he had in fact caused an injury that required medical attention. I accept that D would have suffered significant pain at the time and cried out but if D was already crying and screaming then the father may well not have recognised a cry in pain as a new or significant cry.
117. Dr Yadav accepts the signs and symptoms may have been difficult to identify and associate as indicative of a fracture. There is no evidence that D showed any signs or symptoms of having a fracture until 10<sup>th</sup> June.
118. In all the circumstances while one might speculate that the father should have sought medical treatment, I cannot say that this allegation is proved to the standard of a balance of probabilities.

### **Allegation 11**

*At the time protective arrangements were instigated D was suffering significant physical and emotional harm and C was at the risk of suffering significant physical and emotional harm.*

119. I am satisfied that this is established as a consequence of the findings I have made.

### **Conclusions**

120. The parents, local authority and guardian will no doubt want some time to reflect on the judgment.
121. In my judgment the mother poses no risk to her children and they should be returned to her care as soon as possible. She and the father are currently living together however, and some thought will need to be given to their arrangements and how any risk he presents can be managed. It should be noted that since the boys were removed from their parents' care they have continued to have extensive supervised contact with both of them and it has been positive and beneficial for all concerned.
122. The mother said a number of times that she could not understand how anybody could hurt a baby. It is going to be very hard for her to reconcile my findings about the father with the man that she knows and loves. In my experience as a family Court judge I have many times seen loving, committed and caring parents find themselves in situations where for a few seconds or minutes they have lost control and caused serious harm to their child. That does not mean that they stop loving them. It does not mean that they are no longer entitled to have a role in their children's lives.
123. There will need to be a process to understand the circumstances in which this happened, the risks that it might happen again and how to manage the situation so that the children are protected from harm, but can be supported to have a relationship

with their father. I sincerely hope that the father is able to engage in that process, which has to start with acceptance of responsibility from him and a willingness to work with professionals and others to make and sustain positive change.

Joanna Vincent

13<sup>th</sup> January 2020

HHJ Vincent  
Family Court, Oxford