

IN THE FAMILY COURT  
IN THE MATTER OF THE CHILDREN ACT 1989  
AND IN THE MATTER OF P AND R

BEFORE HER HONOUR JUDGE HESFORD

BETWEEN:

A COUNCIL

Applicant

-and-

MOTHER

1st Respondent

-and-

FATHER

2nd Respondent

-and-

THE CHILDREN

(BY THEIR CHILDREN GUARDIAN)

3rd Respondents

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WRITTEN JUDGMENT FOLLOWING FACT FINDING  
HEARING

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“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 children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.”

**Representation**

Mr Garside  
Ms Brown  
Mr Allen  
Ms Pratt

For A Council  
For the Mother  
For the Father  
For the Children via their Guardian

**Her Honour Judge Hesford:**

## **1 INTRODUCTION**

1. This judgment concerns R a girl almost X years of age and P an X month-old boy. Their parents are married but separated.
2. R is a happy, active, chatty young girl. She has a strong bond to her mother and to her full sibling P. She has been referred to the autism Spectrum Disorder diagnostic pathway due to mother's concerns. P suffered a fractured femur but has no other relevant health issues. He is mobile and is always smiling and babbling. He has a strong bond with R.
3. This is an extremely long and detailed judgment and I make no apology for the same, it is deliberately so. Should P ever want to know what misfortune befell him as a baby he can read this when older and understand. It is also important that all relevant issues are considered and this case has been beset by problems as I will outline later. I have not set out all of the evidence which I have heard and read but a summary and have highlighted some particularly relevant matters. Accordingly, the summaries of live evidence should not be assumed to cover all evidence that was given.

4. This judgment is structured as follows:

Section 1: Introduction

Section 2: The Proceedings

Section 3: Background

Section 4: Participation & the nature of the hearing

Section 5: Chronology & case management

Section 6: The parties positions

Section 7: The Local Authority Case and the Threshold

Section 8: The Mother's Case (fact finding only)

Section 9: The Father's Case (fact finding only)

Section 10: The Guardian's case (fact finding only)

Section 11: Submissions

Section 12: The legal principles regarding fact finding

Section 13: Analysis

Section 14: Findings

Section 15: Additional Comment

Section 16: Decision

## **2 THE PROCEEDINGS**

5. The applications before the court are the local authority's applications for care orders which were issued in 2022 and placement orders which were issued on 2023.
6. This is a finding of fact hearing with the Court tasked with determining, inter alia, whether P has suffered a non-accidental/inflicted injury and if so, then to determine the perpetrator of that injury if possible and additionally whether R has been placed at risk of sexual harm as a result of the parents actions. There are other concerns and these are detailed in the threshold as separate findings sought by the local authority. Depending upon my findings (if any) and the parties positions. Thereafter, I will consider the future welfare of P and R including the need for orders and plans for them at a future hearing. The matter was originally listed in April 2023, then in August 2023 and indeed this hearing itself was originally planned to be a composite hearing where welfare would be considered but it could not proceed on each those occasions for a number of reasons, largely due to failures of the local authority.
7. On [a date] 2022 A Local Authority received a referral from [a hospital] due to concerns that P had an unexplained injury. Initial concerns reported by parents were that P had "sticky eyes and constipation" and that his breathing was becoming difficult. Mother rang for ambulance at 17:45. The ambulance arrived at the home address at around 19:15 and checked P over. The parents were informed to take P to the hospital, either to go in the ambulance or to make their own way to the hospital. The parents chose to make their own way and attended A&E with P at 22:30.
8. On observation, P's right leg appeared quite swollen. X-rays on [a date] 2022, showed a significant fracture to the right femur. There were no other marks observed on P. Examining Doctors assessed the injury to be significant and non-accidental.

9. R was believed to be in the care of Ms A and her partner and maternal uncle Mr B who was previously convicted of sexual offences against his own 15-year-old niece. Father and mother were aware of Mr B's convictions.
10. P and R were made the subject of police protection and placed in foster care together (P upon his release from hospital on [a date] 2022).
11. The mother has engaged fully with the local authority and the proceedings. She has attended contact regularly. She denies being responsible for the injuries and has not been able to offer a credible explanation.
12. The father has had very limited engagement with the local authority and proceedings and did not attend for contact for a significant period of time. He effectively disengaged in early 2023 but re-engaged following the abortive August final hearing and sought contact; he by that time had not had contact for over 12 months.
13. This is not a single-issue case, the injuries to P are only part of the findings ultimately sought by the local authority. The full findings sought relate to physical harm to P, risk of sexual harm to R, failure to work with professionals, lack of supervision and domestic abuse.

### **3 BACKGROUND**

14. The family has been known to [a local authority] Children Services since 2017 due to concerns that X-year-old R was being looked after by Mr B, who was reportedly under investigation for sexual offences against a child. A Single Assessment was completed, the family disengaged following the original home visit and refused to sign a schedule of expectations. Mother verbally promised to supervise all contact. The family refused to be supported by EHAT or under Section 17 and it was deemed that threshold was not met for Section 47 as it was the (criminal) courts that had placed Father at the property following their own risk assessment. The case closed on [a date] 2017.
15. A further referral was received in 2018 due to the family not adhering to the advice in relation to supervising maternal uncle when he has contact with R. Mr B pleaded guilty to four offences of a sexual nature against his 15-year-old niece, and he was deemed to pose a significant risk of sexual harm to R, then around 2 years. Assessments were completed which led to R being subjected to a Child Protection Plan on [a date] under the category of sexual abuse. On [a date], a Review Child Protection Conference was held, and the Child Protection Plan ended, and R became subject to a Child in Need Plan. Mr B received a custodial sentence, with a recommendation of

no unsupervised contact with children under 18. The case closed on [a date].

16. A further referral was received due to concerns raised regarding poor supervision of R inside and outside of her family home after she sustained significant injuries following dog attacks by one of the three family pet dogs on two separate occasions. An initial Child Protection Conference held where R became subject to a further Child Protection Plan under the category of Neglect. Additional concerns raised regarding R's weight and speech and language which were being addressed by the respective services. The case closed on [a date] after parents demonstrated that they could ensure R's safety around the dogs in the home and R's health needs were now being met. However, it is recorded that Mother's engagement was inconsistent and Father refused to engage with Social Care completely.
17. The injury to P triggered the current involvement.
18. Since the proceedings commenced the parents have separated
19. There are no family members able to care for the children. All viability assessments were negative and none have been challenged.

#### **4 PARTICIPATION AND THE NATURE OF THE HEARING**

20. This matter has been anything but straightforward, not just in the run up to this hearing but before hand and during the hearing itself.
21. The original hearing was due to commence on [a date] 2023 however was unable to do so due to the state of the bundle, missing witnesses and missing crucial information such as police disclosure. Additionally, the father unexpectedly attended court despite having indicated that he would not attend.
22. The matter was relisted on [a further date] 2023 as a composite hearing but ultimately only proceeded as a Finding of Fact hearing in respect of 2 allegations. There were various reasons for this including witness availability but also significant procedural matters involving the local authority's care plan, the Family Finding team and the local authority ADM. Ultimately it was agreed that the time would be used for fact finding only with proposed dates in March for the Welfare part of the hearing.
23. Active steps were taken to ensure that the parents could participate fully in these proceedings. This final hearing was a fully attended hearing save for Dr Mecrow and the social worker who gave evidence remotely.

24. The mother has had the benefit of an intermediary assessment and appointment following a cognitive assessment by Nomir Ahmed. The cognitive assessment concluded that mother did not meet the criteria for a cognitive impairment due to a combination of her IQ score being above the cut-off point for a learning disability (>70), her MMSE score being above the cut-off point as well as the fact that she is able to independently function in terms of budgeting, travel etc. It also concluded that Mother has the capacity to provide instructions to her legal representatives.
25. The father has also had the benefit of an intermediary assessment and appointment following a cognitive assessment by Dr Allen. The cognitive assessment confirmed that father has significant cognitive impairments, has a full-scale IQ at the 2nd percentile which is in the borderline/extremely low range, has working memory and processing deficits and does not have reliably functional literacy skills and his reading comprehension is at the level expected for a child of 8-9 years.
26. A ground rules hearing for father took place. The father did not fully engage with the proceedings and has not fully utilised the services of his intermediary.
27. No separate ground rules hearing has taken place regarding mother, but ground rules were discussed on the first listed day of the previous hearing and the recommendations of the intermediary's report have been considered by the court and advocates and the recommended measures put into effect. These included accepting the recommendation of the mother's intermediary that she prepare a summary of certain statements to support the mother when she gives her evidence as well as the intermediary being present throughout the hearing. The actual special measures for the mother are set out at pages A37-8 of the bundle, for the father they are contained in the order of [a date].
28. Although the father attended at court on the first 2 days of this hearing, he decided to leave court, indicating that he would not return, before the evidence actually commenced on the Wednesday morning. He did not reappear on Thursday nor on Monday (Friday was a non hearing day). He had been warned that lack of engagement could mean that findings were made in his absence and I ensured that this was confirmed to him again as well as confirming that if he did not attend for his evidence on the Tuesday by 11am he would not be able to give evidence. He emailed his solicitor on Monday to say that he would be attending the next day for his evidence and claimed to believe that it was not necessary for him to have attended the other days. I simply do not accept this as being the truth. I am satisfied that he was informed by his legal representatives and by his advocate to attend

and I do not accept that they told him he did not need to or even gave him that impression. Lack of attendance was purely his choice and his alone.

29. I had the unique opportunity of seeing the parents give evidence in the witness box and to form my own opinions about their evidence and credibility. It was extremely useful to do so.

## **5 CHRONOLOGY AND CASE MANAGEMENT**

30. The proceedings are now at week 73.

31. The IRH was initially listed for [a date] 2022 but had to be delayed as a result of the father's cognitive assessment requiring a PAMS based assessment (ultimately he did not engage). The composite final hearing was initially listed for [a date], vacated due to delays with social work issues and the mother seeking a cognitive assessment and also potentially the instruction of a geneticist. It was relisted for 8 days as a composite hearing but, as stated, delayed again to [a date].

32. The application for the instruction of a geneticist was not pursued in April but was resurrected on [a date] 2023. I dismissed the application

## **6 THE PARTIES POSITIONS**

33. The Local Authority ultimately seek final care and placement orders for both children. They seek findings against the parents.

34. The mother opposes the plans and seeks for the children to be rehabilitated to her care, as a single parent having separated from the father. Initially she did not comment on whether the father may have caused the injuries in her first statement, in her second statement she raised concerns and then again in her final statement she raised her concerns that the father may have something to hide but stopped short of blaming him. In the position statement filed on her behalf her position is made clearer - since she did not harm P in any way, the father must have hurt him and, although she found this difficult to come to terms with initially, she feels that the evidence as it has developed over time lends support to this probability. For this reason and to this extent, the mother's instructions were to put a positive case in respect of causation of this injury to the father.

Her case is that if she is exonerated from causing injury, the children should be rehabilitated to her care, and, if she remains in the pool, the evidence of Stephanie Snow should be preferred to that of the social worker or Ms Kasperowicz, but in any event, the local authority's application for placement orders is flawed.

35. The father has barely engaged since early in the proceedings but his position is that he supports the mother. As a result of his lack of engagement, he has not been fully assessed. He does not put himself forward to care for the children.
36. The Guardian supports the plans of the local authority.

## 7 THE LOCAL AUTHORITY CASE AND THE THRESHOLD

37. The local authority assert that the s.31 Children Act Threshold is met by virtue of the children being at risk of suffering significant harm attributable to the care likely to be given to the child by his parents which would not be reasonable to expect a parent to give. Such harm arose by virtue of the following threshold submitted for the final hearing. The items in **bold** are those to be determined at this Finding of Fact Hearing, the balance at a later date although it is appropriate that I should mention that it was accepted that certain matters of the threshold were purely factual and others were not compliant. I invited (and renew the invitation to) the Local Authority to reconsider the threshold document before the welfare stage of this hearing takes place.

### Physical Harm:-

1. *On [a date] 2022 at or about 5.45pm, an ambulance was called in respect to the child P, then aged 5 weeks. The mother and/or the father advised that P was blue about his lips and had sticky eyes and was constipated [C.2 initial SWET].*
2. *At or about 7.15pm on [a date] 2022, paramedics attended the home and examined P. The parents were told to take P to hospital and were offered the choice of going via ambulance or making their own way to hospital. The parents chose to take him to hospital themselves, but did not attend until approximately 10.27pm [C.2 initial SWET].*
3. *Upon P being taken to the [hospital] emergency department at 10.27pm, the parents gave a history of “bluish discolouration around the lips” and wheeziness [G.3, report of Dr S, paediatrician].*
4. *P was X-rayed on [a date] 2022; the X-ray revealed an oblique fracture of his right femur which showed no signs of healing. Follow-up X-ray on [a date] 2022 also showed no healing. By [a date] 2022, on the skeletal survey, evidence of healing was observed. The fracture was therefore sustained no more than 10 days prior to the X-ray on [a date] 2022. [G.914, Dr Johnson report].*



5. ***The fracture to P's leg is as a result of significant force applied to the bone by way of a blow, or bending, snapping or twisting mechanism. Fractures do not occur in children of this age and development as a result of normal handling or exuberant play. In a non-mobile infant of this age, this fracture could not have occurred as a result on an unwitnessed event [G.5, Dr S report]. P has normal bone density and there is no evidence of underlying metabolic disease, such that would put him at increased risk of fracture [G.917, Dr Johnson report]. This injury did not happen spontaneously and was not self-inflicted.***
6. ***The child P was non-mobile and neither parent has been able to offer a credible explanation for the injury.***
7. ***Between about [a date] 2022 and [a date] 2022, the father and/or the mother inflicted the aforementioned injury upon the child P, either deliberately or recklessly or as a result of a loss of control.***
8. ***The injury would have caused immediate pain to P, and it would have been apparent to the person causing and/or witnessing the injury that P had been hurt;***
9. ***When or around the time this injury was sustained, the child P would have been in obvious pain such that would have been evident to a care giver. The father and/or the mother knew, or ought to have known a significant event had happen so as to cause this injury and failed to seek timely medical attention for him and in doing so have failed to protect him.***

Sexual Harm:-

10. *The maternal uncle Mr B is a registered sex offender, having pleaded guilty to sexual offences against his niece in 2018 for which he received a custodial sentence with a recommendation that he have no unsupervised contact with children under the age of 18 [C.4 initial SWET], a fact which is known to the parents. Mr B's partner is Ms A.*
11. ***Between [a date] 2022 and [a date] 2022, the parents permitted R to be cared for at the home of Mr B and Ms A [B.13, Police Protection Record];***
12. ***The child R has repeatedly shared that she spends time with "uncle B" on her own and was in his company prior to the police attending on [a date] 2022; The reason that R has relayed the***

**same to professionals is that she was in the care or company of Mr B on [a date] 2022 and prior.**

**13. In allowing R contact with Mr B the mother and/or the father have willfully exposed her to a risk of sexual harm.**

Failure to Work with Professionals:-

14. The father has a long standing and deep-seated mistrust of social services. He is either unwilling or unable to work collaboratively and/or engage with children's services.

Lack of Supervision:-

15. On or about [a date] 2018, R, then aged 2, was able to open the door to the family home and leave the house without her parents' knowledge [E. 154, ISW report].

16. On or about [a date] 2019, the child R was injured by an dog belonging to her parents, whilst in the care of her mother [F. 1];

17. On or about [a date] 2019, R, then aged x, was riding her bicycle on a main road, unsupervised. She was found by a member of the public and returned home by police [E. 154-5, F.27, police disclosure].

18. On or about [a date] 2020, R, then aged 4, was found by a member of the public in her pajamas away from home on the street at approximately 7pm [E. 155, I.29-30, CP minutes].

19. On [a date], R received further injuries from the aforementioned dog including a laceration from a bite to her left shoulder and a scratch to the face; the injuries necessitated stitches to her head and shoulder in the course of surgery [F.2]

Domestic Abuse:-

20. On or about [a date] 2022 the father assaulted the mother by hitting her to the face and punching her in the leg. [C.22, mother's statement of [a date] 2022].

21. Despite bail conditions being in place for the father to have no contact with the mother, both parents remained in communication, with the mother expressing a wish to resume the relationship [E. 123, ISW assessment].

38. Neither parent fully nor properly responded to threshold until mother's statement shortly prior to the abortive August 2023 hearing. In summary,

she denies causing the injury to P, denies allowing Mr B and Ms A to care for R at their home or that R spent time with Mr B on her own thus exposing her to a risk of sexual harm. There is some acceptance of other matters. Father has not formally responded to the threshold save for his more general statement in relation to threshold. It became clear during the hearing that a longer statement had been prepared, with extra paragraphs dealing with the events of [a date], but this appears not to have been filed. I have read his full statement. In any event the statement does not properly deal with the threshold either.

### **The Medical Evidence**

39. The physical Injury suffered by P is specifically *“an oblique fracture of the midshaft of the right femur which, in the opinion of Dr Johnson is no older than 10 days of age on [a date] 22. An oblique fracture is one which goes through the bone at an angle. There is some slight displacement of the bones (movement of the bones around the fracture site)”*

### **The treating medics reports including ambulance paramedic**

40. Following arrival at [a hospital] on [a date] 2022, P underwent assessment by Dr E at 00.32 on the [a date] 2022. He noted the following history: *“At 3.30 pm he went pale with bluish discolouration around the lips and was having intercostal recessions, no wheezes – lasted for 15 minutes. Called ambulance. At around 4.30 pm, mum was changing his nappy and noticed right hip is a bit swollen”*. On examination P’s vital signs were normal. He was noted to be alert and conscious. He was noted to have a mild discharge from his eyes and his right hip was noted to be in an abnormal position. *“Right hip: externally rotated and baby seems to be in pain when moved. Mild swelling to proximal thigh.*
41. Dr E considered it likely that P had contracted a viral upper respiratory tract infection with an associated conjunctivitis (infection of the external layers of the eye). He also considered it important to rule out the presence of a broken right femur. P’s case was discussed with Dr M (Specialist Registrar in Emergency Medicine). She reviewed and examined P and had advised that an urgent X-ray of the right hip and femur should be undertaken. Dr M subsequently noted that the X-ray had shown a spiral fracture of the right femur. At 07.35 on the morning of the [date], P underwent review by Mr P (Consultant Orthopaedic Surgeon). A history of events and his findings on examination was recorded *“ Apparently on trying to change his nappy she then noticed thigh swelling, but this had not been mentioned at initial triage, or initially to me or the orthopaedic team on questioning and on looking back seems to have been mentioned only when noticed by the ED doctors”*

42. A preliminary report was prepared on [a date] by Dr T who, based on the review of the medical records, confirmed that P has suffered a spiral fracture to his right femur which was consistent with non-accidental injury.
43. Dr S, the Consultant Community Paediatrician prepared a report (undated) confirming the same and recording that mother had not provided a satisfactory explanation for the injury.
44. Dr L, Consultant Paediatric Radiologist, reviewed the CT and X-rays on [a date] and confirmed the diagnosis, initially with a potential timeline of between 5 and 14 days prior for the injury although she stated that she was unsure if there was actual new bone growth (healing response) or whether it was “artefactual”; repeat imaging would be required to confirm. She also confirmed no suggestion of metabolic abnormality of the bones.
45. Paramedic Miss R: Her evidence is contained within the police disclosure. She attended on [a date] 2022 at 19.15 “following the report of a baby who appeared to be in pain, not taking his feed as normal and mottled skin” and stayed for about an hour. Mother referred to him not having opened his bowels and Ms R suggested that he may have constipation or trapped wind. *“I held onto P, as did my colleague. I took hold of his ankles whilst he was lying down on the sofa next to Mother and gentle moved his legs backwards and forwards in a usual move that can help with constipation in babies. This did not prompt a pain response from the patient.” ...“P showed signs of being generally unsettled / uncomfortable but once mum, my colleague or sister held him he settled”.*
46. She also stated: *In relation to our whole attendance at the address, I had no concerns whatsoever in relation to what we were presented with or the behaviour of either parents. Neither Mother or Father were reluctant for us to examine P and neither were obstructive in any way. P was only wearing a nappy throughout the incident and I observed no apparent injuries to P. I have been advised that after P was examined at [a hospital] it was identified that he had a broken femur. I can confirm that whilst I was with P I did not notice any bruising, swelling or any marks at all on his body that caused me concern. There was nothing abnormal in the way he moved his legs or in the way they looked. In my opinion it was not possible for him to have had a broken leg at that stage.”*
47. None of the treating medics were called to give live evidence.

Dr Karl Johnson

48. Dr Johnson has filed one report and answered further questions.

49. In the opinion section he states that P has suffered an oblique fracture of the midshaft of the right femur which, in his opinion is no older than 10 days of age on [a date] 2022. He confirmed that as of [a date] there was no evidence of a healing response. He noted:

The radiological dating of any fracture is difficult, imprecise and a subjective estimation.

The fracture is the result of significant force applied to the bone. The amount of force required to cause this fracture is unknown, but in his opinion, it is significant, excessive and greater than that used in the normal care and handling of a child.

This fracture would not occur from normal domestic handling, over-exuberant play or rough inexperienced parenting.

At the time that the fracture occurred, P was less than 6 weeks of age and he would not have had the strength or level of development to self-inflict this injury.

At the time the fracture occurred, he would expect that P would have been in pain and shown signs of distress which would have lasted for some moments. Following this initial distress, the signs and symptoms related to this fracture could have been variable and he would defer to the paediatricians in all aspects of clinical presentation, both at the time that the fracture occurred and subsequently.

To cause any fracture requires both a suitable mechanism and a significant level of force.

The right femoral fracture is the result of a blow, impact or bending snapping action applied to the bone.

The radiological appearances of the fracture are non-specific with regard to the exact mechanism of causation and the same fracture pattern could occur from a variety of different causative events.

The radiological dating of this fracture excludes it being a birth related injury.

He had not been provided with any suitable explanation of significant force applied to P's right leg to account for the fracture which he has sustained. In the absence of any suitable history, an unexplained fracture of this nature in a child of his age raises concerns regarding possible inflicted non-accidental injury. It is the absence of any suitable

history rather than the radiological appearances of the fracture which raise these concerns.

The radiological appearances of the fracture are non-specific with regard to the exact mechanism of causation. The same fracture pattern could occur from an accidental or inflicted injury.

50. In response to questions, he confirmed:

1a) As stated in my initial report, the fracture is no older than 10 days of age on [a date]. Therefore it did not occur at birth. There is no radiological evidence of any previous older fracture. There is no radiological evidence of any increased susceptibility to fracturing.

1b) There is no radiological evidence of a birth related injury.

1c) I am confident that there is no radiological evidence of any previous fracture. In my opinion, if a fracture had occurred at birth, I would still expect to see evidence of this fracture on [a date]. There is no such evidence.

51. Dr Johnson was not called to give live evidence; his evidence was not challenged.

Dr Mecrow

52. Dr Mecrow has filed one report and has answered further questions on 2 occasions.

53. In the opinion section Dr Mecrow states that whilst a fracture is immediately painful after it has been sustained, symptoms characteristically peak perhaps 12-24 hours later as the inflammatory process progresses. This would be logical from medical knowledge of the processes that occur after a fracture has been sustained. Bleeding from the broken surfaces of the bone occurs into the surrounding tissues. As the blood denatures, this initiates an inflammatory process which results in swelling. It is this process which maximises symptoms.

An injury is at its most painful the following morning. Thereafter, symptoms continue to be maximal for a few days before gradually beginning to resolve.

54. He was very clear in advising the court that it would be exceptionally unlikely (and indeed he found it close to impossible to envisage) that P had sustained the fracture in the course of the photo-shoot. Furthermore, it would be exceptionally unlikely that the fracture could have been sustained as a result of paramedics cycling P's legs in an effort to relieve constipation.

“There is no report of him seeming to be clearly out of sorts or in pain until much later on the afternoon of the [a date] 2022. He is then described as appearing unsettled with mottled skin. An assessment of these symptoms is complicated by the fact that he may very well have been suffering with a viral upper respiratory tract infection at this time. He notes that it was thought likely by doctors who examined him at [a] Children’s Hospital that this was the diagnosis. This may very well have accounted to him appearing to have mottled skin and to be unsettled and it would be recognised that viral infections can cause conjunctivitis”.

55. Alternatively, he cannot exclude that his irritability and unsettledness was the result of him having sustained the fracture at some point earlier on the [a date] 2022. This would fit with the reports of Mother of his leg appearing swollen by the late afternoon (i.e., possibly around 16.00). He perceives there to be some inconsistency about the exact time at which an abnormality of the leg was noted. P’s mother is recorded by hospital staff as saying there was an abnormality from approximately 16.00 on [a date]. Elsewhere he notes that there are indications of the swelling only appearing once P had reached Hospital.
56. The other factor potentially at odds with the fracture having been sustained earlier in the day is the observation of paramedics who later attended and considered P to have been constipated and who therefore tried to relieve him of this by cycling his legs. However, he has experience of fractures missed by medical staff and a minority of small babies suffer less pain and discomfort. In his view, “this lends support to the idea that P had, very unusually, experienced little in the way of pain and discomfort from the fractured femur”. He disagrees with Miss Rowbottom’s assessment. He believes that her movement of P’s legs without him registering significant distress does not necessarily exclude the fracture having been present at this time.
57. The type of fracture, oblique, would commonly be associated with twisting or rotational forces, but there is little research on this topic in very small infants.
58. A potential abusive mechanism for the fracture simply involves holding P by the foot and twisting his body weight against this in the course of positioning him whilst undertaking a change of napkin. He noted specifically that a tired or frustrated carer might have caused the fracture to P in this way as a result of a momentary loss of control borne out of frustration.
59. There was no evidence of any underlying bone disorder and this fracture was highly likely to have been the result of non-accidental mechanisms

probably involving twisting of the leg in a baby who at 5 weeks old would have been completely immobile and unable even to turn over by himself.

Live Evidence and analysis:

60. Dr Mecrow's evidence was entirely in line with his report and questions but he expanded when asked. He accepted that there were differences in how he and Dr Johnson had described the fracture, with him saying twisting or rotational and Dr Johnson (and Dr L) referring to a blow, impact or bending snapping action. However, he stated that it was a subtle and minimal difference, the fact was that a force which was out of the ordinary had been applied to the bone to make it fracture.
61. He confirmed that the photoshoot was unlikely to have been the cause for the fracture and although a baby would be tired afterwards, he would recover after a night's sleep. He confirmed that he remained surprised by the lack of pain reaction or distress shown by P at the hospital even when his legs were being cycled, it was unusual for such a pain response in a baby. There was an unknown clinical cause for the lack of reaction which is why it could be very difficult to determine the time of the injury and babies have good and bad days and illnesses, such as a P potentially having a virus could affect his behaviour and therefore assessment of timing. He agreed that a carer could have been confused by the pain response as there may have been nothing extreme.
62. He confirmed that "a potential abusive mechanism for the fracture simply involves holding P by the foot and twisting his body weight against this in the course of positioning him whilst undertaking a change of napkin. I should note here that a tired or frustrated carer might have caused the fracture to P in this way as a result of a momentary loss of control borne out of frustration." He stated that if he was to cause such an injury, that would be the mechanism he would use.
63. He accepted that if the mother had been told by the paramedics that there was no urgency, there did not appear to be any significant delay at that time, but it was impossible to say if there really had been any delay as this depended on the precise timing of the fracture which was not known.

Organic Causes?

64. The mother made a very late application for genetic testing of P to consider Osteogenesis Imperfecta. This was due to the suspicion that there could be some potential skeletal issues in maternal family members although nothing had been diagnosed. I refused the application having considered Dr Mecrow's response and additionally on the grounds of delay.



65. Dr Johnson: There is no radiological evidence of underlying metabolic bone disease or other disorder which would predispose P to fracturing.
66. Dr Mecrow: Having considered mother's application, remained of the view that a geneticist report would not assist and even if P did have an unknown disorder there would still need to be a memorable episode of trauma to account for the fracture.

### **The Non-Medical / Social Work evidence**

#### The Police Evidence

67. Obtaining the full police evidence proved to be difficult. I am satisfied that if there were any gaps in the police disclosure they would not affect my decision; in short I have sufficient evidence to make my decision.
68. In Father's police interview in relation to P's injuries, he seems to suggest that R may have injured P, as he did in his response to threshold.
69. I have also received a copy of the police interview of Father from when he was arrested for assaulting the mother on [a date] 2023. The tone of that interview and Father's attitude is clear. In so far as the allegations are concerned Father is "not bothered", "can't be arsed" "it's just all the crap... I've heard this shit before", "it's fucking shite" and "a load of bollocks". The assault he said was that he "gave her a slap and then I gave her a dig in the leg and that was it... because I was annoyed." He then suggests that it was caused by the mother "she was egging me to hit her". He clearly minimises his behaviour but admits assault.
70. The ABE interview of R shows that she is familiar with Mr B and knows some details of his flat including the colour of the door, for example. She made some comments about the internal layout including there being 1 bedroom and no downstairs. These were ultimately disputed by the mother, and father, who both stated that there were 2 bedrooms. R reveals that Mr B helped to fix her bike when she was 5 by taking it to the shop.
71. Her evidence is confusing and contradictory at times and although R initially suggests that she was alone at her house with Mr B for a while, she later says that Ms A was present too. She was, however, quite clear that she was looked after by Mr B and Ms A at home and not at their flat. R does not reveal that she has spent any other time with Mr B alone. There are no details as to when any such meetings took place, or where. The interview took place 5 months after P's injury. It is not of great evidential value due to the inconsistencies, lack of clarity and R's age and comprehension and I do not attach a great deal of weight to it.

A Social Worker: (C153) 31.8.23 (& I101)

72. She set out in her statement the details of her conversation with R. She considered R to be open with her. R told her that she was with Mr B a lot, knew where he lived and that she stayed there overnight. Mr B's partner Ms A was also present but she did not say if her parents were present or not.

Live Evidence, with analysis:

73. When questioned, she appeared to be unwilling to accept criticism of any of her actions with regard to questioning R. She had no involvement with the family prior to the day of the hospital visit when she was asked to look after R for the day following the police intervention. Her employment history consisted of some time working in residential care following her Undergraduate Diploma in Social Policy 2018. She had received no "on the job" training at [the Local Authority], where she worked as a Family Support Worker between Christmas 2021 and August 2022. She was now training to be a social worker. She was not asked by [the authority] to do any direct work with R. She stated that she had training in direct working with children at her previous residential work placement. She defended herself as being sufficiently experienced and qualified to do direct work with children, accepting that this was specialised and extreme work, despite not having specific training. However, she failed to demonstrate understanding of the correct processes of interviewing children for evidence in court proceedings, answering that she did not understand the specific question. Further, whilst she had heard of ABE (Achieving Best Evidence) interviews, when asked for her understanding of the same she replied, "I don't know". If anything arose, she said that she would speak to a manager.

74. She had recorded the incorrect date for the conversation with R in her statement and admitted that she had not prepared any contemporaneous notes. Indeed her note (I102) was only created some 4 days later, finalised on [a date] and only then after conversations with her colleagues, "I spoke to everyone in my team", and also with the lead social worker. She admitted that she had no idea who Mr B was until conversations with the lead social worker and was unaware of any significance at the time.

75. She refused to accept that the questions she had asked R were leading questions and stated firmly that she had no concerns, did not consider them to be leading questions and that even with her recent training, would ask the same question again. She also admitted that there was no mention by R of spending time with Mr B alone and admitted that she herself had added the words "she didn't say whether her mum and dad are present". This lack of accuracy and including her own personal perspective seemingly led to the lead social worker repeating the comments at C5. When asked if she

knew where the social worker got her information from she stated that she “didn’t know”, despite the obvious similarities.

76. The Social Worker was a most unimpressive witness and not suitably trained to question R. She asked leading questions and her lack of understanding of both that and correct interviewing procedures including ABE and the need for specific training for direct work with children, together with her overconfidence that she had done nothing wrong and indeed would do it again cause me considerable concern. There are inaccuracies and even seemingly “spin” or impressions in her record (adding the comments about mother and father being present or not), which were only created only after conversations with the lead social worker and colleagues. I asked her how long she had looked after R on the day and she said she did not know. I asked whether minutes or hours and eventually it was narrowed down to somewhere between 2 and 8 hours. I find it extremely difficult to believe that she could remember an insignificant (at the time) conversation with R about Mr B in such detail yet cannot remember for how long she looked after her. Furthermore, I cannot accept that this was the only conversation she and R had that day as she claimed. The note at I102 states that R was awake from 4am and did not sleep and “was chatty to all adults”, whilst being supervised by herself.

77. In short, I reject her evidence in its entirety, it cannot be relied upon. It is in any event hearsay evidence, is tainted by discussions with colleagues, was not contemporaneously recorded and the conversation was undertaken with leading questions and without any knowledge or even understanding of the need for specialist training. It takes no account of R’s personality and traits. She has little credibility in this matter and is severely lacking in insight into these complex matters. Even if her evidence was accepted at its highest, and it is not, then there is still no evidence of unsupervised contact between R and Mr B; indeed she speaks of Ms A being present.

## **8 THE MOTHER’S CASE (fact finding only)**

78. The mother filed a response to threshold statement. In her response, she accepts much of the threshold but does not accept causing the injury. She stated that she remained concerned about the possibility of an underlying condition which could impact on P’s propensity to fracture. She has also accepted that the injury may have been caused by the father, in a way that had not yet been disclosed. She also feels it could be possible that R may have caused the injury accidentally.

79. So far as R knowing and spending time with Mr B, she submits that “R is aware of Mr B, having known him prior to his conviction and having seen him on video calls and in passing with other adults present.”

80. She has also filed 5 statements including a response to threshold plus a position statement during the proceedings.
81. In relation to the injuries, she set out a timeline in an early statement and she offered another potential explanation in addition to her response to threshold. This was the possibility that P was injured by the photographer at the photoshoot on [a date]. She now accepts Dr Mecrow's conclusion that this was not possible. She also stated in her statement of [a date] 2022 para 35, that she saw on [a date] 2022 that P's right leg was bigger than his left leg but this was something she had mentioned since birth. She claimed to tell the triage about the swollen leg despite the hospital having no record of this.
82. In summary, her position in response to the local authority's factual allegations can be summarised as follows:
- a. She categorically denies she hurt P in any way,
  - b. If the injury to P is found to have been inflicted, she would say that can only have been caused by Father
  - c. She accepts the incident of domestic abuse, and asserts that her relationship with Father has ended and she has no intention of resuming that relationship, and has also undertaken work in respect of domestic abuse;
  - d. She denies permitting R to be cared for at the home of Mr B & Ms A
  - e. She denies that R spent time on her own with Mr B
  - f. She denies exposing R to risk of sexual harm
  - g. The pleaded incidents of lack of supervision are accepted and it is noted by the mother that they were addressed to the satisfaction of the local authority at the appropriate times.

Participation:

83. Mother was assisted by an intermediary following a cognitive assessment. The cognitive assessment confirmed no impairment. The intermediary's report confirmed that she presented with complex communication difficulties including processing, retaining and recalling information.
84. Detailed Ground Rules were set out by the intermediary and were adhered to with breaks where sought and the intermediary providing input where necessary.

85. I am satisfied that all appropriate steps were taken for her to participate fully and that the hearing was fair.

Live Evidence, with analysis:

86. The mother gave evidence for around 3 hours with the assistance of her intermediary. She had breaks when needed. She appeared to be providing straightforward, thoughtful and open responses to questions, taking a moment to consider the question in view of her difficulties as set out above. She was appropriately emotional and clearly loves her daughter and son. On occasions she had difficulty remembering timeframes and gave conflicting evidence on certain issues such as who and when she told about P's swollen leg. At no time did I have an impression that she was being either dishonest or avoidant. She explained that she had been more concerned about P's constipation, mottled colour and blue-ish lips and did not think that there was a major issue with the leg or concentrate on that until told it was fractured by a doctor. It was a time of great stress and now some 18 months ago, even leaving aside her "complex communication difficulties including processing, retaining and recalling information". Her simplicity and lack of sophistication added to the overall impression of basic truthfulness.

87. She made no vindictive allegations against the father, accepting that he loved the children and she did not want to believe that he would hit them, had never threatened to. Her position with regard to the father was not accusatory, but merely it was effectively "not me so it must be him" and even then she still appeared reluctant to accept that it could be the father or could be a deliberate injury caused by the father although she accepted that it was possible. She had seen and heard nothing herself, he would have to answer for that. She showed considerable loyalty to him with her descriptions of his sciatica and lack of work causing him stress and frustration despite saying that following attending a domestic abuse course she now recognised that the relationship was not what she thought it had been. Her evidence suggested that father had been less supportive than when she had R. He was stressed with his back, out of work and moody but only violent to her on one occasion. He got annoyed with himself and shouted, slammed doors and walked out. She felt he got angry easily.

88. She denied having post natal depression despite apparently telling the paramedics that she had but accepted that she had low moods and was stable. She was not struggling with the care of R and had a strong bond with P.

89. In essence, she basically confirmed her version of events on [a date]. She explained that father had only looked after P alone on only one occasion

[that date] and had never looked after both children alone before then. He had only helped out with holding P about 3 times in total and changed only 5 or 6 nappies. On [a date] the father had looked after P for about 5-6 hours. Initially when she brought P down at 11am, he was in a baby-grow, when she got up again at about 4.45pm he was only wearing a vest and had a blanket. She had slept late due to a disturbed night but she was unclear in her evidence as to why or for how long she had been awake in the night, but certain that P had not been behaving abnormally. She emphatically denied any knowledge of how the injury had happened but she had not caused it herself. She did not speculate. At the hospital initially and with the paramedics she was more concerned about P's colour and lips than the leg and she was in my judgment confused about when she had initially mentioned it and who to and how she described it rather than being untruthful. She was adamant that she had mentioned it to the doctors at Triage. Given her heightened state "I was all over the place, could have said [other things]" and her difficulties, it is understandable that she may have been confused. I did not discern any evidence of lying or misleading, just confusion – she has known problems with recall. P had been settled apart from when he cried shortly after father left to go to the doctors and became mottled in colour.

90. She agreed with what father had said to the police, namely that he was heavy handed. She herself had had to intervene when he was changing nappies. She felt she had to step in to help as father was holding P up wrong, by 1 leg, putting the nappy underneath and he got frustrated, huffed and puffed sometimes with the nappy upside down. She only saw him holding by 1 leg on one occasion and told him not to. She accepted that that could potentially be a mechanism for the break, being heavy handed and doing it wrong as per Dr Mecrow's evidence, but she had not seen evidence of an injury on that occasion.
91. She was adamant that she had never left R with Mr B alone. She was not close to her brother now and had never taken R to his home or had him come into theirs. She could not answer for what father had done whilst she was out and he was caring for R as she had no knowledge of the same and in her opinion, he did not take the issue with Mr B seriously enough. She accepted Mr B's conviction and that he was a risk to R. Mr B was a support for her and had cared for R when she gave birth to P and when P had been taken to hospital. R had seen Mr B, in town and outside their properties.
92. She was confused as to whether she should have been allowing any contact at all, confirmed that she believed that the Local Authority did not have a problem with supervised contact, and she had taken steps to make sure she was supervised. She also challenged R's description of Ms A and Mr

B's flat to the police. She had allowed Mr B to be bailed to their address in [a date] but "at the time was not thinking as straight as now". She accepted that R had been on video calls with Mr B present in the past. She cannot remember the last time she had contact with Mr B.

93. I consider that the mother was not as open in relation to Mr B as she was about P's injury and that a greater amount of time was spent with Mr B than revealed prior to P's injury. I will address this later in my analysis.

## **9 THE FATHER'S CASE (fact finding only)**

94. Father filed a "response to threshold" document but it does not deal with each allegation separately or clearly. This is the statement referred to earlier. Father has confirmed that the longer statement is the correct one. It appears that 2 full pages were omitted at some point by his former solicitors and the fact they had completely failed to number the paragraphs or even the pages meant that this error was not identified until very late.

95. He works away and is not at home during the working day. He denies harming P and provided some information as to R's general behaviour around P, whilst saying that he does not blame her. He states that he saw R jumping off the couch next to P on 27 July. The extra information (2 pages) sets out a more detailed description of the events and R's behaviour. This includes that at one point the cushion he had placed near P was on the floor and P was crying as he was due a bottle. He confirms that P had settled down by the time the paramedics arrived and that they had tea before going to the hospital. He noticed that P was not moving his left leg when being examined and pointed it out to the doctor. The fracture was diagnosed thereafter.

96. He denies that neither he or the mother allowed R to be looked after by Mr B, it as a case of mistaken identity – the police assumed that he himself was Mr B .

97. So far as timings are concerned, he did not cause, hear or witness P's injury and can offer no further explanation.

98. He denied that R had ever been in the care of Mr B or that she had been cared for at his house on [a date] 2022.

99. Father has filed two further statements in this matter. In these he again denied either deliberately or accidentally causing any harm to P. He confirmed that he and the mother had separated, that he works away and that he supports the children being returned to the mother's care. He has not engaged properly with any assessments or these proceedings. He did

not have contact for over a year. He filed a further statement seeking contact but did not file a final statement.

100. Father has ruled himself out as being a carer for the children. He had practically disengaged from the proceedings. He has not attended contact, did not engage with any of the assessors or the guardian and initially refused to attend the final hearing.

101. I have, of course considered the report and answers to questions by Dr Mecrow where he stated that whilst it was possible in theory that *“if (R) had landed with her knee on (P), then I could imagine that this might have caused a fracture to the femur. In general, if this had been the mechanism a transverse fracture (i.e., running across the bone) would have resulted as there would have been no torsional (twisting) component to the force rather than a spiral or oblique fracture.”* Dr's Mecrow and Johnson confirm that P's fracture was oblique in their reports. I have already addressed Dr Mecrow's live evidence.

Participation:

102. Ground rules were established with the assistance of the intermediary at the Ground Rules hearing. This originally included the provision that:

3 (viii). The Father's advocate shall examine in chief the Father, and all other questions by way of cross examination shall be put by the advocate for the Local Authority.

However, the position of the mother had changed to being a positive case against the father and it was appropriate for this to be reconsidered. Additionally, given the significant differences between the mother and the Local Authority, it would not be appropriate for the Local Authority to ask the mother's questions and develop her case, so I directed that Counsel for the Mother should be allowed to cross-examine the father but her questions should be sent to the Intermediary in advance (not to the father). Time would be allowed to develop any further follow up questions. The intermediary would assist throughout. This would ensure fairness. In the event, it was agreed that all parties could ask the father questions, mainly approved by the intermediary.

103. Detailed Ground Rules were set out by the intermediary and were adhered to with breaks where sought and the intermediary providing input where necessary. Indeed, the intermediary played a significant role in assisting with re-phrasing questions and occasionally asking them herself on behalf of the advocates. It was clear that the father had back pain and he was allowed to sit or stand and have a break when needed.



104. I am satisfied that all appropriate steps were taken for him to participate fully and that the hearing was fair.

Live Evidence, with analysis:

105. Father finally attended court on the day scheduled for his evidence. It had not been known whether he would attend but I am grateful that he chose to do so as it offered me the unique opportunity to see him give evidence in person rather than simply reading statements. Like the mother he gave evidence for around 3 hours.

106. The father's evidence was compelling at times, with him making a number of admissions or concessions which were missing from his written evidence, and at other times he was avoidant, evasive, frustrated, belligerent or mumbling. It was clear from his evidence that he has significant difficulties with language and communication but also with timescales and recall. He became aggravated on a couple of occasions when he did not like the questioning such as in relation to R or Mr B and the mother's family, saying "I'm refusing to answer that" or "this is rubbish" and on other occasions he attempted to deflect the question by asking one of his own in reply. A significant number of replies to questions was met with either "not that I recall" or "not that I know of" and it was noticeable that these were instantaneous responses – he never took the time to think about the question or answer before replying. He was evasive, in my judgment, in many of his replies and was a very unconvincing witness. This of course was reflected in his engagement with the whole hearing (and indeed the whole proceedings) - he chose to miss the evidence of the medical expert Dr Mecrow, the social worker and the mother, arriving at court only to give his own evidence.

107. The assistance of the intermediary was extremely useful with additional questioning which of course developed during his cross examination as a result of his response to some of the questions. Father clearly did not like to be questioned about Mr B, asking for a break after only about 10 minutes of questioning as soon as Mr B's name was mentioned and saying he did not like being asked about the subject (my words) but he chose to proceed when informed that the questions would be asked whether he took a break or not.

108. As well as being evasive and avoidant, much of his evidence contradicted the evidence of other professionals, and the mother, and he denied some factual matters which were supported by corroborating evidence. I will address some of these in due course. Where there was contradiction, on each occasion I prefer the evidence of the professional or the mother. I am aware, of course of the father's personal limitations due to his various issues

including his cognitive functioning but his frequent evasion was not, in my judgment, due only to cognitive issues. It was a deliberate attempt to avoid answering questions or deflect on many occasions.

109. Counsel Mr Allen carefully took Father through his evidence in chief, putting to him some of the evidence of Mother which he had missed the day before. This included the suggestions that he was heavy handed, got annoyed easily and swore and slammed doors, all of which he agreed with. He admitted that on [a date] he had painful sciatica, which annoyed him and was off work. He had spent limited time looking after P; this was his first time alone and first time looking after both children. When asked if might have done something to P he replied that he “didn’t know”. He had changed P’s nappy on that day and agreed that he had only done this a few times previously and mother had intervened due to how he was doing it, lifting P by one leg. When told that Dr Mecrow considered that this could be a mechanism for the fracture, he replied “yes, makes me think, the way I picked him up... wriggling”. He said that he was in a rush, with an x-year-old running about and he wasn’t looking what he was doing. This suggests an inappropriate and careless lack of attention when handling a very young baby but he was adamant that he could not recall doing anything to P. When asked that by being stressed, angry, annoyed and in temper could mean an injury caused by a twist he said that it “might be a possibility ... might have happened”.

110. During cross examination by the other advocates these issues were further addressed. Father mentioned that P was in an agitated mood and whimpering or crying but he always put any distress down to assuming P wanted feeding. To him the behaviour was normal as he was not the mother but a man and was “old school”. He accepted that he had been in a temper with P – “with everything” but could not recall hurting him or being rough with him. It was notable that he was able to be adamant that he hadn’t hurt P but yet could not recall what he had done. These were some of the very many “cannot/do not recall” or “not that I know of answers” given throughout his evidence. However, he did admit to holding him by one leg to change his nappy on the [date]. In answer to a question which became confusing for all and which I clarified with the assistance of the intermediary, he confirmed that his position was that he didn’t do anything but yet may have injured P. He didn’t think anything was wrong with P. My impression was that he meant that he had done nothing deliberately to harm P but accepted that he may have done so inadvertently. Much of his evidence was in this tone, with a denial of causing any harm then a tacit acceptance that it was possible.

111. He confirmed that his sciatica was bad and that he was off work due to it, he preferred to be at work. It was the first day he had been at home from work and he had started his painkillers the day before which took the edge off the pain. He denied being angry in the morning of that day with his doctor's surgery when no appointment was available for his blood tests then said he couldn't recall this. The evidence for this behaviour is in the father's medical notes and I simply do not accept that the nurse practitioner lied about this. In view of Father accepting in evidence that he was on that day, in his evidence, stressed, in pain, in temper, looking after an active x-year-old who can wrap him round her little finger and with difficulties with mobility it is entirely likely that he could behave in such a frustrated manner.

112. I mentioned inconsistencies. There were many throughout father's evidence and I will highlight a few here and later in this judgment as they directly affect my assessment of father's credibility. It is not purely forgetfulness. Father downplayed the time he was at the hospital with P, saying he was only there a few hours. In fact, he was present for longer. They arrived at about 10pm. In his statement he said he was at hospital until the early hours and he stated that he drove Ms A home and was arriving home at 5am when the police arrived, following him from Mr B's house. Further, Father denied, specifically and repeatedly when the question was clarified, that he had been present when the doctors revealed the information about P despite knowing that the x-ray had been ordered 20/25 minutes after concern about an injury was initially raised and the medical notes clearly state that "informed parents that P has a fracture or his right femur". There is also reference to Father getting annoyed and leaving shortly after. (G322-323). He denied in oral evidence that the paramedics spoke to him whereas their evidence confirms that they did. I will address this issue again later. He denied suggesting that R should be cared for at Mr B and Ms A's house despite the clear evidence of the police and social workers that he did.

113. When asked in oral evidence who first noticed the leg swelling, he attempted to deflect the question by saying "lost me". He stated in oral and written evidence that he only thought something was wrong with the leg when he saw it was not moving. However at G322 the medical records show that he pointed out swelling in the leg to the SHO.

114. So far as Mr B was concerned, his evidence was again contradictory, at first he said to Mr Allen, Counsel, that he had no issue with Mr B, then later that Mr B would walk away from him. He stated that he had never been to Mr B's house with R, then he "could have done". He admitted that Mr B had been in the house a few years ago to see him and speak to mother. He said he hadn't seen Mr B for 2/3 years. The injury to P was of course in [a date].

Whether this was a lie to distance himself, made up on the spot or was a lack of awareness of the passing of time is not clear. He confirmed in his evidence that he himself does not consider Mr B to be a risk to R but then says it was important that she should be supervised. He minimised Mr B's convictions and was completely unaware, he claimed, that he was now lodging with the victim's father. He denied leaving R with Mr B on any occasion or that she went to his flat, but then "he might have done in passing" but "not to visit". It was wholly unclear and he was unaware of his constant contradictions but did become belligerent on occasion referring to questions as "absolute rubbish/absolute cock". It was difficult to understand why he agreed supervision was necessary yet did not believe that Mr B was a risk.

## **10 THE GUARDIAN'S CASE (fact finding only)**

115. The Guardian filed his final analysis. He highlights the key risks as being the injury sustained by P and the contact that R has had with her maternal uncle Mr B. There are further issues which also impact upon the children, including domestic abuse in parents' relationship (now reported to be over), supervision of R (P only being in the care of his parents for 5 weeks prior to his removal) and Father not engaging in the proceedings or contact with the children. He further identifies the area of largest concern, leaving aside the as yet unexplained injury sustained by P, highlighted in both parenting assessments as being mother's ability to ensure the safety of the children. This encompasses a number of issues; lack of appropriate supervision leading to R being attacked on two separate occasions by one of the family dogs, during which she sustained substantial injuries. R spending time with her uncle Mr B, who is a registered sex offender with convictions in relation to Mother's niece when she (niece) was 15 years old. Domestic abuse in the relationship between father and mother has also been noted.

116. He does not believe that it is likely that the way R discussed her contact with her uncle Mr B and his partner can be explained through contact prior his conviction (around 5 years) or through contact over video calls. In his opinion, whilst it is possible that Father allowed this contact, it is difficult to imagine that Mother was not aware if not through Father

117. The Guardian did not give live evidence at the Finding of Fact hearing.

## **11 SUBMISSIONS**

118. I received detailed written submissions from all parties and I have carefully considered these in detail when coming to my conclusions and writing this judgment even if I do not specifically address all points made. Very briefly they state the following.

119. The local authority invites me to make a pool finding in respect of P's injury. They submit that neither parent was impressive in evidence but father less so. They also submit that if father caused the injury the court could anticipate that the mother would have been aware of this and that it is a coincidence that the injury occurred during the fathers first period of care for both children. Given the mother had care for longer, she had more opportunity to inflict the injury. They submit that the sexual harm findings are established on the basis that it does not matter whether contact was supervised or unsupervised, the issue is spending time with him. I am also invited to deal with the finding in relation to "failing to work with professionals". I have absolutely no intention of doing so at this juncture – it was never intended and has not been dealt with by any party in evidence or submissions. It is inappropriate for the local authority to invite me to do this.

120. The mother invites me to find that the father perpetrated P's injury. Numerous reasons are given. A pool finding is not appropriate. Insofar as the issue of Mr B and R, the allegation must fail for the following reasons: (i) the local authority has not established a causal link between supervised contact and a risk of significant harm: it has not produced evidence to suggest that either of the parents had become incapable (since 2018) of safeguarding the child from any risk posed by Mr B, (ii) the local authority has not produced any evidence to support a suggestion that, irrespective of the fairness/proportionality of a complete ban on any contact, it reduced the expectations of parents to a written form which was accessible to and agreed by each of them.

121. The father concedes that a finding may be made against him in relation to P's injury as he conceded this in his evidence. He takes a similar stance to the mother on the question of supervised contact and risk and invites me not to make the findings sought regarding Mr B. He highlights father's presentation and invites me to consider that he was honestly helping the court.

122. The Guardian invites me to make a pool finding in respect of P's injury. He criticises the parents for being defensive and wanting to protect themselves and at times each other from blame. They were both inconsistent. The Guardian also appears to support the local authority in relation to supervised or unsupervised contact. On the whole, the guardian agrees with the local authority.

## **12 THE LEGAL PRINCIPLES REGARDING FACT FINDING**

123. The legal framework resolving the schedule of findings sought is now well settled and I will set out a summary here.

124. The core principles are summarised by Baker J (as he then was) in Re JS [2012] EWHC 1370 (Fam) and approved in many cases since.

"36. In determining the issues at this fact finding hearing I apply the following principles. First, the burden of proof lies with the local authority. It is the local authority that brings these proceedings and identifies the findings they invite the court to make. Therefore, the burden of proving the allegations rests with the local authority.

37. Secondly, the standard of proof is the balance of probabilities (Re B [2008] UKHL 35). If the local authority proves on the balance of probabilities that J has sustained non-accidental injuries inflicted by one of his parents, this court will treat that fact as established and all future decisions concerning his future will be based on that finding. Equally, if the local authority fails to prove that J was injured by one of his parents, the court will disregard the allegation completely. As Lord Hoffmann observed in Re B: "If a legal rule requires the facts to be proved (a 'fact in issue') a judge must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are 0 and 1."

38. Third, findings of fact in these cases must be based on evidence. As Munby LJ, as he then was, observed in Re A (A Child) (Fact-finding hearing: Speculation) [2011] EWCA Civ 12: "It is an elementary proposition that findings of fact must be based on evidence, including inferences that can properly be drawn from the evidence and not on suspicion or speculation."

39. 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. As Dame Elizabeth Butler-Sloss P observed in Re T [2004] EWCA Civ 558, [2004] 2 FLR 838 at 33:

"Evidence cannot be evaluated and assessed in separate compartments. 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."

40. 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. The roles of the court and the expert are distinct. It is the court that is in the position to weigh up expert evidence against the other evidence (see A County Council & K, D, & L [2005] EWHC 144 (Fam); [2005] 1 FLR 851 per Charles J). Thus, there may be cases, if the medical opinion evidence is that there is nothing

diagnostic of non-accidental injury, where a judge, having considered all the evidence, reaches the conclusion that is at variance from that reached by the medical experts.

41. Sixth, in assessing the expert evidence I bear in mind that cases involving an allegation of shaking 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 (see observations of King J in *Re S* [2009] EWHC 2115bFam).

42. 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. They must have the fullest opportunity to take part in the hearing and the court is likely to place considerable weight on the evidence and the impression it forms of them (see *Re W* and another (Non-accidental injury) [2003] FCR 346).

43. 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).

44. Ninth, as observed by Hedley J in *Re R* (Care Proceedings: Causation) [2011] EWHC 1715vFam:

"There has to be factored into every case which concerns a disputed 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."

The court must resist the temptation identified by the Court of Appeal in *R v Henderson and Others* [2010] EWCA Crim 1219 to believe that it is always possible to identify the cause of injury to the child.

45. 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 (see *North Yorkshire County Council v SA* [2003] 2 FLR 849. 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 (see Re D (Children) [2009] 2 FLR 668, Re SB (Children) [2010] 1 FLR 1161).”

125. In Lancashire County Council v C, M and F (Children; Fact Finding Hearing) [2014] EWFC 3, Jackson J, after citing Baker J above, added this:

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

126. In Re A (Children) (Pool of Perpetrators) [2022] EWCA Civ 1348, King LJ re-emphasised that judges should apply the simple balance of probability standard when determining whether it is possible to identify a perpetrator from a list of those who could be responsible. In coming to a conclusion each person should be considered individually by reference to all of the evidence. Glosses such as 'straining' to identify a perpetrator should be avoided. The unvarnished test is clear: *“following a consideration of all the available evidence and applying the simple balance of probabilities, a judge either can, or cannot, identify a perpetrator. If he or she cannot do so, then, in accordance with Re B (2019), he or she should consider whether there is a real possibility that each individual on the list inflicted the injury in question.”*

127. In Re A (A Child) [2020] EWCA Civ 1230, the limitation of oral evidence was once again highlighted and the courts warned to assess all the evidence in a manner suited to the case before it, and not to inappropriately elevate one kind of evidence over another.

128. In Re H-C (Children) [2016] EWCA Civ 136 the Court of Appeal reminded judges in family cases of the proper approach to witnesses who tell lies as originally set out in R v Lucas [1981] QB 720. There are many reasons for this which do not denote guilt, for example, fear, shame, loyalty, panic and distress. An innocent person may lie to bolster their case. A lie should never be considered as direct proof of guilt. In criminal proceedings, to be capable



of amounting to corroboration a lie must be deliberate, relate to a material issue and be motivated by a realisation of guilt and a fear of the truth. The same principle applies here. This point was emphasized again in *Re A, B and C (Children)* [2021] EWCA Civ 451.

129. In *Re L-W (Children)* [2019] EWCA Civ 159 the Court of Appeal overturned a finding of failure to protect, where it had not been shown that on the particular facts of that case, the mother should have identified a risk to the child. Lady Justice King stated:-

“62. Failure to protect comes in innumerable guises. It often relates to a mother who has covered up for a partner who has physically or sexually abused her child or, one who has failed to get medical help for her child in order to protect a partner, sometimes with tragic results. It is also a finding made in cases where continuing to live with a person (often in a toxic atmosphere, frequently marked with domestic violence) is having a serious and obvious deleterious effect on the children in the household. The harm, emotional rather than physical, can be equally significant and damaging to a child.

130. Such findings where made in respect of a carer, often the mother, are of the utmost importance when it comes to assessments and future welfare considerations. A finding of failing to protect can lead a Court to conclude that the children's best interests will not be served by remaining with, or returning to, the care of that parent, even though that parent may have been wholly exonerated from having caused any physical injuries.

131. Any Court conducting a Finding of Fact Hearing should be alert to the danger of such a serious finding becoming 'a bolt on' to the central issue of perpetration or of falling into the trap of assuming too easily that, if a person was living in the same household as the perpetrator, such a finding is almost inevitable. As Aikens LJ observed in *Re J*, "nearly all parents will be imperfect in some way or another". Many households operate under considerable stress and men go to prison for serious crimes, including crimes of violence, and are allowed to return home by their longsuffering partners upon their release. That does not mean that for that reason alone, that parent has failed to protect her children in allowing her errant partner home, unless, by reason of one of the facts connected with his offending, or some other relevant behaviour on his part, those children are put at risk of suffering significant harm. This professional and realistic approach allowed the Court to focus on what was, in reality, the only live issue, namely; was GL's history of violence sufficient to lead to a finding of failure to protect upon the mother's part?"

132. Similar points were made in *G-L-T (Children)* [2019] EWCA Civ 717.

133. I have also considered the recent case of Hayden J, Lancashire County Council v M, F, A & J [2023] EWHC 3097 where the judge found the father to be the perpetrator contrary to the submissions of the Local Authority and the Guardian after considering propensity. Hayden J addressed in detail the issue of propensity evidence and criminal matters at paragraphs 37 to 42 and in family matters from paragraphs 43 to 51. Given the nature of the mother's position and submissions at the hearing, I invited the advocates to consider the case as it had been very recently reported and was of relevance. There are both similarities and differences between the present case and that matter. In the decision, Mr Justice Hayden underlined the duty on judges to draw on the totality of a wide canvas of evidence and, where that evidence permits, to identify the perpetrator of significant harm. He reminded us that this evaluation is carried out on the balance of probabilities (nothing more, nothing less) and, while this builds in a risk of error, lawyers and judges should not shirk that obligation out of an abundance of caution. The wide canvas of evidence invariably includes a variety of evidence, including hearsay and evidence of propensity to cause harm. Drawing together that evidence and properly drawing inferences from it assists in building a picture of the family's life at the point at which significant harm is caused. Identifying the perpetrator avoids tainting the non-perpetrator parent while also providing the foundations for constructive and safe strategies for a child's future care.

134. I have considered all the evidence which I have read and heard and it has all been taken into account in performing my analysis.

### **13 ANALYSIS**

135. The standard of proof required to identify the perpetrator or perpetrators of P's injury is the balance of probabilities and if I am able to identify the perpetrator to that requisite standard it is my duty to do so, but I should not strain to identify the perpetrator. P has a right to know who injured him and needs to know the truth, if possible. I have not strained in coming to my decision.

136. Both parents have on occasions been untruthful, there are inconsistencies in their evidence to the court, to the police and to other professionals about various matters in the threshold. However, there were striking differences in the nature of their evidence. I found the mother to be a more truthful witness on the whole, she did not seek to avoid questions or obfuscate. She made positive efforts to answer each question as well as she could and I give her credit for the fact that despite believing that the father was the perpetrator she still showed some loyalty to him as her children's father. They have much history together and it is natural that she may behave in this manner particularly when they have been through the

stress of IVF to have these children. It is not unusual for one parent to be unwilling to blame the other, particularly in the early stages of an investigation, nor is it unusual for parents to consider reconciliation. She has clearly moved on though, having begun to recognise the problems with the father and the relationship and I accept her evidence that there is no prospect of reconciliation, and indeed that it is her choice.

137. The father too accepts that reconciliation is not on the cards but he was much more passive about it; his stance was one of acceptance. His evidence was a distinct contrast to the mothers, with denials and frequent contradictions. His demeanour was very different when giving evidence and he showed no real emotion other than short bursts of frustration or temper. I accept he was in pain. It was easier to accept the mother's evidence as being honest than the fathers for these reasons and others. I am of course aware of the father's learning difficulties and they will undoubtedly have had some impact upon him when being questioned but there was an extremely helpful intermediary who intervened and assisted whenever necessary and I am satisfied that the evidential process with the father was entirely fair. The apparent ease with which he accepted and admitted that he may have been the cause of the injury to P (in contrast with his statement and having not seen any of the live evidence beforehand due to his failure to attend) suggested that this thought was not new to him and indeed he admitted in his evidence that he had given thought as to whether he had done something wrong on many occasions. When pushed further on this, he resorted to his frequent answer of "I don't know".

138. Having vacillated, the mother has now firmly blamed the father for P's injuries and has accused him of domestic abuse and responsibility for the nature of the relationship. She has undertaken a number of courses which she says were "eye opening" in understanding behaviour and parenting; the clear implication being that she can now see the father's behaviour differently, as abusive, and this explains some of her past behaviour particularly with regard to the father and what she now sees as an abusive relationship.

139. I have considered the issue of propensity in relation to this father balanced against the whole of the evidence. There is no evidence that the father has been violent other than on the one occasion where he assaulted the mother. However it is notable that he minimised that violence in his police interview. He talks of himself as being "old school" and of corporal punishment being the norm in his childhood. Whilst he has a number of convictions, none are for violent offences save for the caution which is I believe for the assault on the mother. There is no evidence of any physical abuse of the children although R's evidence is that he shouted a lot and

“threw her on the bed with her head” and she “screams a lot.” There is also a suggestion that she was slapped (F287). However we have no further information or corroboration for these events and the mother is adamant that he would not harm the children deliberately.

140. I have also considered the “Lucas” direction in relation to lies, particularly in respect of the father. My decisions in this matter are not based upon the father’s “lies” but on the totality of the evidence including the admissions/concessions which he made during his evidence. It is correct that I should note that he has never actually admitted causing the fracture but he has admitted that it was a possibility. His lies, denials or apparent lapses of memory or knowledge are simply part of the wider canvass of facts in this matter. Father has known learning difficulties, a point he himself made in evidence. I have born in mind his lack of sophistication when assessing his evidence and credibility.
141. Father is a hard-working man who prefers to be in work. He is, according to himself, always angry. There are examples of this and the mother herself described him as being able to get angry really quickly. He was verbally abusive on [a date] to the nurse at the doctors when he could not get an appointment, there is evidence in the medical records (G296) that he was no longer allowed to visit on the ward due to his behaviour on [a date] 2022, he thrashed around and threatened to leave the hospital on one occasion when he didn’t get his own way on [a date] 2022 (G301). He is a highly frustrated man with a short fuse and seemingly in almost constant pain. He assaulted the mother when she challenged him about causing P’s injuries.
142. He admits that he is heavy handed. Mother reported this on the very first day of the hospital visit for P (G313) “Mum started discussing injury with me, saying she was 'unsure how this had happened' and that 'dad is not used to babies, he has big hands and can be heavy handed'.
143. The evidence of the father’s behaviour from his doctor’s surgery is an independent indicator of the kind of mood that the father was in on [a date]. He admitted in his evidence that on that day he was in pain, immobile, and frustrated since he was unable to be where he wanted to be – at work. He had dropped a pan of water and scalded himself. He was angry at everything. Then added to this is the fact that he is looking after P for the first time, both children together for the first time and P was possibly suffering from a virus. He lacks experience looking after children, told the court in his evidence that he did not bring the children up, he was just there. He is old school. He particularly lacked experience looking after P and had trouble changing his nappy, trouble putting his baby-grow back on and had picked P up by one leg when he specifically knew from the mother’s previous interventions that to do this was wrong. Continuing to undertake

such behaviour and pick P up by one leg could be classed as reckless; he was wholly aware that it was wrong yet persisted.

144. I have considered the totality of evidence and evaluated it on the balance of probabilities. At the time of the injury, this was an inexperienced father under stress, in pain, taking strong pain medication, struggling and out of his depth, he was angry, and eventually his frustration and failure to cope whilst roughly changing a potentially poorly baby's nappy led to P being injured, in a manner recognised by Dr Mecrow as being a likely cause. There is no evidence that the mother was aware of the extent of his issues that day and I do not criticise her for asking the father to help her – it was, after all, the first time and she was not to be aware of the potential for catastrophe.

145. I am satisfied that a pool finding is not appropriate. There is sufficient evidence for me to make a finding or findings on the civil burden of proof, the balance of probabilities. The evidence points to the father as being the possible perpetrator of the fracture, indeed there is no evidence which points to the mother bearing responsibility.

146. I do not believe that Father deliberately injured P, but I am able to find, supported by the evidence, that he recklessly caused the injury to P, on [a date] 2022 at some time in the process of changing his nappy, including the time undressing and attempting to dress him, but whether this was due to lack of attention, pulling the leg deliberately in frustration or heavy-handedness or clumsiness, or in temper and frustration I am unable to say on the evidence. He is admittedly heavy handed. He was unable to give a straight answer when questioned as to why he did not re-dress P in his baby-grow, firstly saying that it was a spur of the moment thing but when pressed, accepting that he had maybe tried to put it back on, but he couldn't remember and P was mucking about. He accepted struggling to change P's nappy and that that "might be" how the leg was broken. When he thought P was being a bit whingy, a bit whimpering, wriggling or agitated that may well have been the pain response to the leg fracture. I bear in mind that Dr Mecrow's evidence was that P has highly unusual pain responses and as a very inexperienced, angry and heavy-handed carer Father was likely unaware of the extent of what he had actually inflicted upon P. Likewise the mother would have been unaware of the injury. Dr Mecrow had stated in evidence that a carer could be confused by the lack of an extreme response by P. It appears from the evidence of the ambulance workers that the father was, however, aware of something being wrong with P by their very detailed description of his behaviour when they attended and his protectiveness of P. Further, at page F236 they refer to the report of P being in pain; father made the call to the ambulance

service and he reported the symptoms. They also say that “he appeared to be hyper anxious about P, to the extent that we had to repeatedly try to reassure him and tell him to calm down.” His live evidence minimised or denied this, saying that he did not tell them P was in pain and that he was not worried about P, the mother was. There are so many inconsistencies in father’s evidence and I prefer the evidence of the paramedics. I am satisfied that he knew that P had some sort of injury, caused by himself that afternoon, that he had caused it and he did not admit this.

147. Accordingly I am satisfied that the injury was inflicted on [a date] by the father whilst attending to P and changing his nappy. There is no evidence to support the allegation that the mother was responsible and I reject this. She was not responsible for the injury and there is no suggestion that she failed to protect or is responsible in any way for the father’s actions.

148. The issue of R’s contact with Mr B was the subject of much debate and submission. Sadly, the threshold was not clear as to whether any contact with Mr B was considered inappropriate by the Local Authority or whether this just related to unsupervised contact and how the harm might be caused, particularly paragraph 13. It was agreed that the local authority would clarify the meaning of the threshold prior to the parents giving evidence. As drafted, the threshold seemed to imply *any* contact and indeed that was confirmed as being the Local Authority’s case.

149. The evidence relied upon by the Local Authority in relation to this issue comprised the written and oral evidence of a social worker, the police protection minutes, the ABE interview of R and initially the evidence by the other social worker at C5 para 2 where she refers to R making comments about Mr B but it was not clear where this information came from. Enquiries were made to ascertain whether she had made these observations following discussions with R herself or whether they were repetition of other evidence. If the former she was to be called to court to give evidence and if the latter then no weight would be given to her evidence as it was second hand hearsay. In the end I was simply told before the evidence commenced that she would not be called. Accordingly, I do not attach any weight to the comments of the social worker at paragraph 2. In addition, the ISW had given her opinion on certain matters but that does not constitute evidence regarding this issue and is therefore not relevant for these fact-finding purposes.

150. I have already addressed the evidence of the social worker which I found to be most unsatisfactory. There was no evidence of unsupervised contact between R and Mr B in her conversation with R in any event.

151. In her police ABE interview on [a date] 2022, R calls Mr B her cousin. It is clear that she has contact with him and his partner Ms A and is familiar with them. She mentions Mr B coming to the house and she and her mum going to see Mr B at his flat on occasions. On the day of P's hospital admission R appears somewhat confused, she talks about Mr B and [Ms A being present at her house and she says that Mr B was alone at first (F275), that they arrived at the same time (F279), at 10pm then later that mum and dad saw Mr B before they went to the hospital (F279). The police repeat to R about Mr B and Ms A being together and R does not disagree.

[00:27:39.560] - *Detective Sergeant D "And when he came to the house, he brought Ms A with him. So there was you, auntie Ms A and your cousin who I called your uncle Mr B ...."* R also confirms that she never slept at Mr B's flat and she said that she did not go whilst P was in hospital.

152. I accept that there was a lack of clarity in the parents' evidence particularly in relation to the issue of contact with Mr B where there was confusing and contradictory evidence especially by the father.

153. It is clear that Mr B was a great support for the mother and the first person called when she was giving birth to P and had to go to hospital following P's injury. She has a limited network of support and friends and Ms A was clearly such a friend. I have specifically considered the "Lucas" direction in relation to this issue and although I consider that the mother was not entirely open about Mr B, I am satisfied that this does not mean she has been untruthful about everything else. The simple fact is that it is not clear, to the advocates or even myself, how the precise details of any requirements for contact with Mr B were communicated to the mother and what was expected of her; there were changing sands according to the documentation which has been produced as to whether it was supervised or not. This is a mother who may not fully have the ability to understand subtle nuances about contact and she will have been terrified of having done something wrong. That fear may well have led her to downplay the extent of contact with Mr B. I accept her submission that she thought supervised contact was permissible. It is supported by her actions in ensuring supervision, recognising that Father did not take the issue seriously enough and I accept her evidence in this regard. I am satisfied that she did not facilitate any unsupervised contact with Mr B.

154. I also bear in mind that there was no contract of expectations in place and that in 2018, the child protection measures referred to unsupervised contact with the case closing in October 2018. Child protection was raised again in November 2020 following the second dog bite to R and there is mention than of a contract of expectations regarding contact with Mr B having to be agreed; there is mention of no contact at page I33. I have seen

no such contract and indeed at the review meeting in [a date] 2021, there was no reference to Mr B at all. The minutes of the [a date] 2021 review are incomplete in the bundle. Since that time, until P's injury, there is no evidence of involvement with the local authority until P's injury. It is entirely understandable that the parents would be confused about contact with Mr B and defensive. The confusion is, in my judgment, entirely due to the lack of proper and detailed consistent guidance on behalf of the local authority.

155. As I have already stated, I consider that it is likely that R has spent more time with Mr B than has been disclosed, particularly with the father, but even if so, it is clear that the mother in particular has taken steps to ensure that it was supervised and R protected. This was what she believed to be necessary and the issue was confusing for the advocates let alone a mother (and father) with their own issues. In my judgment, the threshold allegations were not sufficiently particularised nor were they linked to alleged harm and the suggested blanket ban on any contact at all was not supported by the evidence with documents referring to the need for supervision on occasion. The parents were entitled to a clear case to answer, they did not have this.

156. In relation to the question as to whether R was at Mr B's or not on the night (or early hours) of [date to date] July I simply cannot assess on the evidence. There is no police evidence of father and R actually being at Mr B's house, just the comments interpreted by the social workers as them being there. However the actual police record at F190 states that R is "at home" and the entry at 04.08 (1203) confirms that R 'was momentarily at a family friends'. This supports the father's contention that he took R with him to take Ms A home. Additionally, as I have already addressed, R also talks about Ms A coming to her home when P was taken to hospital. In any event, again there is no evidence of her being unsupervised.

157. There is nothing in that interview which satisfies the civil burden and balance of proof that R has ever had unsupervised contact with Mr B. Indeed so far as the mother is concerned, there is no evidence which I have seen or been directed to that R has ever had unsupervised contact with Mr B which would satisfy the burden of proof here.

## **14 FINDINGS**

158. I make the following findings, some of which are agreed/factual:

### Physical Harm:-

1. *On [a date] 2022 at or about 5.45pm, an ambulance was called in respect to the child P, then aged 5 weeks. The mother and/or the father advised*



*that P was blue about his lips and had sticky eyes and was constipated [C.2 initial SWET].*

**This is a factual matter and accepted.**

- 2. At or about 7.15pm on [a date] 2022, paramedics attended the home and examined P. The parents were told to take P to hospital and were offered the choice of going via ambulance or making their own way to hospital. The parents chose to take him to hospital themselves, but did not attend until approximately 10.27pm [C.2 initial SWET].*

**This is a factual matter and accepted.**

- 3. Upon P being taken to the [a hospital] emergency department at 10.27pm, the parents gave a history of “bluish discolouration around the lips” and wheeziness [G.3, report of Ruwan De Soysa, paediatrician].*

**This is a factual matter and accepted.**

- 4. P was X-rayed on [a date] 2022; the X-ray revealed an oblique fracture of his right femur which showed no signs of healing. Follow-up X-ray on [a date] 2022 also showed no healing. By [a date] 2022, on the skeletal survey, evidence of healing was observed. The fracture was therefore sustained no more than 10 days prior to the X-ray on [a date] 2022. [G.914, Dr Johnson report].*

**This is a factual matter and accepted.**

- 5. The fracture to P’s leg is as a result of significant force applied to the bone by way of a blow, or bending, snapping or twisting mechanism. Fractures do not occur in children of this age and development as a result of normal handling or exuberant play. In a non-mobile infant of this age, this fracture could not have occurred as a result on an unwitnessed event [G.5, Dr De Soysa report]. P has normal bone density and there is no evidence of underlying metabolic disease, such that would put him at increased risk of fracture [G.917, Dr Johnson report]. This injury did not happen spontaneously and was not self-inflicted.*

**This is a factual matter and accepted.**

- 6. The child P was non-mobile and neither parent has been able to offer a credible explanation for the injury.*

**FATHER: Proven for the reasons in this judgment.**

**MOTHER: Did not cause or witness the injury, was not therefore in a position to offer any explanation.**

7. *Between about [a date] 2022 and [a date] 2022, the father and/or the mother inflicted the aforementioned injury upon the child P, either deliberately or recklessly or as a result of a loss of control.*

**FATHER: Proven for the reasons in this judgment, recklessly or as a result of loss of control, not deliberately.**

**MOTHER: Not proven.**

8. *The injury would have caused immediate pain to P, and it would have been apparent to the person causing and/or witnessing the injury that P had been hurt;*

**FATHER: Proven, however according to Dr Mecrow, P appears to have a highly unusual reaction to pain, and the father may not necessarily have been aware of how significant the injury was.**

**MOTHER: The mother neither caused nor witnessed the injury.**

9. *When or around the time this injury was sustained, the child P would have been in obvious pain such that would have been evident to a care giver. The father and/or the mother knew, or ought to have known a significant event had happen so as to cause this injury and failed to seek timely medical attention for him and in doing so have failed to protect him.*

**FATHER: Proven, however, again according to Dr Mecrow, P appears to have a highly unusual reaction to pain, and the father may not necessarily have been aware of how significant the injury was.**

**MOTHER: Not proven, the mother neither caused not witnessed the injury. She sought medical attending for other issues, she did not delay this and was entitled to rely in the paramedics who did not express urgency.**

Sexual Harm:-

10. *The maternal uncle Mr B is a registered sex offender, having pleaded guilty to sexual offences against his niece in 2018 for which he received a custodial sentence with a recommendation that he have no*

*unsupervised contact with children under the age of 18 [C.4 initial SWET], a fact which is known to the parents. Mr B's partner is Ms A*

**This is a factual matter and accepted.**

11. *Between [a date] and [a date] 2022, the parents permitted R to be cared for at the home of Mr B and Ms A [B.13, Police Protection Record];*

**MOTHER:** Not proven. There is no evidence to support this. The Police Protection Record is timed at 05.05am on 28 July, when the mother is at the hospital with P and she had remained there all night. I accept her evidence that the plan was for Ms A was to look after R at their home. The father's statement claims that mother rang Ms A to ask her to come round and look after R. The mother's statement claims that the father rang Mr B to ask Ms A to come to the house. Ms A arrived at 9.20pm, alone, according to mother's statement, and this was not challenged. The mother had no input into whatever actions the father took whilst she was at the hospital with P and he had left. There is no evidence to show otherwise.

**FATHER:** Not proven. In his response to threshold, the father stated that he took Ms A home when he returned from the hospital, with R in the car, and when he arrived back home the police were there; he refused to give his name and believes that the police thought he was Mr B.

The Police Protection Record is timed at 05.05am on 28 July, when the mother is at the hospital with P. It deals only with the father's involvement with the police and it is clear that the father has arrived home at the same time as the police arrived, having picked up R from a "friend's address on "A" Road". Father then offers Ms A as a carer for R, being "where R was prior to him taking her home". This evidence is different to what the father claims – but it is far from clear. There is no mention by father to the police of having to take Ms A home from their house. Given father's demeanor with the police, in refusing to identify himself and being upset and irate it is entirely possible that some confusion arose as to what exactly had happened prior to the arrival of the police. It is both parents' evidence that that Ms A had come to the house as requested, and I accept this happened. Unless therefore Ms A took R home to her home of her own volition, (for which neither parent can be held responsible) the father's version of events in taking Ms A home when he returned from hospital is entirely plausible and there is no evidence of other events.

The police ABE interview of R supports the parent's version of events – R says she was cared for at home by Mr B and Ms A and was not alone with him.

It remains of concern that father considered that it was suitable and suggested Mr B and Ms A's home as being suitable for R to stay overnight but in any event this did not occur. These are parents with a small support network and the issue with P was an emergency. I have no criticism of the mother (and indeed the father) for relying on Ms A for emergency support with R. The mother clearly views Ms A as a protective figure.

12. *The child R has repeatedly shared that she spends time with “uncle Mr B” on her own and was in his company prior to the police attending on [a date] 2022; The reason that R has relayed the same to professionals is that she was in the care or company of Mr B on [a date] 2022 and prior.*

**MOTHER & FATHER: Not proven.** I have seen no evidence to satisfy the burden of proof that R spends time on her own with Mr B or in the care of Mr B (“cousin”) from the police or any other source including what she herself said to the social worker and in her ABE interview. Even at its height, if the interview with the social worker had been carried out properly it still does not support this assertion.

It was not denied by the mother that Mr B has come into contact with R in her evidence but she was clear that she has never allowed unsupervised contact save for a couple of very brief occasions when she went to the toilet. This was during the period when Mr B was bailed to her house in [a date]. Mother's evidence was mainly that the family have met in town, that R has spent time with Ms A alone but that R has never been into Mr B's flat with her. Father's evidence was in line with the mothers and there is no evidence to the contrary to satisfy the burden of proof.

13. *In allowing R contact with Mr B the mother and/or the father have willfully exposed her to a risk of sexual harm.*

**MOTHER AND FATHER: Not proven.**

Criteria 11 refers to R having direct contact with Mr B, with Ms A present; criteria 12 to unsupervised direct contact but this criterion refers to any contact with Mr B at all.

I accept the submission on behalf of the mother in her position statement dated 17 December that this allegation is not straight

forward. The Local Authority's case at this fact-finding hearing was clarified to be any contact would be a risk, not just unsupervised contact, but they have failed to set out or indeed evidence how such harm could occur to R if she was fully supervised.

The mother, it seems, has at times been told different things by different professionals and as a result of her communication and comprehension difficulties I have no doubt that she has become confused as to what was expected. At the Child Protection Conferences in [a year] the action points were for Mr B to have no unsupervised contact with R and recorded that R was always supervised by her mother. At the Child Protection Plan meeting on [a date] (about the dog) there was reference to no contact with Mr B but on [a date] Mr B was not mentioned at all.

Of further confusion is the fact that in the Local Authority's initial evidence of [a date] 2022, at C4, it records that the judge (in the criminal proceedings in [a date]) had allowed Mr B to live with the family as part of his bail conditions and confirmed that "the Judge had stated that R will not be at risk with Mr B being at the property." It is no wonder the mother could be confused as to what it was she had to do regarding contact with Mr B.

What she has done, according to her evidence, which I accept, is ensure that R has been supervised at all times around Mr B when in her care and she has trusted Ms A to maintain that. There is no evidence that this trust has been misplaced.

Not proven so far as this relates to the mother or father. Whilst I accept that the parents have not given a clear or consistent account of when and where R had contact with Mr B, there is no evidence that such contact was unsupervised or that or harm was caused. There is no evidence that the mother or father have allowed R to spend any time alone with Mr B (see above), let alone willfully exposed her to a risk of sexual harm. On the contrary the mother's evidence was that she had taken steps to avoid Mr B coming into contact with R directly and had protected her. She herself had never taken R into Mr B's flat and she had conversations with the father about Mr B, but she felt that he didn't take it seriously enough. She did not know for sure whether he had taken R to the flat himself but questioned this. She knows of one occasion where R told her she had been to Mr B's with her father for 5 minutes, a few weeks before P's injury.

The father clearly did not view Mr B as a risk in the same manner as the mother, indeed he does not consider him a risk at all. That

could have led to R being exposed but again there is no evidence that R actually has been exposed to risk of harm in the care of her father.

This threshold criteria item was drafted far too widely. It is not appropriate to simply say any contact. The criteria should have stated whether unsupervised or not and also what and how such harm could be caused particularly if any contact was supervised. It may be unwise for any contact but that is far from satisfying the statute and case law in relation to threshold and risk.

## **15 ADDITIONAL COMMENT**

159. In view of these findings, coupled with the evidence of [a social worker] concerning the difficulties with potential adoptive placements I invite the local authority to return the matter to the ADM at the earliest opportunity.

160. I also note that the remaining threshold issues, which are not yet determined, have been either previously resolved prior to the issue of proceedings, and were resurrected only following P's injury or relate to the father and the mother's relationship which is at an end. The father does not seek to care for the children. Whether to continue with seeking those findings should be revisited by the Local Authority and a proportionate response must be considered.

## **16 DECISION**

161. I make the findings as stated.

**HHJ Hesford**

**22 December 2023**