In Private

Case No: PL16C00786

IN THE FAMILY COURT AT EXETER

[2017] EWFC 75

Southernhay Gardens
Exeter
EX1 1UH

Wednesday 25 October 2017

BEFORE:

MR JUSTICE BAKER

IN THE MATTER OF THE CHILDREN ACT 1989
AND IN THE MATTER OF Q (A CHILD) (FACT-FINDING HEARING)

BETWEEN:

PLYMOUTH CITY COUNCIL

Applicant

- and -

ELIZABETH WILKINS (1)
ERIK VANSELOW (2)
Q (represented by the Children's Guardian) (3)

Respondent

CLAIRE WILLS-GOLDINGHAM appeared on behalf of the Applicant
PAUL STOREY QC and CAROLINE ELFORD appeared on behalf of the First Respondent mother
NKUMBE EKANEY, QC and CHARLOTTE PITTS appeared on behalf of the Second Respondent father
SIMON GREEN appeared on behalf of the child, by his children's guardian.

JUDGMENT
(Approved)

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(Official Shorthand Writers to the Court)

MR JUSTICE BAKER:

1. On 22 September 2016, a baby boy, hereafter referred to as Q, was taken to hospital and found to have sustained a number of injuries, in particular a serious, life changing head injury. Fortunately he has now largely recovered from his injuries, although sadly it seems likely that he will suffer a degree of permanent developmental impairment.

2. The police and local authority started investigations into the causes of his injuries, and, in due course, criminal proceedings were started against Q's parents, Elizabeth Wilkins and Erik Vanselow, hereafter referred to as 'the mother' and 'the father', and care proceedings started by the local authority, under Part 4 of the Children Act 1989. Interim care orders were made, and Q remains in foster care under those orders. The case was transferred to me, and listed for a fact finding hearing. Regrettably, that hearing was delayed for various reasons, and it is only now, some thirteen months after his hospital admission, that I am in a position to give judgment.

Summary of facts

3. Q's father was born in Kenya, and his childhood divided between periods in Africa and periods in this country. He then went to university in this country, to study international relations, and subsequently started a Masters course. In addition to his academic studies, the father has worked regularly as a DJ.

4. The mother described in evidence how she had a disrupted childhood, initially living with her mother, but then moving to live with her father as a teenager. Records about her teenage years have been produced, and include a number of reports speaking about

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her behavioural problems as a teenager. One report described her main problem being "an inability to control her anger." During her counselling sessions, described below, the mother spoke of abuse that she had suffered at the hands of her own mother. The mother was a talented child who obtained a music scholarship to a leading school. Her time at school was disrupted, however, by episodes of truancy. From school, she went on to university to study law, initially with a view to becoming a barrister, specialising in family or criminal law.

5. The parents met at the university, and started a relationship in 2013. They started living together in June 2014. Both parties acknowledge that their relationship has been intensely physical. They have a shared interest in some extreme forms of sexual behaviour. In preparation for the fact-finding hearing, a considerable amount of evidence was filed about their sexual relationship, because it was felt by at least one of the parties that it might be relevant to issues arising in the hearing. In the event, no party has sought to rely on any aspect of the parents' sexual relationship as evidence of how Q sustained his injuries, although the mother asserts that the father's controlling attitude in their sexual relationship extended to his attitude to their wider relationship as a whole.

6. In February 2016, the parties moved into a new flat. By this point, the mother was pregnant. The mother gave birth to Q by caesarean section. He was born approximately at term, with a birth weight of 5 pounds 8 ounces. The following day, the mother and Q left hospital. From the outset, the life of the new family was characterised by a number of difficulties. Both parents, to a greater or lesser extent, suffered from levels of depression, for which they sought professional help. The relationship between the parents came under pressure and there were frequent arguments and tensions. There were some disagreements between the parties as to the care of the baby. A considerable proportion of the care of Q was undertaken by the father, in particular at night, because the mother had difficulty waking up when Q cried. In addition, the parents enlisted the help of friends, a mother and daughter hereafter referred to as KD and SD, who looked after Q on a regular basis, including, on occasions, overnight.

7. A health visitor, JL, was allocated to the family, and paid her first visit on 13 July. No physical examination of the baby was undertaken as he had only recently been discharged by the midwife team. Both parents were present. According to the health visitor's notes, the mother spoke about her history of depression and anxiety. The health visitor noted and recorded emotional warmth and gentle handling of the baby by the father, who had Q on his chest throughout the visit. It was agreed that the family would receive an enhanced visiting service "due to being young parents, a history of maternal mental health issues and no family support locally".

8. The following day, the mother sent an email to the university counselling service, stating that she had just had a baby and was worried about anxiety and depression. She was allocated a course of counselling sessions with a university counsellor, hereafter referred to as SP.

9. The health visitor's next visit took place on 21 July. Both parents were again present. The mother said that her anxiety had decreased but asked for a referral to an agency specialising in helping people to stop smoking, and also informed the health visitor that she was seeking therapy to address issues about her own childhood, as it could have an impact on how she parented Q. The father reported that he was doing most of the night-time feeds. The health visitor recorded that he was providing emotional support for the mother. On the same day, the parents went to register the baby's birth. They both report in their statements for these proceedings that they had an argument at the registry office as to the choice of name. On 23 July, the mother went to her first counselling appointment with SP. The second counselling session took place on 4 August.

10. On 7 August, the father took Q out, on his own, to the park. During this trip, according to the father, Q cried in a way which the father described as being, "a little out of the ordinary", and he continued crying relentlessly on the drive home. The father then noticed that there was some blood on the baby's bib. The mother's account is that she remembers the father telling her via text message, to the best of her recollection, that Q "was being a total nightmare and how he hated him". He also told her about the blood

on the bib. When the father returned home with Q, he telephoned 111, and, as a result, paramedics visited the home, and advised that Q should be taken to hospital.

11. In the early hours of the following morning, the father duly presented Q at hospital. The history given was that the baby had been crying all day, and blood had been seen in his mouth earlier. It was said that he had been unwell for the past few days, and had been difficult to settle and had difficulty taking feeds, had been sweaty and hot to touch, and that he had vomited with blood stains. He was admitted to hospital, where a lumbar puncture suggested evidence of sepsis. As a result the baby was started on intravenous fluids and anti-biotics. The father stayed in hospital overnight with Q and was present for the ward round on the following morning. Further tests revealed no other concerns and the doctors concluded that the baby was suffering from a urinary tract infection. Q was eventually discharged home on 10 August. The mother alleges that the doctors had advised the parents to keep the baby in hospital for a further night, but agreed to the discharge at the insistence of the father.

12. The following day, the mother attended her third counselling session with SP. She reported that she had had a very bad week and that Q had been very ill. According to the counsellor's records, the mother said that he had been in hospital for five days. The mother also reported that she was slightly unsure about her relationship with the father.

13. On 15 August, the mother took Q to the GP, where he was diagnosed as having thrush in his mouth. According to the mother, it was suggested that this could have been as a result of the anti-biotics that he had been given in hospital. On 17 August, the health visitor carried out a six week check. She assessed the mother, using the Edinburgh depression scale, which revealed that the mother was mild to moderately depressed. The father spoke of tension because of the inequality in the care provided by the parents. The health visitor reported that the father was still sleeping downstairs on the sofa, with Q nearby in his cot because the mother was not getting up in the night to attend to the baby. In her statement for these proceedings, the mother said that she was concerned about the talk of post-natal depression because "I had no real issues or bad feelings towards Q, only towards the father in response to his aggression." On the

following day, the mother took the baby for the doctor's six week check, during which she again spoke of the difficulties in her relationship with the father.

14. On the same day, 18 August, the mother attended her fourth counselling session with SP. She informed the counsellor that the father had said that Q should go to spend the first year of his life in Zambia with his family. The counselling notes record the mother as having described the father as "emotionless" when proposing this, and as saying that she was deeply concerned about what might happen to her baby, and feeling in need of support. The mother asserts in her statements for these proceedings that she believed that on this occasion she told the counsellor about how the father seemed to hate Q, that the father was being aggressive and that they had had a huge argument. There is no reference to this in the counsellor's notes and, in oral evidence, SP denied that the mother had alleged during this session that the father was aggressive. Following this session, SP noted, under the heading Risk or safety issues, "Concern for the well-being of this baby." In oral evidence, SP explained that this concern arose out of the suggestion that the baby might be taken to Zambia.

15. At the next counselling session on 25 August, the mother seemed much more positive, and reported that the tensions at home had settled. On this occasion, she talked more about her own upbringing. She spoke about being abused by her mother, and stated that she had had more broken bones in her body than anyone else in the county. In oral evidence, SP said that the mother had been serious when she made this statement.

16. On 30 August, the health visitor paid a further visit to the home. On this occasion, the father was said to be sleeping upstairs. The mother reported that things with him were "a bit difficult". The health visitor offered an enhanced visiting programme.

17. On 1 September, Q received his first set of immunisations from the practice nurse. The mother reported that she and the father had had a row about immunisations as he did not believe in them. In her evidence to the court, the mother alleged that this argument continued after she returned from the surgery, in the course of which the father said that he hated her and Q, adding "if I stay here, I will kill myself, you and Q". The

mother alleges that the father then left the property with some of his belongings. The father denies uttering the alleged threat, but accepts that he left the property after an argument.

18. Shortly after this incident, later that morning, the mother attended another counselling session with SP, bringing the baby with her on this occasion. The counsellor recorded that the mother was very distressed when she arrived and had stated that, thirty minutes earlier, the father had announced that he was leaving, and had got up and left. She then said that she was totally confused and could not understand what was going on, and added that the father had said that he wanted to split up, and that they had to find a way to sort out what happened to the baby. In her statement, subsequently given to the police, SP stated that, on this occasion, she noticed that Q had scratches on his face. In oral evidence she described these as "very small scratches". In her notes, SP recorded that the mother "was quick to say that the baby has had very long fingernails and had scratched himself all over his face". SP recorded that she believed the mother's account, but asked her to see the health visitor, and also recorded that she was slightly concerned about the mother's well-being and asked the duty counsellor to call the mother, to make sure that she spoke to the health visitor. After this visit, the mother sent a text message to the heath visitor, requesting a meeting soon, adding that her counsellor "thinks we should arrange to meet up again soon". Following the meeting with SP, the duty counsellor at the university counselling service tried to telephone the mother. Initially she received no answer but, when she got through later in the afternoon, she spoke to the mother and concluded that she was sounding upbeat and happy.

19. According to a friend of the mother, EW, the mother sent her text messages during the afternoon, stating that the father had just left, that the counsellor had suggested that she should not be alone, and that the father had said "If I don't leave I will end up killing either myself, you, or Q". EW met the mother later that afternoon, and described her as "tearful but not wanting to talk about the matter". The mother sent other texts that afternoon, suggesting that Q was having an adverse reaction to his immunisations. For example, to SD, she texted "had his vaccinations so being very grumpy but we are

doing our best". The mother was also in text contact with her own mother, although, at times in her evidence, she has asserted that she was estranged from her following the difficulties in her childhood referred to above. On the evening of 1 September, the mother sent a text to her own mother, at 20.51, in which she said she did not think that Q would be so bad after his vaccinations, adding:

> "Don't think I'd cope if he was always like this. It's such an awful noise, I think that's the idea though!!!! Just wish I could make him feel better. Well I'll try and survive the night and then we've got an appointment tomorrow."

Later in the text exchange, she said:

> "If I don't reply it's because my brain's exploded, or we've managed to sleep by some miracle."

Later again,

> "People must get, like PTSD from this shit, though, it's too hard."

Then she texted this to her mother,

> "His eyes are like, bloodshot, all over, the white is just red now from how hard he's been crying. Poor guy."

She suggested that she would not go through with the further vaccinations and, when her mother urged her "please don't skip on the jabs", she replied:

> "I won't, but I'll make E [the father] be alone with him next time, so he knows how bad it is. Ha ha."

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20. The father, meanwhile, was working as DJ that evening, and stayed away from the home overnight. Early the following morning, 2 September, just before 6.00 am, she sent him the following text message:

> "As you've not replied or told me whether you're ever coming back, I suppose I will assume you don't want anything to do with Q at all. In that case it's probably best he just goes into care, as I've made it clear I cannot and will not ever be able to make it through a single 24 hour session with him on my own, so I guess you've made it the only option. I've also sorted it so that you can return. I was only staying at uni as I here with you anyways. I will go to my dad's, obviously alone, after I've got ready this morning. Q will be in the flat, since you should be here with me, I can't just be expected to sit here not knowing if you're ever returning, and doing stuff for him 24/7 for the indefinite future, as I know full well you would do the same. Also I think it's particularly mean to have done this when we knew he'd been severely ill and relentless for 48 hours from his jabs. Just saying. Sorry I've had to resort to this, but if I spend one more moment without a plan in the situation me and Q are currently in, will actually kill myself. Being deadly serious as without you, I have nothing left to lose anyway. P.S. my anxiety about being left alone with him has totally reverted back to when he was born, so thanks for that. I will never get over this day. I know that's selfish, blah blah, but when you're this low, you have to take care of yourself first, otherwise you won't exist to be selfish in future days anyway."

21. The text exchange with the father continued and shortly after 9.00 am, the mother sent a text saying,

> "Also I think Q has issues,"

followed by a text with three photographs of Q's face, apparently taken at or around the same time, shortly after 9.00 am on 2 September. They show a faint linear scratch mark above the left eyebrow, two marks to the left of his left eye, and subconjunctival haemorrhages in the inner corners of his eyes. The argument continued by text message between the parents over the next hour or so. The mother then sent a text message to the Stop Smoking Service, with whom she had an appointment that morning, cancelling that appointment, saying that she had to rush her baby to the GP as he seemed to be having a reaction to the vaccinations. The mother now accepts that this was untrue. By this time, the father was on his way back. The mother sent him a text saying,

> "I'll be here anyways as Q's going crazy, so cancelled my appointment."

Shortly afterwards, she texted the father again, saying

> "Hope you're getting on good. I've had to shut him in a room now, he is evil."

22. The father's interpretation of these messages sent to him is that she was using the baby as a kind of emotional blackmail. Later that morning, the father returned home.

23. It is the mother's case that, on either the following day, or the day after, she saw the father shake the baby. In her statement, she asserts that he had been asleep in the lounge, and awoke to hear a strange sound and saw the father shaking Q, holding the baby with his hands around his chest, under his armpits, with the baby facing him. She asserts that, when the father realised that she had woken, he stopped shaking him. She stated that the father said that he would take the baby to hospital and began searching his laptop for information about the symptoms of shaken baby syndrome.

24. In the evening of 3 September, the mother sent a series of text messages to another friend, NW. At 19.25, she said:

> "Q seems like super bad, but don't even know if it's 'cos of the injections. We literally, like, don't even know what to do at this point, because we can't even get to the hospital."

When her friend responded, expressing concern, the mother replied:

> "Since E maturely decided to abandon me and Q for 48 hours once, I now can't be alone with him at all or I have panic attacks. Plus I swear I saw E shake him, but feel so unstable and exhausted I'm not 100 per cent. And he has mark on his chest that looks suspiciously like a bruise, so obviously I can't take him in case they think E did do something to him on purpose. I've been trying to speak to the health visitor for days, but they seem literally to be ignoring me. He had his vaccinations. Keep telling myself it's just that. If it is, he's not having the rest, unless they look after him after, 'cos it's bloody abhorrent. But also his eyes are like, blood red, type blood shot, and were before, so can't be that really. I don't know."

After NW replied, expressing concern, the mother sent a further text saying:

> "I left the thing up on E's laptop and now he seems to have realised that he may have done that, so he's up with Q at the hospital now. I will let you know what happens."

A little later, the mother sent a further text to NW, saying:

> "Can't talk on the phone, as E's here, and is really upset, thinking he may have hurt him, so don't want to make it obvious we're speaking about this, if that makes sense."

25. The mother's case is that she did see the father shake the baby, and that her account given to her friend was accurate.

26. The father denies ever shaking the baby. The father's evidence is that he and the mother noticed some redness in the baby's eyes. He describes them as having started as a few dots which would change in location and size as the days went on.

> "We both started Googling and checking out the NHS website to find out what it could be. I found that there were many potential symptoms, and shaking came up as a possible cause. The mother accused me of having shaken Q and said that I should take him to hospital. I told her that this was complete nonsense and that I had done no such thing. I took Q to hospital, where I explained to the medical staff that he had red eyes, and did not seem himself. I gave them as much information as I could. I mentioned that he had been straining without it leading to a poo. I told them Q had had his immunisations recently, that I had done Google searches, and told them the results. I specifically recall that they did not believe the red eyes had anything to do with shaking. I knew that I had not shaken Q, and they suggested that I was over-reacting and thinking too much about things. They said that all the other causes, signs of shaking, are not present except for the red eyes."

27. A statement from the hospital doctor was obtained by the police, confirming that the father brought Q to the emergency department on 5 September. It is said that the father reported that Q had been well before the immunisation, but since then had not been himself. He reported that Q was back to normal now, and reported no medical history of note. On examination, the doctor noted "small possible haemorrhage spots on his eyes". It is reported that the father said these were improving. After the discussion, the doctors concluded there was no concern about the spots on his eyes, and the father was reassured and sent home, and told to report to the GP if he had any further concerns.

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28. Whilst at the hospital, however, the father sent a text message to the mother, in which he said that he had:

> "explained everything to them regarding him and how I probably shook him. However, they've done some minor checks on him, and said he seems okay, and no real issues for concern as yet."

A few minutes later, in response to a question from the mother "What did they say about his eyes?" the father texted:

> "I mentioned my shaking but they said I'd have to aggressively shake him for it to be that. So far, saying something he's allergic to."

29. Meanwhile, the baby had continued to be looked after regularly by KD and SD. According to the mother, on 7 September, KD sent her a text saying that she was concerned that Q did not seem himself, and asking if she was going to see the GP. As a result, the mother rang the surgery for an appointment and the baby was taken there by both parents. The mother's evidence is that the father told the GP that he thought he had shaken the baby more than once, but the GP did not seem concerned at all, and implied they were cautious new parents. In his statement, the father says that he raised with the GP the question of Q's eyes. The mother prompted him to mention that he may have shaken Q. The father continues:

> "This was all completely unwarranted and so far from the truth but I reluctantly asked the GP if the red eyes could have been the result of shaking. The GP asked the mother what she meant and I showed her how I would rock Q in my arms and on my shoulders. She reassured us that this would not be the cause. She also described what shaking would be like, getting to the end of our tether, being angry and frustrated, and, in that moment, aggressively shaking him. I told her none of this had happened."

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The GP records referred to "small bilateral conjunctival haemorrhages" as part of the history given by the parents but makes no reference to the shaking.

30. On 9 September, the father telephoned another GP. According to the medical records, the father told the doctor that he had a new child and thought he was suffering "post-natal depression and a mixture of anxiety and anger". The notes record that he stated that he had thoughts of harming Q when he had a "high pitched cry which was a trigger" but added that he "would not act, as recognises this is not a logical approach to a time limited situation". He also reported that he had had thoughts of self-harm and suicide one to two weeks earlier, but has not acted on this because he knows it is "not a rational solution", and that his partner was already taking anti-depressants, and he would like to stay strong for her". He described feeling, "helpless and has tried removing himself from the environment, but it's not possible to escape". He said that he was not sleeping and his appetite was reduced.

31. In the medical notes, the doctor recorded her examination, which was, of course, being carried out by telephone, that she noted nothing abnormal in the father's speech, which she described as "rational, logical, clear, comprehensive and with good insight". The doctor's recorded diagnosis, however was "major post-natal depressive disorder". She agreed to refer him to psychological services and prescribed mirtazapine. In her subsequent statement to the police, after Q sustained the injuries described below, the GP said that, in the consultation on 9 September, it felt like the father was taking a proactive approach to his symptoms and seemed very open and honest. As a result, the GP did not feel she needed to put any safeguarding for the baby in place. She did not feel that the child was at risk.

32. In passing, as I observed during the hearing, I have a number of concerns about this telephone consultation, which I shall return to at the end of this judgment. The father's evidence is that, whilst he was on the phone to the GP, the mother was listening in on loudspeaker and prompted him to mention suicide or self-harm, as it could lead him to getting the best help more quickly. He added:

> "naively, I agreed to say this, despite it not being the case. Although I was low and stressed, it was mostly due to how much I was doing without assistance from the mother. I had absolutely no intention of self-harming or committing suicide".

The father confirms that he was given a prescription for mirtazapine, but decided to stop taking the tablets because of side effects. The father also says that he made a self-referral to a counselling service. He says that he was called by one of the staff, to whom he spoke about not getting much help at home, feeling alone in looking after the baby, and not knowing what to do when the baby cried relentlessly with colic. The father states: "I made it clear to her I had no intention of harming myself, Q or the mother, but just wanted some help". He was advised to engage with the university counselling service.

33. On the same day, the health visitor paid a further visit to the home; both parents were present. No physical examination of the baby was carried out on this occasion. The father told the health visitor that he was feeling low and reported about his difficulties in his childhood, with his own parenting, following his father's departure. He said that he had contacted the GP, as he thought he had post-natal depression. The health visitor's evidence is that the parents were "low and struggling". She added that they did not mention that they had taken the baby to hospital, although she had received notification from the hospital about the visits. The health visitor's evidence is that at no time did the mother mention to her that the baby had been shaken by the father.

34. The mother's evidence to this court, (not mentioned to any professional at the time, nor in the immediate aftermath of the baby's subsequent admission to hospital, but only some weeks later), is that it was during this period that an incident occurred during which she saw the father throw Q onto a sofa. She describes how, in the course of an argument, the father was holding Q, and getting frustrated with him as he had been crying for a while. The father was standing in front of the sofa, and, as Q started crying again, he turned and threw Q on the sofa and stormed out of the room. She alleges that she ran to Q and picked him up. She says that he then stopped crying fairly

quickly and she continued to soothe him. She said that she was crying herself because of what had happened. The father denies ever throwing the baby onto the sofa.

35. The mother has also made other allegations about the father abusing the baby. She has described further occasions when she says the father covered the baby's face with blankets when he was crying so that he did not have to hear him. She also alleges that, on one occasion, the father put the baby in a baby carrier, and hung it from the door handle. The father denies that he ever behaved in this way.

36. On 12 September, the father applied for an extension of time for the submission of his dissertation on the grounds of extenuating circumstances. On 15 September, the mother went to a further counselling session with SP. On this occasion, the counsellor observed that she seemed slightly more relaxed talking about her relationship with the father. On the same day, Q had his first session at the university nursery. The nursery worker describes seeing a red sore on his neck, a mark across the neck some two inches in length in the crease of his neck. She described it as raw and weeping.

37. The various accounts of the events of the early hours of 22 September 2016 are a crucial part of the evidence in this case. I shall consider them in more detail below. Suffice it to say at this stage that the father's case is that he accidentally dropped the baby onto the kitchen work surface while preparing a feed at around 4 am.

38. The accounts given by the parents contained a number of inconsistencies about what happened then and in the ensuing hours which I shall consider below. What is clear, however, is that on the father's account, after the alleged fall onto the kitchen work surface, the child was distressed and refused to take milk. At some point, he started emitting a high-pitched cry. During the morning, the father telephoned the surgery requesting a doctor's note supporting his application for an extension of time for filing his dissertation. The father left home at about 11.20 am to collect the medical note supporting the extension of time for the submission of a dissertation and delivered it to the university office. The mother was left in the property with the baby. She, however, was due to attend another counselling session and was concerned whether the father

would return in time for her to attend. At about 12.06, the father sent a text to the mother saying that he was just leaving the university building. Further text messages passed between the couple. At 12.32, the mother texted, "Are you close?" The father replied, "Yeah, 5 minutes, go if you must". The mother then responded, "Okay. He's asleep in his bouncer anyway so sure he will survive ha ha". There was a further exchange of texts and the mother then left the property at about 12.37, leaving the baby there on his own for a very short period before the father returned. The mother arrived for her counselling session with SP at 12.45. The counsellor noted that the mother "seemed far more settled". The mother reported that "the father had banged Q's head on the cupboard this morning by mistake. It was just a gentle bang, but Q had cried".

39. It is the father's case that, after returning from the university, he noticed that Q was looking unwell and was paler in the face. He also noted that the redness on his head had extended over the whole of his forehead and that his head was quite swollen, soft to touch with fluid underneath. At 13:40 the father carried out various searches on the internet on his computer, including for "high pitched screaming like in pain" and "baby's head, random soft bits on head swelling". At 14:12, the father telephoned the surgery and asked to speak to the GP. According to the medical records, the father mentioned a rash which would not disappear and raised the possibility of meningitis, but did not mention either a bump or an accident. The GP called back. According to his statement in these proceedings, the father again did not mention any accident, but

> "describes the baby as having a rash which he stated had been there for two to three days, had been sweating on his head and his behaviour had been abnormal. I did not get the sense of urgency from the father."

The GP advised that he bring the baby into the surgery.

40. At this point, two friends of the parents sent a text saying they were on their way to see the baby. Shortly afterwards the mother arrived home and then the friends also arrived and stayed for a short while. In their police statements, the friends reported noticing swelling on the right side of the baby's head. According to one of the friends, the

father mentioned having bumped Q's head the night before to which the mother replied, "Oh did you? I didn't know that". In cross-examination by Mr Ekaney QC on behalf of the father, the friend confirmed that, when the mother made that comment, she was referring to the bump on the head and looked surprised. The parents then left to take Q to the surgery.

41. The GP's account of the consultation in the surgery is set out in a handwritten statement prepared by the GP himself and also a police statement based on that handwritten statement. As set out above, there is no mention of any bump to the head before the consultation. On examination, the GP initially saw a horizontal red mark on the forehead, which he thought might be an abrasion. He then noticed that the whole of the forehead extending over the anterior fontanelle and the right temple was boggy and swollen. There were red marks on the side of the head. The GP also noticed a bruise approximately 2 to 3 centimetres in diameter behind the right ear. He suspected that the baby had an intracranial bleed. He told the parents that he was very concerned about the baby's condition and called 999 for an immediate ambulance response. He left the room briefly to speak to reception staff and then returned to examine the baby again and monitor him while waiting for the ambulance.

42. Up to this point the parents had offered no explanation for the bruising, so the GP asked if he could have injured himself. At this point, the father said that he could have hit his head as he was reaching to get a bottle while preparing a feed during the night. The GP asked whether he meant that he had hit his head on the kitchen counter and the father confirmed that this might have happened. The GP did not think this provided an explanation for the level of injuries visible on the baby, but did not enquire further as he was primarily concerned about Q's health.

43. On arrival at the hospital, the baby was examined by a consultant paediatrician, Dr A, to whom the father gave an account of the alleged accident. Radiological evidence revealed extensive injuries, including rib fractures, a skull fracture, a subdural haematoma and a collection of blood exerting pressure over the underlying brain with associated swelling. Police and social services were informed and a full investigation

instigated. The police investigation included a gathering of a large number of statements and interviews of the father on 22 September, of the mother on 24 September and both parents on 8 November 2016. Both parents deny that they had inflicted any injuries upon Q, although the father stated that Q had bumped his head when he dropped him on the kitchen counter in the early morning on 22 September. Subsequent examination of the father's computer found that, in the early hours of 23 September, he had conducted a Google search of flights out of a nearby airport and the live departure board.

44. On 27 September, the local authority filed an application under section 31 of the Children Act 1989 in respect of Q. The proceedings were allocated to me and listed for a first case management hearing on 20 October 2016 at which I made an interim care order, together with various case management directions. On discharge from hospital, Q was placed in the care of the local authority foster parents where he remains. A series of case management hearings took place. Initially, the mother's friends, KD and SD, were given leave to intervene in the proceedings because they had cared for Q in the course of the period during which expert evidence indicated that Q had sustained some of his injuries. After further enquiry, however, all parties agreed that there was no real possibility that either KD or SD was responsible for any of the injuries and they were discharged as intervenors.

45. The fact-finding hearing started before me on 20 March 2017. The findings sought by the local authority at the outset of the hearing can be simply summarised, namely that each of the injuries sustained by Q as particularised below was sustained as a result of assaults inflicted intentionally or recklessly by the mother or the father. The mother and the father each denied that he or she inflicted the injuries, denied any knowledge of how the injuries occurred, and declared that he or she sought to explore the possibility of whether the other parent was responsible. The local authority further asserted that the mother and/or the father failed to seek appropriate medical assistance upon becoming aware of the head injury on 22 September. The mother denied this allegation and stated that she was unaware that the injury had taken place. On behalf of the father, it was contended that, as soon as he became aware of the seriousness of

Q's condition, he sought immediate medical assistance. The local authority further asserted that the mother and/or father failed to take all reasonable steps to protect Q from the injuries. This allegation was denied by the father. In respect of the mother, she accepted that she had failed to protect Q, in that she observed the father shake him and throw him on the sofa, accepted that this was unacceptable behaviour and that she should have done something about it and she regrets not doing so. It was further asserted that the mother did not feel able to take any action because of fear and further that she was depressed and taking medication at the time.

46. In due course, by the conclusion of the hearing, the local authority's case as to the perpetrator of some of the injuries was refined as described below.

47. Early on in the hearing, it became apparent that not all the relevant documents had been disclosed to the parties. In addition, information from Q's treating clinician raised the possibility that he might have been suffering from a bone disorder or vulnerability not previously identified. The father's counsel, supported by those representing the mother and the guardian, applied for an adjournment for further expert opinion. I granted that application and the fact-finding hearing was adjourned part-heard to dates in July.

48. When the hearing resumed, the further expert evidence obtained disclosed no evidence on any bone disorder or other vulnerability in Q. It became apparent, however, that the time allocated that month would be insufficient to complete the hearing and, after five days' further evidence, the case was adjourned part-heard until September. At the conclusion of the further hearing in September when the evidence was completed, I adjourned for written submissions to be prepared which were duly filed on 2 October. It is extremely unfortunate that difficulties with the disclosure of documents and subsequent pressures of work on the court lists have delayed the conclusion of this hearing.

The Law

49. The legal principles governing care proceedings concerning allegations of child abuse are well-established: see, for example, the summary in my earlier judgments in *Re JS* [2012] EWHC 1370 Fam, *Re AA (Fact Finding Hearing)* [2012] EWHC 2647 Fam and *Re IB and EB (Children)* [2014] EWHC 369. At all points I have had those principles and the authorities from which they are derived firmly in mind. What follows is a summary of those principles, plus some further comments of particular relevance to this case, derived in part from counsel's submissions.

50. 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 them.

51. Secondly, the standard of proof is the balance of probabilities: *Re B* [2008] UKHL 35. If the local authority proves on a balance of probabilities that Q 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 Q was injured by one of his parents, the court will disregard the allegation completely.

52. Thirdly, 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."

In this context, Mr Storey QC, representing the mother in this case, invited the court to be wary of how it treats social media material. He submitted that, all too frequently, the picture emerging from social media is partial, because texts, posts or other material have been deleted or partially deleted.

53. 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 U, Re B (Serious Injury' standard of proof)* [2004] EWCA Civ 567, the court "invariably surveys a wide canvas". In *Re T* [2004] EWCA Civ 558, she added:

> "Evidence cannot be evaluated and assessed in separate compartments. A judge in these difficult cases has to 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."

54. 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. In *A County Council v K, D & L* [2005] EWHC 144 Fam, at paragraph 39, Charles J observed:

> "It is important to remember (1) that the roles of the court and the expert are distinct; and (2) it is the court that is in the position to weigh up the expert evidence against its findings on the other evidence. The judge must always remember that he or she is the person who makes the final decision."

55. Sixth, in assessing the expert evidence, I bear in mind that cases involving an allegation of child abuse 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 the observations of King J (as she then was) in *Re S* [2009] EWHC 2115 Fam. The court

must also bear in mind that the point articulated by Dame Elizabeth Butler-Sloss, P in *Re U, Re B* (supra):

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

See also the observations of Moses LJ in *R v Henderson-Butler & Ors* [2010] and of Hedley J in *Re R (Care Proceedings: causation)* [2011] EWHC 1715 concerning the need of the court to be aware of the possibility of the unknown cause.

56. 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 & Anr (Non-accidental injury)* [2003] FCR 346.

57. 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.

58. Ninth, it must also be born in mind that witnesses may be fallible for other reasons. As Peter Jackson J (as he then was) observed in *Lancashire County Council v The Children* [2014] EWHC 3 Fam at paragraph 9:

> "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 and accuracy are not fully appreciated, or there may be inaccuracy or mistake in the recordkeeping 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."

I also bear in mind the observations of Mostyn J in *Lancashire County Council v R* [2013] EWHC 3064 Fam:

> "With every day that passes, the memory becomes fainter, and imagination becomes more active. The human capacity for honestly believing something which bears no relation to what actually happened is unlimited. Therefore, contemporary documents are always of the utmost importance."

59. 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 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, a 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 interests of the child, although where it is not possible for a judge to find on a 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.

The hearing and witnesses

60. As stated above, the hearing regrettably took place in three stages over several months. The papers comprised 19 bundles, including extensive records of text and other messages sent by the parties, and substantial volumes of documents disclosed by the police. The parents' case was set out in interviews conducted by the police as summarised above and statements filed for these proceedings. Expert evidence was obtained from a number of medical specialists: Dr Halladay, consultant paediatric radiologist, Dr Keiron Hogarth, consultant neuroradiologist, Dr Andrew Watt, consultant paediatric radiologist, Mr Bill Newman, consultant paediatric ophthalmologist, Dr Frank Hind, consultant paediatrician, Dr Richard Stanhope, consultant, paediatric endocrinologist, and Mr Peter Richards, consultant paediatric neurosurgeon. In the event, there was little challenge to the expert evidence and only Dr Hind and Mr Richards gave oral evidence at the hearing.

61. In addition to those two experts who gave evidence at the first stage of the hearing in March 2017, oral evidence was given by 14 other witnesses, including several of the mother's friends, including EW, SD and NW, the GP to whom the father spoke on the telephone on 9 September, the health visitor, JL, the mother's counsellor, SP and the parents. As already stated, at the conclusion of the hearing I adjourned for written submissions. I am very grateful, as always, to counsel and their instructing solicitors for their assistance in this case.

The medical expert evidence

62. As indicated above, there was no significant challenge to the medical expert evidence in this case, and in those circumstances on this occasion it is unnecessary to consider that evidence in great detail.

63. It is beyond dispute that Q sustained the following injuries:

(1) a serious head injury comprising a right parietal skull fracture, a large predominantly right-sided scalp soft tissue swelling overlying the fracture, a large right-sided parafalcine subdural haematoma, contusional change to the underlying brain and a laceration of the dura, leading to herniation of the brain matter;

(2) ten rib fractures sustained on at least two occasions;

(3) subconjunctival haemorrhages demonstrated in the photographs, said to have been taken on 2 September.

64. With regard to the head injury, Dr Hogarth observed that the radiological findings are in keeping with massive trauma to the head. He added that "herniation of brain substance between the fractured parietal bone is indicative of the great severity of the injury". Both he and Mr Richards dismissed the possibility of the injuries to the head having been sustained in a low-level fall as described by the father as having occurred around 4 am on the morning of the 22nd. In his report, Mr Richards observed that:

> "It is extremely unusual for low level falls from domestic sofas or beds, ie of around 45 centimetres, to cause any skull fracture or significant head injury. The described fall of 20 to 30 centimetres would not be expected to cause injuries of this severity."

Dr Hogarth's opinion was that the proposed mechanism could not conceivably explain the extreme severity of the injuries depicted on the scans. He concluded that, given the presence of rib fractures and bruising, the only unifying causation that could account for these injuries is trauma.

65. Whilst deferring to Mr Richards, Dr Hind stated in oral evidence that he would expect the child's consciousness to be impaired and that he would be in distress and less-responsive after the head injury. In his oral evidence, Mr Richards said that he would have expected the baby to have been distressed and crying from the point of injury until such time as the swelling caused the level of consciousness to fall, "I would have

expected at the point of injury that there would have been noise and then the baby not settling, crying, distressed, and particularly if the head was handled in any way and then as the brain swelled and the effect of the injury became worse, then the crying would have got less."

66. In cross-examination, Mr Storey took Mr Richards through the father's account to the police of what happened after the alleged fall onto the kitchen counter. He agreed with Mr Storey's suggestion that, from the beginning of the process, there was evidence consistent with encephalopathy – the high-pitched cry, the refusal to take milk, and later the father's account of how the child alternated between crying and lying quietly, staring and not following with his eyes. Mr Richards described it as being in "the twilight zone between conscious and unconscious", and agreed with my description of how he was going in and out of consciousness and the more conscious he was, the more aware of the pain.

67. In oral evidence, Mr Richards was asked about the consequences of a delayed presentation to hospital. He observed:

> "If there was a delayed presentation, that could have been avoided. The difference that might have occurred is that the fundamentals of treating a head injury are to keep the patient full of oxygen and keep their blood pressure up and that's what earlier presentation in this case could have achieved. It wouldn't have altered the dura laceration. It may or may not have avoided the need for surgery, because if those things could have reduced the swelling so the brain damage wasn't extended, it might have made a difference. But if earlier oxygenation and correction of the anaemia had occurred, it might have reduced the severity of the underlying brain injury, although you cannot be certain."

68. According to Dr Halladay, one rib fracture occurred between two and six weeks before the admission to hospital on 22 September, ie, between 11 August and 8 September, and the others between four and ten days before the hospital admission, ie, between 12

and 18 September. There was a slight difference of interpretation of the x-ray evidence between the two radiologists, Dr Halladay and Dr Watt, but, as Dr Watt acknowledged, this disagreement is not significant. Dr Watt contends that it is possible that all the rib fractures occurred at the same time, because a degree of variation in the pattern of bone healing is common, but that he thinks it more likely that they occurred at separate times. Both radiologists concluded that the rib fractures are most likely to be due to force or compression of the chest by an adult. Dr Halladay observed that rib fractures in children this age are strongly associated with inflicted injury. No accidental explanation for these fractures has been proffered.

69. In closing submissions, Mr Storey and Miss Elford on behalf of the mother contended that, looking at the evidence of Dr Halladay and Dr Watt, there is only a relatively short timespan between the two windows suggested for the rib fractures, and submitted that it is unsafe in the circumstances to conclude that the posterior rib fractures occurred at different times. With respect to counsel, however, I conclude that the expert evidence is manifestly clear that it is much more likely than not that the rib fractures occurred on at least two separate occasions.

70. Overall, with regard to the head injury and fractures, Dr Hind advised that the force used to cause all these injuries would have been far outside anything seen in normal childcare, and most likely would represent a complete loss of temper on the part of the adult perpetrator. He did not think that any of the injuries could have been sustained without the knowledge of any adult carrying the child at the time the injury was sustained.

71. With regard to the subconjunctival haemorrhages, Mr Newman noted the photographs allegedly taken on 2 September showing the haemorrhages and in addition the abrasions near the left eye. He further noted that no marks had been seen by the doctor who examined the baby three days later. In Mr Newman's opinion, the haemorrhages were not related to birth, medication, minor trauma, vomiting, straining to open his bowels or immunisations. No underlying significant haematological infections or

metabolic condition had been identified to account for the findings. Accordingly, Mr Newman advises that:

> "In the absence of an episode of major accidental trauma or an underlying medical condition, and in the knowledge that not everything in medicine has a clear explanation, then the finding of subconjunctival haemorrhages remains unexplained but in my opinion would be consistent with a non-accidental aetiology as a result of one or a combination of thoracic crush injury, shaking, indirect or direct trauma to the eyes."

The parents: character and credibility

72. As stated above, it is crucial that the court has an opportunity to hear the oral evidence of the parties in cases of alleged child abuse. In this case, the mother and the father are alleged to be the possible perpetrators of the injuries sustained by Q. Both of them provided extensive evidence in statements and orally in the course of which they were subjected to intense scrutiny in cross-examination. In my judgment, in a number of respects, neither was a satisfactory or reliable witness.

73. The evidence of both parents was characterised by inconsistencies. In the father's case, the inconsistencies principally revolved around his account of the events of 22 September. As Mr Ekaney and Miss Pitts conceded on behalf of the father, the objective contradictions and limitations in his evidence about those events are, at first blush, difficult to explain, although they counselled caution about drawing the conclusion that those contradictions amount to culpability. It is their case that the father is a loving, committed, hard-working father who found himself in a most difficult situation, effectively caring for the baby and supporting the mother whilst pursuing his university course and trying to provide financially for the family.

74. In the mother's case, the inconsistencies in the evidence were more widespread. On behalf of the father, Mr Ekaney and Miss Pitts submitted that the mother's evidence was so shot with lies and untruths that the court cannot rely on her as a truthful or credible historian. Whilst acknowledging that the court will apply the principle in *Lucas*, they submitted that in this case, the court cannot safely rely on the mother as a witness of truth. They relied on the fact that the mother never mentioned to any professional prior to the hospital admission on 22 September, or indeed for several weeks thereafter, that she had seen the father throw the baby on the sofa. No professional was ever told that the mother had seen the father put Qin a baby carrier and hang him on a door handle. The mother's allegation that Q was over-medicated by the father was also never raised with any professional.

75. They submitted in particular that it is significant that the mother never told her counsellor, SP, that she had seen the father throw or shake the baby or harm him in any way. At one point in counselling, the mother asserted that the father had stormed upstairs after a row with a health visitor. There is no evidence to support this from the health visitor, JL. The mother has asserted that she told the health visitor and her counsellor that the father had threatened to kill her, himself and Q on 1 September. This allegation was not supported with evidence by either of those professionals. The mother initially suggested that the father had been responsible for starting the search for information about shaking on the internet on 3 September. In cross-examination she conceded that she had searched on his computer for this information and left it open for him to see.

76. On 5 September the mother sent a text to her friend, NW, stating that the baby was fine and that "surprisingly hospital didn't take it that seriously". This message was sent some hours before the father took Q to the hospital. In interview, the mother initially told the police the father had not left the family home on 22 September, only conceding the truth when she was confronted with the CCTV evidence. The mother then went on to deny knowing that he left the property, suggesting that he might have done so without her knowledge. She was then confronted with the mobile phone records with

the evidence that communication had passed between them while he was out, as described above.

77. Counsel for the father also rely on the evidence in the papers about the mother's troubled childhood referred to above. It was submitted on behalf of the father that the mother suffers from high levels of anxiety, in particular, anxiety about being left alone with the baby. The father's representatives relied in particular on the evidence of the text message quoted above.

78. It is plain that the relationship between the parents was unstable and volatile. One obvious example was the argument on 1 September after which the father left the property for some 48 hours. During that period, the mother was plainly under very considerable pressure and in a state of distress having to cope with Q, who was apparently suffering an adverse reaction to his immunisations. Mr Ekaney and Miss Pitts submitted that the dynamic between the couple is of relevance in the overall analysis of what may or may not have happened in this case. Their main contention was that the mother is a more savvy and knowledgeable individual, who is highly manipulative of the father. They pointed to her threat to kill herself and to put Q into care if the father did not return. They submitted that the mother's actions in spending the night with the father before the second police interviews on 8 November is further evidence of her manipulative behaviour.

79. On the other hand, I take into account the fact that in other respects, save for the serious injuries eventually discovered when the child was admitted to the hospital, there were no concerns about the care of the baby who was always well-presented and apparently being well looked after. It is clear from the evidence as a whole that the father paid a considerable role in caring for the child, particularly at night. As Mr Ekaney and Miss Pitts submitted, Q was readily brought to the attention of medical professionals.

80. I shall now consider the evidence about the key issues. Although chronologically the last in time, it is convenient to start with the most serious injuries to the head.

The head injuries

81. Both parents agree that Q was well at the time of the feed in the middle of the night up to about 1.30 am. Plainly, therefore, the head injuries found on admission to hospital some 14 hours later were inflicted after that time. There is some evidence that the parents noted that Q had a misshapen head before 22 September, but the evidence of the clinical experts is that Q would not have been well after sustaining the very serious head injuries found on admission to hospital.

82. At this point I shall consider the principal accounts given by the parents at various stages in the medical and forensic investigations.

83. The parents have given various accounts of what each says happened during the following night. The first detailed account is set out in the medical history taken by the paediatrician, Dr A, following the baby's subsequent admission to hospital later in the day on 22 September. Importantly, both parents were present when this history was taken, and contributed to it. Dr A's note reads as follows:

> "Over the last two to three days, Q doesn't look right. Noted his back of the head looked bigger when woke up in the morning. Went to bed last night. Well fed at 1 am, no issues. E got up, went to the kitchen to make his milk and holding him with his left hand, Q made some movements. E dropped him, hit the back left side of his head onto the top of the kitchen counter. Didn't lose consciousness but irritable and refusing to drink milk. Did a poo but not going back to sleep. Eyes half open not crying. He left Q in his Moses basket and back to sleep. L [the mother] woke up at 6.30 am. Didn't know he hit his head earlier. Said E was asleep. Noted red mark on his forehead. Q making little noises, not taking his feeds. Put him back in his Moses basket, she went back to bed. 9 am = both parents wake up. Q didn't look well. Change in colour. Lips almost purple. Face quite flushed. L went out to uni for appointment and didn't come home till 2 pm. E

> said Q was screaming throughout the day. Eyes vacant look, not taking his feed. Noted a swelling over right side of his head above his ear. Called GP. Went to surgery when L came from uni. GP noted bruising and lump on the back of his head, right side. No vomiting. One wet nappy at 9 am. Bowels open once at 4 am."

84. At the start of his first police interview, the father gave a detailed account in which he described waking up at about 4am when the baby monitor went off and going downstairs holding Q to make milk:

> "So I was just holding him there like I usually do and ended up making the milk and then by accident he sort of really kicked hard which I've kind of really had coming from him before ... and I wasn't holding him tight enough, which was my mistake, and he fell onto the surface ... and I then quickly lifted him up and sort of held him as tight as I could ... and so I tried to console him for that for about an hour and then I tried to give him milk but he was having none of it. Every time the teat touched his mouth, he just went into this high squeal crying, but it was continuous. So rather than it being like every so often out of nowhere, it was continuous and then I woke L up about 6 o'clock just to say, 'Hey, do you want to try something? I'd just exhausted everything and I've got nothing left and I don't know what else we can do'."

85. He then described how the mother tried unsuccessfully to settle the baby and added:

> "I was kind of monitoring him, seeing how he was doing then, while he was there, while he was sat in the bouncer. Could see -- because generally he loves being in the bouncer. He wasn't himself at all, because normally he will sit in there and be looking at you and sort of trying to interact and hitting the things around him on the bouncer. But he was just sort of sat there almost vacant staring if you will. He wasn't following me at all."

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86. He described how he had put Q back in the Moses basket next to him while the mother went upstairs. He then said:

> "For like two or three hours, kind of no sound. Nothing was coming from him and I found that quite weird, but then I noticed about like 9, 9.30, he would be in that state and every now and again squeal really loud and then be back into that state again, then really, really loud, then back into it again, almost like he was having a really bad dream it seems... L went to uni for her induction ... I was looking at his head and looked sort of a weird shape ... when I went to lift him up, he just squealed even louder than before, and I could tell straightaway his head looked almost like there was different shapes to it ... so then I knew that I'd hit him on the bump side of it, so I said to L, 'Look, I've done this which was an accident, but do you think that that could have something to do with his recent crying and everything else like that going on?' ... If you touched it, it sort of felt like a water bed, that sort of thing. That's when I was like this is definitely not right and that's why I rang the GP."

> In his statement in these proceedings, the father describes how Q woke up at about 1.30 am after his feed. The mother played with him although he pointed out that this was disruptive to his routine. He put Q back in his Moses basket and eventually dropped off to sleep. According to the father's statement, the mother then went upstairs to bed and he stayed downstairs on the sofa with the Moses basket next to him. Q woke again at about 4 am. He started crying and the father carried him into the kitchen, cradling him in his left arm. According to his statement, with his right hand he took a bottle out of the cupboard and put it in front of him as he started preparing the milk. At that point Q "kicked me in the chest, jolted out of my arms and fell on the worktop below, which was a drop of about 20 to 30 centimetres. He hit his head on the right side at the back, but did not cry. I immediately

held him in my arms and tried to console him, but he did not react. There was no sign of any bump or redness at this stage. I tried to feed him with the milk, but he only took very small amounts. I was concerned as he would normally take the whole bottle. I woke the mother and told her what had happened and that I was having difficulty getting him back to sleep. I asked if she would try. I went back into the living room, leaving her with Q in the kitchen trying to feed him. I went back to lie on the sofa but only half asleep, as I was trying to listen to what was going on. Between half an hour and a hour later, I heard the mother go upstairs, but I could hear Q crying. She had left him in the Moses basket in the kitchen ... I could not believe that the mother would go upstairs and leave him still crying. I went back into the kitchen and he was crying which I would describe not as a pain cry but as an upset cry. He was fidgety, and I noticed redness appearing on his forehead. I was concerned that when I had previously taken him to hospital for things I was worried about, I was sent away being told nothing was wrong. I stayed up with him and he slept intermittently. I was lying next to him on the sofa and eventually I held him in my arms. The mother came downstairs about 8.30 to 9 am and I repeated the events of the night. I said I was surprised that she had not spent longer with him trying to get him back to sleep. She said she needed to get ready to go to her GP or counselling, I cannot recall which. Q did not look right. He was not crying, but I just did not recognise how he looked. The mother said he was restless but nothing out of the ordinary. I said we would need to monitor him during the day."

87. In a preliminary statement for her first police interview on 24 September, the mother gave the following account:

"I was woken by Q crying at around 1.30 am. When I got up, I got him up, changed his nappy and gave him a feed. He was giggling as I played with him, but E told me off saying he wouldn't go back to sleep

> if I continued. I sat with Q in my arms until he fell asleep. I put him back in his cot and went back to bed. Around 4 am, Q woke again but E said he would go this time, so I went back to sleep. I woke up around 10 am. Q seemed okay. He was a bit dozy but that wasn't unusual for him. E said, 'He has been a bit off his milk', but again this was not unusual. I told him to keep a close eye on him whilst I went for my counselling session at 12.30. E said he might call the GP and I asked him to let me know what he said. Whilst I was out, E contacted me and said that Q had hit his head a bit on the kitchen counter but he was fine. I returned home to find two other friends there. E was being really negative about having a baby. As soon as I saw Q, I realised something was really wrong. He was vacant and his eyes were only half way open. His cry was piercing and different. I immediately took Q to the GP who called an ambulance. E told the GP that the knock to the back of the head had in fact happened at 4 am. That was the first time I heard of the incident."

88. In her statement for these proceedings, the mother stated that she and the father had gone to sleep after Q's 1 am feed. Q was in the Moses basket just outside the door on the landing. She woke up when she heard the baby monitor. The father said he would deal with the feed. The next thing she knew was the baby monitor going off again about 6 or 6.30. She got up, noticed that Q was not on the landing, went downstairs and found Q in the Moses basket at the far end of the kitchen. She made him a bottle and tried to give him a feed, but he would not take anything. She put him back in the Moses basket but cannot remember whether she changed his nappy at this point. She noticed a slight red rash on the centre of his forehead which looked like dry skin that had been there before. He drifted back to sleep as she placed him in the Moses basket. She went back to bed. In her statement, it was her evidence that she had then woken up again between 10 and 10.30.

89. There are a number of obvious inconsistencies in these various accounts, in particular (a) whether or not the baby cried immediately after the "incident" in the kitchen; (b)

what time the mother next got up after 4 am; (c) whether the mother assisted the father in trying to console the baby after the incident; and (d) at what point the mother first heard the father's account of having dropped the baby.

90. On behalf of the mother, Mr Storey and Miss Elford invited the court to treat the father's account to the police in his first interview as the most reliable. They rely on the fact that at no point in that account did the father suggest that the mother was told at six in the morning what had happened to Q. In contrast, in his statement in these proceedings, he asserted that he woke the mother and told her what happened. Mr Storey and Miss Elford also relied on a passage in the first interview in which the father described the baby immediately after the incident, in particular, his description of trying to feed the baby, including his statement that "every time the teat touched his mouth, he just went into this high squeal crying", a description of how, after Q was put back in his Moses basket, there was no sound for two or three hours, which the father described as quite weird, and his description of how, later in the morning, Q would move from being "in that state" and then every now and then squeal real loudly and then go back to "that state again". Mr. Storey and Miss Elford submitted that this account is completely consistent with Mr Richards' description of a child suffering from encephalopathy, as amplified during cross-examination by Mr Storey. Mr Storey and Miss Elford relied further on the evidence of the mother's counsellor, SP, about the counselling session that day. The mother mentioned that Q had banged his head, her case being that she was informed of this by text message after she had left the home on the way to the counselling session, but was described by SP as being "far more settled on this occasion". Mr Storey submitted that such a state would be wholly inconsistent with the mother having been told at six in the morning about the bump, or with knowledge of the symptoms observed by the father.

91. In contrast, it was submitted on behalf of the mother that the father's conduct during the morning is consistent with culpability for Q's injuries. Mr Storey and Miss Elford relied on how the father, instead of seeking medical attention, started searching on Google for topics, including "high pitch scream like in pain" and "baby's head, random soft bits on head swelling". They also relied on the fact that there is no record of the

father mentioning any of these symptoms when he rang the surgery at 14;12, or during the GP's initial examination of the baby. Finally, they relied on the father's internet search about flights on the morning of 23 September, which they submitted is consistent with guilt.

92. On behalf of the father, Mr Ekaney and Miss Pitts conceded that the initial account given to the police by the father on 22 September is more likely to be accepted by the court and further that the court is likely to be concerned about what they described as the apparent grudging nature of the history given to the GP on that day and the discrepancies in the parental accounts highlighted in Dr A's note. As a result, they conceded that the court is bound to be troubled about the father's evidence about the events of that day. They argued, however, that there are a number of other points to be taken into account before the court could conclude that such inconsistencies amount to evidence of culpability. They suggested that in evidence the father came across as measured and considerate. They pointed to other evidence about him, demonstrating that he is intelligent, hard-working, devoted and thoughtful. Although he was initially uncertain about the pregnancy, he was supportive and kind towards the mother following Q's birth and thereafter devoted to the baby. There are many descriptions in the papers of the father's warmth towards his son.

93. Mr Ekaney and Miss Pitts realistically acknowledged the difficulties in challenging the evidence given by Mr Richards and recognised that, given the small distance which the baby fell according to the father's account, it is unlikely that the court will conclude that he has given a full account of the events of that morning. They pointed out, rightly, that it is impossible to measure the velocity or identify the exact mechanism of any fall of this nature. They relied on the consistency in the father's account about the actual incident itself. They acknowledged the failure of the father, and on their case the mother as well, in failing to seek medical attention earlier in the day. The explanation provided by the father was that the significance of the fall was not immediately apparent.

94. In his oral evidence, the father asserted that he had been mistaken about the timings of the various symptoms and events of the morning and afternoon. It is that aspect of his evidence that was, to my mind, particularly unconvincing.

The subconjunctival haemorrhages

95. On behalf of the mother, Mr Storey and Miss Elford relied on a comment made by the father to a nurse in the hospital on 5 September. The hospital records report him as being "concerned regarding persistent crying and bilateral bloodshot eyes for approximately four days". The doctor's note taken on the same visit is that the baby had been "brought in by father as concerned as had bloodshot eyes since immunisations four days ago". Mr Storey and Miss Elford submitted that these two entries in the medical records date the eye bleeding back to 1 September, which they asserted to be four days earlier, and that this is sufficient for the court to conclude that the bloodshot eyes were present when the father was still in the house before he walked out after the argument on that day.

96. In addition, they rely on the mother's evidence that the bloodshot eyes were an intermittent problem coming and going on a number of occasions. Mr Storey and Miss Elford submitted, therefore, that, if the haemorrhages were inflicted, it is open to the court to conclude, in all the circumstances, and in particular in the light of the fact that, on their case, the father was the perpetrator of the head injury, that he was also the perpetrator of the subconjunctival haemorrhages. They further submit that, if the court concludes that the father was responsible for the head injury, it is manifestly more likely that he was responsible for all the injuries sustained by Q, including any injuries to the eyes.

97. The principal submission advanced on behalf of the mother, however, is that the local authority has failed to establish that the eye injuries were inflicted non-accidentally. It is contended that there are inconsistencies within Mr Newman's report concerning the interpretation of the photographic evidence. But with respect to counsel, I consider

that they have misread this aspect of his report. The photographs clearly demonstrate the presence of the haemorrhages.

98. On behalf of the father it was pointed out that the first contemporaneous record of a reference to the haemorrhages in the eyes is in a text message sent by the mother at 2109 on 1 September quoted above. Mr Ekaney and Miss Pitts submitted that the court can safely reject the assertion made by the mother that the bloodshot eyes came and went intermittently. Particularly reliance was placed on behalf of the father on the mother's text message on the morning of 2 September in which she said "Also I think Q has issues", in the context of sending photographs showing the haemorrhages in the eyes. They drew attention to the fact that the mother did not make any reference to the haemorrhages returning, but rather was highlighting that the baby had visible injuries not seen before. It is the father's case that the baby was inconsolable that day in the absence of the father because of an injury the mother had inflicted upon him. His counsel relied on the evidence of the ophthalmologist, Mr Newman, that the injuries would usually occur at or around the time of the event. Accordingly, they submitted that the injuries demonstrated in the photographs were likely to have been inflicted by the mother between the time when Q had his immunisations on 1 September and when the photographs were sent the following day.

99. Mr Ekaney and Miss Pitts submitted on behalf of the father that, having inflicted the injuries to Q's eyes, the mother set about trying to cover her tracks and pin the blame on the father. They relied in particular on the fact that her allegation about seeing the father shake the baby occurred after the injuries to the eyes were seen on 2 September. They drew attention to her manipulative behaviour concerning a link to a search for information about shaken baby syndrome on the father's computer.

Rib fractures

100. On behalf of the mother, Mr Storey and Miss Elford submitted that, if the court finds that the father was responsible for inflicting the head injury on 22 September, it is manifestly more likely than not that he was responsible for the rib fractures. They

further rely on other aspects of the evidence: (1) comments by the father about harming the baby; (2) statements by the father that he had shaken the baby; (3) the mother's allegation that she saw the father shaking the baby; and (4) the mother's allegation that she saw the father throw the baby on the sofa.

101. I have set out above the occasions when the father spoke of having feelings about harming the baby. I accept that he had those feelings and that there is no reason to believe that he was being untruthful when he spoke about it. One example was his conversation with the GP on 9 September as summarised above. As described above, the GP did not think his comments gave rise to a safeguarding risk. In the context of all the evidence available to me, those comments take on rather greater significance. Another example was in text exchanges on 6 August in the course of which the father said he had thoughts of shaking Q "lots of times". It is notable that the mother replied by saying, "Can't lie. Same. Obviously haven't but it's crossed my mind."

102. The father's statements about shaking the baby are more complicated. He refers to having shaken Q in a number of text messages. It is plain that he told a number of professionals on various occasions that he had shaken the baby. It seems that the doctors with whom on 5 September he discussed what he said he had done did not believe that the actions he was demonstrating were responsible for any injuries. It may be, of course, that he was minimising what he had done. He told the police at one point in his first interview that he had thought he had shaken Q too hard, that the mother described his actions as a bit aggressive, although he thought that what he had done was really quite normal. Later in his interview, in response to a direct question from the police, he said he had never shaken the baby.

103. As set out above, the mother's evidence is that she saw the father shake the baby on an occasion in early September, shortly after he returned to the property after walking out at the beginning of the month.

104. In response, Mr Ekaney and Miss Pitts relied on a number of matters arising from the evidence. There is no evidence of any injury seen by the nurse when Q went for his

immunisations on 1 September. Initially the mother made no complaint about Q's behaviour after the immunisations but, following the father's departure, became increasingly distressed and anxious and described the child in various states of distress in text messages set out above. Furthermore, it is clear that a Google search was carried out on the computer into shaken baby syndrome.

105. The mother has also alleged that she saw the father throw Q on the sofa. The father emphatically denies that this ever occurred. In this case, and in contrast to the allegation about shaking, there is no contemporaneous evidence supporting the mother's allegation at all. In fact, and most strikingly, the mother did not mention it at all at any point, either before or after the child's admission to hospital until half way through her later round of police interviews in November, eight weeks after the incident. Furthermore, in my judgment, her evidence about this alleged incident and a demonstration in court of what she said she saw, were highly implausible. In the witness box she was invited to demonstrate what she saw the father do. Her demonstration was hesitant and unconvincing. It was completely different from her description of a violent throw given in the course of the police interview in November 2016.

Further discussion and conclusions

106. In her closing presentation, Miss Wills-Goldingham on behalf of the local authority made the following core submissions on behalf of the local authority:

(1) the injuries were all inflicted;

(2) on the evidence before the court, only the father claims the head injury that occurred on 22 September was accidental and his account can be discounted as the mechanism as described and demonstrated in the witness box is incompatible with the extent of the injuries identified by the expert;

(3) the mother accepts the injuries were inflicted by the father, but denies all knowledge of the events until informed by the father by text message while she was with her counsellor in the middle of the day, but this assertion is incompatible with the unchallenged evidence of what was said during the examination GP, Dr D, and the hospital paediatrician, Dr A;

(4) overall, the presentation of Q at the GP's surgery and hospital on 22 September is incompatible with the description and timeframe claimed by the parents;

(5) neither parent presented as credible in their respective accounts of events;

(6) it appears that the undisputed date of evidence, in the photographs sent by text to the father on 2 September, demonstrate that the bloodshot eyes occurred at a time when the father was not with the child;

(7) in considering the rib fractures, it is a matter for the court to assess the alleged previous shake and throw, alleged by the mother and described and illustrated in the witness box.

107. The local authority invited the court on a balance of probabilities to reach the following conclusions as to the perpetrator of the injuries sustained by Q:

(1) that the court is not able to determine as between the parents who was responsible for the rib fractures but should be satisfied that they are non-accidental injuries and accordingly they both remain in the pool of perpetrators;

(2) that the mother was responsible for the bilateral subconjunctival haemorrhages between 2 and 5 September;

(3) that the father was responsible for the head injury inflicted on or before 22 September;

(4) that the mother and the father both failed to seek appropriate medical assistance on becoming aware of the head injury;

(5) that both parents failed to take reasonable steps to prevent the injuries sustained by Q whilst in their care.

108. On behalf of the mother, Mr Storey and Miss Elford invited the court to exclude the mother from the pool of perpetrators for any of the injuries, and invited the court to find that they were all inflicted by the father. The mother accepts, however, that she failed to protect her son. On her case, she saw the father shake and throw the baby and failed to take action. Counsel on her behalf invited the court to place any failure to protect in what they describe as "a blanket of significant mitigation", relying in particular on the fact that the mother was a young mother who had not had the benefit of any good example of parenting herself after her troubled childhood. They describe her as a young woman who needs help.

109. On behalf of the father, Mr Ekaney and Miss Pitts summarised their case on behalf of their client as follows:

(1) He has no alternative explanation for the life-changing cranial injuries apart from the account given about dropping the baby onto the work surface in the kitchen.

(2) He does not advance a positive case that there was another incident that night involving the mother which is capable of explaining the cranial injuries.

(3) He has no knowledge of how the baby suffered rib fractures and denies shaking the baby or in any way compressing his ribcage.

(4) He invites the court to conclude that the conjunctival haemorrhages seen on 2 September were caused by the mother in a situation in which she was highly stressed, profoundly distressed, anxious and alone with the baby and seeking the company of others and lying about her baby's true situation.

(5) Finally, if the court concludes that the father was responsible for the cranial injuries, then counsel on his behalf invited the court to consider a number of factors which provide a degree of mitigation for what happened.

110. Drawing all these threads together and considering each piece of evidence in the context of all the other evidence, I reach the following conclusions.

111. I find the father's account to the police of Q's behaviour in the minutes and hours after the "incident" at or around 4 am on 22 September given in his first police interview to be the most reliable account that he has given. His description of the child's condition, the reluctance to eat, the high-pitched squeal and later the fluctuating consciousness, are, as Mr Richards advised, strong evidence of encephalopathy and thus convincing evidence that Q sustained his serious head injury at about 4 am that morning. I accept that the evidence of the experts that the low-level fall described by the father cannot explain the serious injuries which Q suffered.

112. Both parents agree that Q was well when he went to sleep at or after 1.30 that morning. I therefore find, on a balance of probabilities, that Q sustained his serious head injury whilst in the care of his father at or around 4 am; that the injuries cannot have been sustained in the incident as described by the father; that, had Q sustained the injuries as a result of an accident of a different kind, the father would have described it and accordingly that, on a balance of probabilities, the injuries were inflicted by the father non-accidentally.

113. I find it more difficult to reach a conclusion as to when the mother first discovered that Q sustained a head injury. On balance, however, I conclude that the father did not tell the mother about the alleged incident until some hours later. This is consistent with the account given to Dr A after the baby was admitted to hospital. I accept the submission made by Mr Storey and Miss Elford that, had the mother known about the bump and appreciated that Q was not well, she would not have been in so equitable a frame of mind when she saw SP around midday that day. On the other hand, I find it very surprising that the mother did not observe during the morning that her baby was unwell. On the father's account, Q was manifestly demonstrating symptoms of encephalopathy and it is to my mind very difficult to understand why the mother did not realise that something was wrong. Having considered all the evidence, however, I find that the explanation for this is that she simply did not pay sufficient attention to the baby that morning. On this point, I accept her account that she did not look at the baby before she went out because she was in a rush and did not pay much attention.

114. Thus, in their different ways, each parent bears a share of the responsibility for the fact that there was a catastrophic delay in seeking medical attention for the baby. As the parents will be only too well aware, that delay has contributed to the significant, long-term permanent damage which Q is going to suffer as a result of his injuries. I find that the father, having inflicted the injuries, must have realised that the baby needed urgent medical attention and yet took no steps to seek assistance for nearly ten hours. Although the mother did not know what had happened, had she paid more attention to her baby that morning she ought, in my judgment, to have realised from the symptoms which the baby was manifesting that he was not well and needed urgent medical attention.

115. I turn next to the subconjunctival haemorrhages. The photographs taken by the mother and sent to the father on 2 September, accompanied by the message, "Also, Q has some issues", are deeply concerning. The mother was plainly under very considerable stress at this time, thinking that the father had left and apparently having to deal with a child having a severe reaction to immunisations. She used language in her text messages which on one interpretation could be seen as indicative of risk of harm to the baby – for

example, calling him "evil" and threatening to put him in care. On her behalf, Mr Storey, counsel's caution in interpretation of text messages and I bear that submission firmly in mind.

116. The mother's case is that Q had bloodshot eyes intermittently in August and early September. There is no evidence to support this assertion other than the mother's ex post facto evidence. The mother alleged in oral evidence, apparently for the first time, that she had raised the question of bloodshot eyes with the health visitor a week or so before 2 September. There is nothing in the health visitor's notes or evidence to support this assertion. The first reference to bloodshot eyes is in a text message sent by the mother on the evening of 1 September.

117. I am satisfied that, had the haemorrhages been present when Q received his immunisations earlier that day, the nurse would have noted them. It is to my mind significant that the mother did not mention the bloodshot eyes to SP in a counselling session that day, but did mention the father leaving. It is notable, that on this occasion SP was sufficiently concerned about the mother's condition to take various precautionary steps.

118. I remind myself again of Mr Newman's conclusion concerning the subconjunctival haemorrhages as quoted above. That evidence has to be assessed in the context of all the other evidence. I bear in mind that findings must be based on evidence, not speculation. I also bear in mind the wise observations of Peter Jackson J and Mostyn J quoted above concerning the fallibility of memory.

119. I find that the subconjunctival haemorrhages were sustained between the time of the immunisations on 1 September and the time on 2 September when the mother sent the photographs to the father. During that time, the mother was plainly in a state of stress and anxiety as she described in her text messages. Again, I accept Mr Storey's warning about interpreting those messages, but in this case I am satisfied that she was in a state of stress and anxiety. On a balance of probabilities, I conclude that in that condition, she inflicted injuries on Q which led to him suffering the haemorrhages in his eyes.

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120. Although there is some evidence that the father has spoken on a number of occasions about shaking the baby, that evidence is, in my judgment, severely contaminated in a number of respects by the intervention of the mother as described above. The father has been consistent in saying that he does not believe he shook the baby aggressively. It is the mother who says that he did. Having considered the evidence given by both parents, I find that on this evidence, I accept the evidence of the father and reject that given by the mother. The mother's account and demonstration of the shaking incident she says she witnessed was, to my mind, highly implausible. I find that, after 3 September, she tried to persuade the father that the subconjunctival haemorrhages were attributable to his shaking. She encouraged him to seek medical attention for the baby's condition, and to tell the doctors about the shaking. I find that she did so in an effort to divert attention from the fact that the subconjunctival haemorrhages had been inflicted by her when she was on her own with the baby the day before, she says, she saw the father shaking him.

121. I reject the mother's assertion that she saw the father throw the baby onto the sofa. I find that she has fabricated that allegation with the aim of incriminating the father as the perpetrator for the rib fractures. That may, of course, be evidence to support the assertion that she was responsible for those rib fractures. On the other hand, there is evidence to support the suggestion that the father might be responsible, for example, his own comments to the GP in the telephone conversation on 9 September.

122. Overall, I conclude that there is no reliable evidence as to any occasion when the rib fractures might have been inflicted, or any reliable evidence as to the circumstances in which they were inflicted. In my judgment, there is insufficient evidence for the court to reach any conclusion as to precisely when they occurred or as to whether the perpetrator was the mother or the father. I have already in this judgment found that each parent was, at different times, responsible for injuring their baby. I find that both parents remain within the pool of possible perpetrators for the rib fractures.

123. Those are my findings in this case and in due course I will decide what orders to make in respect of Q's future care and welfare in the light of those findings and such other evidence as may be put before me.

124. Finally, I return briefly to the matter of the telephone conversation between the father and the GP on 9 September. I recognise the great pressure that all doctors in the NHS are under. Plainly it is appropriate for GPs to conduct many examinations by telephone. I am also aware of the advantages of hindsight. In this case, however, it does seem to me, with respect to this busy and hardworking GP, that she should have taken certain steps following this telephone conversation in which the father spoke of having thoughts of harming his baby. When a patient in the course of a telephone consultation discloses thoughts of harming a child, the doctor should as a matter of course immediately arrange a face to face appointment, liaise with the child's GP and health visitor, and refer the matter to social services. I shall discuss with the President of the Family Division what steps should be taken to draw this matter to the attention of the relevant medical professional bodies.

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