Neutral Citation Number: [2020] EWFC 68

Case No: LV19C02014

IN THE FAMILY COURT

Sitting Remotely

Date: 12 November 2020

Before:

THE HONOURABLE MR JUSTICE MACDONALD

- -

Between:

A Local Authority	**Applicant**
- and -	
W	**First Respondent**
-and-	
R	**Second Respondent**
-and-	
S and L (By their Children's Guardian)	**Third and Fourth Respondents**

Mr Shaun Spencer and Helen Crowell (instructed by **Ms Elizabeth Emmington**) for the **Applicant**
Mr Nicholas Stonor QC and Kirsty Robinson (instructed by **Butcher & Barlow LLP**) for the **First Respondent**
Mr Damian Garrido QC and Mark Steward (**instructed by Susan Howarth Solicitors**) for the **Second Respondent**
Ms Lisa Edmunds (instructed by **Berkson Family Law Solicitors**) for the **Third and Fourth Respondents**

Hearing dates: 9 October to 23 October 2020

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Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic. Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be at 10.30am on 12 November 2020.

THE HONOURABLE MR JUSTICE MACDONALD

Mr Justice MacDonald:

INTRODUCTION

1. In these public law proceedings under Part IV of the Children Act 1989 I am concerned with the welfare of S, born on 15 March 2019 and now one year old and L, born on 10 January 2018 and now two years old. The children are represented by Ms Lisa Edmunds of counsel through their Children's Guardian, Ms Anglim. Both children currently reside together in the same foster carer placement, where they have been placed throughout these proceedings. The applicant local authority is represented by Mr Shaun Spencer and Helen Crowell of counsel. This is the second judgment I have handed down in this matter, the first being *A Local Authority v W (Application for Summary Dismissal of Findings)* [2020] EWFC 40.

2. The first respondent mother is W, represented by Mr Nicholas Stonor, Queen's Counsel and Miss Kirsty Robinson of counsel. The mother was at times very measured in her evidence, willing for example to tell the court that the father had stated he was lucky to be the children's father. However, I am also satisfied that the mother was at points during her evidence deliberately evasive, sought to dissemble markedly at some points and introduced a new version of events surrounding the discovery of S moribund on 2 June 2019 during the course of her evidence. I will come in more detail to the import of this below. However, I am satisfied that the mother has failed during this hearing to assist the court by disclosing all that she knows about how S came to be admitted to hospital on 2 June 2019 with a hypoxic ischaemic head injury.

3. The second respondent father is R, represented by Mr Damian Garrido, Queen's Counsel and Mr Mark Steward of counsel. It became apparent during the course of these proceedings, and during the course of this hearing, that the father has been *serially* dishonest with doctors, social workers, the police, the jointly instructed expert psychologist and this court. Indeed, at one point in cross-examination the father conceded that the court could not rely on *anything* he had told the police. I will deal in detail below with the multiple lies told by the father and their forensic import having regard to the careful direction I must give myself when evaluating their significance and what is, as rightly acknowledged by the local authority, the father's longstanding strained relationship with the truth, which is not specific to the events under consideration by this court. For now it is sufficient to note that the father presented at times as an arrogant witness who could not see the need for the fact finding exercise in which the court was engaged, at times as a young man with some insight into the damaging nature of his past behaviour and at times as a person who was highly evasive, with a memory that conveniently failed him at crucial points in the history of this matter. Indeed, selective recall became the defining feature of the father's evidence as that evidence progressed. At one point the father claimed to have, effectively, no recall of the point at which S was discovered to be moribund beyond seeing his condition. However, only minutes later he gave detailed evidence about aspects of this incident. Within this context, I must accept Mr Spencer's submission that the father presented as a prolific dissembler and unreliable historian whose account of events must be treated with caution. As with the mother, I am satisfied that the father has failed during this hearing to assist the court by disclosing all that he knows about how S came to be admitted to hospital with a hypoxic ischaemic head injury.

4. At this hearing I have had the benefit of reading the trial bundle, of hearing oral evidence from Professor David, Dr Stoodley, the mother and the father, and of careful and measured written and oral submissions from leading and junior counsel. Given the complexities of this case, I reserved judgment and now set out the reasons for the decisions I have made.

BACKGROUND

5. The mother was the subject of local authority intervention when she herself was a child by reason of her exposure to repeated episodes of domestic abuse as an element of neglectful parenting. The mother was also sexually assaulted as a teenager. Subsequently, she has experienced episodes of depression with thoughts of self-harm and suicide.

6. When the father was aged 11 he became aware that his parents had separated when he was 4 years old by reason of his biological father having sexually abused his sister. It was clear during the course of the father's oral evidence that this subject remains a sensitive and upsetting one for the father. Mr Garrido and Mr Steward submit that the mention of this incident during cross-examination of the father, and his reaction to it, assists in explaining why the father's evidence was in many respects unsatisfactory. Whilst I acknowledge that the father finds it a difficult subject, I am not persuaded that this was at the root of his subsequent dissembling during his oral evidence. Following his discovering the actions of his biological father, the father began exhibiting problematic behaviours, including anger and threats of suicide which led to his exclusion from school. The father readily conceded that he has had difficulties with his mental health from his early teens and has, at times, struggled with anger and thoughts of suicide.

7. The parents' relationship commenced in 2016. By this time the mother was living in county A and the father in city B. The mother subsequently moved to city B. The parents' relationship was characterised by instability, with frequent separations. Neither parent disputed that the word "toxic" was an apt description of their relationship. Following the birth of L the father reported that he was using cocaine and the mother reported that she struggled to bond with L due to illness but that this improved with social work support. On both parents' account, the father undertook a good deal of the care of L at this time.

8. The parents moved to county A in May 2018, the local authority assert without securing housing, thus making themselves and L intentionally homeless. The parents' relationship continued to be unstable. During the periods of separation both parents formed short-term relationships with other people. This led to doubts as to the paternity of S in the minds of both parents. Upon becoming pregnant with S, the mother initially stated that the father was not the father of S, before later stating that he was. The father told Dr Shieldhouse that he had doubted the paternity of *both* children at points during the mother's pregnancies. Within this context, the mother contended during her oral evidence that the father "did not want to know S", claiming that he was not reassured regarding the issue of paternity until DNA testing was undertaken. The mother stated in oral evidence that the father was more distant and less affectionate with S than with L although she told the police that he was "still amazing with S" and that he would take it in turns to get up to care for him. The father told both the police and Dr Shieldhouse that he considered that he did not have the same bond with S as he had with L. In cross-

examination the father conceded he had doubted S's paternity and that the mother's assessment of the relevant dates had failed to reassure him.

9. In November 2018 the mother reported that father was a drug user and dealer and that he drank heavily. The father conceded during his evidence that he had abused both drugs and alcohol and had also dealt drugs. The father further accepted that he exposed the children to risky adults and criminal activity as the result of his drug dealing and that his abuse of cocaine and cannabis resulted in him not being emotionally available to the children and neglecting their basic needs. Whilst the mother initially denied that she used drugs, she now concedes that she lied about this and has been taking drugs both when the children were at home and during these proceedings. The mother contends she was scared to reveal this fact to professionals. The mother conceded that she continues to use cocaine at a high level.

10. The mother contends that the father's alcohol and drug abuse led to him being emotionally and physically abusive to her throughout the course of their relationship. She further alleged that the father would be unpleasant the day following using drink and drugs and would not be available physically or emotionally to the mother or the children. During cross examination the father conceded that his behaviour when drunk included punching objects, walking out and shouting. The father stated that he had punched walls or doors or other solid objects many times. He further conceded that on at least five occasions between August 2016 and April 2019 he had broken fingers in his hand from punching things, at one point requiring surgery for injuries to his hand consequential on that conduct. The last such incident conceded by the father was on 8 April 2019.

11. With respect to the issue of domestic abuse, the local authority relies in particular on an incident that took place in July 2018. During the course of her oral evidence the mother described an extremely unpleasant incident during which the father became angry whilst drunk, removed L from her and was holding L with a bloody hand having punched a wall. Within this context, in answer to questions put by Mr Spencer in cross-examination, the mother agreed that the father was violent and controlling, would push her, scream in her face and tell her that he was struggling to stop himself from "smacking me in the face". During the course of his oral evidence the father conceded that the relationship was abusive and admitted the following when questioned by Mr Spencer and Mr Stonor:

    i) He was controlling of the mother, including taking her clothes and using her phone for drug dealing.

    ii) He was verbally abusive to the mother, screaming in the mother's face. The father further admitted that he would also lean forward and scream in the mother's face with his hands behind his back, claiming he was restraining himself from hitting her.

    iii) The father threatened to "smash the mother all over [town]".

    iv) The father pushed the mother on occasion, including when she was pregnant with L, causing marks on the mother.

v) In July 2018 the father grabbed a pram bag from the mother, causing her bruising.

12. Within the foregoing context, the evidence demonstrates and the father concedes that the he has had a significant problem with anger. The father has described getting angry every day and that anger is his "easiest emotion". He has also conceded that he is abusive and aggressive when drunk, with a tendency to be violent when under the influence of alcohol. The photographs of the family home show the damage caused by his aggression towards inanimate objects summarised above. The father has further stated that when angry he is unable to exit the situation and, if the situation involves a child, he will usually raise his voice and then break down and cry and has made the following statements regarding his anger:

> "If an adult, I just beat them up to be honest, take them out of the situation. If a child, I usually raise my voice, then break down and cry to be honest. I'm such an emotional person as a result of my childhood. I tell myself I'm stupid afterwards, but at the time I just do it"

And:

> "I struggle with my emotions massively. I struggle massively with life, to be honest, from day dot to now. Do you know what I mean? Like, my past was just, my past haunts me and just the simplest of things can trigger the past and I do struggle, erm, and it just comes out in anger. So, yeah, I mean, do you know what I mean? I'm an angry person. After I've been angry, I realise what an absolute idiot and I couldn't see what my head tells me."

13. The expert assessment of the father by Dr Shieldhouse indicates that a further complicating feature in this case is a strong inclination on the part of the father towards fabrication, with the father identified by Dr Shieldhouse as having fairly significant problems with fabrications and lying behaviours. Dr Shieldhouse opines that this behaviour may be related to a social learning effect grounded in the father having developed successful fabrications with his mother during childhood and adolescence. Within this context, it is evident from the papers, and the father does not dispute, that prior to the issue of these proceedings:

i) He has lied about the state of his mental health, namely making a false claim to have been diagnosed with bi-polar affective disorder, the mother stating that the father pretended to go to appointments for injections for this condition, even claiming on his return that the injection sites hurt, and used his condition as an excuse not to look after the children on the grounds that he was due a depot injection. The father accepts he lied about having bi-polar disorder and contends that this was a method of seeking to stop people constantly enquiring after his mental health.

ii) He has lied about hearing a voice in his head that tells him what to do. The father was not able to explain why he lied about this.

iii) He has lied to police when describing his friend DB as his boyfriend when this was, on his case, not true (in oral evidence the mother intimated that it was possible that there was a sexual element to the father's relationship with DB).

iv) He has lied about his failing to engage with health visitors when he had in fact always engaged well with them.

v) Following the admission of S to hospital he lied when stating that the family had had to be called to the hospital because S was so unwell when this was not the case, by stating that S had been made the subject of a DNAR notice when this was not the case, when he told LL that S only had hours to live when this was untrue and by telling medical staff that the police were coming to arrest him and were attending undercover, which was likewise not true.

14. Following his birth in March 2019 the parents delayed in registering S with the GP until 29 May 2019. The mother informed police that following the birth of S it was she who took the primary care role for S. The mother asserts that during this period the father would spend extended periods out of the family home. During early May 2019 text communications between the parents indicate that the mother continued to be frustrated by the father's use of drugs and his failure to assist with the care of S. In addition to these difficulties, when speaking to Dr Shieldhouse the father stated that during this period he had "smashed up the bedroom and kitchen" during a bout of extreme anger.

15. Within the foregoing context, it is important in my judgment also to note the evidence that pertains to the sleeping arrangements for the children during this period. The parents did not provide L with a bed of her own. Both parents concede that on occasion L would sleep on an inflatable bed with the parents and that she was doing so on the morning of 2 June 2019 when S was discovered moribund.

16. Likewise, both parents concede that on occasions the father would fall asleep whilst holding or feeding S and would not wake when the mother removed S from him. The father gave puzzling evidence regarding falling asleep whilst holding S. During cross-examination, the father did not dispute the mother's assertion that he would fall asleep holding S but claimed not to remember *any* incidents of this happening. The father repeatedly adopted the formula "I don't deny what she has said about me...but I don't remember". When cross examined by Ms Edmunds the father continued to employ this formula, denying any recollection of having fallen asleep with S but not disputing the mother's account. The father further conceded to Ms Edmunds that it was possible he would not remember due to the influence of drink or drugs and that the mother being able to remove S from him without him waking would fit with him being heavily under the influence of those substances during such incidents.

17. Further, on the parents' own accounts S was permitted to sleep on his front when in his Moses basket and to sleep in that position on an adult size pillow used as a mattress for his Moses basket. The mother confirmed in evidence that the Health Visitor had advised the parents that this practice was very risky and the records show that the Health Visitor informed the parents on 27 March 2019 that they should not be using a pillow in S's Moses basket. During their oral evidence both parents conceded that they had been advised of the risks of allowing infants to sleep on their front, and specifically of the risk presented by the pillow, but stated they had adopted the practice notwithstanding this (the father on several occasions later describing the Health Visitor's advice generally as "bollocks" and "bullshit"). The mother claimed during her oral evidence that the practice of allowing the children to sleep on their front was instituted by the father with respect to L, an assertion that the father did not dispute. The mother further claimed that she did not agree with placing the children on their

fronts but that if she did not the father would become angry. The mother went on to claim that if the father was not present she would place the children down on their backs. When cross examined by Mr Spencer the father disputed the mother's contention that she had wished to change the practice of placing the children on their fronts but that he had stopped her.

18. Finally, I also note that the father did not dispute (although he again claimed he could not remember doing so) that he informed medical staff in June 2019 that the parents would take steps to try and prevent S from waking overnight for a bottle by giving him water, telling a paediatric registrar that "I can't be arsed to get up in the night me". When attending a specialist children's hospital for an MRI scan the father is recorded as stating to nurses that when S wakes in the night "we just smash him with water so he does not wake for milk".

19. As I have already alluded to, these proceedings have their genesis in a head injury sustained by S in respect of which he was admitted to hospital on 2 June 2019. With the context set out above, it is apparent from the evidence before the court that in the period leading up to this date tensions in the parents' relationship continued. The father appeared to accept in cross-examination that his behaviour had changed in May 2019, he stating that this was possibly due to the stress in the household, and that he was taking almost no role in the care of the children. In cross examination the father further conceded he was not there enough for the mother as "I was too engulfed in my lifestyle to care about her feelings". In addition, a lack of money meant that the parents were short of milk and nappies for S and food for L. Whilst the father initially dissembled in cross-examination regarding financial difficulties, he ultimately conceded that he had had to plead for money from relatives. Social services provided food bank vouchers on 20 May 2019. The mother agreed in oral evidence that in the week commencing 27 May 2019 she was at "breaking point". The mother further conceded in cross-examination by Ms Edmunds that she was also taking cocaine as at June 2019.

20. In the week commencing 27 May 2019 the parents' relationship was once again volatile, this time by reason of the mother's discovery of the father's infidelity with a AG. Having regard to the father's police interview, it would also appear that the question of S's paternity continued to be a source of contention. The father's memory became very selective when he was asked in cross-examination about the consequences of his infidelity being discovered. The father claimed that he could not remember any argument but then conceded that there had been a huge falling out with the mother in the days leading up to S going into hospital. In a text message on 27 May 2019 the father related that "it has all kicked off round here, I'm fine but friends and girlfriends are not for me". On the mother's account, the dispute regarding the father's infidelity led to an argument between the parents, which in oral evidence the mother described as "a lot of screaming and slamming of doors". The father left the family home on 30 May 2019 and used alcohol and drugs during the day on 31 May 2019. This left the mother caring for both S and L, L being at that time unwell. In his initial response to threshold the father contends that S was also cared for by AG on two occasions in the week commencing 27 May 2019 overnight at her flat.

21. The mother alleges that the father made threats to harm S. The precise timing of these is unclear. The mother contended that the father said he hated S and threatened, on more than one occasion, to throw S against the wall. In oral evidence she described an incident where the father was staring at S before observing that S was "not mine" and

stating he could just throw him against a brick wall. The mother asserts that following this the father claimed to have been "joking". The mother further asserted that threats of this nature had been made by the father in front of AG, with AG also considering that the father was "joking". The father has persistently denied having said he hated S or that he threatened to throw him against a wall. When cross examined by Mr Garrido on behalf of the father the mother maintained that the father *had* threatened to throw S against the wall and had stated "every day" that he hated S. She further alleged in oral evidence that if she could not get S to stop crying the father would take it out on her and that the father was easily wound up, with the tension building in him until "he just blows and he does not care who he takes down with him".

22. At approximately 1.00am on 1 June 2019 the father returned home in the company of DB, who was extremely drunk. The father concedes that he and DB had been engaged in an all-day drinking session, supplemented with cocaine. Both parents agree that DB was barely able to stand. Within this context, the parents contend S's Moses basket was knocked off its stand by DB and S fell to the floor. On the parents' account, S's fall from the Moses basket occurred as a result of DB accidentally kicking the basket when he attempted to stand. The only witness was the father, who, it is said, himself remained severely intoxicated by alcohol and cocaine. The mother asserted that she heard alarm in the form of someone shouting "S, S, S". I note that in her initial response to threshold the mother raises doubts about the father's account of this incident, suggesting that the father's account of pushing DB towards the radiator as he became unstable did not accord with the location of the radiator and that the Moses basket did not look as if it had been kicked as S was too close to the basket to have fallen from it. The mother asserts she took S to kitchen to examine him for marks and whether he could focus on her. However, she stated in oral evidence that the father's claim that they got a torch out to check S's eyes is untrue. Both parents accept that they failed to seek timely medical attention for S following this incident.

23. As a result of this incident, the mother states that she did not get to bed until approximately 2.30am on 1 June 2019 and had had very little sleep when she woke later that morning. Both parents contend that 1 June 2019 was a normal day. The father conceded he was exhausted and that he was far short of the sleep he needed. Both parents denied ongoing arguments concerning AG or the fact that the father had brought home a man who was insensible with drugs and alcohol and which had resulted in S being knocked to the floor, although the father went as far in cross examination to concede that it was likely that the parents did argue during 1 June 2019. Neither the mother nor the father was willing to elaborate in any detail what transpired between the parents on the evening of 1 June 2019 notwithstanding the fact that the mother was plainly upset about the father's conduct over the course of the preceding day and the father was recovering from a high level of alcohol and cocaine use. The most that was conceded was that the mother and the father spoke about the father's infidelity.

24. DB is said to have left the family home at 7pm on 1 June 2019. S is said to have presented normally until he was put down to sleep at 12.10am on his stomach. The mother contends that thereafter she then fell asleep at approximately 1.15am having been scrolling on her phone between 12.10am and 1.15am, with S immediately next to her in his Moses basket. During this period, the mother asserts that S was making snoring noises, causing her to laugh and try to record it, but that she did not check him by rolling towards him. The father claims not to be able to recall what time he went to

sleep but asserted that he initially slept separately from the mother but by 5.00am had moved to the bed on the floor of the room. In cross examination the father contended that he had fallen asleep whilst S was still awake and propped up and the mother was still awake. Within this context, the mother volunteered that she was the last to see and deal with S before he went to sleep as the father was located on the sofa on the other side of the room.

25. The mother further volunteered that she was, physically, the closest to S throughout the night, S remaining asleep in a Moses basket on the floor next to her. The parents' account of S's normal feeding routine during the course of the night at that point was that he ordinarily woke between 2.00 and 3.00am, normally closer to 2.00am and was then awake until 4.00am after which he slept and then woke again at 6.00am and slept again at about 8.30am. However, on each parents' account, on 2 June 2019 neither parent was woken by S during the night for a feed as had been the pattern prior to that date. Rather, the parents contend that they were woken at approximately 5.00am by the sound of L crying. There are various accounts given by the parents of what happened next. In his police interview the father stated in respect of L waking up:

> "We thought nothing of it, and for whatever reason which ... I can't understand why cos we never do, W picked S up out of his Moses basket, after seeing that his back was not breathing. I was back laid down with L …"

Later in the same interview however, the father asserted:

> "L had laid down like she usually does, gets what she wants and then goes straight back off to sleep. I'd done the same thing but I don't think I was fully asleep but I was, I was going and W screamed saying S wasn't, erm, from what she told me, her hand on the back and then lifting his bum..."

In her police interview, the mother gave the following account of seeing S:

> "well, I stared at him… for a second or two and normally you can see, like, their chest and stuff moving up and down. Erm, and I didn't know if it was just because I was tired, but I couldn't see that happening so I just placed my hand on top of him, and my hand wasn't moving up and down. So then I, I knew something was wrong so that's why I've lifted his legs to drop his legs a little bit to see if that would startle him. It didn't, and I was shouting, "S" at the same time. I was going, "S. S," and he still wasn't, er, responding or anything like that so I'd took him out of his Moses' basket and said to R, I was like, "R, he's not breathing." R then took him off me and tried to open his airways."

Later in her police interview, having asserted that some fifteen minutes passed between L waking her and her checking S, the mother stated:

> "...she was itching her bum sort of thing, so changed her bum and put cream on her and sorted her bottle out. I put her back to bed the right side of me … and something just told me to check on S as he'd not woken up during the night."

In her statement before this court the mother asserts:

> "I asked the second respondent to get milk whilst I lay L down. The second respondent passed me the milk. At this point something told me to check on S, I never usually do this however I think it may have been due to having no 3am wake up which he usually did. I stared at S for a minute however saw no breathing. I lightly grabbed S's legs to startle him however he did not move so I took S out of his Moses Basket and realised that he was not breathing. The Second Respondent stripped S of his clothes and tapped him on his back three times to open his airways.

26. Following him being picked up by the mother, the father described S as not breathing and presenting as unresponsive and blue around his lips. The father contends that he hit S on the back twice, causing him to grunt and open his eyes when the father rubbed his back. The father stated that he placed S on his back, at which point he was seen to be breathing and "he seemed responsive...and the colour came straight back into his skin". A 999 call was made at 5.12am. In oral evidence the mother stated that S was breathing or trying to breathe by this point and that he recovered the ability to breathe very quickly from the point he was discovered. The paramedics arrived at 5.20am.

27. Upon the arrival of the paramedics S was observed to be "pale, floppy, grunting, ineffective breathing". At 5.45am on 2 June 2019 S was admitted by ambulance to the Emergency Department at X Hospital. Notwithstanding her evidence that the father had been closer to L than S, had regularly said he hated S and had threatened to throw S against a wall, it was the mother who remained at home with L whilst the father went in the ambulance with S.

28. S was stabilised in the Emergency Department before being transferred to a high dependency bed on the children's ward. S vomited after a milk feed therefore his feeds were stopped and intravenous fluids started. He was reviewed by a paediatrician on the ward who witnessed two episodes that were felt to be seizures. Examination of S's body revealed no evidence of trauma and there were no bruises or other visible injuries. On 5 June 2019 at approximately 11.00pm S was observed to have a further suspected seizure. At hospital the father provided an account stating that S was observed to have been awake in his Moses basket at 12.10am and that when the parents next attended to L, who slept with her parents on an air bed, at approximately 5.00am S was seen to be floppy and unresponsive and apparently not breathing, that he was blue around the lips, was not responding, eyes rolled back, and grunting. No mention of a fall from the Moses basket was recorded. Dr F, who took the history, does not recall anything being mentioned about the fall from Moses basket and it is not in her notes. Whilst she acknowledges that it is possible that the mother mentioned it and it is not documented (as Professor David points out, the notes of the Emergency Department doctors are very brief), since this was during acute admission, she considers that it would have been potentially important clinical information which she would expect to have documented and remembered.

29. On 6 June 2019 S underwent an ophthalmology review, an EEG and an MRI scan. The ophthalmology review revealed no evidence of retinal haemorrhage. The EEG was reported as abnormal, with evidence of diffuse and cortical damage to S's brain. The MRI was reported as being grossly abnormal. The consultant paediatric neurologist reporting on the MRI considered that the appearance was consistent with a metabolic or mitochondrial disorder, that the features were not those classical of non-accidental injury but that non-accidental injury could not be ruled out as a possible cause of the

features seen on the MRI. A CT scan showed no evidence of subdural haemorrhage. The results were discussed with the parents but the possibility of non-accidental injury was not raised with them at that point.

30. There is also some evidence that the behaviour of the parents during the period that S was critically ill in hospital raised suspicions. The father made statements about going to prison. The father was not able to offer any explanation of why he said these things. The father was also recorded as stating to a nurse on 6 June 2019 at 8.00pm that "Dr G says this is a long term thing, swear it is something I have done, bad things always happen to me". There is also some evidence that the mother made excuses not to be at the hospital and not to be with S. As I have noted, the father conceded that he told further lies about S and his condition after he was admitted to hospital as detailed above.

31. On 7 June 2019, five days after admission, the parents asked to speak to a doctor and related the incident that occurred on 1 June 2019 when, it is asserted by the parents, S's Moses basket had been knocked over and S had fallen to the floor. The hospital contends that this was the first time the parents made mention of this alleged incident, although both parents stated in their police interviews that they mentioned the alleged incident to the doctor when S was received at the Emergency Department. There is a frank dispute of fact in this regard in circumstances where the parents assert they disclosed the incident in the Emergency Department on 2 June 2019.

32. On 7 June 2019 the parents gave consent for L to be accommodated pursuant to s 20 of the Children Act 1989. S was discharged from hospital on 17 June 2019 and he too was placed with L in foster care with his parents' consent.

33. On 13 June 2019 a report of the skeletal survey carried out on S identified no fractures, as did a repeat skeletal survey carried out on 21 June 2019. Reports were provided by S's treating clinicians dated 10 June 2029, 1 July 2019, 10 July 2019 and 27 August 2019. The provisional report dated 10 June 2019 indicated that S's treating clinicians were investigating the possibility of an underlying medical disorder but were unable at that stage to rule out non-accidental injury as a cause of the features seen on the MRI scan and in the EEG. They however, discounted a fall from a Moses basket as the cause of the head injury to S. The subsequent reports indicate that genetic testing for mitochondrial disease has indicated no evidence of pathogenic variants that would confirm a diagnosis of mitochondrial disorder. Mitochondrial DNA disease results indicated no evidence of a mutation with further testing ongoing to screen the entire mitochondrial genome. Further, metabolic results received to date have returned as normal or with no evidence of an organic acid disorder. The urine amino acid screen detected "several unknown compounds" which may have been drug/diet related metabolites. A repeat urine sample indicated no abnormal purines or other endogenous compounds although the plasma / urine guanidinoacetate and creatine results were slightly unusual and repeat samples were taken.

EXPERT EVIDENCE

Professor David

34. Within the context of these proceedings, two expert reports have been directed pursuant to Part 25 of the FPR 2010. The first is from Professor David, Emeritus Professor of

Child Health and Paediatrics at the University of Manchester and the second is from Dr Stoodley, Consultant Paediatric Neuroradiologist.

35. Professor David has provided a detailed opinion on the injuries sustained by S. The conclusions reached by Professor David in his substantive and addendum report can be summarised as follows:

i) The two possible causes of S's presenting symptoms are (a) a naturally occurring but poorly understood process that interfered with S's breathing and (b) one of his parents intentionally suffocated him. In his oral evidence, Professor David also stated that a third possible cause of S's presenting symptoms was that of S having been overlaid by an adult.

ii) It is difficult to find positive medical evidence to support (b) where the aetiology of the intracranial features is non-specific, including hypoxic ischaemic injury and metabolic abnormality, the inability to exclude medically non-accidental injury is not positive medical evidence of inflicted harm and the treating clinician's view that there was no necessity for further child protection medical examination implies everything possible was done to find medical evidence of inflicted injury without success. Professor David acknowledges that evidence of absence is not the same as absence of evidence.

iii) Within this context, Professor David's analysis identifies two factors that tend to favour inflicted injury, namely (a) S sustained a hypoxic brain injury which, whilst it can result from natural causes, can result from an inflicted injury such as suffocation and (b) the treating team were unable to exclude the possibility of an inflicted injury in S. Within this context, in his report Professor David notes that:

> "It is well recognised that it [is] possible to fatally suffocate a baby with little or no evidence of trauma. I think it was John Emery who coined the term 'the gently battered baby'. Another difficulty is that some sudden infant deaths are the result of accidental suffocation, such as overlaying in bed or when an infant sleeps on a settee also occupied by an adult."

And

> "...the chance of a parent finding a child dying a natural death a few seconds before stopping breathing is very small. If the parent is on the scene at the time it must raise the possibility that the parent has been responsible for the child not breathing. Natural cot deaths are more likely to be associated with a child being found dead, rather than moribund"

iv) Against this, Professor David's analysis identifies a number of factors "which if anything point away from S's collapse having been an inflicted injury". Namely, there being (a) no evidence of bruising or other visible injury, (b) no retinal haemorrhages or other indicators of inflicted trauma, (c) no fractures or bony injuries, (d) no evidence of subdural haemorrhages or other physical injury to the brain and (e) S does not fit the profile of a unnatural sudden infant death

as described by Professor Sir Roy Meadow nor the profile of repeated episodes of intended suffocation as described by Professor David Southall. I further note that, having set out in his report that the amount of time necessary to smother an infant to the point that their electroencephalogram is flat and there is no spontaneous respiration has been estimated at between 70 and 90 seconds (although this is based on observations in only 4 children) and having stated in his oral evidence that complete airway obstruction of approximately 60 seconds is required to produce major changes in the brain, Professor David stated that a child in this position would react as follows to the obstruction of the airway:

> "The child will fight. There is data of video surveillance showing the child will fight and struggling quite impressively... If asleep I think the child would wake and fight."

v) Professor David "cannot state dogmatically" that it is impossible that there was no significant head injury from the fall from the Moses basket following it being kicked, but in his view it is highly unlikely.

vi) Professor David cannot exclude with certainty the possibility that the S's collapse was a totally unexpected and extraordinary delayed consequence of a very minor accident but considers this to be no more than a remote possibility.

36. Within the foregoing context, and when asked whether he had changed his views based on any information received following the submission of his addendum report, Professor David stated that, in thinking further about this case, he had reached the conclusion that he had not given sufficient consideration to what might be described as the question of inherent probability. In this regard, Professor David told the court that the competing possibilities in this case, i.e. a medical cause and an inflicted cause, are not equal in that the probability of a natural cause is far greater than an inflicted cause simply because the former is more usual than the latter. Within this context, having regard to the relative frequency of natural events as against incidences of babies being intentionally suffocated caused him to favour the former explanation. In addition, Professor David told the court that he attached weight to a paper published in 1989 by Constantino which described a series of cases that closely resembled what had been seen in S. He further reminded the court that that there is still a lot being learned in terms of scientific research in terms of why babies collapse and die and therefore acknowledging what is not known about these conditions is important, his report quoting Dr Levin's statement that:

> "...sometimes we just don't know the answer …it's okay that we don't have the answer in every case. That is the nature of life and the nature of medicine".

37. Having regard to the matters set out in the foregoing paragraph, in his oral evidence Professor David stated that he had, in the final analysis, now concluded that a natural event was considerably more probable in S's case.

38. Finally, as I have noted, in his oral evidence, Professor David also stated that a third possible cause of S's presenting symptoms was that of S having been overlaid by an adult. Professor David conceded that it had been an omission not to address this mechanism in his reports. This possibility was however, explored further in cross-

examination. Professor David stated that the lack of oronasal blood might be regarded as a factor against overlaying, but did not wish to emphasise that point too strongly and reiterated that overlaying was a possible explanation. Professor David told the court that there is no research data to support the concept of overlay, rather it is a theory based on admissions by adults. Professor David considered that overlay depends on the adult being asleep, that it would be possible for a parent to roll onto and then roll off a child and that, as set out above, there is research evidence suggesting that complete airway obstruction of 60 seconds is probably needed to produce major physiological changes. Within this context, Professor David agreed that overlay for a short period could result in some features of hypoxic ischaemic injury short of death.

39. It is important to make clear that, as can be seen above, a *component* of Professor David's analysis, and therefore of the overall conclusion he reached in respect of this case, is the reliance he placed on data gathered by Professor Sir Roy Meadow and by Professor David Southall. During his oral evidence, Professor David explained his rationale for this approach, making the following points:

    i) Professor David acknowledged that referring to, and relying on the work of Professor Meadow and Professor Southall in current family proceedings will induce a reaction in those considering his opinion.

    ii) Professor David was at pains to make clear, in brutally unambiguous language, that he had no affection for Professor Meadow as a colleague or as a person.

    iii) However, Professor David considered it important to recognise that whilst the scientific methodology of Professor Meadow, and of Professor Southall, was imperfect, they each collected large amounts of important data.

    iv) Within this context, and acknowledging that retrospective studies based on case series are inherently problematic, Professor David stated that the data collected by Professor Meadow and by Professor Southall is not available elsewhere.

    v) In these circumstances, provided its weaknesses are fully recognised, Professor David took the view that the data gathered by Professor Meadow and by Professor Southall (as distinct from the methodology they applied to that data) is not useless and that it is reasonable to treat it as useful, subject to being clear as to its limitations.

    vi) Professor David frankly acknowledged that, whilst he considered that he had used and applied the data collected by Professor Meadow, and by Professor Southall, in a way that was responsible in order to make the best use of the data available, others may disagree and may feel uncomfortable with that approach.

40. Having made clear these caveats, with respect to the work of Professor Meadow, and having set out in his report an extensive discussion of the debate that took place surrounding certain of Professor Meadow's views, Professor David concluded in his report that:

> "Meadow's publication on unnatural sudden infant death, though the subject of several methodological and statistically (*sic*) difficulties which

> unfortunately infected most of his publications on inflicted injury, was (unexpectedly) particularly helpful in the case of S"

41. In particular, Professor David noted eight factors identified by Professor Meadow as featuring in his series of unnatural sudden infant deaths. Professor David stated the eight factors identified by Professor Meadow in that series as follows:

    i) Most of the unnatural deaths occurred in the afternoon or the evening, being strikingly different from the majority of SIDS deaths, most of which occur in the early hours of the morning.

    ii) The majority of children were seen to be well within two hours of death.

    iii) Fifty percent of the children had been examined by doctors in the week preceding their death and were found to be healthy.

    iv) Seven children in the series died on a date predicted by a parent and another four died on the anniversary of a sibling's death.

    v) Twenty seven children were found with blood apparent in the mouth, nose or on the face.

    vi) Most of the children were born to mothers who had not had a previous, live, healthy child.

    vii) Most of the children had had previous or unexplained events reported by the alleged perpetrator.

    viii) The health records for forty four of the alleged perpetrators indicated that they had been studied for evidence of somatisation. Forty eight percent of parents had either factitious disorder or somatising disorder.

42. Whilst acknowledging the criticisms levelled at the work of Professor Meadow, Professor David considered that, although the study was retrospective in nature, the data that underpinned the foregoing eight factors is likely to be reliable, and that it is reasonable to consider whether any of the factors were present in S's case. Professor David stated that he had not attempted to weight the factors but had simply asked himself whether each of the factors applied in respect of S.

43. Within the foregoing context, and stating in oral evidence that he does not often engage in "profiling", Professor David opined that consideration of Professor Meadow's work, and in particular eight factors that are identified by Professor Meadow in his series of unnatural deaths, show in this case that, "simply put, the features of S's case match those of naturally occurring as opposed to unnatural sudden infant deaths". Within this context, and as I have noted above, in his addendum report Professor David lists as one of the factors weighing against a conclusion that S suffered an inflicted injury as "S's case does not have the profile of an unnatural infant death as set out by Prof Meadow". When asked by the court how much weight this statement carried in his overall conclusion, Professor David stated that it was not the key element of his conclusion, the major factor for him being the absence of positive evidence of an inflicted injury:

> "For me the major factor in medical terms in order to make a diagnosis there needs to be positive evidence and there is an absence of any positive evidence of that. 'Could not be excluded' is not positive evidence. Really medical diagnosis has to be based on facts and evidence and that is absent in this case from perspective of medical science."

44. With respect to Professor David Southall, Professor David summarised Professor Southall's research as follows in his report:

> "The data of Southall and his colleagues who spent some years using covert video surveillance to detect 'imposed airway obstruction' or 'intentional suffocation', showed that these cases all followed a similar pattern in which repeated episodes led to repeated hospitalisations, sometimes going on for a prolonged period (months or more), leading eventually to the clinicians coming to suspect the cause of the illness episodes. It is true that very occasionally the episode 'went wrong, when a mother, trying just a bit too hard to convince the treating team that there really was something seriously wrong with the baby, would suffocate the child for longer than necessary to cause apnoea and loss of consciousness. The catastrophic end result of prolonged obstruction was brain damage resulting from lack of oxygen. This was fortunately a rare occurrence, but I have vivid recollection of one such case occurring on the paediatric ward at the old St Mary's Hospital in Manchester. At the risk of serious oversimplification, for the sake of brevity, the motivation for this behaviour was not to harm the child but was believed to be a form of attention seeking behaviour, the mother deriving 'support' from the extra medical attention given to a sick child".

45. Within this context, whilst not ultimately listed by Professor David in the list of factors set out in his addendum report as militating against an inflicted injury, in his substantive report, on the basis of the work of Professor Southall, Professor David concludes that "the single episode of collapse affecting S does not fit the usual profile of mothers who intentionally suffocate their infants".

Dr Stoodley

46. Dr Stoodley's report, dated 21 January 2020, sets out the following conclusions in respect of the head injury sustained by S:

    i) There is no evidence of intracranial haemorrhage or abnormal surface fluid collection and no evidence of acute bleeding or spinal subdural haemorrhage.

    ii) There is no evidence of any significant generalised brain swelling, no evidence of significant generalised curable swelling to the lateral ventricles, basal cisterns and the peripheral subarachnoid spaces appear normal.

    iii) There are no abnormal metabolite peaks to suggest any underlying metabolic abnormality.

    iv) The two main possibilities with respect to the causation of the brain injury are either an acute life threatening event (ALTE) or an episode of unintentional, such as overlaying, or intentional asphyxia, such as attempted smothering.

v) It is not possible to differentiate between these possibilities on the basis of the scan appearances.

47. Finally, and within the context of the nature of the fact finding exercise with which this court is engaged, it is important to note the following passage of Professor David's report:

> "...having analysed the problem as best one can the final task has been to see if there is sufficient medical evidence to assemble a coherent conclusion that is supported by the medical evidence. If there is insufficient medical evidence to complete the jigsaw or join the dots there needs to be a willingness (on my part) to admit defeat. By being able to take many other factors into account the Court may well be far better placed to complete the jigsaw".

LAW

48. The legal principles that apply when the court is determining questions of fact are now well established and can be summarised as follows:

i) The burden of proving the facts pleaded rests with the local authority. In cases of alleged non-accidental injury, it is for the local authority to establish on the balance of probabilities that the injuries were inflicted. There is no requirement on the parents to show that injuries resulted from some other cause. Where a respondent parent seeks to prove an alternative explanation but does not prove that alternative explanation, that failure does not, of itself, establish the local authority's case, which must still be proved to the requisite standard (see *The Popi M, Rhesa Shipping Co SA v Edmunds, Rhesa Shipping Co SA v Fenton Insurance Co Ltd* [1985] 1 WLR 948 at 955-6).

ii) The standard to which the local authority must satisfy the court is the simple balance of probabilities. The inherent probability or improbability of an event remains a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred (*Re B* [2008] UKHL 35 at [15]). I examine the topic of inherent probabilities further below.

iii) Within this context, there is no room for a finding by the court that something might have happened. The court may decide that it did or that it did not (*Re B* [2008] UKHL 35 at [2]).

iv) Findings of fact must be based on evidence not on speculation. The decision on whether the facts in issue have been proved to the requisite standard must be based on all of the available evidence and should have regard to the wide context of social, emotional, ethical and moral factors (*A County Council v A Mother, A Father and X, Y and Z* [2005] EWHC 31 (Fam)).

v) In determining whether the local authority has discharged the burden upon it the court looks at what has been described as 'the broad canvas' of the evidence before it. The role of the court is to consider the evidence in its totality and to make findings on the balance of probabilities accordingly. Within this context, the court must consider each piece of evidence in the context of all of the other evidence (*Re T* [2004] 2 FLR 838 at [33]). However, the concept of the broad

canvas is not an excuse for forensic laxity. Wide as it is, the canvas surveyed must still be comprised of threads of relevant admissible evidence.

vi) In this context, and self-evidently, I am not limited to considering the expert evidence before me. Rather, I must take account of a wide range of matters that includes the expert evidence but that also includes, for example, my assessment of the credibility of the witnesses and inferences that can be properly drawn from the evidence. Accordingly, the opinions of the medical experts need to be considered in the context of all of the other evidence.

vii) When considering the medical evidence with respect to the child's presentation, the court must bear in mind, to the extent appropriate in the given case, the possibility of an unknown cause for that presentation (*R v Henderson and Butler and Others* [2010] EWCA Crim 126 and *Re R (Care Proceedings: Causation)* [2011] EWHC 1715 Fam). As observed by Dame Elizabeth Butler-Sloss P in *Re U, Re B* (Serious Injury: Standard of Proof [2004] EWCA Civ 567:

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

viii) The evidence of the parents and carers is of utmost importance and it is essential that the court forms a clear assessment of their credibility and reliability. The court is likely to place considerable reliability and weight on the evidence and impression it forms of them. In this regard, it is important to bear in mind the observations of Peter Jackson J in *Lancashire County Council v M and F* [2014] EWHC 3 (Fam) that:

> "To these matters I would only add that in cases where repeated accounts are given of events surrounding injury and death, the court must think carefully about the significance or otherwise of any reported discrepancies. They may arise for a number of reasons. One possibility is of course that they are lies designed to hide culpability. Another is that they are lies told for other reasons. Further possibilities include faulty recollection or confusion at times of stress or when the importance of accuracy is not fully appreciated, or there may be inaccuracy or mistake in the record keeping or recollection of the person hearing or 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."

ix) It is also important when considering its decision as to the findings sought that the Court take into account the presence or absence of any risk factors and any protective factors which are apparent on the evidence (see *Re BR* [2015] EWFC 41). These, however, cannot be determinative by themselves.

x) It is in the public interest that those who cause injury to children be identified (*Re K (Non-accidental Injuries: Perpetrator: New Evidence)* [2005] 1 FLR 285). The court should accordingly endeavour to identify on the simple balance of probabilities the person or persons responsible for inflicting the injuries in question where it is possible to do so.

xi) The Court should not, however, 'strain' the evidence before it in order to identify on the simple balance of probabilities the individual or individuals who inflicted the injuries. If it is clear that it is not possible on the evidence before the court for the court to conclude on the balance of probabilities who the perpetrator of the injuries is, or perpetrators of the injuries are and the court remains genuinely uncertain, then the court should reach that conclusion (*Re D (Care Proceedings: Preliminary Hearing)* [2009] 2 FLR 668).

xii) Where it is not possible to identify which parent inflicted injuries found to be non-accidental, it is open to the court to conclude in respect of each parent that the local authority has demonstrated that there is a likelihood or real possibility that they inflicted the injuries and to proceed to the welfare stage on the basis that one or other or both parents caused the injuries in question (see *Lancashire County Council v B* [2000] UKHL 16, *O and N (Minors); Re B (Minors)* [2003] UKHL 18 and *Re B (Children: Uncertain Perpetrator)* [2019] EWCA Civ 575).

49. In this case, and in light of the evidence of Professor David, it is important to examine in a little more detail the proposition that the inherent probability or improbability of an event remains a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. In *Re B* [2009] 1 AC 11 Lord Hoffman observed as follows at [15]:

> "There is only one rule of law, namely that the occurrence of the fact in issue must be proved to have been more probable than not. Common sense, not law, requires that in deciding this question, regard should be had, to whatever extent appropriate, to inherent probabilities. If a child alleges sexual abuse by a parent, it is common sense to start with the assumption that most parents do not abuse their children. But this assumption may be swiftly dispelled by other compelling evidence of the relationship between parent and child or parent and other children. It would be absurd to suggest that the tribunal must in all cases assume that serious conduct is unlikely to have occurred."

And Baroness Hale observed as follows at [72]:

> "Some seriously harmful behaviour, such as murder, is sufficiently rare to be inherently improbable in most circumstances. Even then there are circumstances, such as a body with its throat cut and no weapon to hand, where it is not at all improbable. Other seriously harmful behaviour, such as alcohol or drug abuse, is regrettably all too common and not at all improbable. Nor are serious allegations made in a vacuum. Consider the famous example of the animal seen in Regent's Park. If it is seen outside the zoo on a stretch of greensward regularly used for walking dogs, then of course it is more likely to be a dog than a lion. If it is seen in the zoo next to the lions' enclosure when the door is open, then it may well be more likely to be a lion than a dog."

50. Within this context, Peter Jackson J (as he then was) noted as follows in *Re BR (Proof of Facts)* [2015] EWFC 41 at [7]:

> "[7]...
>
> (3) the court takes account of any inherent probability or improbability of an event having occurred as part of a natural process of reasoning. But the fact that an event is a very common one does not lower the standard of probability to which it must be proved. Nor does the fact that an event is very uncommon raise the standard of proof that must be satisfied before it can be said to have occurred.
>
> (4) Similarly, the frequency or infrequency with which an event generally occurs cannot divert attention from the question of whether it actually occurred. As Mr Rowley QC and Ms Bannon felicitously observe:
>
> > "Improbable events occur all the time. Probability itself is a weak prognosticator of occurrence in any given case. Unlikely, even highly unlikely things do happen. Somebody wins the lottery most weeks; children are struck by lightning. The individual probability of any given person enjoying or suffering either fate is extremely low."
>
> I agree. It is exceptionally unusual for a baby to sustain so many fractures, but this baby did. The inherent improbability of a devoted parent inflicting such widespread, serious injuries is high, but then so is the inherent improbability of this being the first example of an as yet undiscovered medical condition. Clearly, in this and every case, the answer is not to be found in the inherent probabilities but in the evidence, and it is when analysing the evidence that the court takes account of the probabilities."

51. The foregoing authorities demonstrate that inherent probability is sensitive to context. Within the population as a whole, a natural cause is inherently more probable than an inflicted cause. At the level of an individual family however, whilst a matter that remains to be taken into account when examining the evidence in relation to that family, the forensic utility of the competing probabilities in the population as a whole may well alter when it comes to deducing what occurred in a particular household based on the evidence before the court.

52. In this case, where the key events with which the court is concerned were witnessed only by one parent or both parents, the following further matters with respect to the significance or otherwise of demeanour and the significance or otherwise of lies call for particular consideration in the context of articulating the legal principles applicable to the fact finding process.

53. As I have noted, the evidence of the parents and carers is of utmost importance and it is essential that the court forms a clear assessment of their credibility and reliability. Within this context, I am mindful of the fact that this hearing has taken place remotely, without the court having the benefit of seeing the parents physically before the court. However, two points fall to be made in this regard. First, in circumstances where I directed that the parents should keep their cameras on during the course of the hearing and their images 'pinned' to the computer desktop, I have in fact had a *better* view of

the parents and their demeanour during the course of the hearing than is ordinarily available to me during the course of a face to face hearing, where the parents are sat behind their lawyers. Second, and in any event, in assessing the credibility of a person there is a need for care when it comes to the question of bare demeanour.

54. The need for care with witness demeanour as indicative of credibility was highlighted by the Court of Appeal in *Sri Lanka v. the Secretary of State for the Home Department* [2018] EWCA Civ 1391. Within this context, as to credibility generally, the authors of Phipson on Evidence note as follows at [12-36]:

> "The credibility of a witness depends on his knowledge of the facts, his intelligence, his disinterestedness, his integrity, his veracity. Proportionate to these is the degree of credit his testimony deserves from the court or jury. Amongst the more obvious matters affecting the weight of a witness's evidence may be classed his means of knowledge, opportunities of observation, reasons for recollection or belief, experience, powers of memory and perception, and any special circumstances affecting his competency to speak to the particular case—all of which may be inquired into either in direct examination to enhance, or in cross-examination to impeach the value of his testimony."

Within this context, in undertaking the essential task of forming a clear assessment of the credibility and reliability of the parents in public law proceedings, I take the view that the court's assessment should coalesce around matters such as the internal consistency of their evidence, its logicality and plausibility, details given or not given and the consistency of their evidence when measured against other sources of evidence (including evidence of what the witness has said on other occasions) and other known or probable facts.

55. Further, and related to the matters dealt with in the foregoing paragraph, is the importance of considering carefully the significance or otherwise of lies. The court must bear in mind that a witness may tell lies during an 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. The fact that a witness has lied about some matters does not mean that he or she has lied about everything (*R v Lucas* [1982] QB 720). It is also important, in cases where one or more of the respondents has cognitive difficulties, that before considering the application of the principle in *R v Lucas* the court satisfies itself that the statement that is said to be a lie is not, in fact, merely the result of confusion or misunderstanding.

56. Within the context of family proceedings, the Court of Appeal has made clear that the application of the principle articulated in *R v Lucas* in family cases should go beyond the court merely reminding itself of the broad principle. In *Re H-C (Children)* [2016] 4 WLR 85 McFarlane LJ (as he then was) stated as follows:

> "[100] One highly important aspect of the Lucas decision, and indeed the approach to lies generally in the criminal jurisdiction, needs to be borne fully in mind by family judges. It is this: in the criminal jurisdiction the 'lie' is never taken, of itself, as direct proof of guilt. As is plain from the passage quoted from Lord Lane's judgment in Lucas, where the relevant conditions are satisfied the lie is "capable of amounting to a corroboration". In recent

> times the point has been most clearly made in the Court of Appeal Criminal Division in the case of *R v Middleton* [2001] Crim.L.R. 251. In my view there should be no distinction between the approach taken by the criminal court on the issue of lies to that adopted in the family court. Judges should therefore take care to ensure that they do not rely upon a conclusion that an individual has lied on a material issue as direct proof of guilt."

57. The four relevant conditions that must be satisfied before a lie is capable of amounting to corroboration are set out by Lord Lane CJ in *R v Lucas* as follows:

> "To be capable of amounting to corroboration the lie told out of court must first of all be deliberate. Secondly it must relate to a material issue. Thirdly the motive for the lie must be a realisation of guilt and a fear of the truth. The jury should in appropriate cases be reminded that people sometimes lie, for example, in an attempt to bolster up a just cause, or out of shame or out of a wish to conceal disgraceful behaviour from their family. Fourthly the statement must be clearly shown to be a lie by evidence other than that of the accomplice who is to be corroborated, that is to say by admission or by evidence from an independent witness."

58. Where the court is satisfied that a lie is capable of amounting to corroboration of an allegation having regard to the four conditions set out in *R v Lucas*, in determining whether the allegation is proved, the court must weigh that lie against any evidence that points away from the allegation being made out (*H v City and Council of Swansea and Others* [2011] EWCA Civ 195).

DISCUSSION

59. I have decided that the local authority has proved the following findings on the balance of probabilities:

    i) The children have been exposed to domestic violence between the parents causing emotional harm and putting the children at risk of physical harm:

        a) On one occasion the father pushed the mother when she was pregnant with L, causing marks on the mother.

        b) On 15 October 2017 the police attended the family home as the father had become irate and asked the police to remove him before he "lost it" with the mother.

        c) In July 2018 the father attended the family home and was aggressive and abusive towards the mother whilst L was present resulting in the police attending.

        d) In July 2018 the father grabbed a pram bag from the mother, causing her bruising and held L whilst bleeding from his hand, having punched a wall.

e) The father was verbally abusive and threatening to the mother on other occasions. On one occasion the father threatened to "smash the mother all over [town]".

f) On one occasion the father leant forward and screamed in the mother's face with his hands behind his back, claiming he was restraining himself from hitting her.

g) The father has difficulty controlling his anger and has damaged the family home by punching holes in the walls when in a heightened state whilst the children were present.

h) The father has been controlling towards the mother, including taking her clothes and using her phone for drug dealing.

i) The father continues to minimise the extent of his culpability for, and the impact on the mother of the aforementioned domestically abusive behaviour.

ii) The father has a tendency towards fabrication and has told multiple lies during the course of the police investigation and the proceedings, including lying about his mental health. During the course of the proceedings both parents failed to work openly and honestly with professionals.

iii) The parents failed to provide L with a bed of her own and caused her either to sleep on an air bed with her parents or on the sofa, exposing her to the risks associated with co-sleeping.

iv) The parents failed to adhere to advice from the health visitor as regard S's sleeping arrangements. They continued to allow S to sleep on his front and used an adult sized pillow as a mattress for his Moses basket despite being advised not to by the health visitor, putting S at risk of physical harm.

v) The father has exposed the children to risky adults and criminal activity by engaging in selling cocaine and, in consequence, allowing drug users to frequent the family home.

vi) The parents each misused cocaine and cannabis and, in consequence, were not emotionally available to the children and neglected their basic needs.

vii) The children's basic needs have been neglected:

a) The parents moved from city B without securing housing thus making themselves and L intentionally homeless.

b) S was not registered with the GP until 29 May 2019 which resulted in him missing his post-natal check and immunisations.

c) The parents have poorly managed their finances and accrued rent arrears and have, as a result, not been able to provide formula and food for the children.

viii) Both the parents continue to demonstrate a marked lack of insight into the nature and extent of their respective parenting deficiencies, with each repeatedly stating they considered the other to be a 'good parent'.

ix) Upon attendance at X Hospital on 2 June 2019 the parents failed to disclose that S had fallen from his Moses basket the night before thus delaying timely and informed medical procedures to be undertaken.

x) In this respect, the parents failed to seek timely medical attention for S and/or failed to provide an accurate history upon presenting the child to medical professionals.

xi) Upon presentation to hospital S was found, following MRI and EEG scanning, to have diffuse damage to the brain, which followed an acute presentation with an unresponsive episode and subsequent seizures.

xii) The nature of the damage to S's brain was extensive diffusion abnormality in an extended watershed distribution with evidence of restricted diffusion consistent with ischaemic change. The appearances were of a generalised hypoxic-ischaemic or hypoperfusion injury.

xiii) Prior to this injury there was a period of time when S's respiration was impaired.

xiv) The impairment of S's respiration led to an inadequate supply of oxygen to S's brain, causing neurological symptoms in the form of unconsciousness, unresponsiveness and seizures.

xv) S's presentation and the injury sustained were not due to any underlying metabolic condition or underlying medical condition.

xvi) The aforesaid injuries were caused by an as yet undisclosed event early on the morning of 2 June 2019 which impaired of S's respiration and led to an inadequate supply of oxygen to S's brain.

xvii) On the balance of probabilities, that event was S being overlaid. In respect of both parents there is a real possibility that they overlaid S.

xviii) Both parents are aware of the circumstances and cause of S's impaired respiration and have to date failed to disclose the same.

xix) Both parents have sought to collude to conceal the circumstances and cause of S's injury from those investigating the cause of the injury, including the medical staff, the police and the court.

My reasons for reaching the foregoing conclusions on the balance of probabilities are as follows.

60. There was, ultimately, little dispute with respect to the findings set out at (i) to (vii) in the foregoing paragraph. The father made a number of concessions regarding his domestically abusive conduct towards the mother, which concessions are sufficient to ground the findings sought by the local authority in that regard. The father likewise conceded his tendency towards fabrication and admitted having told a series of lies to

the medical staff, the police and to this court. Neither parent seriously disputed the findings sought by the local authority regarding their use of drugs and their neglect of the children's needs, including the findings sought in respect of the children's sleeping arrangements. I am further satisfied however, on the parents' own evidence, that each continues to demonstrate a marked lack of insight into the nature and extent of their respective parenting deficiencies.

61. In my judgment the father also demonstrated during his oral evidence a continued and marked tendency to minimise the impact of his domestically abusive behaviour. He initially claimed that he had never witnessed the mother as terrified of him. The father also sought to claim that the domestic abuse was "six of one and half a dozen of the other". He was forced to retreat from both of these claims during cross-examination by Mr Stonor, acknowledging that the serious domestic abuse had not in fact been "six of one and half a dozen of the other", that the allegations of domestic abuse had not simply been made up by the mother and that he had been wrong to state to the psychologist that the mother "likes it when I kick off". I am satisfied on the father's own evidence that he continues to minimise the extent of, his culpability for and the impact on the mother of the aforementioned domestically abusive behaviour.

62. Likewise, with respect to the question of S's head injury, there was little dispute with respect to the findings (ix) to (xiv) above. I am satisfied that S sustained a hypoxic ischaemic head injury early on the morning of 2 June 2019, the evidence of Dr Stoodley derived from the neuroradiological imaging, being clear in this regard. I am further satisfied that that injury was the result of the impairment of S's respiration for a period of time, leading to an inadequate supply of oxygen to S's brain. No party disputed the opinion of Professor David that:

> "...the inescapable conclusion is that there was an undefined period of time when the oxygen supply to S's brain must have been impaired."

And that it is:

> "...highly probable that failure to maintain adequate respiration led to an inadequate supply of oxygen to his brain, causing both immediate neurological symptoms (for example being apparently unconscious and unresponsive) and also delayed symptoms in the form of seizures."

63. With respect to the timing of the event which resulted in the impairment of the oxygen supply to S's brain, the preponderance of medical evidence favours a finding that S's oxygen supply was impaired a short time before he was discovered moribund. Professor David was clear that the rapid improvement in S's pH levels "most likely reflects that whatever happened to S was very recent", that the timescale involved was "minutes not hours" and that "one could say with some confidence that the family were not sitting on a dangerously ill child for many hours". Each parent is clear that S's recovery from the point of discovery was relatively rapid. Whilst great care must be taken with each parent's evidence given the manifest issues with their credibility that I will come to, I am satisfied that the description of S's improving state apparent over the course of the 999 call given in the heat of the moment is likely to be accurate and is corroborated by the results of the examination subsequently undertaken by paramedics. In the circumstances, I am satisfied on the balance of probabilities that S's oxygen supply was impaired for a period shortly before the 999 call was made.

64. Within the foregoing context, I am satisfied that the event that impaired S's respiration and, in consequence the oxygen supply to his brain occurred proximate in time to his discovery in a moribund state at approximately 5.00am on 2 June 2019. With respect to the duration of the cessation of S's respiration, Professor David opined that "There is no way of knowing for how long S's respirations had ceased before this was discovered. Plainly the period cannot have been very long, or he would have been found dead." Within the latter context, I further bear in mind the unchallenged evidence of Professor David that the amount of time necessary to smother an infant to the point that their electroencephalogram is flat and there is no spontaneous respiration has been estimated at between 70 and 90 seconds (although, again, this is based on observations in only 4 children) and that, in his opinion, complete airway obstruction of approximately 60 seconds is required to produce major physiological changes. I accept that evidence and am satisfied that the impairment to S's oxygen supply lasted for a period sufficient to cause S to suffer a significant hypoxic ischaemic injury but insufficient to result in his death, that period being anywhere up to approximately 60 seconds in length. I will examine the import of this conclusion in more detail below.

65. In these circumstances, as Professor David rightly noted, at the fact finding stage "the real concern of the court will be what caused S to stop breathing, rather than the consequences of his failure to breathe adequately". Having regard to the matters set out above, the key issue of fact now in dispute before the court is what caused the period of inadequate oxygen supply to S's brain shortly prior to his discovery in a moribund state at approximately 5.00am on the morning of 2 June 2019?

66. In answering this question, I pause again to remind myself that the evidence before the court cannot be evaluated and assessed in separate compartments and that I must have regard to the relevance of each piece of evidence to other evidence and to exercise an *overview* of the totality of the evidence in order to come to the conclusion whether the case put forward by the local authority has been made out to the appropriate standard of proof. In this regard, the court is not limited to the medical evidence and the opinions of the medical experts will need to be considered in the context of all the other evidence. I again note the observation of Professor David that:

> "...having analysed the problem as best one can the final task has been to see if there is sufficient medical evidence to assemble a coherent conclusion that is supported by the medical evidence. If there is insufficient medical evidence to complete the jigsaw or join the dots there needs to be a willingness (on my part) to admit defeat. By being able to take many other factors into account the Court may well be far better placed to complete the jigsaw."

67. Within this context, I further remind myself that in *Re A (Children)* [2018] EWCA Civ 1718, the Court of Appeal once again emphasised the overarching importance, when determining whether or not the local authority's case has been proved to the requisite standard, of the court standing back from the case to consider the whole picture and asking itself the ultimate question of whether that which is alleged is more likely than not to be true.

68. In order properly to examine the medical evidence and the opinions of the medical experts in the context of all the other evidence before the court, it is necessary first to consider what weight properly attaches to that evidence. The medical evidence in this case admits of three possible causes of the period of inadequate oxygen supply to S's

brain immediately prior to his discovery in a moribund state on the morning of 2 June 2019. Namely, a poorly understood natural event of unknown aetiology, the obstruction of S's airway by deliberate suffocation or the obstruction of S's airway by overlaying. I agree with the submission of Mr Garrido and Mr Steward that should the court conclude that the mechanism of causation is one or other of the latter two possibilities, such is the difference in culpability between an intentional smothering event and an unintentional event such as overlay that the court should attempt to determine on the balance of probabilities which occurred.

69. I have borne carefully in mind that, from the perspective of medical science, Dr Stoodley was clear that it was not possible to distinguish between these possibilities from a neuroradiological perspective (although he made clear he could not recall being asked by paediatric colleagues to provide a neuroradiological opinion in a case of a naturally occurring ALTE) and that Professor David ultimately favoured a poorly understood natural event as the cause of S's head injury in this case, rightly cautioning the court to bear carefully in mind that medical science is not omnipotent and is advancing towards new discoveries all the time.

70. It was clear from his oral evidence that Professor David's medical conclusion in this complex and difficult matter rested primarily on the tripartite foundation of (a) the absence of any positive medical evidence of an non-accidental or accidental cause, (b) the fact that S's circumstances did not fit the profile of unnatural child death identified in the data gathered by Professor Sir Roy Meadow or repeated intentional suffocation identified in the data gathered by Professor Southall and (c) the fact that a natural event is inherently more probable than an inflicted event. Professor David also relied on similarities between S's case and the paper by Constantinou et al entitled *'Hypoxic-ischaemic encephalopathy after near miss sudden infant death syndrome*'. It is important to examine each of these contentions in a little more detail.

71. Professor David made clear that it was the absence of any positive medical evidence of an inflicted cause that weighed heaviest in his conclusion that a poorly understood natural event was the most likely cause of S's head injury from amongst the possible causes he identified. However, it is also important to note that Professor David conceded that it is well recognised that it is possible to fatally suffocate a baby with little or no evidence of trauma. Within this context, whilst I agree with Professor David that medical diagnosis has to be based on facts and evidence and that an inability on the part of doctors to exclude a non-accidental cause should not be accorded undue forensic weight, the fact that a deliberate or accidental suffocation might not leave any medical evidence beyond the injury caused by the same must, in my judgment, reduce the weight to be attached in this case to the fact that no other evidence beyond S's hypoxic ischaemic head injury was found by the examining doctors.

72. With respect to the significance of the 'profile' of S's case as measured against the data gathered by Professor Sir Roy Meadow and Professor Southall, Professor David properly and frankly acknowledged that, whilst he considered that he had used and applied the data collected by Professor Meadow and Professor Southall in a way that was responsible in order to make the best use of the data available, others may disagree and may feel uncomfortable with that approach. Whilst not doubting that Professor David approached his task in all good faith, I regret that I do find myself in the latter category.

73. Professor David's central contention in seeking to rely on the data gathered by Professor Meadow and Professor Southall in divining what happened to S is that that data can properly be separated from well recognised criticisms levelled at the scientific methodology of Professor Meadow and Professor Southall and, thus, stands on its own as a usable profile of natural infant deaths and repeated intentional infant suffocations against which other cases can usefully be compared with a view to drawing forensically valid conclusions. In this context, Professor David emphasised that the data gathered by Professor Meadow in respect of unnatural infant deaths and by Professor Southall in respect of repeated intentional suffocation represents the only substantial data available in respect of these occurrences. However, in my judgment it is difficult to separate entirely scientific methodology from evidence gathered by those whose methodology has been so comprehensively and justifiably criticised. At the very least, I accept the submission of Mr Spencer on behalf of the local authority that the data must be treated with the utmost caution in light of the criticism levelled at the work of both Professor Meadow and Professor Southall.

74. Further, and much more fundamentally, even if it is legitimate to separate the data from the tarnished methodological reputations of those who gathered it, there are in any event very real problems with the data itself. Professor David readily acknowledged these problems, in particular with respect to Professor Meadow. In this regard, Professor David made clear that Professor Meadow's series of unnatural infant deaths is a retrospective rather than a prospective study comprising highly selected cases collected over 18 years with no reference to a denominator population. There was no control group. In addition, Professor David considered it likely that the series was the subject of bias in circumstances where Professor Meadow developed clear suspicions concerning the presence of oronasal blood and where considerable reliance was placed on the conclusions reached in court cases where he was directly involved, giving rise to "an element of circularity in placing great faith in the conclusions of the courts". Further, Professor David described the data as being "extraordinarily" incomplete. Within this context, in his report Professor David made clear that uncontrolled case series collected by tertiary specialists occupy the lowest level in the hierarchy of evidence based medicine and in that context, in oral evidence, stated that:

> "This is a lesson on why research studies should be prospective rather than retrospective, you could not have a better demonstration."

And:

> "The difficulty is that Meadow's cases were retrospective and from multiple sources, meaning there was not complete data for every case and that is unsatisfactory. It is a perfect illustration of the drawbacks of retrospective studies".

75. Within the foregoing context, and whilst I acknowledge Professor David's caution against expecting perfection in scientific studies, I entertain *significant* reservations regarding the forensic utility of using data gathered by Professor Meadow, and by Professor Southall, to 'profile' an individual case by comparing that individual case with the Meadow and Southall data with a view to drawing forensically valid conclusions with respect to an individual child. In addition to the manifest problems with the data that I have summarised above, two other difficulties underpin my reservations in this regard.

76. First, there are significant difficulties within the forensic context of court proceedings (as distinct from the clinical or research context of medicine) with the concept of 'profiling'. As I noted in *A Local Authority v X, Y and Z (Permission to Withdraw)* [2017] EWHC 3741 (Fam), there are real risks in relying on models to profile a specific case, especially if the model used is not based on rigorously conducted research. Within this context, whilst no criticisms were levelled against its methodology, I also take the view that I must approach with caution the suggestion that it should attach weight to the stated similarities between the profile in S's case and those cases collected by Constantinou et al in their paper entitled *'Hypoxic-ischaemic encephalopathy after near miss sudden infant death syndrome'*.

77. Second, and more specifically, in this case, the data collected by Professor Meadow concerned unnatural infant deaths. S did not die. Nor does the series compiled by Professor Meadow deal with cases resulting from overlay, which is an acknowledged possible mechanism in S's case. Professor Southall's data concerned incidences of repeated intentional suffocation. S's case concerns a single incident of interrupted respiration. In these circumstances, Professor David conceded that it is not possible to make a direct comparison between Professor Meadow's series or Professor Southall's series and S's case. Within this context, and whilst I acknowledge Professor David's point that this is the only substantial data available and again accept that Professor David makes the effort he does in all good faith, this must in my judgment undermine even further the *forensic* efficacy of profiling S's case against the data collected by Professor Meadow and by Professor Southall.

78. With respect to the weight that Professor David attaches to the inherent improbability of an inflicted cause versus a natural cause, I am once again satisfied that this element of Professor David's analysis, whilst legitimate, must also be approached with some caution within the forensic context of court proceedings as distinct from the clinical or research context of medicine. In particular, the authorities make clear that in every court case of this type, the answer is not to be found in the inherent probabilities *per se* but in the evidence, and that it is when analysing the evidence in a specific case that the court takes account of the inherent probabilities as appropriate (see *Re B* [2009] 1 AC 11 and *Re BR (Proof of Facts)* [2015] EWFC 41). Thus, in the context of the general population it is less likely that a child presenting with S's symptoms will have been smothered or overlaid than it is that he will have been the victim of a natural event. However, in the context of the evidence in *this* case, the inherent probability of smothering or overlaying as against being victim of a poorly understood natural event will necessarily be different because inherent probability is sensitive to context.

79. In the circumstances, the proposition that an organic cause of respiratory arrest or suppression in a child is inherently more probable than deliberate or accidental suffocation is generally true for the population at large. However, the validity of that proposition becomes increasingly strained where the context that falls to be considered having regard to the evidence in this specific case is not that of the general population at large but rather that of a child living in a chaotic household in which domestic abuse and drug and alcohol abuse was prevalent, where S's parents were the subject of significant stressors in the form of a lack of finances, exhaustion, lack of support and social isolation, where there had already been a drunken incident causing S to fall to the floor, where the parents had put in place unsafe sleeping arrangements for their children, including co-sleeping, where on one parent's evidence S was found face down

in a pillow and where the parents claim to have awoken at just the right time to resuscitate S.

80. When examining the medical evidence in this case in the context of all of the other evidence available to the court, the weight that I have felt able to attach to Professor David's conclusion that the most likely cause of S's hypoxic ischaemic injury of the three possible causes before the court is a poorly understood natural event of unknown aetiology has been limited by the matters I have rehearsed in the foregoing paragraphs.

81. The other source of evidence that the court has available to it to assist it in determining the cardinal question of what caused the period of inadequate oxygen supply to S's brain immediately prior to his discovery in a moribund state at approximately 5.00am on 2 June 2019 is that of the parents. As I have already alluded to, that evidence was deeply unsatisfactory, the court being satisfied that neither parent was being frank and honest in their evidence to the court. Three particular difficulties arise from this that must be borne in mind when the court seeks to draw inferences from and make findings on the basis of that evidence. First, the court does not have a fully frank account of what occurred on the morning of 2 June 2019 from the only two adults present at the time. Second, and within that context, the court must be cautious about relying on the evidence given by the parents regarding those events and should look for corroboration where it seeks to do so. Third, the court must consider whether lies told by the parents are capable of themselves amounting to corroboration, having regard to the direction the court is required to give itself under *R v Lucas*. I remind myself that to be capable of amounting to corroboration the lie in question must be deliberate, must relate to a material issue, must arise from a realisation of guilt and a fear of the truth and must be clearly shown to be a lie by admission or by evidence from an independent witness.

82. Within the foregoing context, in considering whether the local authority has proved on the balance of probabilities the findings its seeks with respect to S's head injury, in my judgment the following matters arising from or in relation to the parents evidence are in my judgment important:

i) Both parents concede that they were exhausted on the evening of 1 June 2019 into 2 June 2019 in a household environment that was toxic and highly stressed.

ii) There is clear evidence, including the admissions of the parents, that the parents adopted the practice of co-sleeping with L and that they repeatedly failed to follow, and indeed had on occasion rejected, safe-sleeping advice in respect of S.

iii) The parents' claim that S did not wake during the night for a feed and that they were woken by L crying at 5.00am is inconsistent with each child's then established night-time routine.

iv) The father concedes that at some as yet unidentified point during the night he moved around the room and specifically moved from the sofa into the bed in which the mother was co-sleeping with L.

v) On parents' case, they woke at precisely the right point to rescue S from his arrested respiration and in circumstances where, according to the mother, S was face down in a pillow.

vi) The parents' evidence as to who found S in his moribund state is inconsistent.

vii) The parents' evidence as to S's orientation when he was found is inconsistent.

viii) There is clear evidence that both parents sought to repeatedly mislead medical professionals, the police and the court as to the circumstances surrounding S's arrested respiration on 2 June 2019.

ix) Whilst domestic abuse and neglect were prevalent in the family home, and whilst I am satisfied that the father made on one occasion inappropriate threats to harm S, there is no evidence of incidents of physical violence being directed towards children by either parent or prior physical injury to the children as a result of the parents' deliberate conduct.

x) The import of the evidence of Professor David is that if one of the parents was deliberately obstructing S's airway shortly before 5.00am on 2 June 2019 that parent would have to have tolerated him fighting and struggling and, having regard to the extent of his injuries, would have to have done so for a period of up to approximately 60 seconds.

83. Examining these points in more detail, having regard to the evidence before the court, I am satisfied that in the days leading up to 2 June 2019 the parents' relationship remained tense and volatile. The home environment was toxic and harmful by reason of parental immaturity, exhaustion, mental health issues, drug and alcohol use, domestic abuse and acute relationship discord. I am satisfied that I can rely on the parents' evidence that this was the position in circumstances where that evidence comprises of admissions against their respective interests. In particular, I am satisfied that on the evening of 1 June into 2 June 2019 both parents were exhausted by this situation and that the father was also recovering from extremely heavy alcohol and drug use over the course of 31 May 2019 into the early morning of 1 June 2019. Their level of exhaustion was exacerbated by the fact that they had been dealing early in the morning of 1 June 2019 with the aftermath of the incident in which S was caused to fall to the floor and had both risen later that morning and spent a full day with the children and DB. Within the foregoing context, I am likewise satisfied that when the parents came to go to bed on the evening of 1 June into 2 June 2019 they were each still exhausted.

84. Both parents admit that L was taken into the bed with the mother, and remained in the bed when the father moved into it at some point prior to 5.00am on the morning of 2 June 2019. Whilst the parents deny that S was likewise brought into the bed at any point prior to 5.00am, I bear in mind that, as I have noted, they were co-sleeping with L on that evening. In addition, both parents concede that on occasions the father would fall asleep whilst holding or feeding S and would not wake when the mother removed S from him, the father further conceding that it was possible he would not remember these incidents due to the influence of drink or drugs and that the mother being able to remove S from him without him waking would fit with him being heavily under the influence of those substances during such incidents. Further, neither parent was apt to follow the advice of professionals regarding the sleeping arrangements for S, as demonstrated by the use of a pillow in his Moses basket against the clear advice of the health visitor and had on occasion actively rejected the same, as demonstrated by the father's view that the Health Visitor's advice was "bullshit" and "bollocks". Both parents were exhausted, making it more likely in my judgment that they would on that

evening have adopted any practice that allowed them to sleep, particularly in circumstances where the father stated to medical staff that the parents would take steps to try and prevent S from waking overnight for a bottle by giving him water, telling a paediatric registrar that "I can't be arsed to get up in the night me".

85. The father concedes that at some as yet unidentified point during the night he moved within the room and, specifically, from the sofa into the bed in which both parents admit the mother was co-sleeping with L. I am satisfied that I can rely on that concession in circumstances where it places the father *nearer* to the position the parents claim S was in during the course of the night and prior to the discovery of his injury. The father was not willing to elaborate on when he moved into the bed. In the circumstances, it remains unclear at what time this took place and whether he moved from the sofa to the inflatable bed in the dark. Indeed, the inability or unwillingness of both parents to recount the movements and events of the night of 1 to 2 June leading up to S being found critically unwell was striking. On the father's case however, this move into the bed during the night was habitual and autonomic in nature, with the father claiming little awareness of his actions or surroundings when habitually making this move.

86. The parents claim that S did not wake during the night for a feed and that they were woken by L crying at 5.00am is inconsistent with *each* child's then established night-time routine.

87. Neither parent sought to dispute the local authority's contention that it was unprecedented for S to sleep through the night and not wake for a feed in accordance with his usual routine. Within this context, it was also striking that notwithstanding the unprecedented nature of the situation claimed by the parents, the mother further asserted that it was some 15 minutes after she was woken by L, during which time she concentrated solely on feeding and changing L, that she first thought to check on S, notwithstanding he had *never* failed to wake during the night prior to that date.

88. Further, in addition to it being unusual for S not to wake during the course of the night for a feed, I am also satisfied on the evidence before the court that it was unusual for L to wake as early as 5.00am. As at 2 June 2019 L was 18 months old. Within this context, she was described by the parents to the social worker as sleeping well and rarely waking throughout the night. In her police interview the mother informed officers that "She used to go sleep at 7 but now longer naps so between 8 and 9" and that "when L wakes up, if she doesn't tap me and say, "Mummy, I'm awake," then she'll get onto the sofa and she'll start playing with her toys or reading her books or something. Erm, but it's very unlikely she doesn't let me know. She always wants something when she wakes up." Within the latter context, the mother informed the Children's Guardian that "L sleeps right through 10pm to 10am. I spoke to the health visitor about it at one point because I was worried." Within this context, it is not clear what caused L, unusually, to wake up at 5.00am, close to or at the very point S needed to be rescued from his moribund state, when the account of the mother to the Children's Guardian (which was not challenged) suggests that L was by then sleeping through the night, a situation that would also have been commensurate with her then age.

89. In the circumstances, as I noted during the course of the hearing and in the foregoing paragraph, on parents' case they were woken by L, who usually slept through the night but did not on this occasion, close to or at the very point S, who usually woke during the night but did not on this occasion, needed to be rescued from his arrested respiration.

Within this context, and having regard to the question of whether the cause of S's injury was a naturally occurring event or the result of intentional suffocation or overlay, I again note the opinion of Professor David that:

> "...the chance of a parent finding a child dying a natural death a few seconds before stopping breathing is very small. If the parent is on the scene at that time it must raise the possibility that the parent has been responsible for the child not breathing. Natural cot deaths are more likely to be associated with a child being found dead, rather than moribund."

90. The parents' evidence as to who found S in his moribund state contained a number of inconsistencies. The mother maintained that it was she who found S to be unresponsive 15 minutes or so after she had been woken by L and after she had finished tending to L's needs. However, as noted above, there are passages in the father's police interview and history in medical records that suggest the opposite. In particular, the father stated during the course of the 999 call, which call I am satisfied took place only moments after it was realised that S was not responding, that "It's when I picked him up, he's obviously...he was...I don't know what was wrong with him but he was fucking...he weren't there." In oral evidence the father sought to suggest this was a reference to his having taken S from the mother. Again, I note that during cross-examination by Ms Edmunds the father, apparently unwittingly, at one point stated "I did not have the best mental state and I find my son like that". The overall approach of the father was to claim that he could not remember the circumstances that pertained early on the morning of 2 June 2019 but then give answers that demonstrated a clear recollection of certain events. For example, in one answer he would state that he would never forget the way S presented at that point before claiming that he had no memory of events only minutes before but then stating confidently that he had at no point during the incident changed S's nappy and recalling that he had undressed S as he knew being overwarm could cause convulsions. He could not say whether he had left the room to fetch milk for L upon being requested to do so by the mother but that this is ordinarily what he would have done. Following this, the father asserted that he had fallen back asleep or was in the process of falling asleep when the mother raised the alarm regarding S.

91. The evidence given, particularly by the mother, as to S's orientation when he was found is likewise inconsistent in the face of the claim by the mother that S was placed on, and found on his front. Against this assertion, the mother's descriptions to the police of looking at S's chest to see if he was breathing and her picking him up by putting her hand "underneath his head and bum". When cross examined by Ms Edmunds the mother accepted that these statements tend to suggest that S was on his back when found, although she continue to deny that this was the case. During his oral evidence, in chief and during cross-examination, the father maintained that in addition to not having seen S go to sleep on 2 June 2019, he had not seen him wake up some 5 hours later before the mother picked him up. Within this context, the father's evidence was that he could not say whether S was sleeping on his front at the point the mother picked him up. As I have noted however, certain of the responses by the father to the police and medical staff act to gainsay that assertion.

92. More fundamentally, during the course of her oral evidence the mother significantly changed her account of how the situation in which she says she found S on the morning of 2 June 2019. Namely, she contended that she had seen S with his face down into the pillow, a scene that she described as being "unforgettable". The mother further

contended that seeing S face down had caused her to "turn his head a little bit". The mother conceded that she had never before given that account to the doctors, police or in her written evidence to this court. Moreover, the mother was taken to a series of entries in her police interview, in the medical records and in her statement that directly contradicted the account. For example, in her police interview the mother had said "when his head has been to the side in the morning when I actually woke up." During her oral evidence, the mother further claimed to have informed the father at the hospital that she had seen S face down in the pillow, before claiming only to have remembered that this is what happened some 15 months later in August or September this year. She was not able to explain how she had informed the father on 2 June 2019 of a fact she claimed only to have remembered some 15 months later. The father disputed that he had been told by the mother about S being found face down before this hearing. In cross examination by Mr Stonor the father reiterated that he had never been told by the mother that she had found S face down. The mother claimed also to have told someone else, who may have been her solicitor or a social worker, but offered no further evidence of this.

93. During her oral evidence, and as I have noted above, the mother also could not explain why she had not checked S immediately upon being woken in circumstances where, on her account, the circumstances represented a significant departure from the normal course, namely that S had, on the mother's evidence, never before slept through the night. Notwithstanding this, she maintained her account that it was some 15 minutes after she woke, during which time she concentrated solely on feeding and changing L, that she first thought to check on S, notwithstanding he had never previously failed to wake during the night. In the circumstances on both parents' account S would have been next to them during the 15 minute period the mother was dealing with L but the court is being asked to believe that at *no* point during that time did either parent notice S was face down in a pillow in the context of him for the first time having not woken during the night. When cross-examined by Ms Edmunds the mother contended that, notwithstanding that S was face down in the pillow she stared at him for a "second or two" and moved his head rather than reacting by picking him up. I accept Ms Edmunds's submission that *if* the mother is telling the truth that when S was found moribund he was face down in a pillow this tends to argue against a natural cause.

94. There is clear evidence that both parents sought to mislead medical professionals, the police and the court as to the circumstances surrounding S's discovery on 2 June 2019.

95. I am satisfied that both the mother and the father chose to withhold from treating clinicians any account of the incident on 1 June 2019 when S was caused to fall from his Moses basket to the floor. Within this context, I pause to note that the father stated that his subsequent account to medical staff when he arrived with S at hospital was drawn from what the mother had told him. The father claimed however, not to remember when the mother had told him about the detailed matters he subsequently relayed to the treating clinicians.

96. Within this context, I am satisfied that the parents chose not to inform treating doctors in the Emergency Department of the fact that S had been knocked out of his Moses basket early on the morning of 1 June 2019, and delayed providing this information to medical staff until 7 June 2019. The only recording of the parents informing doctors of this event is on 7 June 2019. Further, Dr F is clear that:

> "I have no recollection of S's mother telling me about this incident whilst in the Emergency Department. However, it was during acute admission so it is possible that she did tell me. However, it would have been potentially important clinical information that I would have expected myself to have documented and remembered."

Further, I accept the mother's evidence that when the father heard her tell the medical staff on 7 June 2019 about the incident he "had a go" at her, saying "well done the social will be all over us now." This reaction on the part of the father is consistent with his generally dismissive approach to the mother and suggests that (a) the father had not heard the mother tell the medical staff about this incident before 7 June and that (b) the father had not himself told medical staff about the incident before this point, which he himself accepts. The father was not able to explain why he failed to mention the incident to the 999 controller, the paramedics or the hospital in circumstances where S had been found moribund only a little over 24 hours after that incident.

97. I am further satisfied that the parents have actively sought to conceal the telephone and text communications that took place between them and others before, during and after the discovery of S moribund on 2 June 2019.

98. The mobile phone evidence before the court indicates gaps in the communication traffic between the mother and the father during the material period. In particular, there is a gap between 31 May 2019 4.57am and 2 June 2019 at 5.17am (although I bear in mind there were other gaps prior to this date). Whilst the parents make reference in their police interview to phone calls made in the period immediately prior to S being discovered moribund, no records exist of such calls.

99. Within this context, further evidence regarding the telephone communications at the relevant time came to light during the mother's evidence (as a result of her having a conversation with her mother about the evidence whilst still under oath, in express contravention of the warning given to her only hours before by the court). This evidence indicates that communications sent to her own mother and sister from her iPhone, which has been made available to the police, do not show up on that iPhone. Further questions were asked of CYFOR to determine why this might be the case. The possibilities include that the relevant messages have been deleted from mother's phone (although I bear in mind that this is not the only possible explanation).

100. Within this context, the father's evidence regarding his use of mobile phones during the relevant period was deeply unsatisfactory. In summary, the father contends that as at 2 June 2019 he was using an Alcatel mobile telephone with a SIM card that had a telephone number ending 101. The father contends that upon S's admission to hospital he took the mother's iPhone and gave her his Alcatel phone. The father further contends that SIM card in the Alcatel ending 101 subsequently became locked as a result of the mother incorrectly entering the phone's PIN three times and was replaced with a new purchased SIM card with a telephone number ending 103. Thereafter, the father contends he gave the Alcatel phone to his own mother, who disposed of it as she could not operate the small keys on the phone. Finally, the father contended that he threw away the locked SIM card ending 101 when "tidying" the house ahead of the police attending the property to search it. However, when cross examined, the father admitted that he had told multiple lies in the context of the foregoing account:

i) The father conceded that the assertion that he had taken the mother's iPhone to hospital and left her with the Alcatel phone (this being the basis for his later contention that the mother had accidently locked the SIM ending 101 that was in the Alcatel phone) was not true, as is demonstrated by the mother's text messages at the time.

ii) The father was forced to concede that his assertion that SIM ending 103 was a new SIM purchased expressly to replace the locked SIM ending 101 when the latter became locked was untrue, the SIM ending 103 having in fact been in use by the father long before S was admitted to hospital.

iii) The father admitted that his assertion that in the period prior to S being injured only two phones were in use, namely the mother's iPhone and the father's Alcatel phone, was untrue, the father conceding that other phones, including an iPhone purchased by the mother for his birthday, were present in the household.

iv) The father conceded that he lied to the police about having access to and using a workplace phone which lie included fabricating an account of having gone to work on the Friday before S was admitted to hospital.

101. In the foregoing circumstances, the father ultimately conceded in cross-examination by Mr Spencer that *all* of the evidence he had given about the mobile telephones was untrue, but claimed that this was not deliberate. Within this context, and as I have noted above, the father had contended that he had thrown away the SIM card ending 101 immediately before the police attended the family home to search that property. Whilst the father sought to maintain his account that this was the result of his "tidying" the property prior to the police visit, as astutely pointed out by Ms Edmunds in the cross-examination of the father, the photos taken by the police during *that* visit show dirty nappies *in situ* notwithstanding the father's claim to have tidied the property in preparation of the police search, as well as other evidence that no tidying had in fact taken place.

102. On the balance of probabilities, I am satisfied that the parents have colluded to conceal their telephone, text and social media communications proximate to S's collapse by deleting messages from the mother's telephone and disposing of the SIM card from the father's phone. It is plain that the lies conceded by the father in relation to the telephones were each designed to avoid the interrogation of the SIM card ending in 101, which was a SIM card in use by the father at the time of S's collapse. The father's lie regarding the mother taking the Alcatel phone and giving him her iPhone for use at hospital was designed to place the Alcatel phone in the mother's hand with a view to asserting she had locked the SIM card ending in 101. The lie regarding the purchase of the SIM card ending 103 to replace it was designed to reinforce the story regarding the former SIM card being locked. The disposal of the SIM card ending in 101 was to prevent that SIM card being interrogated by the police. I am satisfied that the father was plainly not telling the truth when he claimed it was disposed of as part of an exercise to tidy the house before the police search. The disposal of the SIM card immediately prior to the attendance of the police is further indication that it was disposed of in order to keep the contents of that SIM card used by the father at the time of S's collapse from the police and from the court. Within this context, I am also satisfied that the most likely explanation for the missing messages on the mother's phone is that those messages were deleted as part of an overall effort to sanitise the

communications between the mother and the father that took place before, at the time of and after S's collapse.

103. For the reasons set out above, I am satisfied that both parents have told lies about the circumstances in which S was discovered moribund at approximately 5.00am on 2 June 2019 and that they have colluded in an attempt to disguise the true circumstances of that event. I am satisfied that the lies told by the parents, and the efforts to mislead the court, have been deliberate, relate to the question of how S's respiration came to be interrupted, arise from a fear of the truth becoming known and are clearly shown to be lies by other evidence. Whilst I have borne in mind in respect of the father the contents of Dr Shielhouse's report and her opinion that the father has a longstanding difficulty with fabrication, I am satisfied that the lies told by the father in this matter are marked by the fact that they cluster around the discovery of S on the early morning of 2 June 2019. Whilst I also accept that the father was a drug dealer in the relevant period, it is of note that he did not advance this as an explanation for deleted messages or disposed of SIM cards. At no point did he state that the explanation for his actions was that the phones in question were being used to deal drugs and not disposing of them or deleting messages would have put him at risk of adverse action by the police, those who supplied drugs to him and/or those he supplied drugs to. Within this context, I am satisfied that the lies and obfuscation practiced by both parents in this case were designed to disguise the truth of what happened to S.

104. Having regard to the matters set out in paragraphs [68] to [102] above, and standing back from the case to consider the whole picture and asking itself the ultimate question of whether that which is alleged by the local authority, is more likely than not to be true I am satisfied that on the balance of probabilities that the interruption of S's respiration at approximately 5.00am on 2 June 2019 was the result of an asphyxial event rather than a poorly explained naturally occurring event of unknown aetiology. In summary, in reaching this conclusion I have in particular (a) concluded that I can place only limited weight on the conclusion of Professor David that the event that resulted in S's breathing being interrupted was most likely an natural event, (b) placed weight on the exhaustion of the parents and the stressed and toxic nature of the home environment on 1 to 2 June 2019, (c) placed weight on the fact that the parents engaged in the practice of co-sleeping with L and that the father had previously fallen asleep whilst holding S, (d) placed weight on the unlikelihood of the parents being woken by L close to or at the point S has suffered a naturally occurring respiratory arrest, particularly where the evidence is clear that L ordinarily slept through the night, and (e) concluded that the inconsistencies in the parents' evidence and the dishonest conduct in which they have engaged with respect to the circumstances of S's collapse further increases the likelihood that that occurrence was a non-natural asphyxial event rather than a poorly understood natural event.

105. I am further satisfied on the balance of probabilities that that asphyxial event that I am satisfied took place was caused by one or other of the parents overlaying S.

106. As I have set out above, Professor David's evidence was clear that the amount of time necessary to smother an infant to the point that their electroencephalogram is flat and there is no spontaneous respiration has been estimated at between 70 and 90 seconds (although, again, this is based on observations in only 4 children) and that, in his opinion, complete airway obstruction of approximately 60 seconds is required to produce major physiological changes. Moreover, Professor David's evidence was that

a child who is subjected to deliberate suffocation will fight and struggle. Within this context, and accepting that parents can lose their temper for the first time and seriously harm their child, I am satisfied on the basis of the evidence of Professor David that S's injury is not consistent with a sudden and momentary loss of control by a parent. Further, I am satisfied on the basis of Professor David's evidence that in order to consider intentional suffocation as a cause for S's interrupted respiration the court must, given the degree injury to S, contemplate a parent who has been able to maintain the obstruction of S's airway whilst tolerating him fighting and struggling to live for a period of up to 60 seconds. In my judgment, when viewed in the context of the evidence with respect of the parents in this case, this markedly reduces the probability of deliberate suffocation by a parent being the mechanism of asphyxia I have identified as having occurred in this case.

107. With respect to the mother, I accept that the evidence shows that the mother was subject to particularly acute stressors on 2 June 2019 as detailed in this judgment. However, against this I also note the evidence of the pre-birth assessment by the key social worker dated 14 February 2019 which recorded that the mother was warm in her responses to L, had a positive relationship with her, presented as well in tune with L's needs and that L presents as settled and content to be in her mother's care. Following the birth of S professionals recorded that the mother was responsive to both children, offered good levels of comfort to assist in soothing the children and was emotionally warm in respect of each of them. During the course of her evidence the mother displayed, both verbally and in her reactions, a very obvious emotional warmth towards the children when she spoke of them. Within this context, and accepting that the mother neglected the children's needs and exposed them to a risk of emotional and physical harm, there is no evidence before the court that the mother engaged in physical conduct towards the children such as to cause them harm, whether in temper or otherwise. The longer standing concerns of the local authority in respect of the family centred on neglect and a failure to meet properly the children's needs rather than on physical abuse or unexplained injuries.

108. With respect to the father, I of course acknowledge that it is redundant of argument that he has demonstrated aggression towards the mother, has shown a propensity for violence towards strangers in the past and has engaged in outbursts of violence directed towards inanimate objects, particularly when in drink. I am also satisfied that the father has, on at least one occasion, stated that he hated S and could throw him against a brick wall. That conclusion is consistent with his short temper, his erratic and aggressive conduct when under the influence of drugs and alcohol and his well-evidenced doubts about paternity. However, whilst as with the mother, accepting that the father neglected the children's needs and exposed them to a risk of emotional and physical harm, there is no evidence before the court that the father engaged in physically abusive conduct towards the children such as to cause them harm, whether in temper or otherwise. Again, the longer standing concerns of the local authority in respect of the family centred on neglect and a failure to meet properly the children's needs rather than on physical abuse or unexplained injuries.

109. By contrast, there is strong and persuasive evidence in this case of the parents engaging in the practice of co-sleeping and of failing to follow (and on occasion actively dismissing as "bullshit" and "bollocks") the advice of professionals on safe sleeping for the children, such that I am satisfied that S was placed at a risk of physical harm.

Further, there is clear and persuasive evidence in this case of endemic drug and alcohol abuse coupled with disrupted sleep patterns and exhaustion in a chaotic household in which sleeping arrangements for the children were largely *ad hoc*. Once again, whilst the parents deny that S was brought into the bed at any point prior to 5.00am, I bear in mind that, as I have noted, they were co-sleeping with L on that evening. Both parents admit that L was taken into the bed with the mother, and remained in the bed when the father moved into it at some point prior to 5.00am on the morning of 2 June 2019. Both admit that the father had in the past fallen asleep whilst feeding S and failed to rouse when S was removed from him, the father conceding that it was possible he would not remember these incidents due to the influence of drink or drugs, he having used both heavily in the days prior to 2 June 2020.

110. As I have recounted, there is also clear evidence that the parents would take active steps to try and ensure that S would not wake for a feed during the night, the father stating to medical staff that that the parents would take steps to try and prevent S from waking overnight for a bottle by giving him water. Further, the mother stated in evidence that she would use her "own little tactics" when she was exhausted to comfort a child because it was "easier", that L would be "a big comfort' to her, and that sharing a bed with your child is "an amazing feeling." On 2 June 2019 the parents were each exhausted for the reasons set out above, the father had been using drugs and alcohol heavily in the preceding days. Within this context, the mother had also been under extreme emotional pressure by reason of the conduct of the father over the previous number of days, including the discovery of his infidelity and his conduct with DB and, therefore, likely in need of comfort that the father was not giving. In the circumstances, I am satisfied that there is a resonance between the prevailing circumstances on 2 June 2019 and both the father's description of the parents' attempts to make S sleep through the night in order to avoid having to get up and the mother's description of the circumstances in which she tended to co-sleep. In my judgment, this increases markedly the likelihood overnight on 2 June 2019 one or other or both the parents decided to co-sleep with S in an effort to allow them to sleep and/or to accord the mother a measure of emotional comfort.

111. Within this context, and being satisfied that the interruption of S's respiration at approximately 5.00am on 2 June 2019 was the result of an asphyxial event rather than a poorly explained naturally occurring event of unknown aetiology, I am further satisfied on the balance of probabilities that the asphyxial event I have found to have taken place was caused by overlaying. In the absence of a frank account by the parents it is not possible on the evidence to determine exactly what occurred. In my judgment, there must remain a strong suspicion that S *did* wake for his feed as usual during the early hours of 2 June 2019 and was thereafter taken into the bed where he was, shortly before 5.00am, overlaid by one or other of the parents (the father having also moved into the bed), the parent who did so being woken by S struggling to breath and S being rescued from his respiratory arrest in time to prevent his death. However, in the absence of a frank account by the parents, the court is not able to make findings in this regard.

112. Whilst the local authority seek a finding on the balance of probabilities that the mother was responsible for S's injuries, I am not satisfied that the evidence supports such a finding. Once again, I am satisfied that the parents have not provided a frank account of the events of 2 June 2019. Within this context, S was found to be critically unwell

at approximately 5.00am in a room in which both parents were sleeping and had been sleeping since S had been put to bed. The mother was in the bed from the point at which she went to sleep and the father got into the bed at some point during the course of the night and prior to 5.00am on 2 June 2019. Within this context, and satisfied as I am on the balance of probabilities that S was overlaid and that both parents were in bed at the relevant time, I am not satisfied that it is possible on the evidence before the court to identify which of the parents overlaid S prior to him being discovered moribund at 5.00am on 2 June 2019. In the circumstances, the best the court is able to do is to conclude in respect of each of the parents that there is a real possibility that they overlaid S shortly before 5.00am on 2 June 2019.

113. Finally, I am satisfied that both parents are aware of the true circumstances of S's collapse and have colluded to keep the precise circumstances of S's injury from medical staff, the police and the court. As I have set out above, I am satisfied that each parent withheld from doctors the account of S falling from his Moses basket on 1 June 2019. Given that both parents were aware of this incident, and that the evidence shows they spoke about the circumstances of S being discovered moribund prior to the arrival of the paramedics, I am satisfied that both parents were aware of the circumstances of S's collapse and that the fact that they both failed to tell doctors of the incident of 1 June 2019 at the first opportunity speaks to collusion between them. I am likewise, again for the reasons I have given, satisfied that each parent sought to obscure their telephone, text and social media communications for the period before, during and after S's injury. Once again, I am satisfied that this speaks to a level of collusion between the parents. I am not satisfied that the acknowledged level of acrimony between the parents, both at the time and now, gainsays this conclusion in circumstances where both parents have, through dissembling, obfuscation and dishonesty, each demonstrated an individual desire to hide their manifest parenting failures from the court.

CONCLUSION

114. Only the parents know the whole truth of *precisely* what occurred early on the morning of 2 June 2019 to cause a serious head injury to their son. Sadly for S, I am satisfied that they have each made a conscious and deliberate choice not to assist the court fully by giving a frank account of all that they know of how S came to sustain that injury, an injury that will have lasting consequences for him. Within this context I have had to try and divine what is more likely than not to have happened to S in circumstances where the only adults present at the relevant time have not had the courage to assist. This judgment represents my considered attempt to do so on the evidence available to me at this hearing. In so far as the parents consider that this judgment does not represent the full picture of what befell S in their care the responsibility for that lies squarely with them.

115. For the reasons I have set out, I make the findings set out in the Schedule to this judgment on the balance of probabilities. In light of the findings made above, there will be a need to revisit certain of the assessments that have been undertaken in this case to date and I will give directions for the welfare stage of these proceedings having heard further submissions from leading and junior counsel as appropriate.

116. That is my judgment.

SCHEDULE OF FINDINGS

i) The children have been exposed to domestic violence between the parents causing emotional harm and putting the children at risk of physical harm:

a) On one occasion the father pushed the mother when she was pregnant with L, causing marks on the mother.

b) On 15 October 2017 the police attended the family home as the father had become irate and asked the police to remove him before he "lost it" with the mother.

c) In July 2018 the father attended family home and was aggressive and abusive towards the mother whilst L was present resulting in the police attending.

d) In July 2018 the father grabbed a pram bag from the mother, causing her bruising and held L whilst bleeding from his hand, having punched a wall.

e) The father was verbally abusive and threatening to the mother on other occasions. On one occasion the father threatened to "smash the mother all over [town]".

f) On one occasion the father leant forward and screamed in the mother's face with his hands behind his back, claiming he was restraining himself from hitting her.

g) The father has difficultly controlling his anger and has damaged the family home by punching holes in the walls when in a heightened state whilst the children were present.

h) The father has been controlling towards the mother, including taking her clothes and using her phone for drug dealing.

i) The father continues to minimise the extent of his culpability for, and the impact on the mother of the aforementioned domestically abusive behaviour.

ii) The father has a tendency towards fabrication and has told multiple lies during the course of the police investigation and the proceedings, including lying about his mental health. During the course of the proceedings both parents failed to work openly and honestly with professionals.

iii) The parents failed to provide L with a bed of her own and caused either to sleep on an air bed with her parents or on the sofa, exposing her to the risks associated with co-sleeping.

iv) The parents failed to adhere to advice from the health visitor as regard S's sleeping arrangements. They continued to allow S to sleep on his front and used an adult sized pillow as a mattress for his Moses basket despite being advised not to be the health visitor, putting S at risk of physical harm.

v) The father has exposed the children to risky adults and criminal activity by engaging in selling cocaine and, in consequence, allowing drug users to frequent the family home.

vi) The parents each misused cocaine and cannabis and, in consequence were not been emotionally available to the children and neglected their basic needs.

vii) The children's basic needs have been neglected:

a) The parents moved from city B without securing housing thus making themselves and L intentionally homeless.

b) S was not registered with the GP until 29 May 2019 which resulted in him missing his post-natal check and immunisations.

c) The parents have poorly managed their finances and accrued rent arrears and have as a result not been able to provide formula and food for the children.

viii) Both the parents continue to demonstrate a marked lack of insight into the nature and extent of their respective parenting deficiencies, with each repeatedly stating they considered the other to be a 'good parent'.

ix) Upon attendance at X Hospital on 2 June 2019 the parents failed to disclose that S had fallen from his Moses basket the night before thus delaying timely and informed medical procedures to be undertaken.

x) In this respect, the parents failed to seek timely medical attention for S and/or failed to provide an accurate history upon presenting the child to medical professionals.

xi) Upon presentation to hospital S was found, following MRI and EEG scanning, to have diffuse damage to the brain, which followed an acute presentation with an unresponsive episode and subsequent seizures.

xii) The nature of the damage to S's brain was extensive diffusion abnormality in an extended watershed distribution with evidence of restricted diffusion consistent with ischaemic change. The appearances were of a generalised hypoxic-ischaemic or hypoperfusion injury.

xiii) Prior to this injury there was period of time when S's respiration was impaired.

xiv) The impairment of S's respiration led to an inadequate supply of oxygen to S's brain, causing neurological symptoms in the form of unconsciousness, unresponsiveness and seizures.

xv) S's presentation and injury sustained were not due to any underlying metabolic condition or underlying medical condition.

xvi) The aforesaid injuries were caused by an as yet undisclosed event early on the morning of 2 June 2019 which impaired of S's respiration and led to an inadequate supply of oxygen to S's brain.

xvii) On the balance of probabilities, that event was S being overlain. In respect of both parents there is a real possibility that they overlaid S.

xviii) Both parents are aware of the circumstances and cause of S's impaired respiration and have to date failed to disclose the same.

xix) Both parents have sought to collude to conceal the circumstances and cause of S's injury from those investigating the cause of the injury, including the medical staff, the police and the court.