

2. The applicant local authority is A represented by Miss Fitzharris (c)
3. The first respondent (mother) is represented by Mr Twomey KC and Ms. Forsyth (c)
4. The second respondent (father) is represented by Mr Vater KC and Ms. Howe (c)
5. The third respondent children are acting by their children's guardian Deborah Day and are represented by Ms Edmunds (c)
6. Whilst this hearing was initially listed as a composite hearing, at the pre-hearing review, I agreed with the submissions of the advocates that the hearing should be treated as a finding of fact hearing. This was due in part to the fact that the local authority felt unable to make recommendations without a defined factual matrix as there were too many potential findings to enable an either/or report to be prepared and that was a view shared by the children's Guardian.

BACKGROUND TO THE PROCEEDINGS

7. The children had a sibling called Z. On the evening of 3 June 2020, his parents say that Z was found not breathing in his cot (which was part of a pram used as a cot) which was on a small table in the bedroom in which the parents slept. Their bedroom was part of a small bungalow that they shared with the father's grandfather B. The father had lived with B for most of his life together with B's wife who was the father's nan.
8. The parents called the emergency services and paramedics quickly arrived on the scene. They determined that he was in cardiac arrest and had stopped breathing. The mother was performing CPR on Z on the floor in the bedroom. They removed Z without delay into the ambulance and he was taken to hospital. Very sadly he was pronounced dead at 22:52 and died in the arms of his mother with both parents present.
9. Police attended at the bungalow within half an hour of Z being taken to hospital. They found Z's cot in the garden shed in the position shown in photograph P 280.

10. Following the death of Z on 3 June 2020, the local authority carried out a Children and Families Assessment on 3 July 2020. At that stage police reported that there was no identified criminality or neglect. No sign of injury to Z was identified at post-mortem on 5 June 2020 and he appeared well nourished.

11. The Coroner's report dated 1 March 2021 states:

“The mother of Z said in her first account that Z was put in the shed and was found unresponsive in the shed but later changed her account. The scene images of the shed immediately after Z's death revealed the carrycot to be in a tipped-up position, with an adjacent box present and therefore it is possible that the carrycot was positioned horizontally on the box within the shed. The carrycot had signs of vomit and a dummy in it. Taking account of all the circumstances and all the information gathered there is clear evidence suggestive of the fact that Z was put in the shed in his carrycot. This has been denied by the parents of Z, however, the explanation provided for the carrycot being in the shed is unsatisfactory and all the evidence suggests that Z was put in the carrycot in the shed and as this was the only sleeping vessel for Z it would be reasonable to assume and more likely than not Z had been in the carrycot in the shed at some point prior to his death. It is not possible to say that placing Z in the shed contributed significantly to causing death. In light of the uncertainty about the sleeping conditions and the hippocampal abnormality identified the cause of death could not be ascertained.”

12. A further Children and Families pre-birth Assessment was completed on 5 May 2021 during X's pregnancy and that did not identify any concerns. The family had been involved with children's social care since the death of Z. The parents worked well with the pre-birth and infant team and undertook a number of courses, engaging well. A section 20 was agreed by the parents and signed on 28 June 2021. However, following legal advice on 29 June 2021, they withdrew their consent.

13. Concerns were also expressed by the paternal grandmother CC on 26 April 2021 and 28th of June 2021 about the circumstances surrounding Z's death. When the local authority social worker discussed these concerns with the mother on 29 June 2021 she stated “it wasn't even me that found Z in the shed it was F.” When that was pointed out to her, she said that she was getting confused and that it was a slip of the tongue.”

14. Care proceedings were commenced on or about the 30th June 2021.

THRESHOLD

15. The local authority have pleaded their case in a revised threshold document dated 21 October 2022 following the finding of fact hearing:

“At the time Z died there was tension in the Mother and Father’s relationship caused by living with B in overcrowded circumstances and during lockdown, lack of sleep and intimacy and poor mental health on Father’s behalf. These matters led to poor communication and arguments between the Mother and Father, and reached the point where the parents were not coping well and needed a break from caring for Z.

Contrary to safe sleeping guidelines, aged less than 8 weeks old, Z was sometimes placed on the floor in a room on his own away from his parents, to cry and self soothe with the door closed over (not shut).

Mother and / or Father had from time to time put Z in a carrycot in the shed in the garden when he was unsettled so he could not be heard crying in the house.

On the 03.06.20 at around 7.30pm, Mother and / or Father fed Z, placed him in his carrycot on his back with his feet almost at the bottom and a blanket over the top. They put the carrycot cover on and the carrycot hood up and placed a fleecy jacket over the hood to block out the light and placed Z in the shed unsupervised.

In haste or recklessly, the carrycot was placed by Mother and / or Father at an angle or on an uneven surface in the shed which caused Z to move on his left side / shoulder and his face was pressed up against the carrycot side in an unnatural and unusual position. This compromised his breathing or ventilation and led to his death from hypoxia and hypercarbia

Alternatively, in haste or recklessly, the carrycot was placed by Mother and / or Father on a surface in such a way that the carrycot tilted and caused Z to move on his left side /

shoulder and for his face to press up against the carrycot side in an unnatural and unusual position. This compromised his breathing or ventilation and led to his death from hypoxia and hypercarbia.

On the 03.06.20 Mother and Father failed to adequately supervise Z who was only 8 weeks old and this caused or contributed to his death.

Mother and Father have colluded to provide a false account of the circumstances around Z's death to treating medics, the police and other professionals"

THE PARENTS' CASE

16. The parents do not accept threshold. Their primary case is that they deny that Z was ever put in the shed and do not accept that he was ever placed in his cot on a surface that was inappropriate. They say that this is a tragic case of a sudden unexplained death involving a child. All that they had done on the evening of 3rd June 2020 was to place Z in his cot on a table in their bedroom and had then proceeded to check on him regularly. The father had discovered Z in his cot on his side with his head in an unnatural position. He had sick around his mouth and had been sick in the pram. He had a blue tinge. He immediately lifted him out of the cot and called for the mother. Z had not been in a cot that was unsuitable, uneven or tipped up in the shed or otherwise.
17. A full recital of the arguments raised by the parents appears in the joint written closing submissions which I have considered carefully.

THE LAW

LEGAL PRINCIPLES APPLICABLE TO FACT FINDING HEARINGS

18. In **Re M (Children) [2013] EWCA Civ 388** Ryder LJ (as he then was) stated:
"[6] When any fact-finding court is faced with the evidence of the parties and little or no corroborating or circumstantial material, it is required to make a decision based on its

assessment of whose evidence it is going to place greater weight upon. The evidence either will or will not be sufficient to prove the facts in issue to the appropriate standard."

19. In **Re L Sub nom. A Local Authority v (1) A Mother (2) A Father (3) L & M**

(Children, by their Children's Guardian) [2013] EWHC 1569 (Fam) at paragraphs 46-53 Baker J set out what he considered to be the well-established legal principles in determining issues of fact finding hearings.

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

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

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

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

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

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

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

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

20. Courts should themselves guard against an assessment solely by virtue of their behaviour in the witness box and to expressly indicate that they have done so (**Re M (Children)** [2013] EWCA Civ 1147, Macur LJ).

21. There is a need to exercise great care in relying on the demeanour of a witness as indicative of credibility. To attach any significant weight to such impressions if assessing credibility, risks making judgments which at best have no rational basis and at worst reflect conscious or unconscious biases and prejudices (**Sri Lanka v the Secretary of State for the Home Department** [2018] EWCA Civ 1391).

22. In **Re B (Allegation of Sexual Abuse: Child’s Evidence)** [2006] 2 FLR 1071, at [43] - Hughes LJ (as he then was) said this;
“...The fact that one is in a family case sailing under the comforting colours of child protection is not a reason to afford weight greater to unsatisfactory evidence than it can properly bear. That is in nobody’s interests, least of all the child’s”

23. In **Re S-B** [2010] 1 FLR 1161 at [19] Baroness Hale of Richmond gave the following guidance;
“We should no more expect every case which a local authority brings to Court to result in an order than we should expect every prosecution brought by the CPS to result in a conviction. The standard of proof may be different, but the roles of prosecutors and social workers are similar. They bring those cases where there is a good case to answer. It is for the Court to decide if the case is made out”

24. On the issue of threshold, Lord Nicholls of Birkenhead in **Re H and Others (Minors) (Sexual Abuse: Standard of Proof)** [1996] AC 563 said:
"Thus far, I have concentrated on explaining that a Court's conclusion that threshold conditions are satisfied must have a factual base and that an alleged but unproven fact,

serious or trivial, is not a fact for this purpose, nor is judicial suspicion because that is no more than a judicial state of uncertainty about whether or not anything happened."

25. On discrepancies in evidence, the court draws guidance from Peter Jackson J (as he then was) in **Lancashire County Council v M and F** [2014] EWHC 3 (Fam) regarding memory over time:

"Where repeated accounts are given of events ... the court must think carefully about the significance or otherwise of any reported discrepancies. They may arise for a number of reasons:

- (i) Lies designed to hide culpability, or lies told for another reason;
- (ii) Faulty recollection or confusion at the time of stress or when the importance of accuracy is not fully appreciated;
- (iii) Inaccuracy or mistake in the record keeping or recollection of the person hearing and relaying the account;
- (iv) The possible effects of delay and repeated questioning upon memory;
- (v) As memory fades, a desire to iron out wrinkles may not be unnatural;
- (vi) The effect on one person of hearing accounts given by others; a process which might inelegantly be described as 'story creep' which may occur without any necessary inference of bad faith.

26. In *Gestmin SGPS SA v Credit Suisse and others* [2013] EWHC 3560 Leggatt J (as he then was) gave helpful guidance on the approach of the court to memory and recollection:

"An obvious difficulty which affects allegations and oral evidence based on recollection of events which occurred several years ago is the unreliability of human memory.

While everyone knows that memory is fallible, I do not believe that the legal system has sufficiently absorbed the lessons of a century of psychological research into the nature of memory and the unreliability of eyewitness testimony. One of the most important lessons of such research is that in everyday life we are not aware of the extent to which our own and other people's memories are unreliable and believe our memories to be more faithful than they are. Two common (and related) errors are to suppose: (1) that the stronger and more vivid is our feeling or experience of recollection, the more likely the recollection is to be accurate; and (2) that the more confident another person is in their recollection, the more likely their recollection is to be accurate.

Underlying both these errors is a faulty model of memory as a mental record which is fixed at the time of experience of an event and then fades (more or less slowly) over time. In fact, psychological research has demonstrated that memories are fluid and malleable, being constantly rewritten whenever they are retrieved. This is true even of so-called 'flashbulb' memories, that is memories of experiencing or learning of a particularly shocking or traumatic event. (The very description 'flashbulb' memory is in fact misleading, reflecting as it does the misconception that memory operates like a camera or other device that makes a fixed record of an experience.) External information can intrude into a witness's memory, as can his or her own thoughts and beliefs, and both can cause dramatic changes in recollection. Events can come to be recalled as memories which did not happen at all or which happened to someone else (referred to in the literature as a failure of source memory).

Memory is especially unreliable when it comes to recalling past beliefs. Our memories of past beliefs are revised to make them more consistent with our present beliefs. Studies have also shown that memory is particularly vulnerable to interference and alteration when a person is presented with new information or suggestions about an event in circumstances where his or her memory of it is already weak due to the passage of time.

The process of civil litigation itself subjects the memories of witnesses to powerful biases. The nature of litigation is such that witnesses often have a stake in a particular version of events. This is obvious where the witness is a party or has a tie of loyalty (such as an employment relationship) to a party to the proceedings. Other, more subtle influences include allegiances created by the process of preparing a witness statement and of coming to court to give evidence for one side in the dispute. A desire to assist, or at

least not to prejudice, the party who has called the witness or that party's lawyers, as well as a natural desire to give a good impression in a public forum, can be significant motivating forces.”

27. Finally, no precis of relevant legal principles would be complete without some wise words from Hedley J. In *R (A Child)*, [2011] EWHC 1715 (Fam) he said this; “In my judgment, a conclusion of unknown aetiology in respect of an infant represents neither professional nor forensic failure. It simply recognises that we still have much to learn and it also recognises that it is dangerous and wrong to infer non-accidental injury merely from the absence of any other understood mechanism. Maybe it simply represents a general acknowledgement that we are fearfully and wonderfully made.”

THE EVIDENCE

28. I have the written and supplemental bundles. I have also received various video and audio recordings. I also heard oral evidence from a number of witnesses including the parents. Finally I received very helpful written submissions from the parties.

THE EXPERT EVIDENCE ON THE CAUSE OF DEATH

29. I have written reports from the following;

The Post-Mortem examination Report of Dr Johnson at P10.

“My understanding is that it remains unclear whether, or not, Z had been placed in the shed in the period leading up to being discovered. Given the death occurred in early June and in the evening time, it is unlikely (on the available history) that the environmental temperature would have been extreme (either too cold or too hot). Providing the carrycot (if this had indeed been in the shed with Z asleep within it) had been level (i.e. resting on top of the cardboard box visible next to the carrycot in the scene photograph), then an

inappropriate sleeping position (such as being head down with the face up against a surface of the cot) should have been avoided.

Given the above, and the possibility of a sudden natural death occurring on the basis of HMAS, I don't believe it is possible to show that placing the baby into the shed (if this did occur), must have contributed significantly to the death, even on the balance of probability.

Young infants can die suddenly and unexpectedly with no positive pathological abnormalities being identified, when this occurs in a normal sleeping environment and following a detailed post-mortem examination, then the term Sudden Infant Death Syndrome may be appropriate.

Given the overall circumstances, **including the uncertainty about the sleeping conditions** and the hippocampal changes, I believe there is insufficient **pathological** evidence to reliably determine the cause of death.(my emphasis added)”

Dr McPartland at G87 including the report from Dr Du Plessis Consultant Neuropathologist in which he said this at P 134:

“In conclusion, a variety of abnormal features found in the dentate gyri in the hippocampi in this case (HMASD -like maldevelopmental type alterations and very prominent numbers of neural progenitor cells) introduces the possibility of a sudden natural death related to such alterations. Whether this is likely on balance of probabilities needs to be assessed in conjunction with **the full circumstances** and clinicopathological profile otherwise relevant to this case.” (My emphasis added)

At G107 Dr McPartland said this;

“I have discussed this case with Dr Johnson. The significance of Z possibly being in the carrycot in the shed is unclear. If the carrycot were placed onto a flat surface such as a box, then the carrycot might be flat and stable and not inherently dangerous, aside from the lack of parental supervision. There is evidence of gastric content in the lungs, with some patchy oedema and focal haemorrhage. It is uncertain whether this represents recent aspiration that caused death, as post

mortem movement of gastric content into the lungs can occur. There was no evidence of significant lipid laden macrophages or reflux oesophagitis to indicate that Z had previous significant reflux. The hippocampal malformation is a subtle finding; it is a potential cause of sudden unexpected death in infancy, but less common in this very young age group. I have seen Dr Johnson's draft report. I agree with his comments that the temperature in the shed is unlikely to have been extreme, and if the carrycot had been placed horizontally on top of the cardboard box adjacent to it in the scene photograph, then an inappropriate sleeping position could have been avoided. Therefore it is not possible to say that placing Z in the shed contributed significantly to causing death. **In light of the uncertainty about the sleeping conditions** and the hippocampal abnormality identified, I agree with Dr Johnson that the pathological cause of death is Unascertained." (My emphasis added).

Dr McPartland Paediatric Pathologist E251 with answers to questions dated 9th October 2022

Dr Mecrow Consultant Paediatrician E 260 with answers to questions at E387; The following passages are taken from the joint experts meeting;

Dr Herron Consultant Neuropathologist E226 with answers to questions at E375 and E395.

Dr McPartland at E370;

“ .. if we think the cot has definitely tipped, then this is a clear high risk of abnormal positioning comprising breathing or ventilation and it makes option b more likely as the cause of death...it is suspicious that the box the cot is sitting on is much smaller than the actual cot itself... the wording of the question needs to be broader, it's not just that the head could have been pressed against the side of the cot. It doesn't take much for a baby's head to tilt and block the airway.”

Dr Mecrow at E368 stated;

“ The comments from F, when he said Z's face was wedged against the side of the cot, I cannot see how this would happen if the cot was on a flat surface. Z would not

have been rolling yet, a seizure would not take him to that position. The only way to get to that position is if the basket was tipped.”

Dr Herron at E369 stated;

“ if a child is in an abnormal position, there does not necessarily need to be a complete obstruction or chest compression to cause death. If the head of the carry cot was below the tail of the carry cot this would change the normal position of baby – this would significantly increase my suspicion that the posture of cot is highly relevant in this case. This is as far as I can go.....even if I am not referring to a photo, if any abnormal position of the baby in the cot can be shown to be present, it will push me toward excluding hippocampal abnormalities and aspiration as factors contributing to cause of death.”

“SCHEDULE OF AGREEMENT FOLLOWING EXPERTS MEETING ON 22ND MARCH 2022

1. From a medical point of view, Z’s progress in the first weeks of life until 3rd June 2020 was unremarkable. No factors are identified in Z’s birth or postnatal care which could subsequently be linked to his death.
2. It is unusual and rare for a baby to be found dead in a cot or pram (i.e classic cot death) without known underlying medical problems or environmental factors such as co-sleeping.
3. Z at his age on 3rd June 2020 was too young to move himself of his own volition (or if he was experiencing seizure) to lie with his face against the side of the cot if he had been placed on a level and stable surface.
4. The possible causes of Z’s death are:
 - a. Sudden death in childhood relating to Z’s Hippocampal abnormality as identified.
 - b. Hypoxia and Hypercarbia as a result of impaired respiration because Z’s face had wedged against the side of a cot/pram or ventilation was otherwise impaired due to malpositioning of the body.
 - c. Milk aspiration into the upper airway leading to choking.
 - d. Another unexplained cause E.288.

5. Establishing the position in which Z was placed to sleep, the surroundings, whether it was tipped and whether it was placed on an uneven surface are all matters for the Court which then influence whether 4a) (Hippocampal abnormality) or 4b) (Hypoxia and Hypercarbia as a result of impaired respiration) is the likeliest cause of Z's death.
6. Milk aspiration into the upper airway leading to choking (4c) is an unlikely cause of death, especially as Z had no history of significant reflux.
7. If it is established that Z was not placed in a safe, flat position or ventilation was otherwise impaired due to the positioning of the body, then 4b) (Hypoxia and Hypercarbia as a result of impaired respiration) is the likeliest cause of Z's death."

ORAL EVIDENCE

30. Where I express any concluded view about the oral evidence that I heard during this judgment, that view has only been formed after a holistic assessment of all of the evidence in this case.

Dr JH

31. I heard first from Dr JH whose statement appears at P232 in the bundle and in addition her notes at M54-58.
32. In her statement she said that on Wednesday, 3 June 2020 she was at home on call when she received a telephone call from the A&E consultant colleague at 21:28 informing her that a two-month-old infant was being brought into hospital in cardiac arrest.

33. She arrived at the A&E department at approximately 21:45 and was presented with Z who was in cardiac arrest. Z's parents were both present at the hospital throughout but due to Covid restrictions they were initially kept in the relatives' room which is separate to the resuscitation area. She kept them fully informed of events and when the decision was made to end resuscitation efforts, she brought both parents through to the resuscitation area so they could hold Z and be with him when resuscitation ceased. He sadly passed away in his mother's arms at 22:52.
34. She spoke with the paternal grandmother CC at approximately 01:00. She described that the grandmother was quite angry and asking to speak with mother and father and the phone was therefore given to the father.
35. In her oral evidence she confirmed her note at M54 that Z appeared to be a "well cared for infant". She said that the baby appeared to be well fed, he was not unkempt and there was no sign of injury. She could recollect that the parents appeared to be genuinely distressed. They were both disorientated and distressed and found it difficult to give times when asked about Z's death. She said people do react in different ways to distress. Their response was well within the typical range. They were going back through the history after Z's death and they were struggling with times. Dr JH said that both herself and Dr T and the multidisciplinary team felt that the discrepancy of one hour in the timings was not uncommon particularly as this was history being given at a distressing time.
36. During the difficult conversation about death with the parents they cooperated with her medical advice and allowed Z to die peacefully. They appeared open and cooperative.
37. There was a SUDIC meeting the next day to discuss any safeguarding issues.
38. Dr JH confirmed that during the resuscitation event the medical staff take a short brief history from the parents. Then after death they go back to the parents to get a full history. She said the parents answered all questions that she asked of them. From her recollection they appeared shocked, upset and distressed but appeared to answer questions to the best of their ability.

39. In her note at M 57 the following is recorded:

“IMP

SUDIC possible aspiration/choking episode.”

40. She confirmed that SUDIC is an acronym for Sudden Unexplained Death in Childhood. She confirmed that there were no signs of injury or trauma and there was nothing in the history to give a pathological cause for the child’s death.

41. She confirmed the note at M 57 that the grandmother was quite angry although she could not remember the specifics.

42. She agreed with the entry in the SUDIC minutes; “Dr JH surprised by reaction of grandmother who turned aggressive considering the news that was being given.” She said that people do react differently but this lady seemed very angry. She confirmed that the unanimous decision at the second SUDIC meeting was that there were no suspicious circumstances.

DR MECROW

43. I then heard from Dr Mecrow who confirmed his full report at E260, the note of expert meeting at E366 and his answer to questions at E387. He confirmed that he had seen the answers to questions provided by the other experts and a short video of Z on a changing mat. None of that altered his opinion.

44. He was asked whether the reference at G248 to the father saying of Z “he’s cold as a stone” when he was on the phone to the 999 operator could be significant? Dr Mecrow said that it was not safe to infer that Z had been dead for some time. There is no research to show how quickly a baby cools. That would require medical staff measuring the rate at which the body temperature falls at the death of an infant which was not proper medical practice.

45. In addition if the person handling the child has warm hands and the child is cooler than the temperature of the adult's hands, then the child could feel cold. Dr Mecrow felt unable to conclude that death had taken place earlier than postulated.
46. He confirmed that Z's weight was within the normal range.
47. He was asked by Ms Fitzharris a hypothetical question, that if Z was put in the cot feet at the bottom and found in the pram with his face at 1 o'clock so that he had not only rolled over but propelled himself up the cot, could that have taken place if the cot was put on a flat surface. Dr Mecrow replied that it was unlikely at Z's age that he would have the strength and muscular coordination to move himself significantly in the cot. Babies in cots tend to wriggle downwards so nurses are taught to place neonates with their feet at the bottom of the cot. Dr Mecrow said he was aware that babies can move down but not it was clear about them moving up. It was difficult to see how Z could move over to the side. He would have to move to a position where his shoulders pressed him into the side. It was unlikely that he had muscular coordination to do that and therefore it was unlikely on a balance of probabilities.
48. Dr Mecrow agreed with Mr Vater that there are three scenarios that the court has to consider:
- 1 death through unknown causes and whether that includes hippocampal irregularities or not?
 - 2 whether Z was placed in a cot in an unsafe sleeping position?
 - 3 whether he arrived at an unsafe sleeping position by accident; namely he either moved himself to a position where he asphyxiated or was put in a position where by his own steam he tipped himself into that position, or by force of gravity?
49. Dr Mecrow agreed that placing a baby in the cot on its side is slightly contrary to advice. He could not say it was negligent parenting.
50. He said that there are likely to be a small number of children at nine weeks who will attempt to roll over and will roll over. The evidence to support that is relatively poor in standard as it is gathered from the social internet conversations. It is very rare or exceptionally rare to have reports of children younger than Z rolling over. Dr

Mecrow said that he could not understand the father's reference to having found Z slightly rolled to the side at D 20. He agreed that if the father's account that they had seen Z roll over before the fatal event was accepted by the court then it was significant.

51. He agreed that caution should be exercised before ruling out a wriggling manoeuvre which took Z slightly up in the cot. If the cot was slightly head down by a few degrees that would make a difference.
52. He said that in hospital, nurses will tip the cot to a head-up position by a little to help the baby stay in the same position with feet at the bottom of the cot. It is safer to keep the feet at the feet end. The reason that that is done is because medical staff are concerned about re-breathing air which can lead to hypoxia and hypercarbia. So they place them at the bottom of the cot so that they cannot slip further down to suffer rebreathing under the blanket.
53. Dr Mecrow agreed that it must be the case that if we have three-week-old babies with the ability to roll over then some babies must have the ability to move up down or to the side. He agreed that it must be possible and he could not exclude it with confidence. Dr Mecrow agreed that it must be the case that if we have three-week-old babies with the ability to roll over then some babies must have the ability to move up, down or to the side. He agreed that it must be possible and he could not exclude it with confidence.
54. The doctor gave evidence of papers that he had located post his written evidence. He said that deaths with no risk factors are relatively rare and suggested that Dr Herron had said very rare. He said he had tried to find out whether there is research on the proportion of babies who do die with no risk factors. He referred to a paper by 'Safe Sleep Scotland' which gave national guidance that very few deaths occur with no risk factors present. Another document called 'Out of Routine' which was a review of SUDIC cases where the children are considered at risk of harm looked at 40 cases. In 38 there was co-sleeping. In 33, there was parental alcohol or drug abuse. This suggested that there were risk factors in the majority of cases.

55. Another study in 2018/19 of 325 such deaths found that there were modifiable factors in only 60% of cases. So in that cohort there were very many more babies who did not have any modifiable factors. The research therefore appears to be at odds with each other. Therefore he said the court needs to consider that there is quite a variation in research and the number of babies who die from SUDIC with no risk factors at all.

DD

56. I heard from DD who is the sister of the paternal great-grandfather B (deceased).

57. She confirmed her written evidence at P 237 and also text messages that had been exchanged between her and CC the paternal grandmother at P 186 et seq.

58. She confirmed that since the time she had written her police statement she and CC had discussed the case. She said CC had asked to speak to her about the case. She maintained that they had not really spoken about the case as she did not want to.

59. She said CC had come to her house the other night and said that she would not be going to court. The witness said that she had told CC that they could not discuss the case but she had said that it was okay to discuss.

60. She had seen her a couple of times in the last couple of months but also around the time that her brother died on several occasions. She said CC always brought up the subject of Z's death. The witness said that when Z died they had discussed it on the phone.

61. CC had turned up at her house on Sunday the previous week. This was unexpected at teatime about 6 PM. She came with her partner EE. They kept ringing the doorbell so eventually the witness opened the door. She agreed that CC had been quite persistent. CC said that she wasn't going to court. Whilst CC had been bothering her to talk about the case the witness did not know if that was because she wanted her to change her account or not. She agreed that she was wary of her niece because she is known to tell lies. When she first spoke to her at the beginning about the baby she had not done

anything about it so the witness contacted the police. She said things had happened and she was wary of speaking to her. "I thought she wanted me to change my account. I thought she'd pressure me to say something that was not true. That was based on years of experience of her telling lies on serious matters or getting others to do it for her."

62. CC had said to her that they could discuss the case and it wasn't a big deal. The witness said that she said she didn't want to talk about the case.
63. CC mentioned about what EE was told by the mother namely that Z had been put in the shed by the mother and he had died there. She said that she thought that CC thought that the witness was not convinced by her account. She felt they wanted her to say more maybe on their side.
64. She agreed that in her statement she had described CC as controlling and manipulative. She agreed that she gets people to do what she wants them to do, that is by being deceitful and misleading. She said that when CC and EE said that they would not give evidence she did not understand it. She said that she was only here because of what they told her. CC said that she was getting a letter off her doctor. EE said nothing. She said there was no reason why they cannot give evidence. She agreed with the suggestion that she felt that she had been hung out to dry and that they had controlled and manipulated her. It had caused her to doubt what they had told her about the circumstances of Z's death. (I can understand how she reached that view in the witness box under cross-examination, however CC and EE did subsequently attend to give evidence and maintained their accounts surrounding the circumstances of Z's death).
65. She said that she was concerned that she had been getting different accounts from Father. She did not know why she had not put that in her text message exchange with CC. She said on one occasion father said that Z was put to bed on his tummy. She did not agree that she was mistaken. She said she heard different versions from CC and from Father. I accept that evidence. I found DD to be a reliable and honest witness who was doing her best to assist the court in very difficult circumstances.

DR

66. I then heard from DR from RA. She described herself as an accredited family mediator and holistic therapist. Before the morning of her evidence, she had not provided a formal statement for these proceedings. She was however referred to E 45 in the bundle within the RA Assessment. This was a midway report. There is what is described as an update from Ms DG well-being coach. In an email dated 13 October 2022, Ms DG wrote to the local authority solicitor saying:

“I have found this email that I sent into RA that has a relation in a small part to those paragraphs 45-E 46 that someone else has written. I don’t write the reports for RA so I don’t know what’s in them. Again I can’t recall this as it was too long ago.” That attaches an email dated 4 October 2021 that she sent to JC at RA. In addition, an email dated 11 November 2021 sent by the witness to BL was produced. In that email the witness wrote:

“she (the mother) stated that she wished she had not lived with father as she thinks her baby would still be alive, she described on that day the baby was placed in his cot and she had to go out?

The mother said that the father didn’t look after him and it was a while before Z was checked sleeping, the mother said it wasn’t her fault Z died.

The mother said the father was always too busy with his grandad.

The mother said the first person the father called after Z had died was his mother as he was so upset. The mother said she did not like his mother she was always interfering.”

67. The witness confirmed that while she had written the email referred to she had not written the entries at E 45 and E 46. She had referred to the email as it seemed to have a link to that conversation. It was made clear that the local authority do not rely on the contents of E 45 and E 46. That is far as this witness is concerned.

68. Whilst she practices certain forms of therapy such as reiki and rewind therapy, she is not a registered therapist. She does not keep notes. If she writes any notes they are destroyed very quickly. She is registered in terms of her work as a mediator. She said that she was not told to keep records by RA.

69. She said that she was aware of confidentiality. She agreed that confidentiality for her clients is at the heart of what she does. She agreed that the client enters thinking it is a safe and confidential space. She said that she would however report safeguarding issues to RA if they arise. She said that RA explain the commission services to the residents. She said that she would have spoken to both parents about confidentiality.
70. In terms of the email of 11 November she said that the email was not written just from memory but with notes.
71. She said before starting work with the mother she did not have access to the cognitive assessment of the mother. She was not aware that the mother has low average verbal comprehension ability. She said however that through work with the mother she was aware that the mother could mis-communicate her views. She agreed with the suggestion made by Mr Twomey KC of the mother that sometimes she does not actually express what she means to say.
72. She said that at the meeting on 4 November 2021, the mother began to talk about bereavement. She agreed with the suggestion that parents who have lost a child may suffer prominent emotions of guilt and anger. Particularly where the death is unexpected and unexplained and they are trying to find an answer to why the baby died. The witness agreed with the suggestion that the mother had anxieties because of the unexpected nature of Z's death and she was blaming herself and the father and that was the context for the discussion. She agreed that in effect the mother was saying that things would have been different if they had not been living in that house. She was saying that in relation to the father he was not there all the time as he had other things to do for example looking after his grandfather. She also agreed that one should see the records as typical wanderings of a bereaved mother coming to terms with the unexplained death of a child within a safe and confidential setting.
73. She was specifically asked about the question mark (?) In the email of 11 November after the phrase "she had to go out". She said that she did not know what the mother meant which is why she had put the ? . However, it was not her role to explore factual accounts with the mother and so she didn't pursue it.

74. She said she was asked by RA whether she had any more information about that, for example did she say where she went and so on. The witness said that she did not provide any further information because she did not know.

LM

75. I then heard from LM who is now a social worker with *another area*. She was the children's social worker but cannot say when that stopped.

76. She said that she had not seen a cognitive assessment in respect of the mother. The following quote from the cognitive assessment was put to her:

“Following Z's birth, KB, social worker visited the family on statutory visits in July 2021 and noted the following: Mother will look to Father before answering any questions. Father will often answer for Mother. The reason for this is not understood, it appears to be a natural rhythm that parents have gotten into. The social worker is raising questions regarding Mother's cognitive functioning. Mother struggles to articulate herself at times, she struggles to find the right words to explain herself.”

77. The social worker said that she did remember having the same sort of feeling. It was difficult to communicate with the mother. The mother knew what she wanted to say but found it difficult to say it. She could misuse words or phrases. A conversation was reported to have taken place on 29 June 2021 when the mother was reported as saying to the social worker “it wasn't even me that found Z in the shed it was Father.” The witness agreed with Mr Twomey KC for the mother that this was a conversation that had taken place three days after the mother had given birth. The social worker confirmed that the mother's emotions would have been all over the place just after the birth. It was also her first birth after losing Z and a time when the local authority was involved. The mother was really emotional. She agreed that the mother may simply have been confused and suffered a slip of the tongue about where Z was found. In my judgment she did; however the slip exposed the truth.

EE

78. I then heard from the paternal grandmother's partner EE. She gave a statement to police which is in the bundle at P 261. She confirmed that the paternal grandmother had had eight children. She did not bring any of them up. The witness said that the paternal grandmother was the victim of a negligent barbaric finding of fact by a former judge. That view was based on what CC had told her. She also said that the grandmother never had a drugs and alcohol problem and again that was based on what she had told her. She denied that the grandmother is controlling or manipulative. She also denied that the grandmother would try to turn the conversation with DD to the death of Z.
79. She was asked about the visit that she and the grandmother paid to DD's house on 9 October 2022. It was put to her that the visit was to pressure DD to change her account. The witness said that she went out of the room so she could not tell the court what went on. She said that she thought that they were both discussing things about the case. However the grandmother was not trying to get DD to change her account. She agreed that DD had said that she did not want to speak about the case. The grandmother did speak about it but the witness maintained that she could not say what had been said. She did say that in the discussion DD did not say anything about the case.
80. She agreed that the grandmother had asked the witness to answer a question about what the mother had said to the witness about where Z had been. The grandmother got the witness to answer that question in front of DD. The witness said that she could not tell the court what the grandmother wanted DD to say.
81. The text message at the P201 was put to the witness. That is a text message sent by the grandmother to DD in which she says:
- “EE is fuming, she feels like those 2 scumbags will lie their way round it all and with B saying last night what money are you talking about CC that's been stolen?... Last Thursday I became angry and upset at what Mother again said about Z being in the shed and that she has absolutely no idea how much hurt she

has caused by what she said, EE has gone out angry and said that she wants to punch the fuck out of the pair of lying bastards over Z and the lies...”

82. It was put to the witness that the text was sent four days after visiting B the paternal great-grandfather and six weeks after Z had died.
83. The witness confirmed that ‘scumbags’ is terminology used by the witness about the parents in her home “under duress”. The witness confirmed that she may have been violent in the past to a former partner and had ended up in prison.
84. It was put to the witness that six weeks after Z had died the witness and the paternal grandmother had gone to the property. The grandmother thought the place was in a state and became angry with the parents. The witness denied that the grandmother lost her temper “as far as she knew.”
85. The witness said that she was outside having a smoke. It probably was a heated exchange of words but she had left after about one minute.
86. Later she accepted that she had gone into the great-grandfathers room with the grandmother and closed the door. She said that the great-grandfather was petrified that the parents were listening in. The grandmother had said to the great-grandfather “you should be able to speak in your own house and stop being worried about what is going on”. The witness said she went outside for a breath of fresh air. She was in the room for two or three minutes. She said that she went out when they were arguing with each other. She said that she was aware that the police were called by neighbours. The police report is at P906:
“IP’s daughter attends at the location and kicks off, shouting so loudly at the IP, IP was seen crying on the floor by neighbours and then he ran out of the house.”
87. The witness said that the paternal great-grandfather had left the house the same time that she did. She did not see B cry. And it was not because the grandmother was shouting so loudly. She did not see or hear shouting directed at the great-grandfather. She did not see him on the floor but later said that she thought that he was probably crying “yeah.”

88. At that point in the proceedings I rose to give the witness a short break. The witness was given the warning that she should not discuss the case with anybody because she was in the middle of giving evidence.

89. When the matter came back into court, counsel for the local authority informed me that in the break that the witness left court and went into a conference room with the grandmother. The children's Guardian had overheard the discussion. Counsel for the local authority had asked the witness to leave the room. Then the grandmother had come into the court room saying that she wanted a solicitor.

90. The witness was asked about this. She agreed that she had gone into the room but just mentioned DD's name. She had also said that she was fuming with the way that she was being interrogated. She said that the grandmother did not get chance to ask her why as counsel for the local authority had come in. The witness said that she had just said DD and said "you will get eaten alive in the court room."

91. The witness did not accept that she was warning the grandmother that she would be challenged about what DD had said to the court. It was put to her that she had tried to forewarn the grandmother about what was said in court. The witness replied that she did not get chance to say anything else.

92. Further reference was made to the text message at P 201 and 202. In particular the grandmother saying in the text:

"why the hell can't my dad support me and do the right thing, and then get those two lowlife shits out of the bungalow..."

93. The witness said that that had been said in the frustration.

94. It was put to the witness that the visit to the home was to get the great-grandfather onsite and get the parents out of the bungalow.

95. The witness replied;

"no that would not work. I told her that outside."

96. It was put to the witness that the alleged conversation with the mother in which the witness had said the mother reported that Z was in the shed was made up.
97. The witness denied that. The witness said that she had asked the mother where was the baby put and the mother had replied “in the shed”. She had said that the father did not like the baby being in the room.
98. Previously the witness said that she had heard that the father was putting Z in the shed. That is what the great-grandfather had told the grandmother.
99. The witness said that the conversation with the mother took place in the bedroom of the bungalow. The witness and the mother were present. The witness said that she just went there to talk to her about where the baby was put as she had suspicions about where Z had been put.
100. She said that the purpose of the visit was not to comfort the mother. The police statement at P262 was put to her:
“I went to sit with mother in her bedroom to have a chat with her to make sure she was okay.” The witness accepted that what she said to police was not true. “I just went in and asked her straight.”
101. She said that she told the grandmother about the conversation when they got back to the house after a while. She was not going to as she did not want to cause upset. The grandmother was very upset and angry. She did not know whether to believe the witness. She seemed to be very annoyed.
102. The witness said that she could not remember if she was there when the grandmother made a statement to the police. She may have been in the room. She did not think that she asked the grandmother about the conversation with the police. She did say “I hope you told the police what mother told me”. The witness said that she thought the grandmother had said that she had. She did not know why there was no mention of it in the grandmother’s first statement.

103. It was put to the witness that she and the grandmother had made this up to get the parents out of the house to which she replied that it was nothing to do with that at all.

104. She was then asked about an email that she had sent to the local authority solicitor on 30 September in which she said:

“did mother say what she did to cause a complete severe break between my wife CC and her son knowing we would act on it? Was she telling the truth?”

She agreed that she had written that.

105. The witness said that she had been worried about domestic abuse, drinking and overfeeding the child by the mother and father.

106. She was asked why was it that having been told that Z had been put in the shed the day after his death, it was only six weeks later that the police were told. Why not tell them earlier? The witness replied that it was not down to her to say anything to the police it was down to the grandmother. The witness said she doesn't use the phone if she can help it.

107. She was then asked about her statement in which she said that she was a witness to a telephone conversation between the grandmother and the father before Z's death. The father was explaining that he couldn't get to sleep because of the baby and that the father said he had been putting the baby in the shed.

108. The witness said that it was not the father it was the mother saying it. She then said “oh no you're right, yeah.”

“He mentioned it a few weeks before about a fortnight before.”

109. The witness was asked why that was not repeated to the police at the time. The witness said it was overlooked due to the commotion. She was then asked about the text at P205 in which the grandmother had said to DD “a few weeks ago mother told EE that she and father had been putting Z in the shed because they couldn't cope with the crying, then she said to me today that Z had died in the shed.”

110. The witness said that she did not know if mother had told them that she and the father had been putting Z in the shed.
111. It was put to the witness that the grandmother had made this up as the witness had never said it before.
112. Overall this was an extremely poor witness. I found her combative, evasive, inconsistent and unreliable. I am however satisfied on balance that she was telling the truth about the conversation with the mother on the day after Z's death. I find that because of the other evidence to support an account that the mother might say such a thing and also that the mother agreed that a conversation had taken place between the two of them at the time.

CC

113. I then heard from the grandmother CC. She confirmed her police statement at P 247 and her second statement at P 249. In addition the text messages at P 186 to 209 and emails that had been sent Z1-31. She also confirmed an additional witness statement that had been provided to the court on the morning of 18 October 2022 during this hearing.
114. That was described as a witness statement re: retraction. The statement reads as follows:
- I provided a witness statement to the police dated 4 June 2020 regarding the care of Z and the circumstances of his death. I provided a witness statement to the police dated 21 July 2020 regarding the care of Z and the circumstances of his death.
- I wish to retract these previous statements. I gave the statements to the police because my partner EE told me that the day after Z died that Mother had told her that baby Z had passed away in the shed. I believe and confirm that the contents of the statements that I have given are true to the best of my knowledge.
- I wish to retract my statements because of the emotional impact of the thought of giving evidence in the presence of my son father and his wife. I am worried about

my son's mental and emotional health as he has told me that he would end his life if the children did not come home and he had enough of losing people. I would give evidence to the court if Father and Mother weren't in the court.

On Sunday, 16 October 2022 we went to their house at approximately 9:30 PM to drop off shoes and gifts for the children. We discussed DD evidence briefly.

Father told me that DD gave evidence when they weren't in the court room."

115. In oral evidence she confirmed that they had gone to the house on 16 October to drop off some shoes for the children together with toys and an item of clothing.

116. She said that she is worried about things, her grandchildren, her son's mental health and being in the situation that they are. She said it comes down to the conversation her partner had with mother the day after Z died and then disclosed to her when they got home and the ripple effect of that.

117. She then had a conversation with her friend an ex-minister and then told the police.

118. She said she was worried about the father and his mental health. It had never been addressed. She said she was fearful that if the children are not returned he will take his own life. She said she had seen her son close to death through anorexia in 2014.

119. She said that on the previous Sunday she had said that she did not want to give evidence.

120. She said she was very sad for the father in the weeks following Z's death. She was then asked about text messages at P 74 and P75. In the texts she says:

"answer me by 12 midnight or I will do as I have said I will do. I have been told I have every right to be fucking angry and it will be sorted. No good unfriending me on Facebook as I will post all this on Mother's friends and family walls so do not ignore me."

121. It was put to her that the text messages were very different to the emotions that she was expressing. She said that the father had admitted stealing thousands out of his grandfather's account. She agreed that it was an angry text sent by an angry person.
122. She was asked about what had happened in the middle of her partner's evidence. She confirmed that her partner had come into the room with her. She said that EE said they had brought up her past and something about DD lying. She did not go further as she was told she could not speak about it.
123. The witness said that she had made it clear that she has not wished to give evidence from day one. She agreed that she may have said to her son "is there anything you can do from your side to prevent me giving evidence."
124. She agreed that she had gone to DD's on 9 October the weekend before.
125. She said that her partner had spoken to DD before they got to the property. When they arrived at the property and rang the bell she did not answer so they kept ringing.
126. She agreed that the case was discussed. She could not remember who brought it up. She might have said that she was not going to court.
127. She said that she did not bring up Z's death every time they met. She said that DD will bring up how the parents treated her father. She suggested that DD has a problem with drink.
128. She was asked about her first witness statement to the police at P 248. She said that this was taken over the telephone by DC DB. She assumed that it was read back to her and confirmed that the officer had read the statement of truth box. The statement was read to her with the warning. She did not know if EE was with her but she might have been present.

129. He was asked why there was no mention of EE's conversation with the mother about Z being found in the shed. She said that she thought EE had made that statement. She related the conversation saying that EE had said to her that when she went into the bedroom she asked her (the mother) where the baby had died as she felt something was not right. The mother said that the baby had died in the shed due to an argument that had been going on. When she woke up she found the baby in the shed. The father had taken the baby into the bedroom.
130. The witness said that she thought that EE had told the police. She said that both she and EE had made statements to the police six weeks later.
131. It was put to her that if EE told her about the baby being found in the shed it would have been in the first police statement. The witness said that on 4 June she had made a telephone call to a reverend and asked her advice. Then she said
"that is the whole reason why the police were rang."
She was then asked then why is it not in the statement . She replied;
" I cannot answer that I rang the reverend."
It was put to her that in the first statement the word 'shed' is used three times. Yet the statement does not refer to Z being in the shed when he died. She replied EE made a statement. It was put to her that EE had not made a statement for another six weeks.
132. The grandmother confirmed that she had a number of concerns about how Z was being looked after.
133. When the father was at hospital, she had a telephone conversation with the father about the pram being brought out of the shed. She said that she had made a call to the great-grandfather in which she said that father wanted her to ask him to remove the pram from the shed in an attempt to hide that from the police. It was put to her that that was not in her statement of 4 June.
134. She said that she had telephoned her father to ask how he was. She said to him
"by the way Father said take the cot out of the shed."

135. Her statement at P251 was put to her:
“Father specifically asked me to do a favour and asked me to contact my dad about taking the pram out of the shed. I asked him why he was worried about this. Father told me that he didn’t want the police to suspect anything with the pram being in the shed.”
136. It was put to her that, if true, in passing that message onto her father she was part of an attempt to cover up evidence from the police. She denied that.
137. The statement of PC AG at P 148 was also put to the witness:
“At approximately 2 AM the grandfather received a call on the landline from his daughter CC. CC had been contacting him throughout the time we were there asking for updates. I could hear the grandfather almost immediately say on the phone “get the pram out of the shed, which shed is it in?”
On hearing this I explained again to him that the address was a scene and he would not be able to remove any property. I then spoke to CC and informed her of the same. She told me that she had been contacted by her son, Z’s father, and he had asked her to remove it from the shed as he did not want anything of Z’s to remain.”
138. It was put to her again that if the second statement is true then she had attempted to move evidence. She said she was going to ring her father anyway. She said father has asked that you get the pram out of the shed. She was just relaying a message from her son to her father.
139. Again PC AG statement was put- that there was no suggestion of concealing evidence.
140. She was then cross-examined about the fact that there was no reference in her first statement to being told that Z was being left in the shed on days leading up to his death. She said that she did mention to police that Z was being put in the shed before he died. She said:
“this whole case is a set up. I feel we need legal representation. I want a proper investigation.”

141. She was asked about the text message at P205. That has been referred to earlier in this judgement. She said that mother had said that to EE a few weeks before 16 July. It was put to her that EE had said nothing about the mother telling her that she and father had been putting Z in the shed because they couldn't cope with crying. That the witness was not telling the truth. She said she was.
142. In dealing with the evidence around the mother telling EE about Z being put in the shed on the day that he died, she said that EE had come in and sat next to her and said that she wanted to tell her something that she would not like. She said that the mother had told her about putting Z in the shed.
143. It was put to her that EE had said that she overheard the grandmother and the father on the telephone when the father told her about putting the baby in the shed. I am not satisfied that there was a conversation between either of the parents and either the grandmother or her partner EE about putting Z in the shed with the door open **before the 3rd June 2022**. The evidence of CC and EE uncorroborated is not sufficient to discharge the burden of proof for the local authority on this issue. It is too inconsistent and in my judgment unreliable to satisfy me on a balance of probabilities.
144. She was asked why she went around the house on 16 July. She said it was because the great-grandfather had said that his food was being contaminated and there were faeces on the bathroom door. He had said that they were trying to kill him and trying to poison him. She said that she was shouting loudly and her neighbour had called the police. She said that her father was getting beaten if he did not give money. She could not remember if she went into the room with EE and the paternal grandfather and shut the door. She maintained that she did not lose her temper with her father because he did not side with her. She said that she shouted at the mother. She said;
“you have destroyed my family.”
145. The text messages at P201 and 202 were put to her referred to earlier in this judgement. She said that EE might have said that. This was an 82-year-old man stuck

in a web with two insects she said. She described the mother as a twisted bitch. It was put to her that the purpose of the visit on 16 July was to get the paternal great-grandfather to support her in get the parents out of the bungalow. It was put that was why a second statement was given to the police. The witness replied “no, if that is the best you can do.”

146. It was put to her that the father had gone to his doctor the day after the visit (M 185) complaining of palpitations as a result of the visit. Four days later, she had given a second statement to the police.

147. She was asked about text messages at P 70 to 76. In the text messages sent to the father she said;

“ don’t ignore what I have said as I swear on FF’s and Nan’s memories if she does not either go to the ATM and start giving me back what she stole then tomorrow it will have to be answered by the fraud team. All transactions are ready to be passed on to them. You have made me look like a fool, thinking it’s okay to take that money, have fucking fun at my expense and knowing Granddad is forgetting stuff, so easy wasn’t it and the police asked me what person would even think about putting a pram in the shed when they are in a panic over their baby, no one would, because the Fuckin pram was already in the shed. I said don’t ignore or I will phone the police tonight to go out to the bungalow instead of waiting for the inspector to come here tomorrow.” Subsequent text

“I said don’t ignore me this time. After what’s happened I at least deserve what I have suggested. Me and EE have struggled with everything. Yet you and mother have had a Fuckin ball at my mums and dads are and my expense, fucking vile. I will contact the local papers as well as the police as you really don’t know how fucking angry I am. Subsequent text

“answer me by 12 midnight or I will do as I have said I will do. I have been told I have every right to be fucking angry and it will be sorted.”

Subsequent text

“no good unfriended me on Facebook as I will post all this on Mother’s friends and family walls so do not ignore me.”

It was put to the witness that she was suggesting that if mother had left the bungalow and paid money then she would not have gone to the police.

148. She was asked again why she did not bring the vital information to the police attention for six weeks. She maintained that she did and that was why she wanted an investigation.
149. On the evening that EE had revealed what the mother had said to her EE said that she had gone into the bedroom after having a cigarette in the backyard. She went to the bedroom to talk to mother about general things. How she was feeling and things like that. The mother had said that the baby had been put in the shed because they had had a row or an argument. The witness could not remember if EE said that father had put his hands around mother's throat. The mother had had a lie down. When she woke up she found the baby deceased in the shed. There was pandemonium. The father had tried to resuscitate the baby.
150. The witness said that she had wanted to telephone the father but EE had said no. There was a lot of shouting, she wanted to go back. She said that EE had restrained her. She rang a retired minister and told her what EE had said. She said that she did not know what to do. The minister had told her to contact the police. She did so. She gave a statement. She agreed that the reason that she telephoned the police was because of what EE had told her. In addition to that father had said that Z was being put in the shed. She wanted to tell the police about that. She said that she thought that she did inform DC DB about what EE had told her. She could not remember.
151. The grandmother was also generally a poor witness. She was emotionally labile. She, like EE, was unnecessarily combative and at times her account lacked consistency and credibility. Nevertheless, in terms of the conversation between EE and the mother on the 4th June 2022 and how that was reported to the mother and her seeking guidance from the retired Reverend, I was left with a powerful conviction in the truth of the core of her account. I do believe her when she says that EE reported back what the mother had told her on the evening of the 4th June 2022 about Z being

placed in the shed and found there on the day before. It is a piece in the jigsaw that comes together to form a complete picture on that issue.

THE MOTHER

152. I then heard from the mother. She confirmed her statements at D1, D7 and her third statement dated 18 October 2022. She also confirmed her police statement at P222 and her interview at P369. Reference was made to the cognitive assessment of the mother prepared by Dr Hurst dated 4 October 2021. At E1 reference was made to the following passage:

“following Z’s birth, KB social worker visited the family on statutory visits in July 2021 and noted the following: “Mother will look to Father before she answering any questions. Father will often answer for Mother. The reason for this is not understood, it appears to be a natural rhythm that parents have gotten into. The social worker is raising questions regarding Mother’s cognitive functioning. Mother struggles to articulate herself at times, she struggles to find the right words to explain herself. Mother struggles to retain information.”

153. The mother agreed that she struggled to articulate herself at times. She struggled to find the right words to express herself. She said that she did sometimes say what she doesn’t mean. She struggles with talking on the telephone. She will always pass the phone to her partner. She can misuse words or phrases. She also finds nearly all the time that people do not answer what she asks.

154. Z was a happy baby. “He was the cutest baby you’ve ever seen.” She loved him so much. She demonstrated what was in my judgement genuine emotion at this point.

155. She said her memory of circumstances around Z’s death was not that good. She said that she had put Z down in his cot after a feed. She had gone to speak to her family at that point. She had put him in the cot with his feet towards the bottom of the cot but not actually touching the bottom end of the cot. Z started to squirm and wriggle and wanted to cry. She gave him his dummy. Father was helping with his grandad’s tea. She went to check on him after 8 PM. She remembered that father had

been giving Z the feed but then passed Z to her as B the great-grandfather wanted him to go into the room to give him a film. The father did so. That is when she was feeding Z. The father came back and they were both wanting Z to settle. She placed him in his cot and then checked him 20 minutes later. Both of them were in the room when she checked Z before 9 PM. She remembered father going outside to collect the washing. She got up and knocked the window and then left the bedroom to go to the toilet.

156. She said that she had phoned the ambulance. It was father who found Z. The first time she saw father with Z was in the bedroom. The father picked Z up and he was in his arm. The first time she saw Z he was next to the cot. She ran into the room after the father had shouted to her that the baby was lifeless. The baby was floppy. The father was checking him to see if there was any life left. He was checking his airways and his eyes. At that point she was holding him. She remembered the father telling her to get the phone to call 999. She got the phone and called an ambulance. After the father checked him he put Z into the crook of his arm and tried to get milk out. She had called for an ambulance whilst the baby was in the crook of his arm. The father took over the 999 call. He had placed Z on the bed. It was all very quick indeed.
157. She said she had read the transcript of the 999 call. She agreed that the lady on the telephone did not tell them to clear the floor for the paramedics.
158. She denied that they had got their heads together in preparing their statements. She said that the father was wrong when in his statement at D 19 paragraph 4 he suggested that when the police came round, they wanted the room clear for the paramedics and therefore he asked his grandfather to move the cart.
159. It was put to her that she and the father had provided different versions of why the carrycot was moved. She said that she did not put the carrycot in the shed before the ambulance arrived and nor did the father.
160. Having gone to hospital in the ambulance, the father in the back and she and the front, they had left hospital at 3:45 AM. Later in her evidence she said they were dropped off at the hotel room. The father could not sleep. She placed a box by the side

of the bed in which there was a teddy bear and a handprint. They were not given a telephone number to speak to anybody. She said that night in the hotel was quiet and their emotions were high. Everything about Z was in the father's mind like a nightmare he said. Flashbacks. They had continued. As the father was the one who found him he sees it. They wanted him back so much and could not believe he'd gone. They were in shock.

161. She could not remember where she was when she gave a statement to the police on 4 June 2020. She agreed that she knew at that stage that the police were interested in where Z was sleeping.
162. She agreed that the body cam footage at 21:48 that evening taken within half an hour of going to hospital shows there was a mug and a bottle on the table. She did not know how they were there. The inference in the question was that if there were a mug and bottle on the table the cot could not have been there at the same time.
163. She agreed that the table on which they would place the pram in the bedroom was smaller than the base of the pram. She maintained that it was safe to do so. She said that the cot did not fall off that table that night. She agreed that there was a PlayStation on the bed but she maintained that there was nobody playing on the PlayStation and having a drink immediately before leaving for hospital this despite the fact that the television was illuminated when the police arrived.
164. She was asked why the cot would be in the way if it was on the table by the wardrobe. The obvious inference being that it was not. She said she did not know. She did not know who had moved it off the table onto the floor. She said father had the baby on his arm so he did not move the cot.
165. She confirmed that the picture at P 283 is of the cot in the shed. She confirmed that that was what Z had been put down to sleep in. The cot was in the bedroom on the night in question on the table. She did not know how it got anywhere else. That in

my judgment cannot be reconciled with the father's account nor her own later oral evidence.

166. She confirmed that reference to a 'Moses basket' in her police statement at D2 was a reference to the cot.
167. The picture at P300 was of the room described as the 'nan's room'. She said on occasions they would leave Z there to cry until he went to sleep. B the great-grandfather did not like the baby crying. They worked hard to stop the noise travelling to B.
168. She confirmed that her family were due to come up and take Z for the weekend so they could have some time alone, just her and Father. She said that they were not finding it hard with an eight-week-old and father was not getting grumpy. She did most of the night feeds and did not know why father did not do them.
169. She said she could not remember if they were arguing about a lack of sex. She said she could not remember if she knew that father went to the GP before Z's death in February. She did not know if she had concerns about his mental health. She might have had some worries about his health and that he was suffering from depression.
170. Throughout her evidence in my judgment the mother used "I don't know" or "I don't remember" as a device to avoid being drawn into difficult topics or questioning that might expose weaknesses in her account. I make that finding even allowing for the cognitive issues identified in the report at E1, the passage of time between events and questioning, the amount of previous questioning, the emotional sequelae of losing a child and with the considerable advantage of having watched her closely during the day of her evidence.
171. She was asked about his medical records at M 197 which suggest that he would go to the toilet for long periods. She said she did not know about this and did not know that it was happening.

172. The three bottles of spirits in their bedroom were father's but they both drank.
173. She was referred to P306 a photograph of what is being called the Nan's room and confirmed that Z would be put in here on the floor in front of the chest of drawers.
174. She was then asked about P280. She confirmed that the blue blanket shown in the picture was over him up to underneath his arms. Also the pram cover was on it. They used to put that on top. He was in the cot with the blanket and the pram cover on it. She did not know how there was a thick fleecy jacket on it. She could not remember if the thick fleecy jacket was used to stop light coming in. Initially she said that she would not put on the jacket over the hood of the pram. She did not know how the thick jacket got into the shed on top of the cot.
175. In the bedroom she could not remember the grandad tripping on the cot. She said she remembered telling B to move the cot which was on the floor next to the doorway of their room. It would be next to the DVD rack shown on P308.
176. She said she was on the telephone to the ambulance at this point. She told B to move the cot and he moved it. He had said he wanted to help. The father told him to move it to outside. That was when B said about the 'first shed'. She said she remembered this in her mind. He said he would put it in the shed.
177. The 999 call was referred to on the basis that she could not be heard to say move the cot during the call. She said it must have been before she rang.
178. She said she saw B pick it up. He would then have had to have carried it through the hall, through the Nan's room through the kitchen and into the shed. She said he had done it before. She was sure he could do that.

179. She denied that father was controlling of B and maintained that the serious allegations made against her and father by DD were not true.
180. She said that EE was the kind of person who leaves the room when an argument starts.
181. She was asked about P402 when she was being questioned by the police in interview about EE saying that she (the mother) had said that Z had been put in the shed. She denied saying that to EE. She said that the cot had been put in the shed but that Z had not died in the shed. She did remember having a conversation with EE in her room. It was about random stuff. EE must have misheard what she said. She said that the cot was in the shed, she did not say that the baby was in the shed.
182. She was also asked about what she had said to LM who spoke to the mother in hospital. She said that on the day LM had given them a 'section 20' and her head was all over the place. She accepted that she had said what LM suggested, namely that it was father who found Z in the shed. However, that was not true. This is important evidence in my judgment. I attach significant weight to this piece of evidence even having made all allowances for the mother's assessed cognitive function and accepting that she can sometimes struggle to make herself understood and sometimes say something she does not mean.
183. She was asked about her police interview at P394 in particular her answer "no, father told B to move the cot, to get it out of the way so the paramedics could come."
184. She said we were panicking. At the time we knew we should not have moved the cot as they would need it for evidence. It was why he asked his mum to ask B to move it. She denied that she and father had discussed it. She said we have not discussed things as we were trying to forget the day. We did not discuss what to put in our statements. We had separate rooms for police interview. The father had not done a separate statement but there was a video of his first statement on body cam.

185. It was put to her that their last statements were saying the same things. She denied discussing all of this before making statements. She agreed that it was a coincidence that the statements were similar. She said we wrote statements in separate solicitors' offices. The father had gone with her to her solicitors but been asked to stay outside.
186. She was asked about her interview at P387 when she said "but this time he decided to roll in his sleep and suffocate himself." She said that father had found him in the cot. There was sick and Z was on his side. She assumed that he was on his side as father had said that he was 'pressed against the cot'. The father told her that he had rolled over on the day he found him. He said when he picked him up, he was lifeless and looked like he was not breathing. He said he was to one side of the cot. The father demonstrated how the head was back into the side and the mother gave a demonstration herself.
187. She was asked about seeing CC and EE the previous Sunday. She said they brought presents for the children. The father did not let them in. CC and father were talking about films. They had also seen them outside the GP surgery. They did not talk about the case.
188. She was asked about Z rolling over. She said that it started a week or two before he died. She saw Z roll over when father spotted it. The father called her over and showed her he was basically rolling. She said I saw he was trying to roll. He was rocking from side to side on his back not all the way onto his side going back and to back and to and she demonstrated this in court. She only saw him 'on his side' when father showed her. She never saw the baby on his side or rollover.
189. The demonstration that she gave was not of a baby rolling onto its side at all. Later in her evidence in response to Mr Vater KC she said that on the occasion that he was moving from side to side she was astonished and could not believe it. This was because he was so small and was doing more than she thought he could. Then in an answer that leading counsel would not have been expecting she said that if Z had rolled over onto his side on 3 June it would have surprised her from what she had seen.

190. She was asked why a new statement had been produced to the court on the morning of her evidence. She said that she had just remembered it. It was put to her that the statement says that she had not told anybody because it was not in line with guidance (paragraph 7 of the statement 18 October 2022). She had failed to be consistent even with her own statement from the night before.
191. She said that she found it hard to discuss her feelings as does Father. She did not know why. She said they try to hide feelings from each other.
192. On the night she felt sad (at this point again in my judgement she showed genuine distress). She said she was emotional and was frightened that he would have gone. She tried so hard. The father was panicking. He was shouting he was screaming. He was all over the place. He did not know what to do. There was lots of shouting noise and panic in the room. She said she had never had such a shocking experience as that. The father and she wanted to try to forget as quickly as they could. Since that night she had spoken to lots of people about what was said. She had spoken to police officers more than once, nurses at hospital, doctors at hospital, social workers more than once, people at RA, DR, lawyers and all over to ½ years.
193. She never wanted to tell anyone about what happened she just wanted to forget. When she speaks she feels sad. She can't move on and grieve if people keep asking them the same questions.
194. She agreed that she was a first-time mum. She thought Z cried like a baby in a normal way for a newborn. B used to complain to the father about Z crying. The father never complained to her about Z crying. When Z cried it made her feel needed. Z slept well and liked food. He was a hungry baby. He would feed and then go 3 to 4 hours before another one. Sometimes at night he would cry for feeds. Sometimes they would have to wake him. He would be put down to sleep 25 to 30 minutes after a bottle. They would cuddle him to sleep. He would then be put in the cot.

195. She confirmed the picture of the table at P276 was the table that the cot was placed on. She did not know who had moved the mug and put other stuff on the table overnight. She did not know who moved the bottles of Jack Daniels.
196. In answer to questions from Ms Edmunds on behalf of the children's guardian she agreed that the medical records of 9 June were accurate and that she had asked the doctor to remove her implant as father and she had spoken about it and they wanted a family.
197. Z was born during lockdown. When he was born they were only allowed to go out for exercise. The bungalow was small. father and she wanted to move out to a bigger house. They wanted space. They wanted B out of the house as it was not best for him as it was damp mouldy and lopsided. Covid stopped them moving out before birth. She said lockdown was hard for them. Z was the firstborn, everything was new and at times it scared her, overwhelmed her and panicked her. The support that they might reasonably expect was not there. Following the birth everything was done on the telephone including midwife and health visitor check ins. She found it difficult on the telephone and not having any face-to-face conversations. She had some after-effects from the birth and it was painful and uncomfortable. She found living like that hard and harder because of B. There was a pressure through how B would respond if Z was crying. If Z was upset B would not talk to them and he would 'run away to DD's'. When that was sorted out he would return home. It did cause tension between her and Father. She said they did have discussions about it which could be 'loud talking'. She never spoke to any health professional about whether putting the cot in the room was a good idea. Her statement of the previous day at paragraph 6 she said she was having problems with stitches and she was in the bathroom longer than expected although her six-week check-up was put to her at M42 which suggested that her scar was healed on 27 May the obvious inference being that there were no stitches.
205. She was asked about P280 and confirmed that the cover is clipped on. However, when he was put to sleep that night she did not know if the cover was clipped on. It is clipped on the cot. When he was put to sleep the cover was on. It was just for extra warmth (the

fact that the outdoor cover was on is more consistent with the child having been put outside in the shed as alleged than the child sleeping in the bedroom.

206. The grey material on the hood is a jacket which is her jacket she said. The jacket is positioned on the hood of the cot. Though she said her jacket was not on the hood when he was put to sleep. She did not know how the jacket came to be on the hood of the cot. I did not believe her on this evidence. She was not telling me the truth.

207. Hearing the father shouting caused her to come out into the bedroom. When she came in she could not remember where the cot was. She did not remember coming into the bedroom and tripping over it. She could not remember moving the cot to get to Z. She had never spoken about why the cot was moved from the table to the floor. Her evidence on this issue was inconsistent and vague. It is a simple straightforward matter to explain how within 30 minutes of Z being taken to hospital police discovered his cot in the shed outside. Whilst leading counsel for the parents have understandably made much of the enormity of the situation for the mother and the father and the obvious high emotions of panic, alarm, distress, and terror, the accounts given by the mother and father on this issue have been inconsistent, vague, implausible and in my view generally lacking in credibility.

208. The grey jacket was used as a cover from the hood to the bottom cover to shade the light for Z to sleep. It was not used to shade the sun. Then in my judgment and evidence of significant importance she said it was never used in the bedroom. On 3 June it was not used that day nor that night. She did not know why it was in that position.

209. He was put outside before 3 June if it was sunny and the grey jacket would be put on the cot.

210. She said she did not know if it looks like someone has pulled the grey jacket back when looking at the picture of the cot in the shed. In my judgment it clearly did. She said the curtains in the bedroom did cut out sunlight half the time.

THE FATHER

211.I then heard from the father. He wished to change two of his statements. D7 he wished to change paragraph 6 to show that it was not correct that mother had phoned for an ambulance immediately as “a bit transpired before that”. He also wished to change paragraph 6 on D8 to remove “I did not know where he was putting Z’s cot at the time” to say that he had already said to his granddad to put the cot in the shed.

Paragraph 4 on D 20 needed to be changed to say that the police did not come around and did not want the room clear for paramedics. His statement said the opposite. Otherwise, he confirmed that the contents of his statements were true. In addition, his interview to police at P3 hundred and 39 was true.

He said that when he was six months old, he went to live with B his grandfather and his Nan. His Nan had died when he was 27.

He described having a difficult relationship with his mother. He thought that she was jealous particularly of the relationship between the father and his Nan and Granddad. She would refer to him as the ‘golden child’. He said that his mother did not like the mother living in the house.

In terms of being a carer for his grandfather he said that he would accompany his grandfather if he went to the shops.

However, his grandfather would buy ready meals and cook them himself. He said he the father would tidy up and did all of his entertaining for him. In particular his grandfather like to watch films. However, he could not operate the DVD player.

212.He described how bedtimes were difficult and that everybody had to stop what they were doing around 10:30 in the evening. They had to be quieter as the grandfather slept from 11 PM.

213.The father said that he did not sleep well and would be awake until the early hours.

214.He described his grandfather as being an independent type of person. He would use the same clothes most days and would wash them himself.

215.He was asked about an issue over money in the grandfather’s accounts. He said one day the grandfather had confronted him as he felt that money had been removed from his

account. Later he had telephoned his auntie J and she said to him that the grandfather's money had all gone.

216.He said that the grandfather was angry. The father said he tried to explain to the grandfather that that was not the only account that he had.

217.He described how becoming a father made him feel normal as he had suffered from anorexia and bulimia for a couple of years. He said that he was up-and-down from 2014 to 2018.

218.He was happy when he discovered that mother was pregnant and that they were ready for Z to come having bought all the necessary equipment.

219.He said that mother did most of the feeds as he tended to his grandad a lot. They shared changing a nappy. Z had cried the amount that he had expected.

220.On the night of Z's death, he said that when he found him his head was tilted to the side and at an angle. He did not know what he was looking at. He was not in the position that he left him. He said his first thought was 'oh my god what is happening'. Z felt cold. He said that the atmosphere once Z had been found was tense and frantic, it was all over the place. Emotions were high and they were all bumping into each other. Suggestions were made all over the place. Nobody was listening, it was chaos. He tried to perform CPR. It was horrible. He did not know what he was doing. It was the worst thing he had ever experienced.

221.He said he had been asked too many times how he found his son. When asked it makes him feel sick to the very stomach, angry and sad.

222.He said the mother was not the same person. They are so miserable inside. What he has been through is immensely painful.

223.He described that the table in the bedroom and the curtain by the window was where the cot was placed. He did not know how the mug and bottle came to be on the brown table shown in the photograph stills from the body cam footage.

224. He said that on a previous occasion before Z died, he had called the mother over to show her what Z was doing in the cot. He was rocking from side to side shifting his body from right to left. He said he did not know the babies of that age could not roll over until he was told that. He had called her over because he wanted her to see him kind of wriggling. This was in my judgment the father blatantly bringing his evidence into line with that of the mother. It was completely inconsistent with what he described in his statement.

225. He was asked about the photograph of the cot in the shed with the fleece jacket over the top part. He said that was the mother's jacket. On the night that Z died, he did not use the jacket as a cover. They would use it on a sunny day to shade his face from the sun **outside**. Again, that is significant evidence in my judgment. In the house jackets were kept behind the porch door in the hallway and sometimes if they took a coat off, they would put it by the side of the bed.

226. It was put to him that the mother had said that she heard the father scream her name and she came in to see the baby in the crook of his arm standing by the cot. He replied that he was by the bed and she was mistaken in saying that he was by the cot. The ambulance arrived very quickly and Z was scooped up quickly and they went in the ambulance to hospital. He agreed that during the 999 call nobody asked the grandfather to put the cot in the shed. He said that mother did ask his grandad to put the cot in the shed. After the grandfather had said to the father 'where you want me to put it?', she had said 'in the shed'.

227. He said that from the moment he picked Z up he screamed for Mother. She came into the room. She saw him with Z at the foot of the bed. He had Z in the crook of his arm. It was at that point that he started to tap him on the back. The mother was watching him. Then he said to the mother "can you just get the cot out of the room and get the phone to ring the ambulance?" The mother moved the cot to the foot of the bed. He said to mother "not there" as he needed to put Z down. The mother moved the cot further away to create space for himself. At this point when the cot was moved again his grandfather came into the room. He was frantic asking what the noise was and what was going on. He asked

what had happened. The father explained. The grandfather said “no God don’t say that, don’t say that”.

228. Then at that point the father asked the grandfather “please move the cot out of the room” as mother had placed it there by the door. The grandfather asked “where do you want it to go?” The father said ‘just get it out of the house with the rest of the stuff into the shed’. He then asked what shed? The mother said “the Star Wars shed”. He said that the grandfather took the cot and went around the corner. At that point mother was ringing 999. Then they were just doing CPR as instructed by the paramedics. He said; “We were doing CPR both of us. I tried again with Z in the crook of my arm. It was at this time milk came out of Z onto the bed. Nothing more happened. No more milk so I placed him on the bed. Then I recall the paramedic asking is he on a flat surface. At that point I took him off the bed and put him back onto the carpet floor.”

229. It was put to him that this account was nonsense. That he had realised that having heard Mother’s evidence and the 999 call there was no credible explanation for how the cot came to be moved from the table to the shed. That he had gone home and thought ‘how will I answer that?’ I agree with the suggestion put by Ms Fitzharris for the local authority. That is exactly why the father gave that evidence. I have considered the range of potential alternative reasons why the father might give this evidence. I have concluded that the real reason is that he is trying to give an account for why the cot came to be found in the shed so soon after Z’s death that also attempts to tie up the various accounts given by the mother and father to explain why that was, when the real reason is that Z had been put in his cot in the shed and that was where he was found in his collapsed state.

230. He was asked “why would you worry about where the cot was when you had found your baby cold and appearing dead.” He had no satisfactory answer.

231. It was put to him that he was hysterical in a mad panic during the 999 call and he said; “yes I remember being all over the place on the telephone.”

232. He agreed later that there was no urgency to move the cot.

233. It was put to him that all he cared about was getting help for his son. These questions served to emphasize the inherent implausibility of his account.

234. He agreed that this was the first time that he had given that explanation. It was put to him that in his statement at D 20 paragraph 7 he had said "I asked the mother to phone an ambulance which would have been around 9:18 PM but I felt it was within seconds of me finding Z in the unresponsive state."

235. He agreed that he did remember that there was an issue that had arisen because he had said that he found Z at 8 PM and yet the ambulance was not telephoned until 9:18 PM. That was why the explanation in paragraph 7 was given. He agreed that he should have changed paragraph 7 as well. His account continued to fall apart.

236. He said he had not read the mother's statement from 19 October 2021. He was asked why he had not said in any of his statements that they would put Z down to sleep in what was known as the Nan's room. He said everything has become jumbled. Again this was an example of how the parents have not been open and honest during investigation.

237. He said he spoke to his mother at 1 AM and asked her to ask his grandad to get the cot out of the shed. He said he did this because when he rang 999, he thought other authorities would come around because potentially a baby was not alive and other authorities would want to come around. He said he did not know that the police were in the house at the time. He knew where the cot was and he knew that that was an issue. He said he that he was not thinking properly simply to tell the police to get it from the shed. He said that he was not trying to move evidence. In my judgment that was absolutely his motive. The photograph at P 284 was put to him. He said that he was not worrying that the cot had tipped up and how that would look. In my judgment he was.

238. He was asked about D 20 paragraph 8. It was put to him that in her evidence the mother had performed a physical demonstration of rocking from side to side and he said that that was what he saw too. It was put to him that that was inconsistent with what he had said in paragraph 8:

“this is not the first time he had rolled over. This was the second and at that time, we did see him roll over.”

239. In response he said a lot of my description is not what I meant to say. I was not trying to convey that he had rolled over before. My description was wrong. He had been caught out in my judgment.

240. He agreed that they had never found Z wriggled up to the top of the pram before. He said he agreed that mother had put him in the cot but he did not see her do that. Paragraph 8 of his statement D 20 was put to him in which he said “I watched her put the child in the cot in a safe way which is feet to the bottom and on his back.”

241. He was asked about the pram cover that could be seen in photograph P282. He said he could not recall if the pram cover was on when mother put him in the cot.

242. He was asked about the account that he gave to Dr JH in which he said that the hood was up on the pram or cot. He agreed. He did not know why he had not mentioned the cover being on and had not mentioned the grey fleecy jacket. He said that someone has put the jacket over the cot when the pram was put in the shed. I do not accept this evidence. I draw the clear inference from the photograph coupled with the mother’s evidence that the grey jacket had been put on the cot in the way that they did if Z was being placed outside. The jacket has not just been put down or thrown onto the cot it has been positioned in the way that it was used outside notwithstanding the fact that the father denied that they had put it on the cot in the same way that the mother and he did if he was being put in the garden. He said that his grandad would not have put it on there and he could not recall who did.

243. It was put to him that there was no credible explanation for the jacket being on the cot in that way unless it was already there when he found Z. I agree with that suggestion.

244. He was asked about the picture that showed a mug and a bottle on the table in the bedroom. He had no idea how they came to be there. He agreed that the PlayStation was

on but again had no idea why. He agreed that there was a PlayStation control on the bed. He agreed that the photograph at Z 141 showed the television on. It also showed a game controller and his wallet on the bed.

245. I simply did not believe this evidence. I draw the inference that he was using the Playstation shortly before Z was found in the shed.

246. He also agreed that there was milk on the bed between the remote control and the edge of the bed.

247. Later in his evidence he said when he came into the bedroom to check on Z, the hood of the cot was up. He said there was no jacket on the hood. He went to check on Z. He saw that something was wrong and pushed the hood up and took him out. There was sick in the cotton around his mouth. After he was tapping on his back he was sick again. He was not much of a sickie baby. This time there was sick in the cot and he could not understand why. When he tapped on his back that brought up sick. As soon as the mother came in she saw him with Z. He was trying to bring up the sick for the first time. She asked him what was going on. He explained what happened. She was frantic. He explained how he found Z on his side with his head at an angle with sick around his mouth. When he saw him in the cot he was more on his arm and shoulder. His head was crooked. His head was back into the side.

248. The cot was full of sick. The smell coming from it was awful. With him having Z and seeing the cot was too distressing. He asked mother if she could get it out of the way. Mother picked it up and put it at the foot of the bed where he was standing. He said to her don't put it there as I have to put Z on the floor. At that point she moved it out of the way to create more space for him. Then seconds later his grandad came through and that is when everything was moved, shortly after his grandfather came through. The father said that when he had shouted the mother had come in very quickly. When she came into the room she spotted Z first and then moved the cot when Z was in his arm, he was sick again. The first time the cot was moved was when Z was in his arms. The mother put it on the floor. The father tapped Z He was sick. When the CPR was not working the only thing was to try on the floor. It was not the lady on the 999 call who told him to do that.

249.He confirmed that he asked the mother to move the cot because of the smell. She did as he asked. She put it at the bottom of the bed and he asked her to move it again. At this point Z was being sick again. It was everywhere. “The smell of sick was just a decision on the spot.” The section from his interview at P344 was then put to him:

“ I’m just going to check on him because I think she was in the toilet and when I went to go and check on him he was rolled over to the side and his head was like on like a screwed angle, only just up like that and there was like sick round his mouth and then instantly I pulled the hood down on the bloody cot and I grabbed and I shouted mother like that, I said: mother the baby like that and she was what like that and we said ring the ambulance and she rang the ambulance and I put him on the floor like that and it was just disgu...-Every- there was sick, sick everywhere and he was on the floor and then there was a nurse or the doctor or paramedic was on the phone to me. She said resuscitate him, leave him on his side, leave him on his side or something like that and we were leaning him on his side and I was... You know, the worst thing is, you know, I’ve just fed him, you know what I mean, I’d just fed him and then suddenly I’ve got put my mouth-put my mouth to his mouth and I’m trying to resuscitating, you know what I mean and he’s sitting there and he’s bringing up sick, you know.”

250.He agreed that he did not tell the police about movement of the cot. He said I can only say that things in my mind and I forget things. Some things I can recall.

251.He was asked about the entry at G 15 a statement of PC AG who said:

“whilst at the scene Sgt JS attended hospital where Z had been taken to by ambulance along with his parents. From here she contacted me and confirmed that the pram cradle we had seen in the shed was in fact the one used for Z to sleep in and Z’s father had confirmed to her that Z had been in the pram cradle and he had put it in the shed before he went to the hospital.”

252.The father said that he did not recall saying that he put in the shed before he went to hospital.

253. The photograph at P280 was put to him which showed the grey jacket around the hood of the cot. He agreed that it would be reasonable to say that it looks as though the jacket has been placed around the hood of the cart. He had not asked anyone to do anything with the grey jacket at any point.

254. When asked what made him think that there was something seriously wrong with Z when he went to check on him he said it was just the position of his body and the angle of his head was at. It was not how they had laid him down. He said the position that he was in was terribly wrong and the angle of his head just did not look natural. It wasn't a normal head position.

255. When asked he was unable to say whether the room was light or dark. He said he could not remember. In describing Z he said "when I saw a bluish tinge I thought something not right."

256. He was asked about his mental health at the time that Z was born. An entry for 4 February 2020 at M 197 was put to him. This was a reference to him trying to empty his bowels as much as possible which would cause him to sit on the toilet for half an hour and then go back again and doing that repeatedly during the day to try to maintain his weight. He said that was what he was going through at that time. He had long-standing mental health issues. He had no help post February until Z was born. When Z was born he was still feeling anxious. He said that there were some matters that he had not disclosed to Mother.

257. He said having a new baby and lack of sleep did not make matters worse. He struggled to sleep. However, that did not bother him. He was then asked about an entry in his medical records for M 167 for 21 September 2021. He had attended at his GP complaining of dyssomnia. He agreed that he did struggle due to X's apnoea alarm going off. He said he did find it difficult if he doesn't get enough sleep. He agreed that babies cry often and it takes a lot of getting used to. He said Z would be put in the Nan's room so he would cry himself to sleep.

258. He said the bungalow was quite a small space. They did not argue about night feeds. They did have less sexual relations and were both under immense pressure for different reasons. I find that as a fact. Z was ratty when tired. He agreed that he had said that he is a little sod when he is going off to sleep.

259. He said that the paternal grandmother was telling the truth about them putting Z in the Nan's room. She was also telling the truth when she said she was not happy. However, she was not telling the truth when she said that they had been putting Z in the shed with the door open. He agreed that there was an entry in his GP records that his mother had telephoned asking for the GP to give her son some help for the bereavement suffered.

260. He agreed that on 4 June EE had spoken to mother and he was not present. He was asked about his mother's account that she had rung him on the evening of 4 June 2020 to say that EE was saying that mother had said that Z had been put in the shed. He said that he did not remember this. He described his mother as being malicious and that she liked to 'play at his heartstrings'. He had asked mother if she said that to EE but mother had said no.

261. He said that he had found Z lifeless in his cot and that everything else that happened had fallen into the background by that appalling picture. It dominated his thoughts that night so that he could not sleep. It haunts him all the time.

262. He agreed that he could be trying to pull all the elements together. He said that nobody had asked about the jacket before giving evidence. He said he was familiar with mother saying something that she does not mean to say.

263. It was put to him that the local authority was saying that he had changed his account and that he could see that the court would find it difficult to rely on what he was saying.

264. In answer to questions from Ms Edmunds he said Covid and lockdown was a struggle for both of them. They had a routine for Z but they were limited to one trip out today. They were first-time parents. Their sleep was disturbed but they had got used to it. Before Covid his grandad could go out of the house and so his routine was affected by it. He

became more agitated. There was a lot for the father to cope with, with his own problems. The mother tried very hard to stop noise travelling to B, he remembered that. When Z started to cry the grandfather would struggle with that. He would shout through the wall 'try to keep the noise down'. The father and the mother would try their best to settle Z down and some nights were not as good as others. The grandfather would make a point of letting them know that he wasn't happy. "When babies cry you cannot control them" the father said. When the grandfather would shout it would wind him up a bit as there was nothing he could do. The mother would get a bit upset with him as his grandad was upset with them. It was just an impossible job. He was trying to please everyone including the mother. He was splitting himself between three people. It was so hard he said. He felt that they did not have the support for problems at that time.

MY FINDINGS

265. At the time Z died there was tension in the mother and father's relationship caused by living with B in overcrowded circumstances and during lockdown, lack of sleep and intimacy and poor mental health on the father's behalf. These matters led to poor communication and arguments between the mother and father, and reached the point where parents were not coping well and needed a break from caring for Z.

266. Contrary to safe sleeping guidelines, aged less than 8 weeks old, Z was sometimes placed on the floor in a room on his own away from his parents, to cry and self-soothe.

267. On the 03.06.20 at around 7.30pm, mother and / or father fed Z, placed him in his carrycot on his back with his feet almost at the bottom and a blanket over the top. They put the carrycot cover on and the carrycot hood up and placed a fleecy jacket over the hood to block out the light and placed Z in the shed unsupervised.

268. In haste or recklessly, the carrycot was placed by mother and / or father on an inappropriate and insecure cardboard box in the shed.

269. The cot tipped head first off the upper surface of the box which caused Z to move on his left side / shoulder and his face was pressed up against the carrycot side with his head in an unnatural and unusual position. This compromised his breathing or ventilation and led to his death from hypoxia and hypercarbia.

270. On the 03.06.20 mother and father failed to adequately supervise Z who was only 8 weeks old and this caused or contributed to his death.

271. The mother and father have colluded to provide a false account of the circumstances around Z's death to treating medics, the police and other professionals. They have not acknowledged any responsibility for the circumstances surrounding Z's death. They have failed to acknowledge the danger that they exposed Z to by;

- a. Putting him in a garden shed alone;
- b. Failing to supervise him adequately;
- c. Putting him in a cot which was placed on top of a cardboard box which was clearly unsuitable as a base for a cot holding a vulnerable 8 week old child;
- d. Putting him on a box that was in any event too small for the cot and the risk that the cot could tip was obvious.

272. In the circumstances they had not shown any insight into their role in Z's death and therefore exposed the children to future risk.

273. In the premises when the local authority commenced these proceedings X and Y were likely to suffer significant physical and emotional harm and that likelihood of significant harm was attributable to the care likely to be given to them if the order were not made, not being what it would be reasonable to expect a parent to give to each of them.

MY REASONS

274. Where I have made findings as to the events of the third and fourth of June 2020 and reached a judgement about what if any were the consequences of the parents' actions, I do so only after taking into account all of the evidence that has been put before me,

stepping back and performing a holistic evaluation of that evidence. In assessing the parents' evidence I bear in mind the observations of Leggatt J in the Gestmin case and in particular Peter Jackson J in the Lancashire case above. I have made every allowance for that and also for the cognitive function of the mother as set out in the cognitive assessment at E1.

275. I also remind myself that the parents have been questioned time and time again about these events by police officers, social workers, parenting assessors, therapists and lawyers. I also bear very much in mind the impact of these processes on their ability to grieve and that it may well have an impact on the quality of their evidence to the court.

276. I also bear in mind that the recollection of one parent may have influenced the recollection of the other and that they may have been influenced by other things they have heard or seen. I also bear in mind the effect of the passage of time since these events took place 2-2 ½ years ago.

277. These events were undoubtedly deeply distressing for the parents and I am quite satisfied that the memories of the events continue to cause them great distress.

278. I remind myself that In *Re (1) A (2) B (3) C (Children)* [2021] EWCA Civ 451 the Court of Appeal identified the need, in a case of alleged lies, that the local authority must identify the following:

- the deliberate lie(s) upon which they sought to rely;
- the significant issue to which it/they related;
- on what basis it could be determined that the only explanation for the lie(s) was guilt; and
- that whilst the principles of the direction will remain the same, they must be tailored to the facts and circumstances of the witness before the court.

279. I accept that the Court has to be particularly careful about its application of the *Lucas* doctrine to inconsistencies in the parents' evidence, running over 2+ years from particularly shocking events, where time and time again they have both been asked to recall them. They might be *unreliable* historians for all sorts of reasons.

280. However, in my judgment, in this case, they are telling lies to conceal the truth. The truth that Z was put in his cot in the garden shed by either the mother or the father to sleep that evening. Having considered all of the evidence in this case I am left with a very powerful conviction that the mother or the father did put Z in his cot in the shed during the early evening of 3 June 2020.

281. I cannot find on balance which of them it was due to the lack of credibility of their evidence and the absence of any extraneous evidence to point my findings in the direction of one rather than the other. However, clearly they, and only they, are in the pool of potential perpetrators. It was either the mother or the father. Whichever of them put Z in the shed that evening, the other must have known that was done. The evidence is clear that this is a very small bungalow where the parents and the grandfather were living on top of each other. It is inherently unlikely that one parent put Z into the shed and the other was oblivious until after Z's collapse.

282. I also draw the inference from the photographic evidence that it is likely that Z was put down in his cot on top of the Star Wars cardboard box that can, for example, be seen in photograph P282. It is unlikely in my judgment that the cot was placed in the manner shown in P282. I do not consider that it is at all likely that Z was placed in his cot in such a dangerous position. I draw the inference that the reason that the cot is in that position is because it was placed in an insecure and unsafe position due to the length of the cot extending significantly beyond the width of the box, such that it had a propensity to fall and did so. Perhaps due to Z's movement, perhaps not. The cot tipping was not just reasonably foreseeable in my judgment, it was a clear and obvious risk to any reasonable parent.

283. It is likely in my judgment that because of its insecure base on top of the box the cot tipped so that the head end of the cot fell backwards leaving it in the position that can be seen on P280. That in turn caused Z to roll over onto his side and his head to be in a position where his head was tilted back and to the side in an unnatural position and his face was pressed against the side of the cot. As a result, he suffered hypoxaemia and hypercarbia.

284. It is significant that there is a grey fleece jacket which in my judgement has clearly been placed on top of the hood of the cot so that if one pulls on the zip that can be seen in P 280 the grey fleece would then extend from the hood across and onto the cover which can also be seen in the photograph and would thereby cover Z from incoming light. The clear impression that I have formed from the photographic evidence is that the position that the grey jacket is in on that photograph is the position it would have been in as a result of somebody peeling back the grey jacket at or in the region of the zip of that jacket, I infer, to check on Z underneath.

285. It was significant in my judgement that the mother in her oral evidence agreed that the grey fleece jacket was employed for only outdoor use. She also agreed that it would run from the hood across and onto the cover.

286. The falling back of the head end of the cot would also provide a consistent explanation for Z ending up in the position described by the father on finding him. That he had rolled over onto his side with his head in an unnatural position (twisted and backwards) and his face against the side of the cot.

287. It is also significant in my judgement that the parents are simply unable to provide a consistent or at least plausible explanation for why the cot came to be in the shed.

288. In her police interview at P394 she said that the father had told B to move the cot to get it out of the way so the paramedics could come.

289. In her statement at D3 in August 2021 the mother had said that the paramedic on the 999 telephone call had told them that they needed to clear any obstacle out of the way so that the paramedics could get to Z quickly and at that point the father had told his grandfather to move the cot and put it out of the way somewhere. It is clear from the recording that that was not said by the paramedic.

290. She also agreed that the body cam footage taken at 21:48 that evening and within half an hour of going to hospital shows a mug and a bottle on the table where the mother and the father say the cot was. Neither is able to explain why they were there. It is their room.

Furthermore, neither the mother or the father can account for the PlayStation on the television being switched on as shown on the same body cam footage.

291. In her oral evidence the mother did not know who had moved the cot from the table onto the floor. She maintained it was safe to put it on that table even though it is smaller than the base of the pram. She maintained that it was the father who told his grandfather to move the cot. She said that she was on the telephone to the ambulance at this point. She told B to move the cot and he moved it. It was the father who said to move it outside. That was when B said about the first shed. When the 999 call was put to her she agreed that she could not be heard to say move the cot during the call and therefore she said it must have been before she telephoned. She said she saw the grandfather pick it up.

292. She accepted saying to the social worker LM on 29 June 2021;
“it wasn’t even me that found Z in the shed it was father.”

293. It has been said on her behalf and by the mother that that was a slip of the tongue or that the mother had misspoken and had not meant to say that.

294. I have had the invaluable opportunity to assess the mother giving evidence over the course of one day. She has been subjected to extensive cross-examination around these issues. Even making allowances for the contents of the report at E1 and having regard to all of the evidence that I have seen and heard, including the very fair evidence of L M herself, I simply do not accept that. In my judgement the mother said that because it was true and accurate. It was a Freudian slip.

295. An example of how the parents were prepared to align their accounts to try to help their case surrounded the issue of whether Z had rolled over before. In the mother’s oral evidence she described a completely different manoeuvre namely a rocking from side to side on his back not going onto his side and then that was promptly copied by the father. Yet that in my judgement was inconsistent with his statement of evidence for this court at D 20 paragraph 8 where in my judgement he sought to convey the clear picture that Z had rolled over before. I find that he had not.

296. It is also significant in my judgement that they confirmed that they would leave Z to cry himself to sleep in the Nan's room only when the mother produced a further statement which was given to me on the morning that she gave her oral evidence. CC had said that in her first statement to police on 4 June 2021.

297. The father's account was in my judgement utterly inconsistent and implausible on this issue. He had originally said at D8 paragraph 6: "I recall the call handler saying the ambulance was on its way and wouldn't be long. She then said that the ambulance was there and to make sure that the room was clear so that the paramedics could enter. At this point, my grandad removed Z's cot. I did not know where he was putting it at the time."

298. When he gave his oral evidence he said that he wished to change paragraph 6 to show that it was not correct that the mother had phoned for an ambulance immediately as things had happened before then. He also wished to change "I did not know where he was putting Z's cot at the time" to say that he had already said to his grandad to put the cot in the shed.

299. Furthermore, the father said in his statement at D 20 paragraph 4 that when the police came round they wanted the room clear for the paramedics and therefore he asked his grandfather to move the cot and put it in the shed where it was found. However, when he gave oral evidence, he said that he wanted to change that to say that the police did not come around and did not want the room clear for paramedics.

300. In his oral evidence he said that from the moment he had picked Z up he screamed for the mother. She came in. He said to the mother can you just get that cot out of the room because of the smell of sick. He said the mother moved the cot to the foot of the bed. He said to the mother "not there" as he needed to put Z down on the floor. The mother moved it further away by the door and then his grandfather came in. The father then said to the grandfather please move the cot out of the room as the mother had placed it there by the door. The grandfather asked "where do you want it to go?". The father said just get it out of the house with the rest of the stuff into the shed. The grandfather then asked

which shed. (There was more than one). It was the mother who said put it in the Star Wars shed. The grandfather took the cot.

301. Therefore, not only are the accounts of the mother and father as to how the cot came to be in the shed variable and riddled with inconsistency, but I also find the latest account of the father given from the witness box to be inherently unlikely and implausible.

302. I have had the discomfort but advantage of listening to the recording of the 999 call. The father sounds distressed, desperate, hysterical and in total panic. In my judgement it is inherently improbable that he would have focused on getting the cot out of the room in the way described before the emergency services were contacted. It is highly unlikely in my judgement that he would have had any focus on the smell of sick rather than the desperate plight of his son whom he clearly believed to be in the most serious peril.

303. It is also significant in my judgement that at 1 AM on the morning of 4 June 2020, while speaking to his mother on the telephone from hospital he asked her to ask B his grandfather to move the cot out of the shed. In his oral evidence she said that that was because when he rang 999 he thought other authorities would come around because potentially a baby was not alive. He said he did not know that the police were in the house at the time. He knew where the cot was, and he knew that there was an issue. He said he was not thinking properly and he could simply have told the police to get it from the shed. He denied that he was trying to move evidence. I did not believe him on this evidence. This account I find to be inherently implausible.

304. The written evidence of his mother CC to the police at P 251, written statement given on 21 July 2020 was:

“Father told me that he didn’t want the police to suspect anything with the pram being in the shed.”

305. On a balance of probability, CC was telling me the truth in that written evidence. The father was concerned about the police finding the cot in the shed and that is why he asked his mother to ask the grandfather to move the cot at 1 AM when he was at hospital just two hours after his son had been pronounced dead. In my judgement his attention would

not have turned to that issue unless it was, potentially at least, very important. Whilst I have taken the evidence of PC AG into account, I consider it unlikely that at 1am he was giving a direction via his mother to his grandfather to take the cot out of the shed because he did not want anything of Z's to remain. I find that to be inherently unlikely.

306. It is more likely that the mother was coming up with an alternative reason to satisfy the police officer that it was not to move evidence.

307. I found CC and her evidence to be a dichotomy. On the one hand she spoke at times of great concern for her son and was able to articulate, what in my judgment, was genuine concern for his well-being. Evidence of that was her contacting his GP shortly after Z's death to ask for help for him. Yet at other times when on the issue of taking the grandfather's money she could become easily enraged and emotionally labile, speaking at times with a venom towards the mother in particular and the father. That rage is well demonstrated by the text messages.

308. I have been exercised by why CC did not in my judgement inform the police officer on the telephone of the conversation that EE said she had, and I find that she had, with the mother on 4th June, about Z being out in the shed. In my judgment, for whatever reason, she chose not to inform the police on that occasion and waited until the 21st July some 6 weeks later to inform the police. It is likely that relations between the grandmother and the mother and father had become so toxic that the grandmother decided to inform the authorities then, probably because the mother and father would not do as she demanded in her texts.

309. I have also considered the circumstances surrounding the mother and the father at the time of these tragic events. The father clearly had a history of significant mental health issues, anorexia and bulimia. There was an entry for his GP records in February 2020 which show that he would sit for long periods of time on the toilet in attempt to evacuate his bowels. He confirmed that he had had no help post February until Z was born and that when Z was born he was still feeling anxious.

310.They had a new baby and the lack of sleep impacted upon them. It took a lot of getting used to. That was why Z would be put in the Nan's room so that he would cry himself to sleep.

311.In addition, the bungalow was a small space and they lived with his grandfather. The grandfather would tell than to keep the noise down if the baby was crying and it was time for the grandfather to sleep. That put the parents in particular the father under pressure. They felt under pressure.

312.He also described Z as being ratty when he was tired. He would be a "little sod" when he was going off to sleep.

313.The couple were also suffering from disagreements about reduced intimacy with each other.

314.The father described how Covid and lockdown was a struggle for both of them. They were limited to one trip out of the small bungalow per day. They were first-time parents.

315.The parents suffered a sense of lack of control because they could not stop Z's crying. When the grandfather would shout it would wind him up.

316.The father felt that he was trying to please everyone and splitting himself between those competing needs.

317.The parents did not feel that they had any proper support. They said that there were no face-to-face visits from the health visitor or midwife everything was on the telephone.

318.The grandfather also required a level of care which was provided by the father.

319.They had no regular family support available.

320.I agree with the submission of counsel for the Guardian that this was a pressure cooker environment especially for the father.

321.In terms of causation, I have kept very firmly in my mind the range of possible reasons for Z's death set out in the joint statement of the medical experts. I have also noted the conclusions of the Post Mortem and the reports of Dr Du Plessis, Dr Johnson and originally Dr McPartland. I have also considered the answers to questions provided by all expert further to their reports.

322.However, it is clear that all felt handicapped by not knowing the full circumstances of the death which have now been the subject of an exhaustive enquiry by the Family Court over many days where the evidence has been scrutinised by teams of lawyers and all before me. This is not a linear question requiring a linear analysis. This is a conclusion that I reach having performed a holistic analysis of all the evidence both medical and non-medical. The pieces of the jigsaw do in my judgment fit best together with my finding that Z died as a result of his cot falling backwards which caused him to roll onto his side with his head twisted back and to the side "in an unnatural position" (per the father) with his face against the side of the cot. This caused him to suffer hypoxia and hypercarbia which caused his collapse and subsequent death. I recognise that it is possible that Z died as a result of;

- a. sudden death in childhood relating to Z's hippocampal abnormality;
- b. milk aspiration into the upper airway leading to choking;
- c. another unexplained cause,

However, these are all only possibilities but improbable in my judgment.

323.In my judgment the proximate causes of Z's death were hypoxia and hypercarbia because of the following;

- a. The link in time and space of the neglectful act of placing Z in his cot outside in the shed insecurely and inappropriately placed on a cardboard box that was too small;
- b. which as I find then tipped up head first;
- c. together with the evidence of how Z presented when the father first found him;

- d. the evidence of Dr Mecrow (which I accept) that it is possible but unlikely that someone of Z's age could manoeuvre themselves into that position;
- e. the determined but doomed attempts of the mother and father to distance Z from the shed,
- f. all weave together in my judgment formation to make that the most likely and probable cause of his death.

324. The local authority has not however satisfied me on a balance of probabilities that Z was being put in the shed with the door open before his death on the 3rd June 2020. The local authority rely on the evidence of CC and EE to prove that. The inconsistencies in their evidence around this issue have been set out earlier in this judgment. For example, these two accounts:

- a) EE at P205 said that a few weeks ago the mother told EE that she and the father had been leaving Z in the shed; and
- b) In her police statement EE said it was CC who was told on the telephone, not by the mother but by the father that he was leaving Z in shed P262.

325. There is no extraneous evidence that the local authority can point to, to support what CC and EE said on this issue, (unlike Z being put in the shed on 3rd June 2020). The court has a number of reasons for concern about their credibility on this allegation.

326. The chronology set out by counsel for the parents in their written closing submissions is, I agree, instructive in assessing the evidence of CC and EE. It would be unsafe in my judgment to find that the mother and father were putting Z in the shed before the 3rd June 2022 based only on the evidence of CC and EE.

327. This judgment will come as a crushing blow for the parents. They have already had to cope with the loss of Z and now having avoided any finding by a court of blame in the last two years, are suddenly confronted by such a finding. In the hope that it mitigates the devastation for them, I fully accept that they did not intend to cause Z any harm at all. Quite the contrary. They were searching for peace and quiet in a pressure cooker situation and made very bad choices. The error was to place the cot on an under-sized, insecure and unstable box for a base and then to leave him unattended during the evening in a garden

shed. That was neglectful. It was not deliberate harm nor was it borne out of any loss of love for their child. This child appeared well-nourished and there were no signs of any injuries, current or past. They have paid and continue to pay a heavy price. They will need a lot of professional support moving forwards, not least to deal with their grief.

His Honour Judge Steven Parker

31st October 2022