IN THE LIVERPOOL FAMILY COURT

Case No: LV20C02369

Courtroom No. 15

35 Vernon Street
Liverpool
L2 2BX

Tuesday, 18th January 2022

Before:
HIS HONOUR JUDGE PARKER
(Sitting as a Judge of the High Court
Pursuant to section 9(1) Senior Courts Act 1981)

B E T W E E N:

LOCAL AUTHORITY

and

A, B, D

MISS J A CHEETHAM QC and MISS BLAND appeared on behalf of the Applicant
MISS K BURNELL QC and MISS HARRISON appeared on behalf of the Respondent Mother
MISS G M TAYLOR QC and MISS EDMUNDS appeared on behalf of the Respondent Father
MISS GREENWOOD and MISS GOSLING appeared on behalf of the Child through their Guardian

JUDGMENT
(For Approval)

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This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with.

Failure to do so will be a contempt of court.

HHJ PARKER:

1. I am dealing with a child called D who was born on [redacted]. He appears through the Children's Guardian, C and is represented by Ms Greenwood and Ms Gosling. The Local Authority is represented by Ms Cheetham, Queen's Counsel and Miss Bland. The mother is A who is represented by Ms Burnell, Queen's Counsel and Miss Harrison. The father is B represented by Miss Taylor, Queen's Counsel and Miss Edmunds.
2. The matter is listed for a finding of fact hearing. This is a tragic case. D's sibling, E, was born on [redacted]. At 4.57am on 22 July 2020 a telephone call was made to the ambulance service by the mother. An ambulance was dispatched to the address and the police attended. At 5.02am paramedics attended at the address of the mother and father. When paramedics gained access they were taken to the living room where E lay. She was taken into the ambulance where treatment began. E was admitted to the paediatric intensive care unit following what was reported as an unexpected collapse and subsequent cardiorespiratory arrest at home. On arrival she was breathing on her own and placed in an incubator.
3. The recorded history given by the mother to the paediatric consultant, Dr F was that E had been well on the Monday and Tuesday prior to collapse in the early hours of the morning of Wednesday. She had been active and alert on Tuesday morning. Towards the afternoon she had become quite tired; she was not taking her bottle as well as previously, she had her last feed at 10pm downstairs when she took approximately three to four ounces of milk. She was put down in her Moses basket and she was then brought upstairs in the Moses basket to the parents' room when the parents were ready for bed; the mother reported this was shortly after 10pm.
4. E woke up at approximately three to 3.30am; it was the father's turn to do the night feed, the father brought E downstairs in the Moses basket which was normal routine, subsequently the mother was awoken by the father, asking her to come and look at E. The mother came downstairs. E felt cold. The father told the mother to telephone for an ambulance which she did.
5. There is no dispute that E had suffered the following injuries: skull fractures; two left-sided skull fractures, caused by a blunt force impact to the left side of the head; bruising, post-mortem E was found to have two adjacent areas of bruising to the lower occipital scalp measuring up to 2cm across and with an area of 5cm by 2cm area of flame type

haemorrhages to the periosteum of the left side of the occipital bone; brain and spinal cord injuries; a fatal brain injury comprising of global hypoxic ischaemic brain injury caused by an initial serious head injury, precipitating a cardio respiratory arrest; hypoxic ischaemic myelopathy; brain swelling; acute multi compartmental subdural haemorrhage; acute fresh subdural bleeding of less than 48 hours; multi compartmental bleeds including shallow but extensive subdural bleeding over both halves of the forebrain and a further extension of subdural blood along the falx; acute cranial subarachnoid haemorrhage; spinal subdural haemorrhage; spinal nerve root bleeds; nerve root axonal injury; evidence of limited old spinal epidural haemorrhage.

Eye injuries

6. Extensive bilateral multi layered preretinal, intraretinal and subretinal haemorrhages, extending from the posterior pole to the periphery of the eyes, including areas of haemorrhagic, retinoschisis, bilateral optic nerve sheath haemorrhage predominantly subdural with additional intradural haemorrhage and bleeding into orbital fat; bilateral, moderate peripapillary scleral haemorrhage at the circle of the Zinn-Haller, at the optic nerve scleral junction; mixed active chronic inflammatory cell reaction to areas of retinal and optic nerve sheath bleeding; a few tiny specs of pearl stain positivity in the peripheral retina and posterior right optic nerve sheath but well developed retinal or optic nerve sheath, hemosiderin laden macrophages are not seen.

Bruising

7. Fresh bruising to the shoulder.

Rib fractures

8. Rib fractures identified from imaging taken on 22 July showed a healing fracture of the left seventh rib laterally; healing fracture of the left 11th rib posteriorly; healing fracture of the left 12th rib anteriorly; healing fracture of the right seventh rib laterally; healing fracture of the right 11th rib posteriorly; healing fracture of the right 12th rib posteriorly; a total of 53 rib fractures, 29 on the right, 14 anterior, two lateral and 13 posterior or posterolateral and 24 on the left, 13 anterior, one lateral and 10 posterior or posterolateral; four of the fractures were said to be re-fractures, two on the right, two on the left and identified at post-mortem.

9. In terms of the individual rib injuries, right ribs. A partial fracture at the anterior aspect of the right first rib sustained within two days of death; a complete fracture at the posterolateral aspect of the right first rib sustained three to six days before death; a very small fracture at the anterior aspect of the right second rib sustained within two days of

death; a small fracture at the anterior aspect of the right third rib sustained within two days of death; a small fracture at the posterior aspect of the right third rib sustained within two days of death; fractures at the anterior aspect of the right fourth rib sustained within two days of death; fracture at the anterior aspect of the right fifth rib sustained within two days of death; a partial fracture at the posterior aspect of the right fifth rib sustained within two days of death; fractures at the anterior aspect of the right sixth rib sustained within two days of death; a partial fracture of the posterior aspect of the right sixth rib sustained three to six days before death; a fracture at the anterior aspect of the right seventh rib sustained within two days of death; a fracture at the posterior aspect of the right seventh rib sustained six to thirteen days before death and a re-fracture three to six days before death; a fracture at the anterior aspect of the right eighth rib sustained within two days of death and a probable earlier fracture three to six days before death; a partial fracture at the posterior aspect of the right eighth rib sustained six to twelve days before death; a fracture at the anterior aspect of the right ninth rib sustained within two days of death and a probable earlier fracture three to six days before death; a fracture at the posterior aspect of the right ninth rib sustained six to twelve days before death; a fracture at the anterior aspect of the right 10th rib sustained one to three days before death; a fracture at the posterior aspect of the right 10th rib sustained three to six days before death and a possible earlier fracture at this site; a partial fracture at the anterior aspect of the right 11th rib sustained three to six days before death; a fracture at the anterior aspect of the right 12th rib sustained three to six days before death.

Left ribs

10. A fracture at the anterior aspect of the left first rib sustained three to six days before death; a fracture at the anterior aspect of the left second rib sustained within two days of death; a very small fracture at the posterior aspect of the left second rib sustained within two days of death; a fracture at the anterior aspect of the left third rib sustained within two days of death; a fracture at the anterior aspect of the left fourth rib sustained within two days of death; a very small fracture at the posterior aspect of the left fourth rib sustained within two days of death; a fracture at the anterior aspect of the left fifth rib sustained three to six days before death; a fracture at the anterior aspect of the left sixth rib sustained three to six days before death; a fracture at the posterior aspect of the left sixth rib sustained one to three days before death and an adjacent additional fractures sustained six to twelve days before death; a fracture at the anterior aspect of the left seventh rib sustained three to six days

before death; a fracture at the posterior aspect of the left seventh rib sustained three to six days before death; a fracture at the anterior aspect of the left eighth rib sustained three to six days before death; a fracture at the posterior aspect of the left eighth rib sustained three to six days before death; a fracture at the anterior aspect of the left ninth rib sustained three to six days before death; a fracture at the posterior aspect of the left ninth rib sustained three to six days before death; a fracture at the anterior aspect of the left tenth rib sustained three to six days before death and an adjacent additional fracture sustained six to twelve days before death; a fracture at the posterior aspect of the left 10th rib sustained three to six days before death and a fracture at the anterior aspect of the left 11th rib sustained three to six days before death.

11. The fractures were suffered by E within at least four different timeframes, up to three days prior to her death, between three and six days prior to her death, between five and thirteen days prior to her death and six to twelve weeks before death. Those which were suffered in the fourth category, six to twelve weeks before death, may or may not have been caused at birth. The Local Authority does not seek a positive finding against either parent in respect of those injuries as they consider it disproportionate to do so in light of the difference of opinion between Dr G and Dr H. The others, they say, were all inflicted.

12. There was an issue at the start of the hearing or partway into the hearing, I should say, the Children's Guardian made an application for the fourth bracket of rib fractures to be the subject of investigation by the Court and I gave a judgment refusing that application on the day that the application was made.

13. As a result of injuries that she suffered on 22 July 2020 E sadly died on 23 July 2020. The father has been convicted of manslaughter at the Crown Court and has been sentenced to 13 years' imprisonment; the mother was acquitted of all charges.

The issues

14. The Local Authority case in respect of the perpetration of the injuries is that the brain and spinal injuries were caused by E's father shaking her violently; the eye injuries were caused as a result of the severe head trauma inflicted on E by her father within minutes of her collapse. The rib fractures; at all times E was in the care of her mother and/or her father, E's father inflicted those injuries by squeezing and compressing E's ribcage in an excessive way wholly outside the range of reasonable handling of a baby of E's age. The skull fractures were inflicted by the father throwing or hitting E against a hard surface with extreme force within minutes of her collapse.

15. Further the Local Authority seeks the following findings in respect of the injuries: Each of the injuries would have caused E extreme pain and discomfort. Given the number of injuries and their timing a reasonable carer would have realised that E was unwell and sought medical attention for her.

16. In respect of the wider picture, the Local Authority seeks to prove the following: Following E's birth the mother suffered a deterioration in her mental health which included experiencing increased auditory hallucinations, frustration and aggression towards professionals and the father. Neither parent sought additional help or support in relation to the care of the children during this period. Both parents had been users of cannabis whilst they have had care of the children; both parents have been involved in the supply of cannabis for profit.

17. The mother was aware that E would become distressed when being winded by her father but did not intervene during that process. On those occasions when E was distressed when being handled by her father, this was as a result of rib injuries which he had inflicted. The mother was unable or unwilling to recognise that the level of distress caused to E on those occasions was outside the range of normal responses to winding. The mother was aware that E was distressed on the morning of 22 July 2020 but did not intervene in the care being given to E by her father. The mother was unable to recognise that E was apnoeic, pulseless and very blue on the morning of 22 July 2020 and unable to recognise that medical assistance was required. She called an ambulance because this was suggested by the father. The mother was unable to recognise the urgency of the need for medical treatment after the ambulance had arrived and delayed the ambulance whilst she changed her leggings and found her shoes.

18. D was cared for exclusively by his parents and was present in the house when the injuries detailed above were inflicted on E. The mother has been responsible for caring for D during periods when she has suffered mental ill health, she has been irritable and has shouted and thrown things.

19. At the time that E suffered her injuries, D was observed to be dirty and the home conditions were poor. D has been subjected to the permanent loss of his sibling because she was killed by his father. He will suffer ongoing emotional and psychological harm as a result of the killing.

<u>The mother's case</u>

20. The mother has consistently maintained that she has not caused injuries to E. She has not

witnessed or overhead the father doing anything that would have caused her to think that he had hurt E. She accepts the medical evidence regarding the extent, timing and causation of the injuries and she believes that the injuries were caused by the father. She denies allegations of failing to protect E and failing to seek medical treatment or delaying medical treatment for E. There were a number of professionals who were involved with the family and who saw E during her short life and no-one raised any concerns that she had been injured or was behaving in such a way that medical attention should be sought.

The father's case

21. The father accepts that E has sustained the injuries set out above. He does not accept that he caused any of the fractures or other injuries to E. He maintains that following E's birth, the mother suffered a deterioration in her mental health which included experiencing increased auditory hallucinations, frustration and aggression towards professionals and himself. Neither parent sought additional help or support in relation to the care of the children during this period.

22. The father confirms that he has been found guilty of manslaughter in relation to the death of E and has been sentenced to a 13-year custodial sentence of which he must serve a minimum of seven years and seven months. He says that he understands that the family court will not go behind the conviction without being satisfied that it has sufficient evidence that the conviction was erroneous. Whereas the burden of going behind a criminal conviction for manslaughter lies with the father he argues that the findings that the Court is invited to make beyond this should be treated differently, the burden lies with the Local Authority to establish, on a balance of probabilities, that Mr B caused the earlier injuries to E. He had not been convicted of that. He suggested the fact of the manslaughter conviction should not lead the Court to the conclusion that he is the parent who caused the earlier rib fractures to E.

23. The family court takes a wholly different approach to the evidence before it when considering findings of fact. The Court has had the benefit of the wider canvas of evidence about these children and their parents. The evidence in the criminal trial focused exclusively on whether it was, and I should say there is a mistake in the closing submissions of counsel for the father in saying that the evidence in the criminal trial focused exclusively on whether it was more probable than not that Mr B has killed his child. Of course in the Crown Court the jury would have to be sure that he killed his child.(***see note at the end of this judgment***). There was little or no exploration or testing of the wider background

evidence and the details of what the family experienced in June/July 2020 before E died.

24. It is also argued on the father's behalf that he has had the benefit of an intermediary throughout his trial. It has proved invaluable to him and those representing him to have this special measure. It has enabled the Court to be satisfied that he could participate effectively and fairly. Statements and relevant evidence have all been read out to Mr B. Great care has been taken in the preparation of questions that were put to him in his oral evidence. All advocates had the support of the intermediary to do this and it is argued that none of that happened in the criminal trial.

25. The father does not accept the conviction and maintains that he caused no injury to E. He says that he is going to appeal his conviction after this hearing. He maintains that the concerns that he raised within his initial statement that if he did not cause the injuries to E it must have been the mother that did so. They were the only two people caring for E and if it was not him it must have been her. He does not agree to a return of D to the mother's care, he would be extremely concerned for D's safety, he says, if D was returned to the mother as he believes that the mother caused the injuries to E and therefore D would be at risk.

The law

26. I am grateful to all counsel for the agreed legal framework set out in the document sent to me by Miss Cheetham, Queen's Counsel. I have applied those principles in reaching this judgment. That document can be attached to any transcript of this judgment *if necessary*.

27. I deal with some particular and additional matters of legal principle.

The effect of the father's criminal conviction for manslaughter.

28. The relevant parts of Section 11 of the Civil Evidence Act 1968 provide as follows:

> "In any civil proceedings, the fact that a person has been convicted of an offence by or before any court in the United Kingdom shall be admissible in evidence for the purpose or proving, where to do so is relevant to any issue in those proceedings, that he committed that offence whether he was so convicted upon a plea of guilty or otherwise and whether or not he is a party to the civil proceedings but no conviction other than a subsisting one shall be admissible in evidence by virtue of this section".
> Subsection two, "In any civil proceedings in which, by virtue of this section, a person is proved to have been convicted of an offence by or before any court in the United Kingdom, he should be taken to have committed that offence unless the contrary is proved".

29. This provision was considered by the House of Lords in the case of *Hunter v Chief Constable of West Midlands Police* [1982] AC 529 at page 529. At page 544 Lord Diplock, said this:

> "This wide variety of circumstances in which section 11 may be applicable

> includes some in which justice would require that no fetters should be imposed upon the means by which a defendant may rebut the statutory presumption that a person committed the offence of which he has been convicted by a court of competent jurisdiction. In particular I respectfully find myself unable to agree with Lord Denning, Master of the Rolls, that the only way in which a defendant can do so is by showing that the conviction was obtained by fraud or collusion, or by adducing fresh evidence (which he could not have obtained by reasonable diligence before) which is conclusive of his innocence. The burden of proof of "the contrary" that lies upon a defendant under section 11 is the ordinary burden in a civil action: proof on a balance of probabilities; although in the face of a conviction after a full hearing this is likely to be an uphill task".

30. The father has been convicted of the manslaughter of E. Section 11 of the Civil Evidence Act means that the fact that the father has been convicted of the offence is proof that he committed it unless the contrary is proven. The burden of proof, therefore, shifts to the father to prove on a balance of probability that he did not cause the death of E by inflicting the fatal injuries upon her.

31. As Sir Andrew McFarlane, president of the family division stated in *Re H-N and Others* [2021] EWCA Civ 448, paragraph 73:

> "It follows therefore that a Family judge making a finding on the balance of probabilities is not required to decide, and does not decide, whether a criminal offence has been proved to the criminal standard. Any use of familiar terms should not give the impression that the abusive parent has been convicted by a criminal court. Equally where an abusive parent has in fact been convicted of a relevant offence (e.g. a sexual or violent offence against the other parent), the conviction is proof of the fact that he or she committed the offence 'unless the contrary is proved".

32. The approach of the Court in a care case where there has been a previous conviction and the relevance of any sentencing remarks in the family process was considered by Lieven J in *A Local Authority v C*, [2019] EWHC 1782 (Fam) at page 1,782 at paragraph 19 she said this:

> "The problem in this regard with a criminal verdict is that there are no findings of fact and it is not known what matters asserted by the prosecution were accepted by the jury. The other complicating factor in a criminal verdict is the approach I should take to the judge's sentencing remarks given that the judge is not the decision maker and his or her remarks are certainly not findings of fact by the jury. My analysis of this case law in the context of this case is as follows: firstly, having accepted the criminal conviction pursuant to section 11 of the Civil Evidence Act, it seems to me that I am bound by the principle of issue estoppel to find that the father intended to kill or cause serious harm to the mother. Although Hale J (as she then was) doubted the application of the principle of issue estoppel in a Children Act

case, that was in the context of previous findings in civil litigation. In my view, issue estoppel must apply to the fundamental elements of the criminal conviction, once I have decided to accept the conviction. Although a normal requirement of issue estoppel is that the parties must be the same - and they are not the same in a criminal case, where of course the State prosecutes – and a civil Children Act case, given the particular nature of the criminal prosecution, I do not consider that that distinction applies. In order for the jury to have decided that the father was guilty of murder they had to find he intended to kill or cause very serious harm to the mother. Therefore, once I have accepted – as I do – that the father murdered the mother, it follows that I also find that he intended to kill her or cause her very serious harm on the night of [date redacted]. I therefore reject any suggestion that the father did not intend to harm her.

Secondly, once I have accepted the father had the requisite intention, then as a matter of judgment on the facts of the particular case, it seems to me that the jury must have rejected the father's account of what happened after the children went to sleep. I will refer to this in more detail below. However, I reach this conclusion as a matter of judgment, rather than on the basis of the legal principle of issue estoppel: The Local Authority rely on the Judge's sentencing remarks, which I will set out below. Those remarks do not, in my view, give rise to an issue estoppel; in other words, they do not bind me because they are not findings by the jury, and they, the jury, did not necessarily – although they very well may have in practice – formed part of the verdict. However, they are something I give a very great deal of weight to. The Judge heard days of evidence, including forensic evidence, and of other witnesses, none of which I have heard. He is a highly experienced criminal judge who reached a view on the evidence, to which it is appropriate I should give very great weight.

Thirdly, however, to the degree the Local Authority rely on evidence that was presented to the jury by the prosecution about the father's controlling and jealous behaviour to the mother before [date redacted], I take a different approach. Plainly no issue estoppel arises in relation to this evidence, but also, I simply cannot tell what role, if any, it took in the conviction. At the most it was relevant background material to the father's conduct when he killed the mother. The jury may or may not have accepted it or given it any weight and I therefore take the view that I should approach that part of the findings sought based on the evidence before me, rather than on any principle that it was previously accepted".

33. The approach of Lieven J in that case followed the father indicating a wish to appeal and disputing, in his oral evidence, elements of the offence, in particular any intention to kill or cause serious harm. Lieven J discussed with counsel how to approach section 11 in that case. The position agreed was that she should record the father's position but also to note that he had not called evidence before that court to challenge the forensic evidence which was presented in the Crown Court. He therefore did not accept his conviction but he was not positively seeking to argue before her that the contrary was proved within section 11(2).

In the view of Lieven J there was no reason for her not to accept the criminal conviction and the contrary is certainly not proven.

34. In my judgment the concept of issue estoppel cannot coexist with section 11 of the Civil Evidence Act in a case like this. The reasons are these:

    (1) The parties are different in each set of proceedings, the Crown Prosecutor in the Criminal Justice System whereas the Local Authority pursues its case in the family jurisdiction.

    (2) That is a distinction with a difference because the canvas is a broad one in the family court.

    (3) The ambit of threshold findings sought are almost always likely to be wider than in an indictment.

    (4) The scope of those findings is also likely to be wider.

    (5) I cannot see how section 11 can properly operate in the face of issue estoppel which is a defence and operates as a bar to prevent a litigant raising an issue for a second time.

35. This is not a case where issue estoppel plays a part as a result of the criminal conviction.

36. I also do not consider myself bound by the sentencing remarks of Mr Justice Choudhury in the Crown Court. In particular I do not consider that I am bound by his findings that the rib fractures were caused by the father. The father was being sentenced for manslaughter, not for fracturing E's ribs. Therefore any remarks about causation of the rib fractures cannot be said to form part of the conviction.

37. I do not consider either that section 11 applies to those findings set out in the sentencing remarks. In other words it remains for the Local Authority to prove that the father caused the rib fractures. They must prove all findings that they ask the Court to make that extend beyond the facts that constitute the offence for which the father was convicted.

38. I also remind myself of the decision of the Court of Appeal in *Re L-W (Children)* [2019] EWCA Civ 159 and in particular paragraphs 62 to 64:

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

> utmost importance when it comes to assessments and future welfare considerations. A finding of failing to protect can lead a Court to conclude that the children's best interests will not be served by remaining with, or returning to, the care of that parent, even though that parent may have been wholly exonerated from having caused any physical injuries.
> Any Court conducting a Finding of Fact Hearing should be alert to the danger of such a serious finding becoming 'a bolt on' to the central issue of perpetration or of falling into the trap of assuming too easily that, if a person was living in the same household as the perpetrator, such a finding is almost inevitable".

The evidence

39. The bundle in this case exceeds 7,000 pages. My attention has been drawn to the relevant parts of that bundle. In addition I have heard oral evidence from a number of witnesses including, importantly, the parents.

The key evidence presented to me

N

40. I heard from the health visitor, N. She had produced the following chronology: She attended a child in need meeting for the unborn child on 23 August 2018. Concerns raised were that the mother had a diagnosis of schizophrenia with a 50% chance of puerperal psychosis. Also the mother had had a previous child removed as she had been in an abusive relationship at that time. At this time the mother had some breakthrough symptoms of muttering to herself and had had her medication increased. She had a mental health care coordinator. She also had involvement from the perinatal mental health team.

41. On 10 September 2018 the health visitor conducted an antenatal home visit. The parents appeared excited about the baby's pending arrival.

42. On 20 September 2018 the health visitor attended a child in need meeting. The mother and father were reported to be engaging with professionals. The mother had had some symptoms of her mental health condition; her medication had been increased and she was feeling well.

43. On 25 October 2018 the mother was seen at home by the health visitor to undertake the mother's primary birth visit. The mother was reported to be well with no increase in her mental health symptoms. The mother and father were reported to be working as a team. The mother appeared calm and happy and good handling of D was seen by both parents.

44. On 13 November 2018 there was to be an arranged home visit but the health visitor got no reply. The health visitor made telephone contact with the mother who reported all was well but that she had forgotten the appointment. A further appointment was made for the following day.

45. On 14 November 2018 the mother was seen at home by the health visitor. The mother was happy to see the health visitor and reported that her mood was fine. She reported that she and the father were working well as a team and the health visitor noted that the mother looked well and had no signs of mental health symptoms.

46. On 16 November 2018 there was a child in need meeting attended by the health visitor. Social care had agreed to close the case to child in need. The health visitor noted that the mother looked well and it was agreed that mental health services would continue until D was 12 months old.

47. On 21 November 2018 there was a home visit by the health visitor.

48. On 12 December 2018 the mother was seen at home by the health visitor. The mother reported feeling well and that she did not have any schizophrenic breakthrough symptoms. The mother indicated that she and the father worked well as a team. The health visitor noted that the mother handled D well.

49. On 15 January 2019 there was an arranged home visit by the health visitor. It was noted that the mother stated that her mental health was fine and that she was pregnant. Her medication continued on the higher dose and therefore the health visitor advised the mother to phone her mental health advisor to discuss this. Both the mother and Father were delighted with the pregnancy.

50. On 12 February 2019 there was an arranged home visit by the health visitor, the mother was present.

51. On 12 April 2019 there was an arranged home visit by the health visitor. The health visitor noted that the mother looked well and she reported to feel well. She continued to take medication.

52. On 11 June 2019 there was a home visit by the health visitor. The mother reported that her mental health was stable and she was not having any breakthrough symptoms. The mother reported that her relationship with the father was good.

53. On 22 July 2019 the mother attended Broken Cross Children's Centre with D for his development assessment. The health visitor noted warm parent/child interactions. The mother reported that she felt well and she had support. Concordance with taking medication was reported. The mother advised that her mental health was stable.

54. On 17 September 2019 the mother was seen at home by the health visitor. She had not yet been allocated a new mental health advisor. The mother had a GP appointment for medication review. The mother stated that she was pregnant. The health visitor urged her

to discuss this with the GP and the mother stated that she would. The mother would also like to see the psychiatrist.

55. On 11 December 2019 there was an arranged home visit by the health visitor and both parents were present. The mother reported that her pregnancy was progressing well. She had been unwell with morning sickness but this was now resolving. She had seen the psychiatrist and had had her medication increased as the voices that she was hearing were getting louder. She was seeing her mental health advisor every two weeks which she found supportive. The father was no longer working due to a knee injury. He reported that he was enjoying being at home and spending time with D.

56. On 13 March 2020 there was a failed contact by the health visitor. The bell at the property was not working and the health visitor could not contact by telephone.

57. On 21 April 2020 the health visitor was informed that the mother had delivered a baby girl at 36 weeks gestation.

58. The Stepping Hill midwife reviewed the mother on the ward that day and she reported that she felt emotionally stable and well and that she was managing to sleep and complying with her medication. The Stepping Hill midwife reported that the mother and Father appeared to have good insight into the signs of decline of the mother's mental health and did not express any concerns to her. The mother had stated that she had been contacted by the mental health coordinator and felt well supported.

59. On 29 April 2020 there was a telephone contact with the mother; she reported she was fine and had not had breakthrough symptoms and she had plenty of medication. She was supported by the father and he was not currently working so they could work as a team. The health visitor discussed management of wind. The mother commented that she is totally delighted with E. The health visitor discussed advice regarding not shaking babies.

60. On 27 May 2020, there was a home visit undertaken by the health visitor. The mother reported that she was well and had had no breakthrough symptoms of schizophrenia. She advised the health visitor that she was in contact with her mental health coordinator weekly and she had adequate supply of her medication. Mother stated that she was not low in mood or anxious. The records indicate that the mother was dressed appropriately and acted appropriately during the contact. Both parents appeared delighted with E. The health visitor did not handle E but E was undressed and placed on the scales. The health visitor did not notice anything out of the ordinary about E.

61. On 10 June 2020 the health visitor undertook a home visit. She observed that the mother

appeared different in her mood to her usual presentation. She documented that it appeared that the mother did not want to interact with her and that the mother had an exaggerated mouth movement. The health visitor enquired regarding the mother's mental health and she reported that her mood was up some days and down others. When the health visitor requested that the mother explain this further she stated that it was private and that her mental health coordinator would be contacting her the following day. The father stated during the contact that he had not noticed anything different regarding the mother. E was seen during the contact and she was dressed appropriately. The environment was satisfactory and the health visitor noted good handling of E by the mother. On leaving the property the health visitor made contact with the mental health coordinator to confirm that she would be making contact with the mother. The health visitor explained that the mother presented differently to all the other times that she was seen by her and she had an unusual mouth movement. The mental health coordinator confirmed that she would contact the next day as arranged.

62. On 11 June 2020 the health visitor received a telephone call from the mental health coordinator who advised the health visitor that the mother was very angry and upset because she felt that the health visitor had been in her house and said everything was okay and had subsequently gone behind her back to the mental health coordinator. The mental health coordinator stated that the mother was shouting and furious. The mental health coordinator and the health visitor agreed that they had not witnessed this side of the mother previously. The mental health coordinator contacted the health visitor again later that day to advise that the mother had since calmed down and was fine.

63. On 26 June 2020 E attended the Waters Green Medical Centre, health clinic, with her mother. The health visitor noted warm interactions; the mother pointed out a tiny 2mm red spot beneath E's left eye and a similar sized red linear lesion on E's left upper ear. The mother stated that she noted these that morning and she reported that she thought her partner may have caught her skin with his nail which may have caused this. The health visitor observed E naked and no other lesions were observed on E's body.

64. On 30 June 2020 the health visitor received a telephone call from the mental health care coordinator who advised her that the mother had contacted her to state that she was getting increased symptoms of her schizophrenia and confirmed that she was on the day the health visitor had last made a home visit and raised concerns regarding her mental health. The mental health coordinator confirmed that mother had had her medication increased and

requested that the health visitor visit weekly.

65. On 9 July 2020 the health visitor received a text from the mother to cancel the planned visit for that day and to rebook for the following week due to family commitments.

66. On 14 July the health visitor received a text from the mother asking to rebook the appointment for 17 July 2020.

67. On 17 July 2020 the health visitor undertook a home visit and it was documented that the mother appeared well and calm. E was observed to be clean and appropriately dressed and there were no concerns regarding the environment. The health visitor noted a lovely bond between the mother and E. It was reported to the health visitor that E was taking her milk well from both parents but more volume from the father.

68. In her oral evidence she said that she was also the health visitor for D and had known the family for two years. She had not made a safeguarding referral as her mental health had appeared to improve quickly. She had a mental health coordinator who had a pathway to support from the consultant psychiatrist. The father was in the property to support the mother and the mother had calmed down later that day when the coordinator had contacted her. Whilst the visit on 9 July, which was cancelled by the mother, had caused some concern, she had been seen the previous day.

69. On 17 July when she was weighed the health visitor had not undressed the baby, her mother did that. The health visitor did not handle the child at all but the child presented as a well-baby. The health visitor did not ask the mother about her mental health as that had upset her before and she was trying to re-establish a connection with the mother.

70. At the visit on 29 April 2020 she had discussed a range of topics with the mother such as feeding, bottles, holding heads and not shaking babies. She had not had any contact with the mental health coordinator until June when the mother's symptoms deteriorated. The father appeared proud of D and the health visitor saw him interact with D when he was calm and loving. She did not see him handle E. She said that she would not be concerned about home conditions if there was clutter, if that clutter was comprised of toys and changing mats etc.

71. The health visitor said that she was aware that the mother had previously had issues with taking cannabis and was not aware that the mother was saying that she had been free from drugs for three years. She was aware that somebody with an underlying mental health condition who was taking cannabis would raise concerns. She said she did not smell cannabis on any of the three home visits. She was unaware that a letter had been sent by the

housing association setting out concerns from neighbours about the smell of cannabis from the mother's property on 21 February 2020.

72. She agreed that the reference to the mother presenting as aggressive at H995 was in keeping with the list of relapse signs. She confirmed that she was not aware of the report that the father was stressing out as he could not get cannabis, G1116. She was also unaware of the reference at G1566 to the mother trying to borrow £500 to buy drugs.

73. She said that the mental health coordinator had informed her of the mother's money concerns; a referral had been made to ensure that the mother was getting the right level of benefits. She also confirmed that the mother did not inform her that she had asked the pastor for food parcels, G1500.

74. She had not been made aware that the mother wished to change her surname due to traumatic early experiences and the health visitor said that she did not have full details of the family background. The mental health coordinator had informed the health visitor of this in July 2020.

J

75. I heard from J who is a midwife on the specialist perinatal community mental health team. The mother was added to her caseload on 22 October 2019.

76. On 10 December 2019 the midwife met with the mother at the Broken Cross Children's Centre. The mother was happy to engage with the perinatal mental health midwifery service. The mother reported at this time that her mental health was stable, her medication has recently increased on the advice of her psychiatrist due to some breakthrough symptoms including auditory hallucinations which were not distressing in nature. The mother was happy when hearing the unborn baby's heartbeat and said that the father was supportive.

77. On 14 November 2020 the midwife met with the mother at Broken Cross Children's Centre for an antenatal appointment. She continued on the same dose of medication for her mental health and reported that it was working well. She felt that her mental health was stable. No concerns were highlighted during this appointment.

78. On 26 February 2020 the midwife met with the mother during her antenatal clinic. The mother reported that her mental health was stable and that she continued on her medication with support from her care coordinator. Antenatal checks were performed and no concerns were highlighted. The mother was happy to discuss and complete a birth plan and therefore an email was sent to her care coordinator to arrange a day to do this. Another midwife who

saw the mother during that day commented that she had thought she had smelt cannabis when entering the mother's consultation room. The midwife asked the mother about any cannabis use and the mother denied that she smoked cannabis during pregnancy. She confirmed that she smoked 10 cigarettes per day.

79. On 1 April 2020 the midwife attended the mother's home and performed antenatal checks and no concerns were highlighted. On 9 April 2020 the midwife met with the mother during her consultant appointment in the antenatal clinic where a birth care plan was completed. The mother reported that she was well and her mental health was stable, although she was becoming anxious regarding childcare arrangements for her son, D, when she went into labour.

80. On 21 April 2020, having given birth to E, the mother was then discharged to her home address. The midwife attended the mother's home on 22 April 2020 for a maternal and new-born check. The mother reported feeling well and the midwife commented that the mother was very loving and warm towards her daughter during that visit. The mother was very excited to introduce the midwife to her daughter. She reported that her mental health was stable.

81. On 28 April 2020 the midwife made a phone call to the mother and the mother reported to feeling physically and mentally well and to being well-supported by her partner. The midwife discussed sleep safety and handling a new-born during that telephone call.

82. On 4 May 2020 the midwife saw the mother at home with baby E, maternal and new-born checks were performed and no concerns were highlighted. As E had just settled to sleep she was not weighed at that visit.

83. On 11 May 2020 the midwife saw the mother and E at home. The mother reported that her mental health was stable and, again, maternal and new-born checks were performed and no concerns highlighted.

84. On 18 May 2020 the midwife met with the mother and E at home, maternal and new-born checks were performed and no concerns were highlighted. The midwife commented that both the mother and father were warm and loving towards E and D.

85. In oral evidence the witness confirmed that she had not smelt cannabis on the mother. She said that on her visits she would conduct a full top-to-toe visual assessment of the baby when weighing them. She would normally handle a baby when putting them on or taking them off the scales to weigh them. She was not, at any stage, concerned that the baby was distressed. She saw the mother with the child most of the time and observed her to be

loving and warm. She did not remember any discussions with the father separately. The mother appeared to enjoy being in a relationship with the father and the midwife would have documented any concerns. Part of her remit was to check that the mother was safe in her relationship. She did not remember being told that the mother had cannabis use in the background. The mother had not shared with the midwife that she had received a letter from the housing association about neighbours complaining of the smell of cannabis from the mother's property. She had completed five home visits. She had no concerns about the house presentation. She did not smell cannabis when her colleague said she did. If she had been concerned that the house was cluttered enough to cause problems she would have documented it. The mother had never shared information about her level of debt with the midwife.

K, a mental health coordinator

86. The evidence from K was that the mother had been a patient of the trust since July 2011. She had a diagnosis of acute polymorphic psychotic disorder with symptoms of schizophrenia and took medication which has been varied over time to the symptoms that she suffers.

87. On 26 September 2019 the mother was allocated to her as her previous mental health nurse had left her role. This was the first time that she had contact with the mother. She had no concerns about the mother's interactions with D.

88. One symptom of the mother's illness is having auditory hallucinations and in December 2019 when the mother was 20 weeks pregnant, there was a decline in her mental health and she reported an increase in the voices that she hears. It is often the voices of deceased relatives that the mother hears but she advised that she often found them comforting and did not see it as a problem. Her medication, aripiprazole, was increased, this improved symptoms.

89. On 27 April 2020 she telephoned the mother when E was six days old. She was being supported by community midwives and from her discussions with her she had no concerns about her mental health. The health visitor, N, contacted the witness on 10 June to report concerns that the mother's mental health could be deteriorating. On the same day she happened to drive past the mother and Father and the mother started to rant at her in the street which was out of character and concerning. They had a planned telephone consultation later that day and the mother was calmer. She advised that she had felt criticised by the health visitor and was fearful of losing her children. The mother had felt

that the health visitor was being abrupt with her questioning. The mother asked for weekly contact to be reduced to fortnightly.

90. On 29 June 2020 the witness saw the mother at Jocelyn Solly House at the mother's request. She came alone and it was evident that her mental health had deteriorated with her presenting as distressed and tearful. She reported an increase in her auditory hallucinations, although she said they were helpful and nice, she said she was getting no respite from them. She informed the witness that she was considering changing her surname as it reminded her of past trauma. She stated that she had not received any help from her family and felt that they had no understanding of her diagnosis. The mother said it had been difficult at home between her and the father; she said that she had been mean to him but did not go into detail. She reported no self-harm or thoughts of harm towards the father or the children and described rapid thoughts and confusion. She was finding her thoughts difficult to manage and had screamed into a towel to get out her frustration. They discussed the possibility of relapse due to changes in hormone balance after the birth of E. The mother raised concerns about Social Services and was worried about losing her children and being admitted into hospital. The mother advised that she knew her mental health was slipping due to the incident with the health visitor and confirmed that she was taking her medication as prescribed.

91. Due to the mother's increase in symptoms her medication was again increased by 5mg meaning that she was on a 20mg dose which was then taken once daily. The witness made a referral to the perinatal mental health team but they declined the referral as the mother already had a community care coordinator. They offered to assist with medication if required. The mother was placed on the alert board which is for the community crisis team and meant if she required more assistance she could have had daily visits from the service.

92. On 30 June 2020 the witness attended the home address to drop off further medication so that the mother had the increased dose prescribed to her. The home was clean and tidy and the children were both wearing clean clothes. The children were in the front room with both parents and E was in baby seat bouncer. The father advised that the mother had improved since the witness had spoken to her the day before. The mother said she felt better for having got everything off her chest. She seemed calm and rational and was allowing the witness and the health visitor to carry out home visits so there were no concerns on the witness's part for the mother or the children. The mother confirmed again that she had no thoughts of self-harm or harm towards the father of the children.

93. On 3 July 2020 the witness spoke with the mother on the telephone and she sounded better after the increase in medication. She reported hearing less voices and denied any thoughts of harm.

94. On 8 July 2020 the witness attended the home address and the mother was warm and welcoming. E was asleep in the lounge so they went into the kitchen. When she woke the mother brought E into the kitchen. The mother was caring towards her. E was feeding every three to four hours and she and B were sharing the feeds. The house was clean and tidy, E seemed happy and healthy. Interactions from the mother to E were very considerate. When they were in the kitchen she heard E murmuring in the lounge and went to get her straight away. She was responsive to her needs, handling her appropriately and E was content and smiling. The mother said she had found it difficult at times to express herself over the last couple of days. She made notes. She said that she had struggled with voices from during her childhood. When she was a child she would audibly reply to the voices. She explained that she found it difficult after the birth of her first child who was then adopted.

95. The witness looked at the notes and was not concerned about the contents. There was no reference to self-harm or harm of others. The mother recalled that recently she had been replying to the voices in her head out loud but when she replied it came out in a scouse or Liverpool accent and she did not know why because that is not how she spoke. The mother raised concerns over money because it was expensive to change her name. The witness was aware that the mother had historic debt. They spoke about bankruptcy. The mother was engaging well. At one stage during her visit the mother placed E in the pram in the living room but she would not settle. She picked E up again and put her on her lap where she settled. E was very alert, had a beautiful smile and did not display any discomfort when being handled.

96. On 15 July 2020 the mother rang to cancel their appointment on the basis that it was a nice morning and she was out with the children. The witness contacted the mother later that day and they arranged another appointment on 22 July. The mother tried to contact her on the morning of 22 July from Accident & Emergency but was unable to get hold of her. The witness managed to speak to the father who seemed distressed. He said that he had woken to complete the night feed. He had taken E from the basket and took her downstairs for her feed when he noticed mucus around her mouth. He tried to feed her but she only took about 20ml of milk. He thought at first that E must be full from the previous feed so he placed her

down. He was worried so he went to get the mother. By the time he got the mother and they were back with E, E was unresponsive and so they called 999.

97. In her oral evidence, the witness said that she monitored the mother and risk-assessed her on every visit. She monitored symptoms such as sleep, the state of the property and how the mother presented. It was about forming a therapeutic relationship, looking at risk and looking for triggers; it was about getting to know her when she was well and when she we unwell. The witness said that she had not made a safeguarding referral at any stage. If she had felt that the mother was particularly unwell and a risk she would have referred for assessment.

98. She said it would surprise her if the mother had been using cannabis. She did not know that there were three cannabis grinders upstairs and had never gone upstairs. She said the use of cannabis would be problematic for the mother; the use of cannabis could exacerbate her symptoms, it could make the mother feel unwell and affect the efficacy of medication. She was unaware that another midwife had said that she smelt cannabis on the mother. If she had been she would have spoken to the mother about it. She was also unaware that the council had sent a letter about neighbours complaining of the smell of cannabis from the mother's property.

99. The mother did not tell her that she was receiving food parcels but the witness said she would not be surprised as most of her clients are. The mother and Father did not tell her that they had called the police on 7 July 2020 due to an incident with neighbours in which there were threats of violence exchanged. The witness confirmed that the father did not tell her that he had not seen any change in symptoms on 10 June.

L

100. I heard from L who was the senior paramedic team leader who was first on the scene at about 5am on 22 July of 2020. She said that on arrival the door to the flat was shut, it was all in darkness. Through the panes of glass in the door she could see a clotheshorse right up against the door blocking the access. She knocked hard on the door and nobody answered. She thought it was unusual as in her experience she is greeted by people ushering her inside. She hammered again a lot louder. She could see a figure walking to the door. She could see them move the clotheshorse and then unlock the door. The door was opened by the mother who greeted her with a, "Hi" and she formed the impression that the mother was quite nonchalant about her presence. The mother led her to the living room. The father was kneeling on the floor and looked as though he was doing mouth-to-mouth on E. The baby

was lying on the floor on her back wearing a baby-grow and a nappy. She was unresponsive and appeared to be in cardiac arrest and very blue. The paramedic immediately took over from the father and tried to find a pulse and assess whether she was breathing. She was not breathing. The paramedic picked the child up and said to the parents, "Are you coming? We are going now". Both parents, particularly the mother's response, was almost of surprise that they were going and leaving the flat with the baby. The paramedic took E to the ambulance and was doing chest compressions along the way. She put the baby on the stretcher and continued chest compressions whilst her colleague grabbed the bag valve mask. At 5.07 she could hear a heartbeat. She was not sure at what point the mother got into the back door of the ambulance and the paramedic put the seat down and asked her to take a seat and put her belt on. She said that the mother sat down but then asked if she could go back into the house for something, it was something like to change her leggings but the paramedic formed the view that it was an unnecessary reason.

101. The paramedic allowed the mother to do so and told her she had to be quick as they needed to leave immediately. The mother left the ambulance; the mother then came back and sat down. The paramedic had a brief conversation with the mother about what had happened and the mother said, "We just found her in bed not breathing".

102. The paramedic described that the mother's level of articulation was poor and seemed emotionally detached to the whole situation. On the journey to the hospital the paramedic asked the mother to talk through the events of that morning. She said that the father had got up to do a night feed at about 3.30am. The baby apparently vomited a little bit during the feed but the father had put the baby back to bed. Then at five o'clock the father had woken A up saying he was concerned about the baby. She was cold and not moving much. She was asked if she was sure that it was five o'clock because the call to the ambulance was made at 4.57; the mother replied that she did not really know and perhaps it was closer to 4.30.

M

103. I then heard from M, another paramedic. He had attended when the mother gave birth to E on the sofa in the living room of the home. He described how L had gone into the flat first and he was getting equipment ready. She came back holding the baby over her shoulder. The baby was placed in the ambulance and he cut E's baby-grow from top to bottom along the arms. The parents came over and he described that the mother looked concerned. Subsequently the father had arrived and he too looked concerned. He recalled being at the

scene for five minutes before they left for hospital.

Dr G

104. The expert confirmed his report of 17 July 2021 and the addenda dated 24 August 2021 and 4 October 2021. He said that rib fractures would be acutely painful at the time of infliction. That pain would reduce with time. It was likely that the more fractures the greater the display of pain but he could not quantify that. The demonstration of experiencing pain would be by whimpering, crying and being grizzly on being handled. If it was a re-fracture then, if anything, the pain would be a little less but it was marginal. It was difficult to quantify that pain too. He agreed that pain is very individual but all people suffer pain unless they have a biological reason for not doing so. A healing fracture involves the formation of a callus to brace the bone. Whether more force is required to re-fracture is a variable situation. When the callus first forms it will be weak and will break easily but it gets stronger with time. He did not know if it got stronger than the original bone. He said that it is possible to hear a pop in the chest when there is a fracture, you can also hear a grinding noise but that is uncommon. Immediately following a fracture the baby would be crying and distressed; there would be a change in pattern of breathing because the baby would be likely to breath more rapidly and shallowly to avoid moving the rib cage so much. Dr G felt that the parents have to be quite observant to notice that. A baby would be more fractious when being handled and anything that moves the torso, like gasping, would cause pain. He said that it is very unusual to diagnose a rib fracture by clinical examination, they are normally diagnosed by skeletal survey which is carried out because it is so difficult to diagnose on clinical examination. The fracture may not show up on x-ray for two weeks and then it shows up as it starts to heal. If the baby was breathing deeply that would be painful.

105. Crying in itself would cause pain. He said that anyone who witnessed the infliction of the fractures would be aware that E had been hurt, the act itself would obviously be painful and E's reaction would demonstrate that she was obviously hurt. That person would be aware that what they did was wrong; any person not witnessing the act might find that they would be fractious but would not necessarily be aware of the cause. The baby would be upset and grizzly but the person who has not observed the act might not know why. He said it was the same for medically trained people. He agreed that it was not surprising that when E was seen by health professionals before her death they were unaware of the fractures. He said that you do not often find bruising on the chest when there has been a rib fracture, that is

because the force that causes the rib fracture is dissipated through the fingers of the person doing the squeezing and also through the baby's clothes. There may not be swelling either. Detection of rib fractures was most likely on the anterior ribs because sometimes the callus would be palpable. He agreed that some of the fractures suffered by E were partial; he did not know how a child would react to the pain of a number of fractures, it would depend on how many but even so it was not possible to be specific. He agreed that there was no evidence of breathing difficulties being demonstrated by E in her history. In any event he said the signs of difference in breathing are quite subtle. Here E had fractures over a long period of time and there may have been multiple changes in her behaviour. He said that the pain from the rib fractures would reduce over time and the exacerbation of pain on certain movements would resolve after about a week. He agreed that it was not surprising that somebody who did not see E being injured did not know that she had the fractures. He said that a re-fracture of a rib can be caused by less force than the original fracture but we do not know how much force, that would be before it has a good re-heal.

106. In dealing with the fracture to the occipital skull, he said that the occipital area of the skull is thicker than the other areas of the skull. To envisage a mechanism for an occipital fracture that would require force equivalent to a fall of more than two feet. A fall at two feet would cause a fracture to the parietal skull. Fractures to the occipital skull are unusual as babies tend to fall on the side of their head. Occipital fractures are unusual as babies do not tend to fall onto the back of their head.

107. The expert was referred to the report of Mr O, consultant paediatric neurosurgeon, at G1685 dated 31 January 2021. In that report the expert said:

> "In the opinion of the vast majority of the experts, the presentation of an infant suffering abusive head trauma by a mechanism of very vigorous shaking, with or without impact, includes, in the order of severity, pain and severe distress with inconsolable crying, vomiting, going quiet, abnormal sleepiness, confusion, vacant appearance and unresponsiveness, loss of muscular tone, going limp, unconsciousness, convulsions may also occur, shaking, becoming rigid, arching back, deviated gaze, etc. Shortly after this type of trauma and in more severe cases also cardiovascular and respiratory abnormalities. This would manifest to a non-medical person as a range of very pale or blue appearance, cold external body temperature, gasping or irregular breathing with long pauses and deep breaths. It is impossible to say at the time they occur when they will resolve with or without external interventions or if they will progress to complete cardiorespiratory arrest. According to the relevant medical literature, the hypothesis that the death of a baby who suffered traumatic injuries of the type identified in E may be preceded by a period of wellbeing, does not have solid scientific support.

> However, some minutes may be needed in a minority of patients before the whole picture of severe neurological compromise including profound unresponsiveness, cardiovascular and respiratory abnormalities, convulsions, is established. During this time the child does not appear normal but likely show generic signs such as irritability, quietness or excessive sleepiness and respiratory abnormalities".

108. At G1706:

> "If the Court instead accepts the hypothesis of a traumatic explanation for E's injuries, it is the opinion of the vast majority of the experts that trauma able to determine such devastating cerebral injuries, does cause a global, sudden and severe neurological dysfunction manifested by a combination of symptoms including collapse, cardiovascular instability, respiratory and irregularities and seizures and most likely, immediately or in the moments following the application of force".

109. At F90 in the transcript of his evidence before the Crown Court, he was asked the following question, "One aspect of the behaviour of a baby that receives an injury such as the one in this case, on one view, is that there is a good deal of noise associated with that at the time the injuries are first caused, could that be correct?" He answered, "That would be my expectation, yes".

110. At F92 he was asked, "Do you agree, perhaps I will put it this way, that it is highly likely that the traumatic head injury happened immediately or moments before she collapsed?" He answered, "Yes".

111. I also note the following additional medical evidence, Dr G at E404, 32:

> "The clinical features of the intracranial injuries would have been profound and immediate including cessation of breathing and I think it not likely that E would have survived very long without cardiorespiratory resuscitation. I think the intracranial injuries were sustained shortly before the emergency services were called at 4.57am on 22 July 2020".

112. Professor P at E145, "Noticeable at the time the original ambulance crew arrives and at Macclesfield, the anterior fontanelle is said to be slack and only becomes full at arrival in Manchester which implies the brain was in acute process and the causative event must have been very close to the time of presentation".

113. Professor Q at E184:

> "If the Court finds that she woke normally for her feed on the morning of 22 July 2020 this would imply that she suffered her injury within minutes of her collapse on 22 July 2020. This is a significant head injury and is not in keeping with a slow-burn type injury that can develop over several hours".

114. Dr R at E84:

> "The collective findings are further consistent with a non-accidental injury event, such an event would have involved an event very close to the time of cessation of breathing which appears to be following an attempt at feeding E during the early hours of the morning of 22 July 2020".

115. Dr G agreed that E would have lost consciousness pretty immediately. He agreed with the sequence of symptomatology described by Mr O. He was referred to the temperature being 34 degrees and a Glasgow Coma score of three. He also referred to the fact that there was no discernible heartbeat and a threaded pulse. He said that the baby was in shutdown when the paramedics arrived. He said that if it was a case where the baby deteriorated slowly it can be difficult to resuscitate. If the deterioration is quick then it is more likely that the heart will be restarted. He said that he was working from first principles. The evidence suggested that E's situation was more akin to a really sudden collapse. The heartrate picked up quickly which made him think that she collapsed not long before the paramedics got there.

116. He was also referred to the report of Dr S at G2470:

> "Dad called 999 around 4.57am and CPR was started. On arrival of the ambulance crew they assessed E and she had no cardiac output. They continued CPR which led to a return of spontaneous circulation. First blood gas revealed PH 6.9 and severe lactic acidosis".

117. Dr G referred to the gap of 14 minutes between the paramedics arriving and E arriving in hospital. He said that the PH reading can be lower than that although it was a severe acidosis. He said that the injury and collapse occurred shortly before the paramedics arrived. The temperature of 34 degrees is moderately low and consistent with it happening not long before.

The mother

118. The mother confirmed her statement at C23, C43 and the transcripts of interviews given to police at C96 and C132.

The events of 22 July 2020

119. The mother's first account of what had happened in the early hours of 22 July 2020 was given to the paramedic, L. She said Dad got up to do a night feed at about 3.30, baby apparently vomited a little bit during that feed but Dad put baby back to bed, then at five o'clock Dad has woken A up saying he was concerned about the baby. She was cold and not moving much.

120. The mother then gave an account at hospital appearing at page H349:

> "Dad got up at 3am for next feed. Noted E had mucus/vomit around her mouth. Only fed 20ml. Projectile vomit following this. Dad woke Mum as concerned E was very still after feed. E was not breathing and felt cold to touch".

121. That account was given at 7am. At 9.30am she gave the following account: At 3.30am when she was due for a feed E was taken downstairs by Dad, E, was sick once, Dad made a bottle and took 20ml but E was sick again and would not take any further feeds, hence placed back in the Moses basket. He felt that there was something wrong and hence came upstairs to discuss with the mother. Both parents went downstairs. E was in her Moses basket, not responsive, she looked pale. Mother tried to rub the chest in the hope that it would wake E up, E was cold, the mother went upstairs to call the ambulance. When the father woke her up in the morning she thought, but could not be sure, that he said there was something wrong or we need an ambulance. She went down and saw E, she was very still, she touched her cheek and it was very cold. She was tucked in around her neck but she still felt cold and looked pale, she was not sure what to think, she knew they needed an ambulance, it shocked her. In the night she had heard the preparation machine and heard her cry but there was nothing unusual about the cry. When she woke for a feed sometimes she would cry. She did not go outside for the ambulance as she was on the phone relaying everything to the father about carrying out CPR. She did not know what was happening and she did not know why it was happening. She was asked about what she was wearing. She said that she was wearing jogging bottoms at hospital. She did not remember changing into them, she said that she sleeps in those bottoms. She looked for her shoes, she had followed the paramedic out of the house. She stood at the back of the ambulance watching what was going on. The father passed her a phone, the father went back to the house for D. The mother was at the ambulance. She asked if she could get into the ambulance for a few minutes. She did not touch E in the ambulance as the staff were busy around her. In hospital it upset her being in a room with E with all the machines and the staff so busy. She agreed with what the father had said to K that she had been well and taken her medication up until hospital.

122. When she was told that the father and she were being arrested for murder, she did not think that the father had done something. As the medical reports came in she began to think more logically and she knew that something had happened and that it was not her who had done it. She said that she could not put into words how she felt. She knew that she had not shaken E.

123. During the day before E was injured there were no difficulties. She said that on the evening before the injuries were discovered E and D were put to bed. D was usually in bed by 10 to 10.30, maybe earlier. When E went to bed depended on how she was in her routine. She gave her feed about 10 o'clock and went to bed about 11 to 11.30. E was in a cot by the side of her bed; she may have taken cannabis that evening and the father as well. She could not remember if anybody else had visited during the evening and she could not remember if anybody had visited to do a drug deal.

124. She did not know if E cried leading to the father getting up. She could remember waking up about 3.20am. She could hear them downstairs. She could hear the prep machine and E gave a bit of a cry.

125. In her police interview at G79 she is recorded as saying:

> "Anyway, we were in bed and B woke up for E's bottle in the early hours of the morning and he went down as normal; took her downstairs. I could hear the prep machine being used and E making a little murmur. I do not know if she was in the kitchen with him or if she was in the living room but I could hear a little murmur. Then I must have dozed off to sleep, then I was woken by a bit of crying and I thought, 'Oh he is winding again' because sometimes E gets a bit crying when she is being winded by B so she was a bit upset but then it seemed to stop and I thought, 'Oh, he must be nearly ready for coming back to bed' and I must have dozed off again. Then not long, well, I do not know how long after but B I think it was about 3.30/four o'clock/4.30 or something, he come to talk to me about – and he said something is not quite right so I went downstairs to have a look".

126. It was put to her that she had told police that it was she who woke up and said to the father it was his turn. The father and E then went downstairs. She could hear the prep machine and a bit of crying. The mother said that she could not recall if she woke up. She may have woken up and said something to the father.

127. It was put to her that the account that she gave to the police was hours after the event and the mother agreed that maybe she did wake up then. She said that she had not got up. She does a lot through the day. She said that she could remember the cry, it was just a normal cry. The mother said that sometimes she, the mother, goes into a deep sleep and can even snore. What she remembered was that the father woke her up, they went downstairs together, she knew that he was talking about E, the mother had a look at E, she then went upstairs to get her phone, she came back down and realised that E was still the same.

128. She agreed that there was a gap between her being asleep and then being awoken at 3.20 and then being awoken again just before the ambulance was called. The mother said that

she did not try to pick E up out of the basket when she went downstairs. The mother did not know what she thought. She thought that the father had said that he had tried to feed her and put her back in the Moses basket. She was asked about an account that she had given at hospital that E had vomited during a feed, in fact, that she had described it as a projectile vomit, H349. The mother said that she did not think that the father had said that it had been projectile vomit. It was put to her that in the police interview, she said that she was there when E projectile vomited. She said, "No, that was an incident two days before" she thought. She had not seen her projectile vomit on the night.

129. She agreed that at 8.20am she was told that there was a strong suspicion that E had been injured. Her reaction was shock and not understanding. She said it did not make much sense. At that stage she understood that only she and the father had been in the house. She had asked if she should contact a solicitor but that was because she was unsure if D was going to be removed.

130. When she went down the blanket was covering E up to her neck. When she first saw E downstairs she pulled the blanket down. E was not blue when she saw her. She saw the father do CPR on the settee and on the floor. She said that E was very cold. She could not tell if she was breathing or not. She did not know when E turned blue. She had called the ambulance within minutes of going downstairs.

131. It was put to her that she did not understand how unwell E was. The mother replied that she did not understand what had happened and was not very articulate in explaining. She said that she did not know what was wrong; maybe that was why she appeared flat during the 999 call. She maintained that she did not cause any injuries to E and never saw the father cause any injury to E.

132. When E was born, D was about 18 months and at the time of her death he was about 21 months old. On the evening of 21 July 2020 D did not have a bath at night. She could not remember what he went to bed in; maybe he had fallen asleep at the computer and been put to bed in clothes.

<u>The mother's relationship with the father</u>

133. In her oral evidence she was asked about her child, T, who was adopted. She said she understood why. She had some problems with her previous partner and this was causing emotional harm to T. She had made changes afterwards and had taken time to look after herself. She described how she and the father met on a dating site. She said he was very kind and caring, he did not show any signs towards her of domestic abuse, he was always

caring. She told the father about T. He had her account as to what happened and why. She also told him about her mental health history. She told him that she suffered from schizophrenia and depression. He asked a few questions. She said he was a good listener, he made her feel cared for.

134. The mother said she felt supported by professionals. Once the father had made a comment about how many professionals were involved with the mother and how he did not think it was fair as he was different to her previous partner. After the birth of D they both did bits of everything. The father was very hands-on, loving and caring with D, they had a good relationship. The pregnancy with E was planned. She did not get much support from her family; just every so often. Up to the birth of E she said they were coping quite well.

135. The father was at home due to an injury and was hands-on at the beginning. He would help with cooking and cleaning but that changed over time when E was born. Up until the last month or two it decreased. He would play on the computer. The mother would do a lot of cooking and cleaning. She described how E was born at home in the living room on the sofa. The paramedics arrived when she was born. The father had been more hands-on with D than E. He was, however, loving and caring to E.

136. Initially she had liked everything about the father, he was kind and caring, a good listener and supported her a lot in the beginning. They had been together for just over three years. She had no concerns about him being abusive or violent. She had no concerns from what she had seen of him with the children.

137. Going into the shed was a way that he would deal with his feelings but that stopped just before E was born. The father had stopped work and become her carer for the purposes of state benefits. She did not think that she needed a carer but it was a way to give him some money. She said that she does not love the father; she has broken off contact with him at the end of September 2020; she knew that it was not her who had injured E, she had always seen the father as a loving and caring parent until the incident with the neighbour and punching the wall. She was aware of his previous serious conviction but did not understand a lot about it. She said that she had seen the father smash things up in the shed.

138. Between July 2020 and the end of September 2020, they were just writing to each other. She did write and tell the father that she loved him. She did not understand or believe that he could have hurt E. He also wrote back saying he loved her. She had decided no contact at the end of September because of the way that the evidence was coming in and she was slowly understanding what had happened to her daughter and knowing that she had not

done it herself. She said it was very difficult for her to comprehend.

The mother's mental health

139. The mother describes how her mental health on a bad day can affect her. She can be distracted; she hears voices a lot of the time, sometimes muffled and has a fuzziness in the back of her head. On a general day-to-day basis she can still manage things like reading to the children. She can struggle with the television so she listens to music. There are no days when she hears no voices at all. On a good day she can pick out who the voices are. If the voices get louder she can become distracted and upset.

140. She said that medication helps to make the voices muffled. The mother can talk with them and talk through things with them. The voices do not tell her to do things, they are nice to her. They have never told her to harm herself or anyone else. The mother said that she found the medication helpful. If her mental health dipped then she would normally talk to somebody like a mental health worker.

141. During her pregnancy with E voices increased and so was the medication; that improved things quite quickly. On maybe one or two occasions she forgot to take her medication for a few days. She would keep it in the kitchen cupboard or her handbag. She never felt that she could not cope with E and D at the same time.

142. She was asked about the visit by N when unusual mouth movements were described. The mother said that at that time she did not think that her mental health was deteriorating, this was in the middle of the lockdown. She said that she would see professionals, her gran and father's brothers from time-to-time. None of them said they were concerned. She said that if someone says that she is behaving differently then at first she is defensive but will then seek help. If the father said that she would be upset but she would listen. She told N that her mood was up and down and said that she would rather talk to her. At the time it was about her name change. She had not organised her thoughts over it. She thought that she needed to speak to K to tell her that she was upset. She said her relationship with her was good. She wanted to change her name from A as that was linked to unhappy early experiences. She had not been able to put the name change into process. When she saw K in the street she said that she felt it was unprofessional. Whilst it was possibly fair to say that she ranted, she thought that her voice was raised maybe. She said she was quite shocked when K called over as she did not expect it. She came running over and it all just seemed a bit much. She said that she felt as though N had gone behind her back.

143. By the end of June she was asking to go and see K and V. In cross-examination the mother

said that she had suffered from time-to-time with relapses in her mental health. She said that the main types of stress were no sleep and other things like problems at home and family problems. All types of stress could impact on her mental health. Financial stress could account for a deterioration but she said she had never suffered from it. She also agreed that drugs could possibly lead to deterioration.

144. She said that she was quite good with routine and structure. She said that at the meeting on 8 July with K she might have said, "Do not tell Social Services" but she could not recall. She agreed that there was a deterioration in her emotional state but not the whole of her mental health. This was because she was trying to undergo a name change and said that would be emotional for anybody. She said that her symptoms can vary and increase and decrease. Schizophrenia changes all the time. Sometimes she agreed that there would be a need to increase her medication.

145. In terms of her mental health, she was not just hearing voices, it could also cause difficulties with hygiene. It could also lead to paranoia but she had not had that for a long time. She agreed that stress was a trigger for her mental health problems. After E had been born her medication was increased and she took it every day. She would take her medication in the morning. Her plan for mental health interventions appeared in the bundle at H1190. She agreed that sometimes she did stare at the television. It was also possible that she could have been standing close to the television.

146. She was also asked about the recordings at H1215 of the father speaking to the community mental health worker about concerns over the mother's ability to look after D in 2019.

<u>The mother's drug use and drug supply</u>

147. She was asked about her cannabis use. She said that she had taken it since 2008. The mother tried to keep her use of cannabis to the night time. Sometimes she would have one early in the morning and it would make her a bit more relaxed. She stopped using cannabis when she went into Styal Prison. She had not used it at all since coming out of Styal Prison although she did use it when she was pregnant with E. She chose not to tell professionals as she did not want any implications. She said that she knew it was harmful for her. Professionals had spoken to her giving her advice about drugs being harmful. She agreed that she remembered being told by a psychiatrist, H1379, that drugs could cause a relapse. She said that when E was born she was using cannabis on a moderate basis. She said that the father was dealing cannabis. Generally she did not have any dealings herself but was aware of them.

148. She said that father was also registered as a carer for her. The money received from those state benefits would be spent on drugs. She agreed that her cannabis use had continued in her pregnancy. Whilst she knew that cannabis could cause a relapse she did not tell anyone during her pregnancy, she said because she did not relapse.

149. She was asked about drug dealing. She said that she was well aware of the father's drug dealing and would smoke some of the cannabis. She said that she knew about the arrangements for the drug dealing and it could be said that she was part of it. She would smoke three or four spliffs a day, it was usually in the evening when the children were asleep. The father would smoke about the same amount. If she ran out of cannabis then sometimes she was a bit edgy. She agreed that taking drugs was against the law and dangerous if the children got their hands on the drugs. When the father said he was planning to deal in cocaine she said that she told the father that that should not happen near the house.

150. She agreed that drug taking for her was not good and she knew that it was harmful to take drugs when pregnant. Sometimes she had thought about giving it up and agreed that it would be better for E and D if she did. She also knew that it could case preterm births and underweight babies. She knew that it could damage E. It was possible that she could not give it up as she was reliant on drugs. She said that she has smoked more than three or four spliffs a day in the past.

Household stresses

151. She said that they started to get food parcels; there was not much on the shelves and it was difficult to get out when she was pregnant, it was not because of money. She did accept that she was in debt from previous houses, catalogue and bills but had consolidated all of her debts. She said that she thought she put a lot of her problems on the father. She felt she was mean to the father and had been rude to him on a couple of occasions. The father had not reacted to this.

152. She said that she was due to see the health visitor and K on 15 July. She cancelled N, one reason was because they wanted time together as a family and the other was possibly due to family members coming to see them. She said she was not avoiding professionals and was not hiding things from them. Nothing had happened to E or between the mother and the father. She said the day before the night that E went into hospital, nothing unusual had happened. She realised that since being in Styal things with the father had become difficult. They have communications problems and have become passers-by. He was never violent to

her. He punched the wall on one occasion around his birthday. The problems had not reached a point where she thought they were separating.

153. On 19 June 2020, she spoke to K, she was not relapsing but she was very emotional, she said. In terms of her family situation she said that she had had good support from her mother in the past, however, that had tailed-off after the birth of D. She denied that there was a fall-out as such, it just fizzled out.

154. When she met K on 29 June 2020 she agreed that she had said that she had deleted all of her family contact details. She said that she did that because there was no communication between any of them. She decided that she wanted to change her surname and wanted to make a fresh start. She was asked why she was intending to change her name, her surname, to W. She said she got the idea from a bottle of Lucozade, in other words she would be AW. She said that her focus, at around this time, was on changing her name and making a new start which would help her to put things to rest. She was expending quite a bit of energy on the name change and said that she was aware of the financial commitment.

155. Around 29 June 2020 her relationship with the father was difficult. They were not talking as much as they had done in the past, they were passers-by, they were not working as a team anymore. She would shout at the father and could be mean to him. The fact that they were not working as a team anymore frustrated her. She said she did not think that the father said much at all about it. At the meeting on 29 June she said that she was worried about reporting her relapse due to what Social Services would do; she did, however, agree that the work of Social Services around the birth of D was positive. She agreed that she had had good support from the social worker. She said that she was not sure why she was worried about Social Services becoming aware, maybe the problems at home and other things may come to light, for example, her cannabis use and relationship difficulties with the father. She denied that she needed personal support at that time but she did need more help from the father as he was always upstairs on the computer.

156. She agreed that she had cancelled a visit by the health visitor on 9 July. It was put to her that she had arranged via text to visit someone. She agreed that on 10 July she had been out to get drugs. She agreed that she had cancelled another appointment on 17 July with K. She was asked why she was cancelling appointments. She said that she and the father were not working as a team and she wanted to spend more time with the family. She agreed that these were meetings with professionals who were coming to check that E and she were okay. She agreed that she had cancelled a visit from K on 15 July. She said she would go

out shopping for two, three or four hours. She would go out for the same period of time if she went to her gran's.

157. She said that she was coping with her mental health but could have emotional problems. She got to the point where she felt uncomfortable about the amount that D was going upstairs on the computer with his father.

158. She was asked about an occasion when a neighbour came around to return their dog, X. The neighbour had asked if the dog was for sale and had suggested that the dog was not being cared for properly. The mother said she told her neighbour that the family dog was not for sale. She said the father got angry as the neighbour wanted to buy the dog and said that they were not caring for it properly. They went around to confront the neighbour, they had a pram each, there was an altercation at the front door, she remembered the neighbour coming over to one of the prams, there was some pushing and shoving between the father and the neighbour; she did not recall that the father had held E up like a shield. She phoned the police from outside the neighbour's house; she shouted at the neighbour something to do with his partner. She said she could not remember shouting, "I will kill your fucking daughter".

159. It was also put to her that there had been a previous incident when she had threatened to harm a three-year-old child, G1150. She also agreed that there had been a row with the neighbour. She had found out about the Facebook messages posted by the neighbour saying that she was a smack-head. These messages were going around the community.

160. She said that she could not remember the father being angry the night that E was injured. She did not know if she would have noticed him being angry. He never said that he was struggling with the children. She agreed that there had been an incident when she got a little jealous after E was born; she also agreed that she was worried about the father leaving. She was frustrated at the lack of progress in securing a name change; she denied that she was taking it out on the father. If she became emotional the father would listen but then walk off again. She also agreed that she could vaguely remember asking if she had hit him. She said that her emotional problems could cause her to be angry with herself.

161. She also agreed that there was an incident when she shouted having discovered that somebody had left the hob on in the kitchen and she wanted to know who had done it and why. She denied that she had lost control when she saw the mental health worker in the street. She said that it was unprofessional for the worker to stop her in that way and that she had raised her voice but was not shouting. She also agreed that there was an occasion when

she had screamed into a towel; that had happened just once. She was in her bedroom on her own and this was late June 2020.

162. She denied that there was ever an occasion when she was shoving D into a pram. She agreed that she could become rude in the way that she spoke to the father. She denied ever smashing a computer up suggesting it was the father who did it.

163. She said that her emotional mood could cause a lack of regular sleep pattern but generally she was sleeping okay. She said that her emotional stability was not so good in June and July 2020. It did not affect how she coped with her children, however. She maintained that she was truthful with the mental health worker although she had lied about taking cannabis.

164. She agreed that she missed important appointments in July, they were important but so was family time she said. She agreed that the visits by the professionals should have been happening weekly.

165. She was asked about shutting down a conversation with the police about social media. She said that social media makes her angry and upset, that she did not speak to her family for years. Rifts in the family upset her and she had not seen her family for a few months. When she gets angry she locks it in and when she is upset she gets tearful. Her family had cut her off and so she cuts them off. It had been like that since she was younger than 15.

166. She denied asking the father to come back when he went out late one evening with his brothers to shoot birds. She denied that it was because D was playing up. She could not remember any reference to toothache. She said that when the father took D up to play on the computer D would simply watch and fall asleep. She said that she would read to D although there had not been much reading from the father nor from the mother once he started going up on the computer.

167. In dealing with her stress factors, she identified money worries which ultimately she agreed were more than four out of 10; she had a number of debts totalling in excess of £4,500 and just after E was born, those debts were consolidated. She told K about her money problems. She was also stressed by relationship problems with her family and the lack of support; she was also stressed by relationship difficulties with the father. She was also stressed by drug dealings from the house, whilst D was usually in bed when drug deals took place but that did not always happen. She agreed that it was not appropriate for that to take place in the house. She agreed that she had said nothing to the father, she just let the father do his own thing.

168. When she knew that the father might start dealing in cocaine that caused her a lot of stress.

The fact was that they were not communicating and that added to how difficult life was.

169. She also agreed that there was evidence that neighbours were complaining about the smell of cannabis and she was referred to the letter in the G section.

170. She also agreed that the letter spelt out that they were in breach of tenancy and committing a criminal offence and that the matter could be referred to the police. That had made her unhappy because it meant that she might lose her home and lose her children. Her stress levels were 10 out of 10.

171. She agreed that the children had witnessed the row with the neighbour and that should not have happened and, again, the stress level then was 10 out of 10.

172. She agreed that during the summer of 2020 there was a lot of stress for her, issues with money, family, the father, drugs and neighbours.

173. She agreed that on 11 October 2019 she had told K that she had been drug-free for three years and agreed that that was not true. She said that she did not want her to know about her drug use. She also agreed that she had kept information about all the important stresses away from the professionals.

174. In terms of the missed appointments in July, she agreed that she could have gone shopping and had family time at other times but denied that she was trying to put professionals off the scent. She said that she did not want them to find out about her stresses. She maintained that she had not caused any injury to E.

<u>Rib factures</u>

175. She said that she knew that the evidence was that the fractures to ribs were caused by squeezing. She had never done that to E nor had she seen anything like that take place. She would never think that the father would do that. She said that sometimes E would cry when the father winded her. She had just thought that it was wind. From what she had seen, he was appropriate when he was winding her. She had never heard E cry differently. The mother said that she was always careful when she handled E as she was so small. She said they were both careful. There was nothing that she could think of to explain how E got the injuries.

176. In dealing with the situation before E was injured, she said that she would go out of the house and the father would be left looking after both children. A number of text messages were put to her from July 2020. These revealed occasions when the mother had left the family home for a number of hours. She said that she did not know that the father had difficulties winding E. She would cry sometimes when he was winding her but not all the

time. E did not cry so that it was noticeable; it was a whinge rather than a cry.

177. The early hours when E was injured, she said the cry in the middle of the night was an ordinary cry, as if she wanted a bottle. She said that during the times that she was out of the house and left E with the father, when she came E had seemed fine and was sometimes murmuring away or sometimes asleep.

The father

178. I heard from B who gave evidence with the assistance of an intermediary. He began his evidence by saying that his statement of C71 and in the supplemental bundle, C13 and also the interviews that he gave to police at G58 and G117 were accurate. He also confirmed his evidence appearing in the transcript at F118.

179. He confirmed that he had been convicted of the manslaughter of E and had received a sentence of 13 years' imprisonment. He said that he hoped to appeal his conviction but was waiting for this to be over. He said that he had no intermediary in the criminal trial; he said that he was answering questions thinking that they were relating to one thing but they were about another.

180. He said that as a baby E did not really cry. The mother looked after E mostly and he did more with D. Later on it changed and he did more with E up to about 50/50. The only problem with E, who never whinged or cried a lot, was that she suffered from wind. Sometimes he said, it just took a bit longer to get the wind up.

The father's relationship with the mother

181. After they met and began a relationship, he said he knew that the mother had had a girl called T who was adopted. She told him a little bit into their relationship. She said that T was adopted as a previous boyfriend was violent and abusive. She did not tell him about all her mental health problems. She did tell him that she had symptoms of schizophrenia. The father said, "Are you going to stab me are you?" the mother replied, "No" and that she had medication which she did not need to take. She did not tell him what the symptoms were until later. She told him that she heard voices from Bob Marley, Princess Diana and Michael Jackson. She did not say sometimes that she would talk back. She did not tell him that she was very poorly after T was born.

182. He agreed that he and the mother had been in written communication once they were both placed on remand. They had written regularly, he thought, once or twice per fortnight. The mother had sent he first letter, she had said, "Let's keep it simple, no mention of anything that has happened". He said that he was going to carry on writing in the hope that she

would say something. He was hoping that she would shed light on what had happened.

Mother's mental health

183. He said that he had stopped working in December 2019 .When he was at work there was one occasion when he had to leave work and his boss's son drove him home because of the mother's presentation. He rang the community mental health nurse, this was 2 May 2019. Later in his evidence he said that when he was first working he would do away jobs for two or three days a week, the mother would care for D. She seemed okay when he got home; he never worried about the mother caring for D.

184. He was asked about the mother when she became unwell. He said he knew about some of her problems, she told him that she had schizophrenia but that it was not strong and she was on medication. He described how symptoms would manifest themselves. He described how once she drew all the curtains and took the mirrors down and she could be up and down on the day. When she was down she was not talking; when she was up everything would annoy her. He said that when she was not well it was very hard living with her, he was treading on eggshells, he was afraid to say something in case it was taken the wrong way.

185. The record of his conversation with the community mental health nurse was read out:

> "Received a telephone call from A's partner, B, earlier this afternoon expressing concern for A and her mental health. B feels that A is deteriorating and has recently found out that she has stopped taking prescribed medication about two weeks ago. B expressed no immediate concerns for their son who A looks after but feels should her mental health deteriorate further then he would have concerns for their son's safety. B did not wish for A to be aware of the telephone call as he did not want to upset her further. B reported that in the last week A has become more agitated and verbally hostile towards him. Her conversation has been quite disjointed. He has found the house in a more disorganised state. Each night he has returned home from work as they would like to move to a bigger place but have not yet been offered anywhere but A is packing for the move. B stated she is talking to dead people and has been pushing her family away slowly alongside behaviour such as turning on the music channel on television and standing right next to this just staring at it. Advised B that they would make a cold-call to A this afternoon and try to assess her mental health and risk and agreed not to inform A of his call at this point.
>
> Cold-called A, A was very curt and abrupt with CCO who normally has a good rapport with her. A stated that CCO should not be calling around unannounced and it was against CCO's policy to do so. CCO advised A that they were a bit worried about her as something had not seemed right with her during the appointment of the other day. A was very quick to point out that there was nothing wrong with her. A appeared paranoid and guarded and was tearful at times. CCO asked A about her sleep and what

medication she is taking. A stated that her sleep was fine and she continues to take the medication at the dose prescribed. Again, A stated that CCO was invading her privacy and wanted them to leave. A followed this up with she felt frightened for her life but could not elaborate why this was. A then ordered CCO from her home. At this time CCO had no concerns for baby as caring for him appropriately but contacted partner who advised he would be home in 15 minutes. CCO advised B that A has no insight that she is unwell nor capacity to consent to treatment and CCO was considering requesting a Mental Health Act assessment but would first discuss with Dr Y who is covering for Dr Z. CCO advised B that they would return within an hour to their property to advise him of a decision. B advised that with regards to the baby he is happy to take time off work to look after his son. After discussion with Dr Y, a Mental Health Act assessment was requested and advised that this is urgent".

186. The record further states that two hours later the CCO return to the mother's home. The record reads:

> "A stated that she was glad CCO had returned as she had not meant to be rude earlier but just felt overwhelmed with her thoughts and problems and not knowing what to do about solving them and having not discussed these thoughts and problems with B or CCO as she did not want to be labelled as thick or incapable. A stated that she had panicked earlier when CCO had visited as she felt vulnerable and thought that CCO would call Social Services and tell them she is a bad mother because she cannot make decisions or solve problems for herself. A, now accepting how this sounded and that she is not a bad mother and CCO would not have left her alone with a child if there had been concerns".

Further down the record:

> "A admitted to speaking with dead relatives but stated this has never really gone away and it is something that she does not find distressing, more of a comfort and it does not interfere with her activities of daily living or care for her son. A agreed that she is currently tearful and emotional but was feeling much better since getting her thoughts and feelings out in the open. A did not feel that she is relapsing, just reacting to a prolonged period of stressors and pressure she had put on herself. CCO advised A that they had been so worried about her after the first visit earlier that they had requested a Mental Health Act assessment but will now cancel this request as they feel that A is once again engaging, taking medication and will be kept safe with her partner for the next week".

187. The father in his evidence confirmed that he had no concerns about D but if the mother had deteriorated further he would be concerned. When he had spoken to the mother on the telephone she was so upset she was screaming or crying. He said that the mother had always told him that if mental health people found out about her she would be sectioned. He said he did not want them to find out. He said the mother did not cope well with

lockdown. A lot of the time she would say that they were not allowed out. He would suggest going to the park but she would say no and that she was sick of going there.

188. In June 2020 when the mother became unwell he said sometimes, indeed a lot, he felt like he was on eggshells, he found that quite hard. He had set out examples of how the mother would behave at C78 in the supplemental bundle. He said that mother was not always like that, however, sometimes she would stand a few inches from the television.

189. He was asked why he had not contacted the community mental health service again. He said he was scared that she would get sectioned. He did, however, maintain that he had never seen the mother be bad with the children, save for one occasion when D would not go into the pram. D had held his body straight and stiffened to prevent his legs going in. He said he thought that the mother was a bit rough with him. She had replied that she was his mother and she knew how to control him. He was asked whether he had ever seen the mother be angry with the children in June or July 2020, he said never but that she was with him a few times.

190. J had done a care plan as to what would happen when E was born; he was there. He knew that he should tell professionals if something was going wrong. But he said, "You do not want to say things against your girlfriend". He said he thought that he could remember telling the health visitor that mother's mental health was stable. He said he was sort of telling the truth, he was not telling them everything. He did say that if he had concerns about the mother looking after D or E he would have said but only once had she been too rough with trying to get D into the pram. After that incident D had no injuries, "It stopped soon after…" he said, "… he is only a little lad". When he saw this he did not think that the mother was trying to hurt him, just being too rough.

191. After E was born he said that she was a quiet baby. She was the same as D. She would cry if she wanted to feed and if she wanted a nappy changed it was more of a whinge. At first the mother did more nappies and bottles, for the first three to four weeks, after that, he said, it was 50/50. Sometimes the mother did big shops and sometimes he did. He maintained that he was very rarely left to look after both of them, he thought only once. He said that he was the mother's carer and paid as such.

192. There were some times when she did not take her medicine. She would tell the father, it has happened at least twice. D was already born, it had happened once before E was born and the second not long after she was born. The second time came just before 10 July when the midwife came.

193. After 11 June the mother's medication was increased and the mother seemed a lot more calm. In terms of the mother's mental health more generally he said he did think about ringing the community mental health team a couple of times but did not want the mother to be sectioned. He had contacted the team in May 2019 when he was worried about D but told them not to tell the mother; he did, however, tell the maternal grandmother who advised him to be careful, he said. He said he was never concerned about the mother to that extent again. The incident on 19 May was the worst.

194. He said during the time that they were together, which during lockdown was 90% of the time, he never had any concerns about how the mother handled E. When he came back from being out he never had any concerns about the children and when he picked E up she never seemed to be in pain.

Drug use and supply

195. He was asked about his cannabis use. He agreed that he would deal in cannabis; in fact they both were. He denied that people would come to the house to buy drugs. He said that they were selling to six people for a bit of cash. He said he did not know that the mother should not smoke cannabis. He thought that she smoked a lot less than she said when she was giving evidence. He said that they would have cannabis together. Sometimes they would have one joint in the morning otherwise they would have half a joint each at night. Sometimes she got a bit snappy if she did not have any cannabis. They would take cannabis when the children were in bed or asleep downstairs. He denied that he was planning to start dealing in cocaine. He maintained that a £500 loan in July from his brother was for a carpet for the front room. Later in his evidence he said that they only used cannabis together; that was before D was born and afterwards. When pregnant with E he said the mother had cut down how much she was using. He did not know if he knew that cannabis was harmful for the mother's mental health as nobody had told him. He had never told any professionals that the mother and he were smoking cannabis as it is illegal.

196. In terms of drug supply he said that they both sold weed and cannabis; it could be his deal or it could be the mother's deal. To start off with the mother drew money out of the bank to buy drugs, however, once they had sold drugs and made profit they would not need to use the bank. He agreed that supplying cocaine was mentioned but he said no.

Household stresses

197. He was asked about the incident with his neighbour on 7 July 2020. He said that the

neighbour had come around to the house wanting to buy the couple's dog having brought it back. The father said he was on his way around to give the neighbour a £20 reward when the mother said, "Have you seen Facebook?" in which the neighbour was suggesting that they were smack-heads. They went around to the neighbour. The father knocked on the door. He asked him why the neighbour was saying this. The neighbour replied, "Because you are". The neighbour closed the door but then came out following them; the mother phoned the police. The father denied holding E up as a shield. He said that the mother said, "I will kill your fucking daughter". The father said he was quite angry, he was not, however, threatening but also trying to show to the neighbour that you cannot say what you like. He said he thought that he would have been shouting. He agreed that the children were in their prams and could hear what was going on.

198. In terms of the allegation made by the mother that the father would take D upstairs to play on the computer too much, he denied that it was as much as the mother suggested. He said sometimes they would go onto the computer but other times they would play with D's car in his room.

199. He said that he knew that the appointment with the health visitor had been cancelled by the mother for 9 July. He did not know why although he knew that the mother had said that the family were coming. He said that they did not have family coming. He described the mother as being a little agitated; he also knew that a meeting was cancelled by the mother for 15 July. He said that they were going out but, in fact, they did not go out.

200. He said that as the mother became unwell in June and July 2020 he would take D a bit more but still did quite a lot with E. He was asked about a neighbour saying in a statement that on 18 July 2020 the father was stewing as he could not get anymore weed. He agreed that he had asked the neighbour if he could have some. He said that on the evening of 18 July he went out with his brothers to shoot birds with catapults. Whilst he was out, the mother telephoned him saying that D was kicking off and that she had toothache. The father thought she had contacted him again. He could tell that she wanted him to come back. If he had not gone back then he thinks that things would have got worse.

201. On 21 July he said he was engaged in the garden for most of the day moving the shed and clearing up. He confirmed that he had never seen the mother do anything to hurt E or D. He was asked how E was injured. He said he believed that she was squeezed or pushed on her chest. He said it was hard to say who caused the injury. He said:

> "If you have not seen it you cannot say that it was the mother. There were

two people in the house, it was not me, the only person left is the mother".

202. The impression that I formed here was the father was very uncomfortable in seeking to suggest that the mother had caused injuries to E.

203. He was asked about 29 June. He said that the mother went to see K. He did not know that she had deleted all her family contacts. He knew that she was going to change her name. He did not know why. She had said that she was sick of her family. He said, "Why change your name if you are going to get married?" she said, "It was not happening quickly enough". He said that the mother used to say horrible things to him like he was thick and stupid. He said that he did not know that the mother had told K that she was hearing voices and responding in a different accent.

204. He said he did not tell anyone that she was becoming ill as she said that she would be sectioned. She said that it was a really bad thing and she would be strapped to her bed and have injections. He said he did not think that the mother relied on him to help her with her mental health.

205. He was questioned by Miss Greenwood on behalf of the Children's Guardian about the stressors on the family. He maintained that they did not know that the mother had so much debt. He was aware of problems with her family. He thought that when E was born she was still talking to her mother but not by the time E died. It was something to do with gran as well. AB, her brother, was living at her gran's rent free and she did not like that. He then bought his own place and she did not like that either. He thought that the maternal grandmother had told the mental health workers that she was worried about the mother. During an assessment to see if D would stay with them, the maternal grandmother had refused to sign a positive assessment for the mother, saying that she knew what she was capable of. He also thought that the mother was jealous when the father rang his own mother and father. She said that she did not like her surname because it rhymed with the word whore.

206. He said that in July 2020 he did not know that the housing association had sent a letter warning the mother about cannabis use. The mother had read it and said that they would need to stop smoking near the gate which was why he moved the shed to the corner of the garden. He said he did not know that the mother should not take cannabis because of her mental health issues. He knew it was bad for pregnancy but did not know that the mother was having as much as she said she was. He did not ask her to stop because he was scared of her reaction. He said that he was living on eggshells and that D would have been present

when the mother shouted. D had to live in that atmosphere as well. He said that during the incident with the neighbour she had threatened a neighbour by saying, "I will kill your fucking little girl" he said that he looked at the mother when she said that and said to her that she should not have said it. He was shocked as he had never heard anything like that before. He did not know that she had said something similar about another child, this is the incident at G1150 where there was a report of antisocial behaviour against the mother on 22 June 2015 when she was reported as making a threat towards the complainant's three year old child; the mother was alleged to have said, "Get that scrote away from my door otherwise I will do something".

The events of the early hours of 22 July 2020

207. He said that he did not tell the mother what had happened to E before the ambulance came as he did not know. He remembered checking on her; her heart was beating but she was not breathing. Her eyes were open when he went back upstairs to get the mother. They were closed when he came back down. He said, "Ring an ambulance" to the mother and for her to get his phone. He maintained that there was no blanket on E. He was feeding her as he put her down but there was no blanket. He had just woken up naturally. He got out of bed, off the end because he did not want to wake the mother up; he picked E up and went downstairs. He denied that the mother had reminded him that it was his turn and said that she was asleep. E was in a Moses basket in the cot. He took it downstairs. He took her downstairs. He picked her up in the Moses basket. Once downstairs, he put her in front of the red sofa and he sat on the sofa and nodded off, he said. Later he woke up, he sprung up, he went into the kitchen to make a bottle using the machine, he thought it took 60 seconds, then he came back into the living room; he sat down, he put the bottle on the floor by his foot. He picked E up to give her a bottle, he did not know whether she took two or three ounces. Thinking back it was not even two ounces. She made a suck on the bottle and then pulled away. He put the bottle down. He went to put her in the basket but her arm fell away. He put her in the Moses basket and went upstairs. When he came downstairs there was some mucus on her lip, he wiped that away.

208. It was put to him that doctors say that she had suffered a head and brain injury shortly before the ambulance was called. The injuries were so serious that she would have collapsed straight away. The father said he knew that E had a fracture to the back of her head and rib injuries and bleeding to the brain. He was asked what had happened between 3.30 when he said he got up and the ambulance being called. It was put to him that he had

told police that when he came downstairs E's eyes were open and she was looking at him and smiled. He said that she was awake and was looking at him. She was not screaming nor was she going blue. He did not know about whether she was floppy. He did not pick her up, he just picked the basket up. There was nothing to suggest at that point that she had an injury. He said he did not know if she took any milk or not; when the teat was in her mouth she clamped down on it, it made a "plunk" sound when it was removed from her mouth. After the plunk sound and as the bottle went down, her arm fell away.

209. It was put to him that when seen by police at 5.45am at G286 he said the following:

> "I think it was three o'clock I am not sure about the time so do not quote me but I think it was three o'clock. It was time for a feed so I bring her down and bring her into here and then went into – and I always close this door so if she cries, she wakes him up, so, I close that door, went into the kitchen to do a bottle on the prep machine. I had done that. Come in and I noticed she had like some phlegm around her mouth, so, I cleaned it off and she looked fine to be honest and picked her up, went to give her a bottle and she just was not taking it at all but she was quite still but she was warm and everything, so, I put her in, back in her Moses basket and I thought I would give her five minutes and then she will probably have it and that is when I had noticed she was really stiller than normal and I picked her hand up and she was unresponsive, so, I straight away went to my partner and then she come down and we both looked and then I was on the phone and they told me to do CPR on the chest and check the airways".

210. It was put to him that there was no mention of him falling asleep and why that was. He said he does not remember and only remembered at the second interview. In his first police interview, he said, at G60:

> "Three o'clock was my turn, I took her downstairs, she was awake on the way down the stairs, she was looking at me, I put her next to the sofa on the floor, she had a bit of mucus around her top and bottom lip so I wiped it off. I give her a dummy, went into the kitchen to do her bottle and her bottle is done on a Tommee Tippee machine so it only takes 60 seconds. I had done her bottle, come back in, went to give it to her, picked her up out of her basket, out of the Moses basket, went to give it to her and she took literally two mouthfuls, no more than three, tops, but I think it was two, then clamped her mouth shut as if she did not want it. Now, mostly I put her down and leave her for five or 10 minutes and she will have it again and it is like happy days but as I put her down I noticed her arm just sort of fell a lot more freer than normal, still open but she – it just did not feel right".

211. Then he was asked about his second account to the police at G123, "Was she awake though?" "Yeah, yeah, she was looking at me okay" "Okay and so then you went in to make the bottle and I am presuming now you – has the account changed from your previous

interview?" "No, no, all the rest is exactly the same, I do not even know how I did not remember falling asleep but I know but sometimes the truth can sound bad but I fell asleep and I should not have and I did" "What caused you to wake up B?" "I do not know, I think it is because I knew what I was meant to be doing to be fair because when I go to bed and wake up sometimes E does not cry for her bottle and I do not know how but I sort of wake up on time and just look at the clock".

212. In his police interview at G71 the father is recorded as saying:

> "I am not sure if it was three o'clock bang on or just after but it was time for E's bottle. She was not crying but she was like, you know, like whinging for her bottle".

213. According to K she spoke to the father on 22 July:

> "I asked him to explain what had happened and he stated that he had woken to complete the night feed. He had taken E from the basket, took her downstairs for her feed when he noticed mucus around her mouth. He tried to feed her but she only took 20ml of milk. At first he thought that E must be full from the previous feed so he placed her down. He was worried so he went to get the mother".

214. In his oral evidence he said that between 3.30 and 5am he did not talk to the mother about what had happened but after the ambulance left they did speak on the phone. It was put to him that the mother told the hospital that he fed E and she vomited and so he woke the mother up as he was worried. He denied that and said that she had two gulps on the teat. It was put to him that the mother said that E fed 20ml then did a projectile vomit. The father denied that and said that she has done a projectile vomit but not then.

215. He said that E stopped breathing and that her chest was not going up and down. She started to change colour just before the ambulance got there. He was asked about the difference in time given for him getting up with E, the mother saying 3.20 and him saying 3.30 was put to him that he told the police that it was three something but that he was not sure what the numbers were. The father maintained that during the days of trial he had had a lot of time to think and could now see it vividly in his head as being 3.30 in red numbers. It was put to him that unless the mother had seen the clock, she would not know what time he got up. The father said that that was because the mother knows that E normally has a feed at three o'clock.

216. As he was going downstairs with E he could clearly see E's face. What he could remember is that she just looked straight at him. What he said in police interview at G71 was put to him:

> "She was just looking at me, she was looking at me on the way down the stairs. We have got a light at the end of the stairs and every now and again she looks at you on the way down so when you get to the bottom she is like, you know, because of the light so she did that, she was looking at me in the front room, once I have cleaned that off and give her, her dummy, I went into the kitchen to make the bottle. I had done the bottle, I come back and I always have her this way because A always has her that way".

217. The father said that she was looking his way all the way down the stairs and in the front room. The father said that he fell asleep, then woke up and then went to make the bottle. He had brought E down, then sat down and nodded off. When he woke he bounced up as if he was late for work. E had not started to cry. She did not make any noise when he got up in the first place. He said he had not told the police about falling asleep at first because he did not remember. He accepted that it sounded dodgy. It was put to him that he was saying this now in a bid to explain how he had been downstairs for so long. He maintained that when he scooped her up to give her the bottle she seemed all right. She was just the same. She was awake. Her eyes were open, she did not seem floppy. He had no worries for her. He gave her the bottle. She clamped down and was a little tense. He pulled the bottle out and it made a plunk noise and her arm fell away. The floppiness was when he put her down. This was the first time he had ever experienced anything like it, it was very noticeable. He said he thought she had some of her bottle, she bit down on the teat, he said the change of colour was happening just as the ambulance was pretty much there.

218. I simply did not believe the father's account. His inconsistencies are deeply troubling and in my judgment what is missing is any plausible account of what happened between getting up with E between three and 3.30 and going to get the mother and then ringing the ambulance. His account cannot survive scrutiny when set against the unchallenged medical evidence in this case, having performed a holistic assessment of all of the evidence.

219. He was asked about his tendency to be aggressive or violent. He said he would have to be provoked to kick off. On one occasion at work he had not punched a cupboard, he had dropped a wardrobe and punched the side of the van and broke his hand. He denied smashing a computer at home and saying it was the mother.

220. He maintained that what he said at G127 was true:

> "No, and that is the god's honest truth, I really do not, I swear but to be honest with you I definitely have not inflicted those injuries, I wanted to get that very clear, definitely, definitely have not touched her. She is my little angel and my partner, she would not hurt a bone in her body, she is lovely, you know, she is brilliant with both kids".

221. He was asked why gripe water was put in E's milk and he said that that was because she had a problem with wind, it would be a while before she brought any wind up.

222. He said that he did have a very serious previous conviction. At the time of the offence he was angry and drunk but he felt it was not fair to refer back to it as it was 13 years ago.

223. He maintained that he was not stressed in the days leading up to E's death; he was living on eggshells and it was not easy for him but he said you get used to it. He agreed that the house was a mess on the morning of E's injuries, however, they had had no time to tidy up. Once the ambulance had been he grabbed the nearest clothes for D, he went to hospital. D had not had a bath the night before because he was helping him with the garden and so he fell asleep at the computer.

224. I now set out my findings. The brain and spinal injuries were caused by E's father shaking her violently. The eye injuries were caused as a result of the severe head trauma inflicted on E by her father within minutes of her collapse. The relevant rib fractures were all caused when E was in the care of her father. E's father inflicted these injuries by squeezing and compressing E's ribcage in an excessive way, wholly outside the range of reasonable handling of a baby of E's age.

225. The skull fractures were inflicted by the father throwing or hitting E against a hard surface with extreme force within minutes of her collapse.

226. Each of the rib fractures would have caused E significant pain and discomfort; the father realised that E was unwell and should have sought medical attention for her.

227. In June and July 2020 the mother suffered a deterioration in her mental health which included experiencing increased auditory hallucinations, frustration and aggression, demonstrated towards professionals and the father.

228. Neither parent sought additional help or support in relation to the care of the children during this period in spite of the obvious pressures that it placed on the family and the parents in particular.

229. On two occasions the mother cancelled appointments with healthcare professionals because she was concerned that increasing emotional stressors were affecting her mental health and she did not want that exposed to medical or healthcare professionals.

230. Both parents have been users of cannabis whilst they have had care of the children. The mother has done so knowing that it was harmful for her mental health. She also smoked cannabis when pregnant with E notwithstanding that she knew it could be harmful for her

unborn baby.

231. Both parents were involved in selling cannabis from the house even though they knew of the risks that that posed for their children of exposure to drugs and drug users.

232. D was cared for exclusively by his parents and was present in the house when the injuries detailed above were inflicted on E.

233. The mother has been responsible for caring for D during periods when she has suffered mental ill health. She has been irritable and has shouted and thrown things.

234. At the time that E suffered her injuries D was observed to be dirty and the home conditions were poor.

235. D has been subjected to the permanent loss of his sibling because she was killed by his father. He will suffer ongoing emotional and psychological harm as a result of the killing.

My reasons

236. On behalf of the father it is submitted that the Court has heard much wider and more detailed evidence that was not heard or tested in the criminal court, in particular about the pattern of the mother's behaviour when suffering a deterioration in her mental health through June and July 2020. The matters that were concealed or minimised by the mother to professionals, including cannabis use, because she was so wary of being referred to Children's Services or being sectioned and examples of her aggressive and unwell behaviours.

237. I also accept that the lived experience of B and the children in the home has been, in part, accurately described by him in his written and oral evidence. A number of the incidents set out at C78 and 79 of the father's statement were accepted, in part, by the mother. She became irate over the hob being left on and her anger led to the paternal uncle leaving. She was paranoid about the father leaving. She was jealous of a neighbour called AC. When asked about standing right in front of the television the mother did not accept this description but it is exactly the behaviour that the father described when he got in touch with the mental health services in May 2019. The father described avoiding arguments trying to keep the peace, keeping D out of the way and returning home from trips prematurely because of the consequences if he did not.

238. These were examples of the mother presenting with emotional and mental health difficulties. A further example is of the mother ranting or shouting in the street at K and also saying, "I will kill your fucking daughter" to a neighbour during a dispute.

239. The mother gave evidence that she felt that her relationship had changed, this is not

evidenced by the records of professionals who visited the home before and after E was born.

240. At least until June 2020 when the mother confided in K that she had been mean to the father, had shouted into a towel in frustration and was struggling, the mother accepted that she had asked the father whether she had hit him; this change coincided with increasing stressors and triggers for a mental health relapse including money, name change, being in lockdown, paranoia that the father would leave her, worried that she might be sectioned or that Children's Services would get involved.

241. In her police interview she described their relationship as very good at G110.

242. K described the relationship as healthy and that B was friendly, pleasant and warm when she visited, G197.

243. The parents had talked of marriage during a home visit on 30 June, page 1595.

244. Those submissions made in closing on behalf of the father are well made and I accept them. However, none of that led to the mother inflicting injury upon E, in my judgment.

245. I also accept the submissions made on behalf of the father that when seeking to identify perpetrators of non-accidental injury the test of whether a particular person is in the pool of perpetrators is whether there is a likelihood or a real possibility that he or she was the perpetrator, reference to *North Yorkshire County Council v SA* [2003] EWCA Civ 839 and also that Jackson LJ summarised the law relating to uncertain perpetrators in the case of *Re B* [2019] EWCA Civ 575 that the court should first consider whether there is a list of people who had the opportunity to cause the injury and then consider whether it can identify as possible perpetrator on the balance of probabilities. In other words, the Court should be careful to approach the question as one of being able to rule in rather than out.

246. Now, I agree also that there is a striking similarity in the evidence of both parents that neither criticises the care of E by the other. They have been consistent about this despite being asked it many times by police, in the criminal trial and in these family proceedings.

247. There is no evidence that the father was ever violent or aggressive to the mother or the children. The mother described him as a lovely man who she was not in fear of in her second police interview, though whilst it is accepted that he has an old conviction from 2012 it is suggested this was a very different offence for which he pleaded guilty.

248. Further, there is evidence that the mother has behaved verbally aggressively including making threats to children. K gave evidence that the mother ranted at her in the street. I bear all of that in mind in reaching my judgment. Whilst I accept that the mother issued two threats to adults albeit making children the apparent target of the threat, there is no

evidence of physically aggressive or assaulting behaviour from her and in my judgment those threats, whilst utterly reprehensible and a display of what could best be described as thuggish behaviour, were likely to be vacuous. They were petulant, childish threats.

249. I also accept the submissions of the local authority. There is a joint statement prepared by Dr H, consultant paediatric radiologist, Dr AD, consultant histopathologist, Dr G paediatrician, that appears at E421. Dr AD and G generally adopt and defer to the findings, interpretations, opinions and conclusions of Professor AH who filed a report dated 30 May 2021.

250. In the opinion of the experts, the rib fractures were inflicted although Dr H says inflicted injury could account for fractures seen radiologically.

251. The fractures are unlikely to have been sustained during resuscitation attempts on 22 July 2020, E424 although it is right to say that Dr G is recorded as saying that some of the recent fractures could have been caused therapeutically, i.e. by resuscitation. The mechanism for the causation of the rib fractures is compressive force to the chest or ribcage. Dr G also opined that fractures to the anterior aspect are occasionally caused by impact and per Professor AH there may be an element of side-to-side compression, E425.

252. The experts were of the unanimous view that the degree of force required to cause the fractures would be excessive outwith normal or even vigorous handling of a child with normal skeletal strength, E425. As to timing there was more than one fracture-producing traumatic event, some fractures were up to three months old, E425. All of the experts agreed that these would initially be very painful for about 10 minutes and that the perpetrator would realise that significant injury had occurred to the child, E426.

253. A carer not present at the time of the injury would not necessarily be aware, subsequently, that a fracture or fractures had been sustained. The child would have been fractious but the carer might not have realised the cause, E426.

254. Neither of the parents have given any account as to the causation of those injuries at any point in time. In evidence, each denied any possibility of having inflicted the injuries or of having witnessed the other inflicting the injuries.

255. From the chronology, the following can be extrapolated: The first set of rib fractures which the experts identified in respect of which the Local Authority seek findings will have been caused on or around the ninth and 17 July 2020. Matters were escalating in the home. The altercation with the neighbour having preceded on 7 July. On 8 July the mother was awoken by E at 5am. The mother went to visit her grandmother and was out of the house

for four hours, evidenced by the mobile phone records at G2412. This also coincides with the mother cancelling visits from professionals.

256. The second set of rib fractures is timed between the 16th and 19 July 2020. On 16 July the mother visited a friend evidenced by mobile phone records at G1614, leaving home at around 10am and was out from the home for some time. It was on this occasion that she took the documents for the change of name with her, G1615.

257. The more acute fractures were caused between the 20th and 22 July 2020, the mother went out shopping on 20 July 2020 having called for taxis at 10.27 and 12.05.

258. Tuesday 20 July 2020 Mother went out to see AE, leaving the children with their father as she said in her interview with the police, G107 and AE came back to the house with her at G107. She then walked her back to the shop and went to the chemist, out for about 30 minutes, G108.

259. There were three times when the father was left with sole care of the children which at times coincided with the timings for the causation of the rib fractures.

260. I also accept the submissions of the mother. The rib fractures were inflicted by the father. These are not injuries that fall into the uncertain perpetrator category but rather that the totality of the evidence enables a Court to conclude that the perpetrator was the father for the following reasons: The Court can properly take into account the inherent unlikelihood that E was subject to injuries from both of her parents, each inflicting injuries separately and unknown to the other, although I remind myself that the Court needs to be cautious of adopting an approach whereby a finding that one carer caused one set of injuries to a child translates into a finding that the same carer must have also caused other injuries which are present, *Re T* (*Care Proceedings*) [2010] 1 FLR 1325. Similarly I have regard to the observations made by the Court of Appeal in *Re A (Child Abuse)* [2008] 1 FLR 1423 that an argument based solely on the high degree of improbability that there are two perpetrators for injuries to the same child is potentially misconceived inference.

261. There is no evidence from any source that the mother acted in any way inappropriately towards E nor did she do so with D. The evidence given by the father regarding D in the pram was, at most, evidence of Mother setting a boundary for D. Whilst it may have been done in a way that Father felt was rough or heavy-handed, it did not cause injury, it was over quickly and was in response to biting behaviour which needed to be stopped and managed. There was no suggestion that Mother was reacting in anger or in a violent way and I am satisfied that there was such an incident with D in the pram.

262. The observations of the mother with E by professionals, showed a loving, caring mother with warm, affectionate, positive and appropriate interactions, the father agreed in evidence that his observations of the mother were similarly appropriate and affectionate. The father's conviction for the manslaughter of E shows that he was capable of behaving in a very abusive way towards her. Whatever led to Father behaving in that way in the early hours of the morning of 22 July is likely to have caused him to behave in an abusive way whether out of frustration or stress on previous occasions and concerning the rib fractures.

263. The father has a history of reacting physically to stress or frustration. He punched the cell wall after his arrest; he broke his hand after an incident at work, saying, "Oh for fuck's sake" as he dropped a sideboard and then slammed his hand against the side of a van. I also find that he did smash up the computer as alleged by the mother; I preferred her evidence to the father's on this issue and also in his evidence when he was asked whether he reacts in a physical way when frustrated or angry he said, "Everybody does if they are frustrated, everybody does at some point but I would have to be really provoked before kicking off" and I do note Father's previous conviction for a serious assault in the past which did cause life-changing injuries although that is an extremely minor point in the overall scheme of things.

264. The Local Authority seek findings amounting to a failure to protect against the mother. I attach weight to the evidence of Dr G at E411 where he said, "In my opinion people not witnessing an event causing a rib fracture and caring for E thereafter would have found her to be fractious but might not have realised the cause". Whilst E had suffered a high number of rib fractures, I agree with Miss Burnell that it would be too simplistic an analysis to infer from the number of fractures that it would have been apparent to a non-witnessing carer that E had been injured or required medical treatment. In his evidence Dr G referred to Professor AH and indicated that there were some small or partial fractures and that we would never know about these fractures, he said, unless children die, so we have to be cautious because these smaller fractures may not go into the nervous system.

265. Dr G also noted that even for clinicians it is difficult to diagnose from clinical investigation hence the reliance on x-rays.

266. Also E had rib fractures from at or around the time of her birth and therefore the mother would not have a comparison of caring for E without rib fractures.

267. I do accept also that when she was fractious the mother attributed this to wind, this was on occasions likely to be due to discomfort from the fractures, however, there was nothing to

indicate to the mother that she had been injured, therefore she did not fail to seek medical attention as she could not reasonably be expected to know that it was required.

268. The Local Authority also seek to rely on the mother's comment about E crying at times when she was being winded by the father. Whilst the crying may have been due to discomfort caused by injury it could equally have been due to wind or a combination of both.

269. I also bear in mind the observations of K, J and N as to their observations of the father, the mother agreed with those observations, there was nothing in the father's handling of or behaviour towards either child to have put the mother on notice or to have given her cause for concern.

270. In relation to the injuries suffered by E the evidence does not, in my judgment, support a finding that the mother knew or ought to have known that she should seek medical attention or take any other steps to protect E and it was not until the events of the early hours of 22 July that she became aware of actual injury to E.

271. I am not satisfied on the evidence that she delayed unreasonably either in letting the paramedics in. I accept her evidence that she was on the telephone still at that point, nor indeed did she delay the trip to hospital of the paramedics in the ambulance.

272. I also note, as I am urged to do by Miss Burnell, that the mother's distress and upset at hospital was appropriate and noted by medical practitioners at G2994 AF, a critical care nurse stated, "Mother was very upset and started crying on the floor". At G2952 AG who is a family liaison and bereavement counsellor, "When I met A on the unit she was clearly visibly upset". At G2944 the consultant anaesthetist, "As I walked on to the department I saw the mother who looked visibly upset".

273. I do, however, accept the submissions of the Children's Guardian that at times during the evidence the mother presented as defensive, replying, "I do not know" on a number of occasions where I might have expected an answer and seeking to minimise both the external operative stressors upon her before and during E's life. Both the nature and extent of her mental health and its manifestation and its impact on those around her, especially the father and D and I agree that it was not until the latter part of her evidence that she was open about the level of cannabis use and demonstrated an ability to reflect realistically upon the impact of external stressors upon her.

274. I find that she knew that drug use was a risk factor in terms of her mental health and for her unborn baby and that professionals engaged to support her would be concerned about her

using drugs. She admitted lying to K on 11 October 2019 when she claimed that she had been drug free for three years and two months, H994. This was done to create a false positive picture of her functioning.

275. I also accept that the mother was living under a number of significant life stressors which she was not sharing either satisfactorily or at all with the father, it was impacting on the family, debt totalling in excess of £4,500 in respect of four credit cards, several mail order and home credit loans, a loan and an overdraft current account, threat of a report to police and potential loss of home arising from significant cannabis use, G850, involvement in dealing cannabis and concern that the father may be about to engage in dealing cocaine, complaints by and altercations with neighbours arising from cannabis use, unresolved traumatic experiences including her own father's suicide and the loss of her first child, T, historical and persistent volatility in relationships with family members and at the relevant times a lack of contact and support from her mother, isolation and stress arising from the Covid pandemic and being in lockdown during the relevant period, responsibility for caring for two children, deterioration, dissatisfaction with the relationship with the father and what she saw as a lack of communication between them and a cessation in their working together as a team.

276. However, the mother was a witness whose evidence, although peppered with unreliability as to details, at times demonstrating avoidance and lies, is nonetheless compelling and convincing as to the central core. I recognise that there are all kinds of reasons why witnesses lie, yet through the lies as experience teaches, one may nonetheless be left with a powerful conviction that on the essentials the witness is telling the truth, perhaps because of the way in which she gives her evidence, perhaps because of a number of small points, which although trivial in themselves nonetheless suddenly illuminates the underlying realities.

277. As I sat and listened carefully to the mother's evidence and subsequently stepped back to consider all of the evidence holistically, I was left with a powerful conviction that she did not cause any of the injuries to E. Nor, indeed, that she was aware that the father was inflicting such horrendous injuries to his daughter and would eventually, in so doing, cause her death. To put it simply I believed the mother. As was submitted on behalf of the Children's Guardian, whilst there is evidence that E would whinge when being winded by the father, there is no evidence to suggest that this was at a level that required intervention by the mother. It may be that E was distressed when being handled by the father because of

the fractures but the expert evidence was that the child may not have shown such distress and that even if she had it would not be obvious to anyone who had neither inflicted the fractures nor been present at the time of infliction, that her distress was the result of rib injury, including *inter alia* oral evidence of Dr G. Many people, including professionals, handled the child during the relevant periods.

278. When the mother gave her evidence notwithstanding the inconsistencies in her account, I still found her, at times, to be a candid witness who was prepared to make concessions that put her in a poor light. She conceded significant drug use that, in my judgment, the father played down. She conceded involvement in drug supply. She said that she thought she put a lot of her problems on the father. She felt she was mean to the father and had been rude to him on a couple of occasions. She was able to say with some ease that she considered that the injuries and subsequent death of E had been caused by the father, even though clearly she had found that difficult to process initially at least, after all she loved him at the time, it is clear that the mother and the father entered into correspondence from their incarceration until about the end of September 2020, however, it was she that broke off the correspondence, the father conceded that. Her reason for doing so was the dawning realisation, as evidence came in, that her daughter had been fatally injured and that it must have been the father who did it.

279. During her testimony there were moments when she demonstrated what, in my judgment, was genuine emotion as she spoke of the injuries and death of her daughter, whereas the father appeared bereft of emotion. I am very careful not to overplay the significance of the impression that I formed on this aspect. Whilst that is not determinative of my assessment of their respective credibility it is a small pointer, a small piece in a large jigsaw.

280. It was the way in which she gave her evidence and because of a number of small pointers which, although trivial in themselves, nonetheless illuminated the underlying realities that, combined with very powerful and unchallenged medical evidence, which completely undermines the father's case. Notwithstanding her mental health issues, the emotional stressors that she was under, and her reprehensible, thuggish oral threats issued in the direction of children, I am not satisfied that she inflicted any injuries on E.

281. By contrast, I found the father to be an unimpressive witness who found it difficult to say that it was the mother who caused the injuries and subsequent death of E. When asked this question there would always be a run up to the wicket, as far as he was concerned. He would, for example, say as he had not seen it you could not really say it and even when he

was able to say that it was the mother he would always couch the statement with those sorts of observations.

282. I was left with a clear impression that the father was very uncomfortable in seeking to blame the mother for these injuries and E's death and in my judgment the reason is simple and straightforward. He caused them. I also found him to be a generally dishonest witness. In my judgment he dishonestly played down the parents' consumption of cannabis and also sought to distance his drug dealing away from the house.

283. He was also dishonest about the events that took place between 3am and 5am on 22 July 2020. The unchallenged medical evidence of the causation and timing of the catastrophic injuries suffered by E and her consequential death and the mother and the father's evidence that place him as the sole carer for E during the relevant time, in my judgment, exposed the lies of the father in denying responsibility for them and seeking to blame the mother.

284. The account he gave around the events in the early hours of the morning of 22 July 2020 were inherently implausible, inconsistent and dishonest. He has not discharged the burden of proof placed on him by his manslaughter conviction and the operation of section 11 of the Civil Evidence Act 1968. His conviction is admissible in evidence to prove that he committed the offence of the manslaughter of E and I find that he did cause her death.

285. I find as a fact that between 3.30am and shortly before 5am on 22 July 2020 E was in the sole care of her father and during that time she suffered the catastrophic brain and head injuries that led to her collapse and subsequent death. These injuries can only have been and were caused by the father. The mother was unaware at the time.

286. I also find that the father has caused the rib fractures identified by the medical experts up to three days prior to her death, between three and six days prior to her death and between five and 13 days prior to her death. I make no findings in respect of the rib fractures that took place between six and 12 weeks prior to her death.

287. That concludes this judgment.

End of Judgment

Note to Judgment: The error identified at paragraph 23 was identified by counsel on proofreading the written closing submissions prior to delivery of judgment but the amended document was not circulated in error.

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