Ref. NG18C00247

IN THE FAMILY COURT AT NOTTINGHAM

Before HIS HONOUR JUDGE MARK ROGERS

IN THE MATTER OF

NOTTINGHAMSHIRE COUNTY COUNCIL (Applicant)

-v-

L & M & N (Respondents)

MR J CLEARY appeared on behalf of the Applicant
MS M MULRENNAN appeared on behalf of the Respondent L
MR S VEITCH appeared on behalf of the Respondent M
MS A BUTTLER appeared on behalf of the Respondent N

JUDGMENT
30 APRIL 2019
(APPROVED)

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.
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JUDGE ROGERS:

1. These care proceedings relate to the welfare, ultimately, of N. She is a little girl of about five and a half. The parties to these proceedings are the local authority, the mother, L, the maternal grandmother M and N herself, through her guardian. The child's father does not appear as a party within the proceedings. There is doubt in fact, as to his identity. At least, it has never been proved satisfactorily. This is purely a fact-finding hearing to establish the underlying facts and deal with the issue of threshold.

2. It is important to remember that such a hearing is purely forensic. Questions of welfare and discretionary outcomes are for another day. In any fact-finding hearing, if disputed facts are involved, the burden of proving any particular fact lies on the party asserting the fact, normally, as here, the local authority. The standard of proof, however grave the allegations may be, is the simple civil standard of proof. Where, as here, there is a great deal of technical material or evidence provided by experts, it is important that the court remembers that it is the court's ultimate obligation and duty, to find the facts. And whilst of course, evidence of a technical nature of expert opinion is highly important, the court does not abdicate its duty or allow the experts to decide the case. It is very important, in other words, to put such evidence in its context, which is that it is only one part of the overall, so called, broad canvas of the case.

3. In this case, the canvas is indeed wide and goes far beyond the evidence of the medical practitioners and has led to an enormous volume of material, not all of which of course, has been scrutinised in the detail that the controversial matters require. One of the important factors is the testimony of the many individuals involved. I have not heard either from the mother or from the grandmother, but that does not mean that I ignore them. I am well aware of their respective positions from the evidence submitted on paper and from the refinements explained to me by their learned counsel. In particular, in relation to the mother, she maintains a denial of any culpable responsibility in the circumstances described so clearly, by Ms Mulrennan, who represents her and I have to place sufficient and full weight upon those denials and bear them fully in mind as part of the overall picture.

4. The reason for the mother's decision not to give evidence is one, to which I will return but I acknowledge at the outset, how for any individual in whatever context, being involved in proceedings of this sort will create enormous emotional and psychological pressure, anxiety and nervousness, unfamiliarity with not only the environment but the process, and the wealth of material – medical and legal - with which, a lay person is usually wholly incapable of engaging to the full extent and I therefore, take all of that into account. To the extent that I have to grapple with the concept of an individual lying about a particular matter, or more generally, I have to remind myself that although a lie may be confirmatory evidence of wrongdoing or guilt, it is not inevitably so and there are many reasons, as is very familiar to those who practice in this jurisdiction and the criminal jurisdiction, why people may lie and the underlying reason for that must be examined and placed properly into the balance.

5. This is, in many ways, a very unusual case. It is, as I have already indicated, on paper, at first blush, a very complicated fact-finding hearing. And therefore, the court's role over several days, would have been to hear from a whole raft of witnesses. In the end, the number of witnesses giving oral testimony was substantially smaller than

originally anticipated and of course, as I have said, did not include the mother or the grandmother. But there were many witnesses warned by the local authority, whose evidence in the end, was not either required and/or challenged.

6. The template of potential witnesses at A154 demonstrates the breadth of interest that the various participants would have had in the case. The list of documents, both those in the core reading list and in the electronic bundle itself, shows the enormous amount of source material, both forensic documents created for the proceedings and an enormous amount of medical and police documentation and other miscellaneous documentation as well. In the case summary, which appears right at the beginning of the electronic bundle, from paragraph 7 onwards, there is – if I may say so – an enormously helpful summary of events leading to the proceedings, which it is not necessary to read in extenso, into this judgment. It is accurate in my judgment, having looked at the source material.

7. That is supplemented by Mr Cleary's opening note and in a very substantial passage from paragraph 5 to paragraph 42, he sets out with, in my judgment, commendable clarity and detail, the chronology of this case tracing the entirety of the medical engagements with N with very helpful cross-referencing at every stage. It is a comprehensive and impressive narrative. It is detailed and clear and has not to any extent, been the subject of criticism or challenge. In my judgment, it can be adopted as a reliable summary, as can paragraph 7 of the case summary itself, of the material before the court.

8. In order however, to make clear that the matter is in evidence and is not simply the adoption of external material, another extremely clear summary is to be found in the initial statement of Z, the social worker. At C1, her social worker statement begins. And then at C9, she encapsulates the essence of the case. Again, in a way that has not seriously been challenged or undermined. And although it is lengthy, I propose to read it in full, because it is the absolute core of the case.

9. "N was initially seen by health professionals in 2015, due to concerns regarding her vomiting. Since this time, N has attended the emergency department on 10 occasions and has been admitted to ward 25 on 11 occasions. Health professionals have been increasingly concerned regarding N's health, which has included ongoing vomiting, headaches and within the past year, faltering growth and significant weight loss. On 11 September 2018, N was admitted to ward 25 for observation. N remained in hospital throughout this time until she was discharged on 29 October 2018.

10. Whilst in hospital, N underwent an endoscopy. The endoscopy found that her bowel was consistent with someone who had misused laxatives. Given this information, a urine sample was taken which later came back indicating that there were laxatives in her system. A further sample was requested, also testing positive for laxatives. The toxicology department report that these laxatives would have been administered within 48 hours of the sample being taken. L denies giving N laxatives within this timeframe.

11. Following the positive samples, Dr Y, Paediatrician, made a referral to social care, raising significant concerns regarding fabricated and induced illness. Following mother's arrest on 17 October 2018, N has gained over three kilograms in weight, has not experienced any sickness or diarrhoea, has returned to an unrestricted diet without

incident and a further urine sample has tested negative for laxatives. Hospital staff, who had grown to know N, report that since her mother's arrest, N's attitude and presentation has significantly improved. Medical professionals report that in recent weeks, N would spend lots of time in bed and was very tired.

12. Since her mother's arrest, N has been playing, been chatty, been bossy and has remained very active. The evidence that N has been given laxatives, her significant weight increase and her drastic change in presentations raise significant concerns that N's ill health has been induced. As a result of N's ill health, she has had 11 hospital admissions, has had a number of investigations completed such as MRI scans, tube feeding and an endoscopy. She has been prescribed a number of medications and has had her diet significantly restricted. Dr Y reports that N has been subjected to the most extensive investigations he has ever done on a child over several years. Given the evidence that would indicate that N has been subjected to fabricated and induced illness, it is possible that all of these interventions may not have been necessary.

13. Dr Y reports that he and his medical team were considering the most invasive intervention possible, which was to undertake intravenous parenteral feeding. This option is reserved for the most severe bowel disorders. Dr Y reports that plans to begin this had been made, which were only stopped by the positive laxative sample being received. Should N be cared for by her mother, it is of high concern that N may be exposed to further fabricated and induced illness, putting her at risk of significant harm and even death."

14. Apart from that final sentence, which is a matter of opinion, the rest of the quotation is an accurate and stark representation of the gravity of this case. There has been no significant challenge to the underlying basic medical and chronological factors as asserted or to Mr Cleary's detailed documents, including the case summary and the social worker's very clear evidence which I have just read. The hearing began with the local authority relying on the 10-point Scott schedule of factual and threshold allegations. Again, helpfully and meticulously, the underlying evidential references are painstakingly enumerated in cross-references to the pages of the E-bundle.

15. Once again, neither the mother nor the grandmother has, through their counsel, taken any substantial objection to the factual accuracy or evidential relevance of the bundle entries. A key factor has been N's weight and the tabular form at page A147 and following is again, an exact record of the changes, both in literal weight and weight representation in percentile terms, as well as similar figures for height and body mass index. The number of entries shows just how often N was examined, which is in itself, telling. From that table, it is clear that in her early life, N's weight was high on the percentile charts, regularly in the 80 to 90 per cent bracket. In 2017 and 2018, her weight dropped rapidly. Not only did she not gain weight, but she positively lost weight. By the middle of 2018, she was showing weight on the single digit percentiles, once as low as 2 per cent. Her height percentiles also dropped, although less strikingly.

16. Was there a medical cause for these presentations? An astonishing range of medical tests and investigations were undertaken. The treating physicians were called to give evidence and explained the position to me. They were, without exception, impressive, contentious professionals. Inevitably, in addition, an independent consultant paediatrician was commissioned to provide an overview and that individual was Dr Kate Ward. In a

characteristically full and detailed report, she has embraced the issues in this case with enormous depth of analysis and clarity.

17. It does no particular justice to her report simply to look at its conclusions. But happily, given the circumstances, that will suffice. In her executive summary at E173 and following, she says this:

"N is a child who had an uneventful first year of life. There was no evidence of inappropriate health seeking behaviour on the part of the mother in the first year of life and N was appropriately presented for immunisations and routine health care. If anything, there were fewer consultations than average for health problems. From 18 months of age, N may have presented with recurrent (inaudible) vomiting, requiring nasogastrical intravenous fluid administration. Review of the chronology suggests that this was a genuine medical problem, possibly as a result of cyclical vomiting syndrome and oblique or non-IGE related food allergy. However, this seemed to improve spontaneously as episodes became less frequent. From 2017, N had presented with faltering growth and a steady loss of weight. She was reported to have a good appetite but intermittent bowel symptoms including constipation, abdominal pain, vomiting and latterly, diarrhoea and inadequate oral food intake were documented. N was subjected to a vast array of medical investigations which did not identify any underlying medical problem. She was admitted to hospital but attempts to improve her nutrition failed as a result of ongoing vomiting and diarrhoea. Difficulties in reaching target amounts of nasogastric feeding. A urine toxicology screen revealed the presence of rain, a metabolite of Senna on two occasions. This could not have related to medically prescribed Senna. Investigations by the police revealed that the mother had, in her presence, unprescribed Senna and multiple receipts of purchased Senna. She claimed that it had been purchased for her own purposes, however, exclusion of the mother from N's care, resulted in a rapid and dramatic improvement in her general health, feeding and weight gain. Within days she was eating normally, with evidence of increased intake and over a period of weeks, she gained more than five kilos, returning to her original weight centile. She required treatment for refeeding syndromes, a measure of the severity of her original malnutrition. This was a potentially fatal situation. N had presented with medically puzzling symptoms, which were unresponsive to attempts to rectify the situation. Physically, she presented as cachectic, lethargic and unable to participate in physical activities such as running, jumping and hopping. This had impacted on her gait and she had been transported largely in a wheelchair or pushchair, which was inappropriate for her age. In the long term, severe malnutrition may impact on a child's physical and cognitive development. However, the impact of induced illness can also have a long-term impact on a child's emotional wellbeing and her perception of herself as a healthy individual. N will need support in returning to normal life and in perceiving herself as a healthy individual without taking responsibility for what happened to her."

18. And then, immediately after that summary, in a series of questions posed to Dr Ward, she sets out her individual conclusions consistent with what I have just read. Perhaps the most important at E175G is her confirmation of what she sees as the evidence of fabricated illness and she lists them:

"A, puzzling symptoms. B, the presence of Senna. C, Supporting evidence of chronic Senna administration in melanosis coli. D, non-organic failure to thrive. E, reversal of all symptoms when the mother was excluded. And F, the dramatic catch-up of growth with a normal diet."

Dr Ward's expertise as a paediatrician is well known. However, questions of toxicology are outside of her sphere.

19. In those circumstances, Dr Johan Grundlin was also commissioned to provide evidence. And he, although originally warned as a witness, simply presented his report. At E63 and following is the toxicology report. And at E66, he states his opinion. He says at paragraph 1:

"In June 2018, N was noted to have melanosis coli on histological examination. Her symptoms of diarrhoea and weight loss started soon afterwards. I am of the opinion that on the balance of probabilities, the hospital presentations from June 2018 onwards were in keeping with laxative abuse. It is likely that her exposure to Senna started prior to this date and continued up to the point where the mother was arrested. In the context of N, I suspect she did suffer from an underlying disorder that presented early on in childhood, causing her to vomit profusely, prompting frequent hospital visits up to 2017. However, these presentations cannot be explained by laxative poisoning or abuse alone. On the balance of probabilities, there is not enough evidence to say that her presentations due to vomiting and abdominal pain were due to laxative abuse. I cannot exclude any other forms of abuse over that time and there are countless types of medications that can cause vomiting and abdominal cramps."

That very fair exclusion of the early period as culpable relevance only adds to the probative value of the overriding view as expressed in paragraph 1.

20. At E178, Dr Grundlin added to that in response to some further questioning about the reliability of the test results and he said this:

"The urine result has a specificity and positive predictive value of up to 95 per cent. What this means is that without the clinical background there is an up to 95 per cent chance that the test is correct and can be relied upon. With there being two positive samples, a suggestive clinical picture and a prescription for Senna, the chance of the child having been exposed to Senna is most likely up to 98 per cent."

Those two independent medical examinations, together with the hospital notes are, in my judgment, compelling. But I also heard from the experts themselves and from the treating doctors. They were, as I have said, uniformly helpful and clear.

21. In her oral evidence, as well as explaining the content of her report, Dr Ward gave a graphic and stark picture. She is a doctor of very great experience, both chronologically and in terms of the volume of the work she has done. And yet, she used epithets such as "extreme, dramatic, life threatening." They were at the extent of her experience. She was nevertheless, completely fair. She, like Dr Grundlin broke down the medical chronology into different phases and she said, "Only the third and most recent phase was the one where there was clear evidence." But that evidence was clear and the results and the turnaround, in Dr Ward's view was "staggering." She said that she had never seen such a catch up in her professional experience.

22. It was that dramatic change, when the mother's sphere of influence was removed, that was so striking. Dr Ward also was satisfied that there was clear evidence of insufficient calorie intake by this child. She went on to explain the risks generated by repeated testing of a child and investigation. Some of the risks are obvious, for example, those associated with a general anaesthetic, but there were many more. She, Dr Ward was also satisfied that Senna had been administered on the ward by the mother. She explained how that could be by the relatively relaxed nursing methods adopted in paediatric wards which for perfectly good and creditable reasons, allow a high degree of autonomy and independence for the parents of sick children.

23. Dr Ward painted a stark picture of there being a vicious cycle as more and more testing occurred as the fear of serious illness increased in what was, in fact, a well child. I accept her evidence, as I do, that of Dr Grundlin without hesitation. I turn to the treating doctors. Dr X was the consultant paediatric gastroenterologist at the Queens Medical Centre and dealt with her, N, from 2017. She sets out in her written evidence and explained of the various potential food intolerances or difficulties that there might be, which could go some way to explain the weight loss. She dealt to my mind, perfectly well and satisfactorily with the question of melanosis coli, which in the end is not a finding in context of any significance.

24. She worked hard with dietician colleagues and others to solve what she thought was a problem of this child's gut or with food intolerance and undertook multiple investigations. At C56, she says this then, in her statement, having set out in great detail, her work and that of Dr Y, the consultant paediatrician:

"Dr Y next contacted me in mid-October. He forwarded a weight chart showing very appropriate weight gain on NG feeds for a couple of weeks prior to faltering weight gain in association with recurrence of intermittent vomiting and reported loose stools. I advised I would list for a bed in Queens Medical Centre to be further assessed and consider video capsule to examine small bowel in consideration of intravenous nutritional rescue. In the interim, I advised urine, laxative and toxicology screen and repeat stool infection screen as a precaution as the recent documented excellent weight gain on NG, that's nasogastric, feeds, was discrepant with the current reported picture."

25. She explained how difficult and challenging it was becoming for the medical professionals. She goes on:

"Following the receipt of the urine laxative screen result from 12 October 2018, demonstrating Senna metabolised, Dr Y re-contacted me. N had not been prescribed any laxatives since admission in September. I advised close observation to keep N as an inpatient pending receipt of a repeat urine laxative screen to seek advice from the local safeguarding team. I advised that I defer transfer until this result was available. Following receipt of the second urine Laxative screen on 18 October 2018, which also showed Senna metabolites, the request for transfer was cancelled. I understand from Dr Y that N has shown excellent intake of an unrestricted diet with very appropriate catch up weight gain since unsupervised contact with mum was stopped. This is evidence against any significant underlying gastrointestinal or other pathology to account for N's symptoms and weight loss and I would defer any further investigation until or unless new GI symptoms present."

26. In concluding her report, she used what I put to her in my question, was a very cautious, in some ways, quite conservative analysis. She said in writing: "It is reasonable to conclude that covert Senna administration was a factor in N's concerning failure to thrive through induced vomiting, diarrhoea and associated fluid and nutrient loss." She agreed that those words were very cautious in choice, but she said, as I expected, that her thinking had developed. And what she meant by that was, that as the evidence stacked up, the matter became more stark. And as she said to me, in the end, the position facing her was a dreadful one. Either this child had a catastrophic oncological problem, which was as yet, undetected or there had been, to use her phrase, "foul play."

27. I understand that development of thinking. I accept her evidence. Dealing with the matter quite shortly, I equally accept the evidence of Dr Y, the treating consultant paediatrician at the Kings Mill Hospital. He similarly, with his medical colleagues, strove tirelessly to find out what was happening and how these inexplicable matters were developing. He spoke, quite movingly I felt, in a quiet, understated way of how again, rather like Dr X, the thinking developed and he had and his colleagues had to begin to confront a very, very unpleasant reality as it dawned upon them. I accept his evidence similarly.

28. Diet was also, of course, an issue. Both food restriction and calorie intake. And I heard quite briefly, from W, the hospital dietician. She similarly, in her discipline, had worked enormously hard to try and find a practical solution and to maintain N's weight. Fructose absorption was a minor problem but no explanation in the end for what was going on catastrophically. She, like other medical staff, was puzzled and worried. And I accept her evidence.

29. There were, on paper, a number of other potential witnesses who in the end, were not required. Their evidence, unchallenged, is in the bundle and needs no detailed repetition

by me. I give however, simply because it struck me as significant, a taste of some of the other evidence, particularly that of V who was the nursery leader and who provided a statement on 1 February 2019, which is to be found at C84 in the bundle. She, of course, and her colleagues had almost daily contact with N.

30. She says this at paragraph 6, “L also told me that N had suspected intolerances.” And then over the course of a very long paragraph, sets out all the dietary matters that were raised by the mother and how difficult it became for the nursery staff to ensure that N’s food intake was both, consistent with the instructions given and sufficient to provide her with sufficient to see her through the day. She went on, at paragraph 7, “We did raise with grandmother that N may be hungry, as she would often ask for extra food but we were unable to give her any, as per mum’s instructions.”

31. And then quite sadly, in my judgment:

“The grandmother acknowledged she was aware that N would often be hungry and she would give her extra snacks. However, she would tell N that this was ‘their little secret.’ During the summer term of 2018, N had told members of staff that mum would order a pizza and eat it herself. N also mentioned that on another occasion, that mum and grandmother shared the pizza. N has only ever once said she was allowed to try a piece.”

At paragraph 8, the witness describes how the nursery staff had to work round, for example, birthday treats when normally food would be shared out between the children but of course, N would not be allowed. And similarly, in paragraphs 9 and 10. At paragraph 10, she says, “L and the grandmother both engaged well with nursery staff and always informed us about N’s hospital appointments and their outcomes.” It seems to me and I find, that is just an example but indicative of how an apparently, cooperative and open manner can soon be wholly misleading.

32. I also heard from N through the medium of her Achieving Best Evidence interview. And there is helpfully, a full transcript of her evidence. The recording, the digital recording of the interview which took place on 10 January 2019, shows Detective Constable U, together with the intermediary and N. It is, in my judgment, a thoroughly good interview, a good example, as often unfortunately, the court has to comment to the contrary. Both the audio and visual quality were good. It was quite a short interview. The questioning was clear. There were, of course, one or two closed questions which could have been framed better but there were no grossly leading or repetitious or confirmatory questions which undermine the value of the interview.

33. It was clear that N was engaging with the adults and with the questions she was being asked. I thought that she was quite a bright child, talkative, clear and a child that knows her own mind. It is unnecessary to quote extensively from that since the transcript is available. But I do just want to mention a couple of examples. At about halfway through at H121 in the bundle, of the transcript, she is asked about medication, what she took, and she describes different methods of administration; syringes or spoons, what was taken, vitamins, tablets, gummies and so on.

34. And then she is asked, "OK, so have you ever taken tablets before?" She nods. She answers, "Senokot tablets because the one medicine I had, that mummy was called Senokot." "Senokot?" "Yeah." "I've not heard of that before. Has it got any other names?" "No. Just Senokot." "Tell me about Senokot then. It tastes disgusting, does it?" "Then I had Senokot tablets what was in yoghurt, then mummy had to mush them down." "Oh, tablet. What did they look like, the Senakot tablets?" "They were little ones. They were all grey." "Were they grey?" "Yes." "And you said mummy put them in what?" "Yoghurt." "Yoghurt? And then what?" "And mashed it down." "Mashed it down and what happened?" "I ate it." "You ate it, did you?" "Yeah." "And how did that taste?" "It didn't taste as bad as the Senokot medicine." "Oh right, so you know when you put the Senokot into the yoghurt and mashed it down, how many tablets got in there?" "About three or four or five."

35. And then later, she is talking further, at H128. Question, "Does your mummy have Senokot?" "No." "No. Have you seen her any?" "No." "What about your mamma, does she have it?" "No." "OK, now if you know – when you have your Senokot, how does it make you feel?" "I can't remember." "Can't remember? I know you said it was like sick, wasn't it?" That was a poor question, of course. "Mmm." "Did you ever tell your mummy that you didn't want it?" Nods. "And she said I've got to have it." "Got to have it?" "Mmm." "Yeah. What happens if you didn't have it?" "I would have runny poos." "You would have runny poos?" "Mmm." "Yeah, OK. And if you said to your mummy 'mummy I don't what want the Senokot,' what would she say to you?" "She – inaudible – you're having it." "You're having it, yeah?" "Yes." "And what if you said no?" "She'll give it me." "Would she give it to you?" "Yes." "How would she do that if you didn't want it?" "She would syringe it."

36. There is other important material and the interview has to be read as a whole, but I accept its accuracy and the truthfulness of N's account and more importantly, its reliability. It was clear and straight forward. Of course, the mother was required, having been arrested, to give her account. And there is a very substantial interview and other material in section H. At H12, in the mother's interview, she says this, question, "Are you on any medication for anything else at all?" Answer, "I take Senna myself. That's due - I do struggle to go to the toilet and I do take it because I've not been eating as much, not been drinking as much myself so I'm struggling quite a lot at the moment." "Have you been to the doctors about that?" "No." "Have you been to the doctors?" "No, because I was quite embarrassed, to be fair. To be fair, it's not something I'd like to go to the doctors about, as horrible as it sounds, but no." "So, when did it start for you? When did you start taking Senna?" "About two, three months ago." "So, we're now in October, we're talking what? July, August time?" "June, July, yeah." "Prior to that, had you taken Senna?" "I had taken – not Senna – but I'd taken like, the cheap tablet forms from the pound shop, they're not – I don't know what they're called. I can't remember exactly what they're called but I took them, before I struggled taking tablets so I prefer a liquid form." "What was the reason for taking Senna? Tell me your symptoms." "I was getting a lot of belly ache, I was going toilet very often and when it was very, very painful, I tried and it helped so I carried on using it."

37. Later at H24 onwards, is a further passage of interest. She is then being asked about N having Senokot. “Who prescribed it?” “Dr X.” “Where’s she based?” “Queens Medical.” And then she goes on to describe the chronology and the dose. “How often?” “Daily.” “Is that daily?” “Daily, yes.” “And what was the idea? What was the Senokot for? Because of the constipation?” “Cos was only going once a week and it was basically not normal for a little one to go once a week and because the Movicol wasn’t working, he wanted to try that.” “And was this Senokot on a prescription with your daughter’s name on it?” “Was.” “So, when you were going to collect it, you were going and handing the ticket in and not having to buy it, you were collecting a prescription for your daughter?” And so on.

38. And then later, at 39, she, the mother is asked about some items retrieved. And the officer says, “We’ve got an exhibit, a bottle of Zentiva.” “Yeah.” “Do you recognise that at all?” “That’s domperidone and that is what was prescribed in August by Dr Y, it’s got her name on it, yeah.” “Then she didn’t have much of that, she doesn’t look particularly,” “No, tried to get it down. She the medicine and N does not.” “And then, this was?” “That’s Monster in there.” “At SH5, the exhibit is a water bottle with liquid in. So, what’s in there?” “It’s mine. Pink Monster.” “When you say Monster, you mean the energy drink. OK, anything else that shouldn’t be?” “No.” “And has your daughter had anything from that bottle?” “No.” “At your home address as well, there is other – quite a large quantity of Senna or Senokot and whose is that?” “That’ll be mine, my mum’s.” “Yours or your mum’s? Because you’ve told me you’ve got quite a lot of it. We’ve also recovered from hospital, a quantity of receipts.” “Yeah.” “There’s nine receipts for Senakot.” “Yeah.” “OK. In handbag. And that is from 12 September to 12 October. So pretty much in a 30-day period, there or thereabouts, it looks like there’s been nine different amounts of Senokot purchased. Can you tell me about those receipts?” “Yeah, that’s where me or mum have bought them for ourselves.”

39. There is of course, an enormous further amount of police material including text messages, an internet search history which is of course, of great significance and they speak for themselves. And I must take account of all of that other material. In these proceedings, as is, of course, required, a response to the threshold document was provided at an early stage. And this of course, was the up to date position of the mother and remains so. At C113, she says this:

“To the best of my knowledge and belief, I have never administered to N, excessive doses of laxative medication and I certainly, have never deliberately done so prior to the prescription of Senokot, which I believe was in or around August 2017. I have never administered it in any form. I have however, given N Movicol on an occasion, to see if it would help with her constipation. It was only ever administered in accordance with instructions accompanying the medicine. It was never given for extended periods. Once Senokot was prescribed, it was only ever administered in liquid form and in accordance with the directions provided. It was only ever administered when I felt it was necessary because N was struggling with her bowel movements. I have never administered lactulose to N.”

40. And then in terms of food intake:

"With one exception, I have never restricted N's food intake unless in accordance with medical advice given. For example, in respect of providing her with a fructose free or gluten free diet. Instructions have been provided, for example, by the dietician and I have followed those instructions and guidance closely. The exception relates to my decision to stop giving N milk, which I believe was in or around February or March 2017. This followed two episodes where she had been sick at nursery and both I and nursery staff at the time, wondered if her vomiting had been triggered by drinking milk. There was absolutely no secret about my decision, which in any event, was discussed with the doctors. N's weight loss was a matter of great concern to me and something that I drew to the attention of the medics involved. My recollection is that I sought the advice of a dietician because of those concerns."

41. As I have said, the mother herself did not give evidence before me. I do understand the difficulties. They were explained very clearly by Ms Mulrennan on her behalf. And I accept that she, the mother, felt so overwhelmed that having taken some advice over the telephone from her general practitioner, she attended at the crisis team at the accident and emergency department of the Kings Mill Hospital. I understand her fear. I understand that she would have been, undoubtedly, subjected to perfectly fair but very difficult questions for which, probably, she had no satisfactory answer.

42. And therefore, her decision not to give evidence, particularly when there is an ongoing police enquiry as well, is, in her context, understandable. What it means for me however, is that I have no ability to understand her explanations, whether confessions or denials or explanations or traverses of the evidence. I am simply left with the stark facts. I have heard denials. I have to give them weight and factor them into my decision. Similarly, the grandmother did not give evidence. That was on an entirely different basis. The local authority and the grandmother have come to an agreement as to sufficient acceptances or concessions to satisfy the fact finding process as far as the local authority is concerned.

43. In cross-examination, Mr Veitch was keen to extract from the various witnesses the reality of the grandmother's role, particularly in medical consultations. He suggested and the practitioners were largely in agreement with his proposition that she was passive, that the interview was largely with the mother and that at times, the grandmother was literally taking a backseat role and looking after N. I accept those factors, but it remains plain to me that she, as a conscientious grandmother, was there because she wanted to be there and would have heard what was said.

44. She, of course, provided a witness statement in anticipation of giving evidence in this case, which is to be found at C105. She says at paragraph 5, in very clear terms:

"I did not at any time, give laxatives to N. That was always something the first respondent," – that is the mother – "would do with liquid Senokot. She would use a syringe and that had the correct measurement to use, labelled on the side of it. I do not know

whether this was given to N more than what was reported or not. I cannot be sure as I was not there all the time. It was given to her sometimes upstairs when I was not there. I remember, I was asked to give N Senokot on one occasion as the first respondent was going to be late home. I recall this was in or around summer or autumn 2018. I remember N asking who a text message I received was from and I told her it was mummy, she was going to be late. N said something like, "Do I have to have it, mamma?" So, I gave in and did not give her the Senokot. N would hate it."

45. Later in the same statement, she says at 16:

"I was aware that N was prescribed with Senokot sometime in 2017 and L would give her this on a regular basis. As far as I am aware, the prescription never stopped. I do not recall at any point where she was told not to give N this. I am not saying she was not told this and I have considered the note of 17 July '18, where it says that I was in attendance when it was advised, N should not have Senna. I do not think the medical professional would have any reason to document this if it was not true. However, I do not remember that being said to me. I must have not been paying attention at the time. I have thought about this and N would have been in the room at the same time. It would always be me playing with her on the floor whilst L would speak to the medical professionals. I accept that there may have been a time where that was said but I honestly, do not recall it. My mind may have been on other things."

I read that of course, dovetailing in the evidence and the concessions extracted in cross-examination that it seems to me that there is a conditionality about such evidence which gives me cause for concern.

46. She goes on:

"I am distraught at the thought that L has done what is alleged to N. I found it very difficult to understand when first presented with the information at hospital. I have lived with my daughter throughout her life and have had no cause for concern about her parenting. She loves N. I did not understand fully what was being suggested at first as I have not heard of this before. All I have done is support L and N throughout the hospital appointments. I have no reason to believe my daughter could have done what is alleged, to N."

And then she carries on in 18, I need not read it all:

"I am upset that at the start of this case, I had been criticised for not accepting the concerns. I had now, a discussion with the social worker, Z before that, viability assessment of me was completed. Nobody gave me any proper information about what this all meant. The first I had heard about this was a policeman knocking at my door at 10pm the evening before. I was told that he needed to search the house and said something about Senokot and I told them I take what I needed, N's was upstairs."

47. Towards the end of that statement, at paragraph 22, she says:

"I have accepted in my response document filed with this statement that I feel that I have failed to protect N, if the finding against L are made. It is difficult for me because I have never felt cause to be suspicious. I am worried, having read the documents and in particular, concerning the phone records."

Paragraph 26:

"I am not dominated by my daughter and I am aware that that is suggested, there is a power imbalance in our relationship but that is not true. I do not see where that evidence has come from, other than the suggestion of financial reliance. I believe it was suggested that as L provides rent money, I am dependent on that. However, what I explained was that if she moved out, I would get housing benefit. That is not the case. I have explained to L very firmly that she will need to move out of the home should it be decided that N should come to me. She is accepting of that. Overall, I deny that I have had any role in this. I love my granddaughter dearly and very much wish for her to return to the family. I would be willing to do anything to ensure that that can happen."

48. That statement was signed and dated 5 April and so, is very recent. There is, I am sorry to say, in that an enormous amount of avoidance. There are some conditional comments made but they are dependent, as she says, "If the matters are found against her daughter." She, by then, had had six months of reflection. And it seems to me that I am bound to bear that in mind, notwithstanding the later concessions that have been made. This is, in my judgment, a grave case. It has enormous implications. I did not hear from the two key participants. As I have said, I do not criticise them, their lawyers or the local authority, for the way in which the case eventually played out. This is a hearing, after all, about establishing facts.

49. What I have not been able to do is to form any preliminary view about the characters or personalities, which would often be the position emerging from oral testimony. This fact finding exercise, though one of great seriousness, in fact presents me with no forensic difficulty. The standard of proof is the simple balance of probabilities. But in fact, the

evidence is of such weight, clarity and consistency that had the bar been set considerably higher, I would still have had no difficulty. What have counsel said? Mr James Cleary on behalf of the local authority, having done so much preliminary work with the material on paper says, in my judgment forcefully, that the unchallenged factual material really speaks for itself. And that view, albeit in a low key and appropriately neutral way, is broadly the position taken by the guardian.

50. Ms Maria Mulrennan, on behalf of the mother, has had an enormously difficult forensic task as counsel since there is no credible, as she accepts, contrary case to put. She has emphasised properly, the vulnerability of her client and has sought to put into a context, the pressures facing her. She, Ms Mulrennan, has in my judgment, made all such points as properly can be made on the mother's behalf, with clarity and in a persuasive manner. Mr Steven Veitch on behalf of the grandmother has steered his client through these difficult proceedings, doing as his duty requires, his best to protect her position. He properly drew attention to the role, relatively limited as it was in the medical consultations to which, I have referred. And latterly, he has confirmed that she has refined her position into a series of somewhat more realistic concessions.

51. His key point in argument was that his client has had a difficulty in squaring the intellectual reality of the evidence, with an ability to come to terms with it in her life and her real world. He says that that may go some way to explain her reluctance to confront the awful reality of the case. And I accept again, fairly, that there must be some force in the argument. Although of course, standing back objectively, the role of a protective overseer is precisely to have the insight and an objective reality to see what is actually happening, however uncomfortable or stark that is. To her credit, the grandmother now accepts in the terms that she has set out in her document on 29 April, that she should "have been aware." And that is an important concession.

52. At the conclusion of the evidence, Mr Cleary provided a revised schedule of allegations, upon which the local authority relies and upon which, it seeks findings. It follows very broadly, those which were set out in the original schedule. The key items are that the mother, between the dates given, deliberately administered excessive doses of laxative medication. Second, that she deliberately restricted N's calorie intake. And thirdly, that she knew that her actions were harming N, but persisted. He sets out in 4, and I need not read them as they are all medically documented, the consequences of that behaviour.

53. He has, in my judgment, sensibly deleted 4f, namely the development of a psychologically distorted approach to food. That is not because there is no evidence in support of that, but it is the medical opinion of Dr Ward, rather than a forensic fact to find at this stage. And therefore, whilst it is a point that can be well made, it is properly excised from this document. Similarly, with item 7, "N is likely to suffer long term psychological and physical consequences". That is a predictive opinion, largely from Dr Ward supported by others. It is again, inappropriate in this document, but is a proposition which is plainly justified.

54. Paragraph 6 should never really have been there in that it is a pure question of opinion, namely, that the actions of the mother are at the extreme end of the spectrum of fabricated and induced illness. That is not a fact, that is Dr Ward's opinion. Given the nature of her evidence, her experience and the graphic vocabulary used, it is a proposition

that she was perfectly entitled to come to and indeed, one that I accept. But it is not, again for obvious reasons, appropriately in this document.

55. Left in, and appropriately so, which goes to the heart of the matter and the seriousness of it, is item 5. If the actions of L had not been discovered and stopped, then N could have died from starvation or electrolyte imbalance. And then 8 is the forensically important but slightly different question of her lying and concealing of her actions. The other most recent document is that of the grandmother, in the form of a signed statement, with a number of propositions that she "accepts." They are that the mother over administered Senna, that she restricted the calorific intake, that N's health suffered, that the mother lied to her own mother and health professionals, but she was not aware, she the grandmother, was not aware that she was harming N.

56. And then there is the important and central matter. "Given" – and then she sets out as preambles, much of the medical opinion that I have referred to, she says this:

"M should have been aware that L's actions were impacting on N's health. She had opportunities to raise any concerns and take appropriate action to safeguard N. She should not have followed the dietary restrictions set by L but felt that she had no choice because L had parental responsibility and would be unhappy if the maternal grandmother did not follow the rules."

And it is signed by her, although of course, drafted and expressed in the third person.

57. That document is a move forward from the witness statement to which I have referred, but yet, there is still much that remains conditional. But I am satisfied that there is a now an unconditional acceptance that she should have been aware of the significance of the mother's actions, in terms of N's health. And that, as a central finding, is in my judgment, key. Having heard the evidence and recited some of it in this judgment, it is my sad but inevitable duty to accept the findings sought by the local authority in respect of the mother. As I have said, 4f and 7 are rightly removed, but Dr Ward's evidence is certainly relevant to them and will be borne in mind at the welfare stage.

58. I also find that there are significant deficiencies in relation to the grandmother, arising from her acceptance that she should have been aware. The Court of Appeal, this very week, has reminded us that a failure to protect finding by another, is not just a bolt on, to be added in every case but is an independent threshold or key factual finding and should be approached in that way, with the same caution and application of all other legal principles and I do that. I say therefore, that I am quite satisfied that the maternal grandmother's failure to protect is clear in this case. She should have been aware and she now knows she should have intervened, she should have challenged and had she done so, she could have saved her granddaughter from potentially fatal significant harm.

59. The mother's physical role in all of this is beyond doubt. Why she acted as she did has not been explored properly and therefore is not found by me in this judgment. But I am quite satisfied that there was something very strange going on. Whether it is about money,

power, relationships, self-image, body-image, a culture of self-medication in this family, or some other matter as yet unidentified remains to be seen. There is no evidence, notwithstanding the mother's anxiety during these proceedings, that she is mentally ill or psychologically dysfunctional. I remind myself that it is important in these sorts of cases, to bear very much in mind that the long-term administration of unnecessary medication and/or the starvation of a child is a deliberate and wicked act. Without clear explanation, it is the behaviour of a highly dangerous and manipulative person. I say no more at present, but I mention it at this stage, since it will be the context in which we move forward.

60. Finally, it is very important, it seems to me, to remember this. I pay tribute to all of those involved in the case, the social workers, the other public-sector professionals and, if I may say so, above all, the medical professionals. It is perhaps forgotten, that they too, suffer psychological strain in dealing with these cases. They are happily rare, but they too thought that they were dealing with a child who was dying before their very eyes. That must have been an enormous burden upon the medical practitioners as they strove, time and time again, to find a medical explanation. It therefore demonstrates to me, how this sort of conduct has very wide-ranging consequences indeed, way beyond the welfare concerns of the child herself – although, of course, in due course, that will be the beacon around which, we will make the decision. Therefore, I make all of those findings, subject to the deletions in the document. I made a number of specific additional comments, which can be recorded and carried forward.

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We hereby certify that the above is an accurate and complete record of the proceedings or part thereof.