IN THE FAMILY COURT

Case No: NN23C50050
Neutral Citation: [2023] EWFC 278 (B)

SITTING AT NORTHAMPTON

Northampton Family Court
85-87 Lady's Lane
Northampton
NN13HQ

IN THE MATTER OF THE CHILDREN ACT 1989
AND IN THE MATTER OF:
AA DOB 22.11.22

Date 27.11.23

Before:

HER HONOUR JUDGE CARTER

- -

Counsel for the Local Authority: Prof Delahunty KC
Leading Ms Pemberton
Counsel for the Mother: Mr Sampson KC
Leading Ms Mettam
Counsel for the Father: Ms King KC
Leading Ms Gilliatt
Solicitor for the Children: Ms Hodnett

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JUDGMENT

HER HONOUR JUDGE CARTER:

Introduction:

1. In this case I am concerned with a baby girl AA. She was born on 22.11.2022. Her parents are BB and DD.

These proceedings:

2. These proceedings started on 20 April 2023, when the local authority made an application for an interim care order to be made in relation to AA.

3. That application was made as a result of her parents having presented AA on a number of occasions to medical professionals concerned that she appeared to have marks which looked like bruising and where the parents asserted there was no event to have caused bruising. After a number of medical appointments, a skeletal survey was undertaken on AA, and it was discovered that she had two broken ribs as well as the history of unexplained marks.

4. There have been a number of hearings obviously since that time, and directions made for completion of experts reports in particular, together with a significant quantity of medical evidence, and of course statements from the parents and treating medics.

5. I have not heard any of the case management hearings, and my first involvement with this matter has been this finding of fact hearing.

6. I should note at the commencement of this judgment the conspicuous assistance that all advocates appearing before me have given the Court, and the enormous amount of work

that has been undertaken by counsel and solicitors to enable this hearing to proceed. There had before my involvement been a number of applications to adjourn this final hearing, which had been listed not in accordance with the PLO, but at a point significantly in advance of all evidence being filed such that no proper assessment could be taken of how long was needed, or any detailed analysis able to be undertaken of the necessary witnesses, and in particular which parts of the evidence were genuinely in dispute. I shall return later to how much that has impacted upon some parts of this judgment. No application has been made to me to adjourn this final hearing.

7. I have no doubt that the efforts of every lawyer involved in this matter have been due to a desire to avoid delay in this matter for AA. On any analysis of the timing of when reports have come in, and the documents that I have received, it is undeniably the case that both counsel and solicitors have been working outside any normal working hours. I am immensely grateful to them all. I should also set out from the commencement of this judgment, the Court's appreciation of the constructive and collaborative way that this case has been presented and argued in general.

8. I have within the papers for this case a number of extensive and detailed chronologies. I do not understand any aspect of those to be disputed and shall therefore only set out a basic chronology to allow proper understanding and context for anyone reading this judgment.

9. AA was born on 2 November 2022. She lived at home with her parents once she and her mother were discharged from hospital. In around mid-December the parents say they noticed a mark on AA, which they concluded may have been caused by her sleep suit. It lasted no more than a day. In mid-February, the parents say there was another mark on AA, and they pointed this out to medical professionals on two separate occasions. On 27

February the mother took AA for blood tests to the hospital, and she was kept in overnight with her being seen by a number of doctors. The tests showed that AA had a significant vitamin D deficiency, and she was started on a high dose of vitamin D. On 21, 26, and 29 March AA had further marks on her body.

10. On 4 April the treating paediatrician telephoned the parents to say that child protection measures were being initiated and asking for them to come into the hospital on 6 April.

11. On 5 April, the parents reported that AA had further marks on her body.

12. When the parents went to the hospital with AA on 6 April, a skeletal survey was done, which concluded that AA had two broken ribs. AA was placed into foster care for a short period but has now lived with her maternal grandmother for some time and remains there with the parents having extensive contact.

The hearing:

13. As I set out above, the way that this hearing was timetabled meant that the last report from Dr Ward came in very shortly before evidence commenced, leaving no time for questions to be asked of her, or an experts meeting, or indeed for counsel or the Court to give detailed consideration of witnesses.

14. I heard evidence over four days. I heard from Dr. A (consultant pediatrician NGH), then Dr. Olsen (Expert Paediatric radiologist). I heard from Professor Greene (Expert Paediatric endocrinologist), Dr. Kate Ward (Expert Consultant Pediatrician) and then Professor Kumar (Expert Geneticist) over a period of 2.5 days. I then heard from the mother BB, who unfortunately was part heard overnight and then from the father DD.

15. We finished the evidence at the end of the day Friday. The case had originally been listed for 2 more days. All advocates confirmed to me that the local authority were able to file their written submissions by 4pm on Monday, and the respondents would file by 12 noon on the Tuesday, with oral submissions being made at 3pm that day. I have been able to hand down this judgment one week later, with that time lag being explained by the fact that I had one week's annual leave booked.

16. I cannot of course in this judgment set out all of the evidence I heard and took into account. I have attempted to summarise the relevant parts.

The allegations/finding sought.

17. The allegations were set out in a schedule filed the day before the hearing commenced on 30 October 2023, and then refined at the conclusion of the evidence, with a significantly amended set of findings sought being filed on 6 November in the local authority closing submissions.

The Law

18. The law in this case is uncontentious. In family proceedings, there is only one standard of proof, and this was reiterated in the well-known case of Re B (Care Proceedings: Standard of Proof) [2008] UKHL 35 in which Baroness Hale said:

"... the standard of proof in finding the facts necessary to establish the threshold under section 31(2) or the welfare considerations in section 1 of the 1989 Act is the simple balance of probabilities, neither more nor less."

In relation to inherent probabilities, she later went on:

"These are simply something to be taken into account where relevant in deciding where the truth lies."

19. The Court must apply the standard of a balance of probabilities and that does not change according to the inherent probability or improbability of an event occurring. Per Peter Jackson LJ in BR (Proof of Facts) [2015] EWFC 41:

(3) The court takes account of any inherent probability or improbability of an event having occurred as part of a natural process of reasoning. But the fact that an event is a very common one does not lower the standard of probability to which it must be proved. Nor

does the fact that an event is very uncommon raise the standard of proof that must be satisfied before it can be said to have occurred.

(4) Similarly, the frequency or infrequency with which an event generally occurs cannot divert attention from the question of whether it actually occurred. As Mr Rowley QC and Ms Bannon felicitously observe:

"Improbable events occur all the time. Probability itself is a weak prognosticator of occurrence in any given case. Unlikely, even highly unlikely things do happen. Somebody wins the lottery most weeks; children are struck by lightning. The individual probability of any given person enjoying or suffering either fate is extremely low."

I agree. It is exceptionally unusual for a baby to sustain so many fractures, but this baby did. The inherent improbability of a devoted parent inflicting such widespread, serious injuries is high, but then so is the inherent improbability of this being the first example of an as yet undiscovered medical condition. Clearly, in this and every case, the answer is not to be found in the inherent probabilities but in the evidence, and it is when analysing the evidence that the court takes account of the probabilities.

20. That same standard of proof must be applied in endeavouring to identify the perpetrator – Baroness Hale, Re S-B Children [2009] UKSC 17 at paragraph 34

21. It is, of course, a fact that findings of fact must be based on evidence. Munby LJ revisited this point in a case called Re A (A Child) (Fact-finding hearing: Speculation) [2011] EWCA Civ 12 in which he said it is:

"[an] elementary proposition that findings of fact must be based on evidence (including inferences that can properly be drawn from the evidence) and not on suspicion or speculation."

22. In determining whether the Local Authority has satisfied the burden upon it, the court must bear in mind the wider context of the evidence, Re U (Serious Injury: Standard of Proof); Re B [2004] 2 FLR 263. In Re B (Threshold Criteria: Fabricated Illness) [2002] EWHC 20 (Fam), [2004] 2 FLR 200 it was held that:

"Judges... are guided by many things, including the inherent probabilities, any contemporaneous documentation or records, any circumstantial evidence tending to support one account rather than the other and their overall impression of the characters and motivation of the witnesses."

23. And in Re T [2004] EWCA Civ 558 the then President of the Family Division Butler-Sloss LJ stated: -

"*Evidence cannot be evaluated and assessed in separate compartments. A Judge in these difficult cases must have regard to the relevance of each piece of evidence to the other and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward by the Local Authority has been made out to the appropriate standard of proof."*

24. It is right to observe that parents are not required to extricate themselves or prove their innocence of the allegations. The local authority's burden continues throughout the evidence and the local authority must prove, weighing all of the evidence, that the facts do, indeed, support the findings sought. It is not for the parents to provide an explanation for the injuries to the child. In Re M (A Child) [2012] EWCA Civ 1580 Ward LJ stated: -

"That, too [The expert's opinion] was the effect of the Judge's view of the case: that absent a parental explanation, there was no satisfactory benign explanation, ergo there must be a malevolent explanation. And it is a leap which troubles me. It does not seem to me that the conclusion necessarily follows unless, wrongly, the burden of proof has been reversed and the parents are being required to satisfy the Court that it is not a non-accidental injury."

25. In Re Y (Children)(No.3) [2016] EWHC 503 (Fam) the President of the Family Division Munby LJ endorsed the legal principles set out in the judgment of Baker J in Re L and M (Children) [2013] EWHC 1569 (Fam) at paragraphs 20-24 and then stated:-

"...the fact, if fact it be, that the respondents (here, the parents) fail to prove on a balance of probabilities an affirmative case that they have chosen to set up by way of defence, does not of itself establish the local authority's case".

26. Lord Nicholls made reference to the wide canvas of evidence that needs to be considered in his speech in Re H and R (Child Sexual Abuse: Standard of Proof) [1996] 1 FLR 80 and he said that:

"*The range of facts which may properly be taken into account is infinite. Facts include the history of members of the family, the state of relationships within a family, proposed changes within the membership of a family, parental attitudes, and omissions which might not reasonably have been expected, just as much as actual physical assaults. They include threats, and abnormal behaviour by a child, and*

unsatisfactory parental responses to complaints or allegations. And facts, which are minor or even trivial if considered in isolation, when taken together may suffice to satisfy the court of the likelihood of future harm. The court will attach to all the relevant facts the appropriate weight when coming to an overall conclusion on the crucial issue."

27. Therefore, in consideration of the jurisprudence, it is abundantly clear that the court must consider the wide canvas of evidence and place into context each element of that evidence judged against the rest.

28. Baker J drew together the principles as to the approach of the Court in fact-finding hearings in Re IB and EB [2014] EWHC 369:

"*81. The law to be applied in care proceedings concerning allegations of child abuse is well-established.*

82. The burden of proof rests on the local authority. It is the local authority that brings these proceedings and identifies the findings that they invite the court to make. Therefore, the burden of proving the allegations rests with them and to that extent the fact-finding component of care proceedings remains essentially adversarial.

83. Secondly, as conclusively established by the House of Lords in Re B [2008] UKHL 35, the standard of proof is the balance of probabilities. If the local authority proves on the balance of probabilities that the injuries sustained by I and E were inflicted non-accidentally by one of her parents, this court will treat that fact as established and all future decisions concerning the children's future will be based on that finding. Equally, if the local authority fails to prove that the injuries sustained by I and E were inflicted non-accidentally by one of her parents, this court will disregard the allegation completely.

84. In this case, I have also had in mind that, in assessing whether or not a fact is proved to have been more probable than not, "Common-sense, not law, requires that in deciding this question, regard should be had to whatever extent is appropriate to inherent probabilities," (per Lord Hoffman in Re B at paragraph 15)

85. Third, findings of fact in these cases must be based on evidence. The court must be careful to avoid speculation, particularly in situations where there is a gap in the evidence. As Munby LJ (as he then was) observed in Re A (A Child) (Fact-finding Hearing: Speculation) [2011] EWCA Civ. 12, "It is an elementary proposition that findings of fact must be based on evidence, including inferences that can be properly drawn from the evidence and not on suspicion or speculation."

86. Fourth, when considering cases of suspected child abuse, the court "invariably surveys a wide canvas," per Dame Elizabeth Butler-Sloss, P, in Re U, Re B (Serious Injury: Standard of Proof) [2004] EWCA Civ. 567 and must take into account all the evidence and furthermore consider each piece of evidence in the context of all the other evidence. As Dame Elizabeth observed in Re T [2004] EWCA Civ.558, "Evidence cannot be evaluated and assessed in separate compartments. A judge in these difficult cases must have regard to the relevance of each piece of evidence to other evidence and exercise an overview of

the totality of the evidence in order to come to the conclusion of whether the case put forward by the local authority has been made out to the appropriate standard of proof."

87. Fifth, amongst the evidence received in this case, as is invariably the case in proceedings involving allegations of non-accidental head injury, is expert medical evidence from a variety of specialists. Whilst appropriate attention must be paid to the opinion of medical experts, those opinions need to be considered in the context of all the other evidence. In A County Council v K D & L [2005] EWHC 144 (Fam) at paragraphs 39 and 44, Charles J observed, "It is important to remember (1) that the roles of the court and the expert are distinct and (2) it is the court that is in the position to weigh up the expert evidence against its findings on the other evidence. The judge must always remember that he or she is the person who makes the final decision." Later in the same judgment, Charles J added at paragraph 49, "In a case where the medical evidence is to the effect that the likely cause is non-accidental and thus human agency, a court can reach a finding on the totality of the evidence either (a) that on the balance of probability an injury has a natural cause, or is not a non-accidental injury, or (b) that a local authority has not established the existence of the threshold to the civil standard of proof ... The other side of the coin is that in a case where the medical evidence is that there is nothing diagnostic of a non-accidental injury or human agency and the clinical observations of the child, although consistent with non-accidental injury or human agency, are the type asserted is more usually associated with accidental injury or infection, a court can reach a finding on the totality of the evidence that, on the balance of probability there has been a non-accidental injury or human agency as asserted and the threshold is established."

88. Sixth, in assessing the expert evidence I bear in mind that cases involving a multi-disciplinary analysis of the medical information conducted by a group of specialists, each bringing their own expertise to bear on the problem, the court must be careful to ensure that each expert keeps within the bounds of their own expertise and defers, where appropriate, to the expertise of others (see observations of Eleanor King J in Re S [2009] EWHC 2115 Fam).

89. Seventh, the evidence of the parents and any other carers is of the utmost importance. It is essential that the court forms a clear assessment of their credibility and reliability. They must have the fullest opportunity to take part in the hearing and the court is likely to place considerable weight on the evidence and the impression it forms of them (see Re W and another (Non-accidental injury) [2003] FCR 346)

90. Eighth, it is common for witnesses in these cases to tell lies in the course of the investigation and the hearing. The court must be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear and distress, and the fact that a witness has lied about some matters does not mean that he or she has lied about everything (see R v Lucas [1981] QB 720).

91. Ninth, as observed by Dame Elizabeth Butler-Sloss P in Re U, Re B, supra "The judge in care proceedings must never forget that today's medical certainty may be discarded by the next generation of experts or that scientific research would throw a light into corners that are at present dark."

92. This principle, inter alia, was drawn from the decision of the Court of Appeal in the criminal case of R v Cannings [2004] EWCA 1 Crim. Linked to it is the important point,

emphasised in recent case law, of taking into account, to the extent that it is appropriate in any case, the possibility of the unknown cause. The possibility was articulated by Moses LJ in R v Henderson-Butler and Oyediran [2010] EWCA Crim. 126, and in the family jurisdiction by Hedley J in Re R (Care Proceedings: Causation) [2011] EWHC 1715 (Fam): "there has to be factored into every case which concerns a discrete aetiology giving rise to significant harm, a consideration as to whether the cause is unknown. That affects neither the burden nor the standard of proof. It is simply a factor to be taken into account in deciding whether the causation advanced by the one shouldering the burden of proof is established on the balance of probabilities."

93. Finally, when seeking to identify the perpetrators of non-accidental injuries the test of whether a particular person is in the pool of possible perpetrators is whether there is a likelihood or a real possibility that he or she was the perpetrator (see North Yorkshire County Council v SA [2003] 2 FLR 849). In order to make a finding that a particular person was the perpetrator of non-accidental injury the court must be satisfied on a balance of probabilities. It is always desirable, where possible, for the perpetrator of non-accidental injury to be identified both in the public interest and in the interest of the child, although where it is impossible for a judge to find on the balance of probabilities, for example that Parent A rather than Parent B caused the injury, then neither can be excluded from the pool and the judge should not strain to do so (see Re D (Children) [2009] 2 FLR 668, Re SB (Children) [2010] 1 FLR 1161).

29. The term 'non-accidental' does not necessarily mean that an injury must have been deliberately or intentionally inflicted in order for there to be an element of wrong that satisfies the s.31 threshold criteria, as per the court of appeal decision in S (A Child) [2014] EWCA Civ 25:

"The term "non-accidental" injury may be a term of art used by clinicians as a shorthand and I make no criticism of its use but it is a "catch-all" for everything that is not an accident. It is also a tautology: the true distinction is between an accident which is unexpected and unintentional and an injury which involves an element of wrong. That element of wrong may involve a lack of care and/or an intent of a greater or lesser degree that may amount to negligence, recklessness or deliberate infliction. While an analysis of that kind may be helpful to distinguish deliberate infliction from, say, negligence, it is unnecessary in any consideration of whether the threshold criteria are satisfied because what the statute requires is something different namely, findings of fact that at least satisfy the significant harm, attributability and the objective standard of care elements of section 31(2)." Per Ryder LJ at Para 19

30. The Court is entitled to depart from the opinion of a medical expert, but must have a sound evidential basis upon which to do so; M-W (A Child) (2010) [2010] EWCA Civ 12**:**

39. I regard the following as trite propositions of law:-

(1) Experts do not decide cases. Judges do. The expert's function is to advise the judge;

(2) The judge is fully entitled to accept or reject expert opinion;
(3) If the judge decides to reject an expert's advice, he or she; (a) must have a sound basis upon which to do so; and (b) must explain why the advice is being rejected.
(4) Similar considerations arise when a judge prefers one expert's evidence to that of another. Judges must explain why they prefer the evidence of A to that of B.

31. In relation to expert evidence a witness provides an opinion to the court, they do not determine the case.

"The expert advises but the Judge decides. The Judge decides on the evidence. If there is nothing before the court, no facts or no circumstances shown to the court which throw doubt on the expert evidence, then, if that is all with which the court is left, the court must accept it. There is, however, no rule that the Judge suspends judicial belief simply because the evidence is given by an expert." Re B (Care: Expert Witnesses) [1996] 1 FLR 667, per Ward LJ

32. In determining whether an injury is non-accidental on the balance of probabilities, fanciful speculation and speculative theories are not an appropriate method of inquiry**;** Re B (Threshold Criteria: Fabricated Illness) [2004] 2 FLR 200;

[24] *It is undoubtedly true that the frontiers of medical science are constantly being pushed back and that the state of knowledge is increasing all the time. That is why, when presented with a speculative theory based on an unlikely hypothetical base, an expert will rarely discount it and will, in effect, never say never. Fanciful speculation is not an appropriate method of inquiry. What is needed and what the experts have endeavoured to achieve in this case is to piece together all the available information and look at the differential diagnosis. Some of the experts in this case specialise within a particular and very narrow field, and by reason of being experts of referral at centres of excellence, they acquire special knowledge and skill. However, concentration on a very narrow area of expertise can sometimes render it difficult for the expert to see the whole picture. It is for that reason that I find Dr S is best placed to view the overall picture. The judge has the duty of sifting the evidence from the experts, who form their assessments within their particular area of expertise, and the judge has to decide the case by reference to the identified issues. Although the medical evidence is of very great importance, it is not the only evidence in the case. Explanations given by carers and the credibility of those involved with the child concerned are of great significance. All the evidence, both medical and non-medical, has to be considered in assessing whether the pieces of the jigsaw form into a clear convincing picture of what happened.*

33. The Court must take into account all of the evidence and consider each piece of evidence in the context of all the other evidence (Re U, Re B (Serious injuries: Standard of proof) [2004] EWCA Civ 567.

34. The evidence of the parents and any other carers is very important. It is essential that the court forms a clear assessment of their credibility and reliability. The court is likely to place considerable weight on the evidence and the impression it forms of them; Re W and another (Non-accidental Injury) [2003] FCR 346**,** paragraph 41.

35. Findings of fact must be based on evidence, including inferences that can properly be drawn from the evidence and not on suspicion or speculation, Re L and M (Children) [2013] EWHC 1569 (Fam) paragraph 48.

36. I also bear in mind that I should seek to identify the perpetrator of injuries if that is possible. The court must have regard to the '*binary system*' set out by Lord Hoffman in Re B (Care Proceedings: Standard of Proof) [2008] UKHL 35 namely: '*the fact either happened or it did not, there is no room for finding that it might have happened*' and '*the same approach is to be applied to the identification of perpetrators as to any other factual issue in the case*'.

37. Thus, if a perpetrator can be properly identified on the balance of probabilities, then it is the courts duty to identify him or her.

38. In relation to the pool of perpetrators I must ask myself if 'is there a likelihood or real possibility that A or B or C was the perpetrator or a perpetrator of the inflicted injuries'. North Yorkshire County Council v SA [2003] 2 FLR 849.

39. I also bear in mind the case of Lancashire County Council v B [2000] AC147 which sets out that if I am only able to satisfy myself that the injuries were inflicted by one or other of two people, that will still enable the court to be satisfied that the threshold has been satisfied.

40. I remind myself that in Re B (a child) [2018] EWCA Civ 2127, Jackson LJ said:

19. The proper approach to cases where injury has undoubtedly been inflicted and where there are several possible perpetrators is clear and applies as much to those cases where there are only two possible candidates as to those where there are more. The court first considers whether there is sufficient evidence to identify a perpetrator on the balance of probabilities; if there is not, it goes on to consider in relation to each candidate whether there is a real possibility that they might have caused the injury and excludes those of which this cannot be said: North Yorkshire County Council v SA [2003] EWCA Civ 839, per Dame Elizabeth Butler-Sloss P at [26].

20. Even where there are only two possible perpetrators, there will be cases where a judge remains genuinely uncertain at the end of a fact-finding hearing and cannot identify the person responsible on the balance of probabilities. The court should not strain to identify a perpetrator in such circumstances: Re D (Care Proceedings: Preliminary Hearing) [2009] EWCA Civ 472 at [12].

21. In what Mr Geekie described as a simple binary case like the present one, the identification of one person as the perpetrator on the balance of probabilities carries the logical corollary that the second person must be excluded. However, the correct legal approach is to survey the evidence as a whole as it relates to each individual in order to

arrive at a conclusion about whether the allegation has been made out in relation to one or other on a balance of probability. Evidentially, this will involve considering the individuals separately and together, and no doubt comparing the probabilities in respect of each of them. However, in the end the court must still ask itself the right question, which is not "who is the more likely?" but "does the evidence establish that this individual probably caused this injury?" In a case where there are more than two possible perpetrators, there are clear dangers in identifying an individual simply because they are the likeliest candidate, as this could lead to an identification on evidence that fell short of a probability. Although the danger does not arise in this form where there are only two possible perpetrators, the correct question is the same, if only to avoid the risk of an incorrect identification being made by a linear process of exclusion.

41. In Re A (Children) (Pool or perpetrators) [2022] EWCA Civ 1384 King LJ set out that:

"*The unvarnished test is clear: following a consideration of all the available evidence and applying the simple balance of probabilities, a judge either can, or cannot, identify a perpetrator. If he or she cannot do so, then, in accordance with Re B (2019), he or she should consider whether there is a real possibility that each individual on the list inflicted the injury in question. She set out three parts to the analysis drawn from Re B:*

i) Whether there was a list of people who had the opportunity to cause the injury.

ii) Whether the judge he was able on the balance of probability, to identify the actual perpetrator.

iii) If, and only if, the court was unable to make such a finding to the appropriate standard of proof, the Judge should resume their scrutiny of the list and in respect of each person on the list, considered whether there was a real likelihood or possibility that one of those individuals inflicted the injury/injuries.

42. I also remind myself of the direction given that is commonly referred to as a Lucas Direction that a lie told by a witness can only strengthen or support evidence against that witness if I am satisfied that the lie was deliberate, that is relates to a material issue, and that there is no innocent explanation for it, as sometimes people lie for reasons that they do not wish to disclose. The Court should first determine if the witness has deliberately lied. Then, if such a finding is made, consider why the person lied. R v Lucas [1981] QB 720.

43. In A, B and C (Children) 2021 EWCA Civ 451 Macur J set out that a formulaic version of the Lucas direction:

"*leaves open the question: how and when is a witness's lack of credibility to be factored into the equation of determining an issue of fact? In my view, the answer is provided by the terms of the entire „Lucas" direction as given, when necessary, in criminal trials.*
55. Chapter 16-3, paragraphs 1 and 2 of the December 2020 Crown Court Compendium, provides a useful legal summary:

"1. A defendant's lie, whether made before the trial or in the course of evidence or both, may be probative of guilt. A lie is only capable of supporting other evidence against D if the jury are sure that: (1) it is shown, by other evidence in the case, to be a deliberate untruth; i.e. it did not arise from confusion or mistake; (2) it relates to a significant issue; (3) it was not told for a reason advanced by or on behalf of D, or for some other reason arising from the evidence, which does not point to D"s guilt. 2. The direction should be tailored to the circumstances of the case, but the jury must be directed that only if they are sure that these criteria are satisfied can D"s lie be used as some support for the prosecution case, but that the lie itself cannot prove guilt. …"

44. She then suggested that:

"That a tribunal's Lucas self-direction is formulaic, and incomplete is unlikely to determine an appeal, but the danger lies in its potential to distract from the proper application of its principles. In these circumstances, I venture to suggest that it would be good practice when the tribunal is invited to proceed on the basis , or itself determines, that such a direction is called for, to seek Counsel's submissions to identify: (i) the deliberate lie(s) upon which they seek to rely; (ii) the significant issue to which it/they relate(s), and (iii) on what basis it can be determined that the only explanation for the lie(s) is guilt"

45. The Court should consider how much weight to attach to discrepancies in accounts between witnesses or from one witness at different times. Per Mostyn J in Lancashire v R [2013] EWHC 3064 (Fam):

(xi) The assessment of credibility generally involves wider problems than mere "demeanour" which is mostly concerned with whether the witness appears to be telling the truth as he now believes it to be. With every day that passes the memory becomes fainter and the imagination becomes more active. The human capacity for honestly believing something which bears no relation to what actually happened is unlimited."

46. Further, Peter Jackson J (as he then was) in LCC v The Children (2014) EWHC 3(Fam):

[9] To these matters I would only add that in cases where repeated accounts are given of events surrounding injury and death the court must think carefully about the significance or otherwise of any reported discrepancies. They may arise for a number of reasons. One possibility is of course that they are lies designed to hide culpability Another is that they are lies told for other reasons. Further possibilities include faulty recollection or confusion at times of stress or when the importance of accuracy not fully appreciated, or there may be inaccuracy or mistake in the record keeping or recollection of the person hearing and relaying the account. The possible effects of delay and questioning upon memory should also be considered, as should the effect on one person of hearing accounts given by others. As memory fades, a desire to iron out wrinkles may not be unnatural – a process which might inelegantly described as "story creep" – may occur without any inference of bad faith.

47. In respect of the allegations of a failure to protect, such a finding is a serious finding, and a court should be alert to the danger of such a finding becoming a 'bolt-on' to the central issue of perpetration; Re L-W (children) [2019] EWCA Civ 159

[62] 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.

[63] Such findings where 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.

[64] 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. As Aikens LJ observed in Re J, "nearly all parents will be imperfect in some way or another". Many households operate under considerable stress and men go to prison for serious crimes, including crimes of violence, and are allowed to return home by their long-suffering partners upon their release. That does not mean that for that reason alone, that parent has failed to protect her children in allowing her errant partner home, unless, by reason of one of the facts connected with his offending, or some other relevant behaviour on his part, those children are put at risk of suffering significant harm.

48. I therefore turn to consider the evidence in the case.

The Expert Evidence

49. This court has the benefit not only of the medical reports completed by the treating medics, but also of five expert reports.

50. Dr Russell Keenan was the first expert to report. He is a Consultant Paediatric Haematologist, and his report is dated 31.5.23. He confirmed that although it was reported that potentially some of AA's levels for platelet counts and Factor IX appeared to be outside suggested ranges, in fact those that were being quoted were not necessarily age appropriate for her, and he considered she had normal platelet function, and her levels of

Factor IX he would also consider normal. He recommended some further specific testing for more rare difficulties.

51. In his addendum report dated 20 August 2023, he sets out his earlier report and conclusions and recommendations, then sets out the test results for those further matters that have been tested for, and concludes that no blood clotting disorder has been identified. He goes on to say that it is not possible to test for mild platelet function disorders, and they are therefore neither diagnosed nor excluded, but that they are extremely rare. He concludes that the bruising observed in AA should be considered to have occurred on the balance of probabilities in a child with a normal blood clotting system.

52. As a result of that, very appropriately, no party sought to ask questions of him.

53. The next expert report in time is that of Professor Greene, which is dated 7 June 2023. Professor Greene is a consultant paediatric diabetologist and endocrinologist.

54. In his report between paragraphs 7.10 and 7.15 he discussed any possible connection between vitamin D deficiency and bruising, and whilst he accepts that there is what he describes as "lay literature" suggesting that vitamin D deficiency can cause bruising in infancy, he says there is no specific evidence of an association in medical literature. He concludes that "there appears to be no specific metabolic, haematological, immunological, or endocrine cause for the spontaneous bruising, which appears to have resolved spontaneously during the medical observation period".

55. Between paragraphs 7.16 and 7.29 he discusses any possible connection between vitamin D deficiency/insufficiency and fractures. He sets out and summarises a number of well-respected medical papers, and in paragraph 7.23.1 reports on the "global consensus on rickets," that sets out that children with clinical biochemical and radiographic evidence of

rickets are at increased risk of fracture. However, fractures only occurred in those who were mobile and had severe radiographic evidence of rickets. That consensus suggests that simple vitamin D deficiency, that is vitamin D deficiency without biochemical or radiological signs of rickets, has not been associated with increased fracture risk in infants and children.

56. He goes on to set out the current view from the Royal College of Paediatrics and Child Health, which includes the statement "children with radiographically confirmed rickets have an increased risk of fracture, whereas children with simple vitamin D deficiency are not at increased risk of fracture".

57. Within this informative section of his report, he goes on to accept that it is difficult to non-invasively assess bone strength and fragility and that conventional X-rays are relatively insensitive in assessing bone mass, often regarded as a surrogate for bone strength.

58. He accepts that the idea that there is increased bone fragility when vitamin D is low has been debated both in medical journals and in the civil and criminal courts. At a later point in the report, he accepts that the significance of abnormal measurement of bone biochemistry markers has been questioned for decades both medically and legally.

59. He sets out that there are no other features apparent in AA in the reports by several radiologists or features suggestive of abnormal underlying bone structure and on radiological assessment there was no suggestion of reduced bone density.

60. In his summary he sets out that the weight of evidence currently supported the view that occult rib fractures in the absence of specific signs of clinical bone deformity and or abnormal bone development as seen classically in rickets, are most likely caused by inappropriate physical force.

61. He therefore goes on to state that in his opinion and on the balance of the probabilities, despite the evidence of vitamin D deficiency there is no substantial evidence of abnormal bone structure that fits a recognised pattern of disease associated with occult fractures, without the application of inappropriate and unfitting force.

62. In answer to a specific question, he accepts this: the radiological reports do not suggest abnormalities in bone density, but there is no measure of the 'bone strength' available in these circumstances. He therefore goes on to say that he believes it would be correct to say that secondary to the low vitamin D levels, that there is evidence of 'metabolic stress' on the homeostatic measures controlling bone architecture, with likely sub optimal bone structure. He is very clear that a force would still be required to cause such fractures, but that it is not possible to estimate the degree of force required for fractures in that situation. He makes it clear that there is no evidence in the literature to assist the court in relation to this matter.

63. In his evidence he agreed that it was most likely that the vitamin D deficiency had arisen in AA secondary to maternal vitamin D deficiency, and as she was being breast fed was not corrected in the way it would have been on infant formula.

64. He was questioned as to the relevance of calcium levels, saying that they were relevant, as the body was trying to maintain the most advantageous metabolic state. The body tries to keep calcium constant and therefore the deficiency of vitamin D can lead to the possibility that the body effectively drags calcium out of the bones. The body is working to try and keep the calcium levels in normal range, and he accepted that calcium deficiency would probably be shown if there was long term and severe vitamin D deficiency. The calcium here however was normal, and that in his view therefore the vitamin D problems, although needing to be addressed, had not reached a point in AA where it had an impact on her

radiological and physical symptoms. When pressed he accepted that what he meant was that it has no measurable impact on the bones, there was nothing visible on the bones.

65. He was asked as to his view of the genetic marker that has now been seen within AA, and his view was simply that these things do occur, but he did not think it was relevant to his views on the vitamin D deficiency.

66. In cross examination by Mr Sampson KC he was asked whether it was fully understood why the vitamin D deficiency/insufficiency may lead to bone weakness. He responded that the fragility is presumably related to changes in the matrix of the bones, and that this can occur even with normal calcium levels. He explained this is because the bones matrix begins to thin out and the calcium structure around the collagen scaffold begins to thin out, and that may create weaker bones.

67. He was pressed as to what impact it would have upon AA's developing bones, if the mother was vitamin D deficient in her pregnancy. He was asked how that would be passed on to AA, but said he simply did not have that expertise, but pointed out that many mothers are vitamin D deficient. He accepted that the most likely reason for AA's vitamin D deficiency was the process of mineralisation in utero being affected by the mother's low vitamin D levels.

68. He accepted that if a child has rickets, that can repair so that those are no longer seen radiologically. He accepted that although there was no sign of rickets here, there must obviously be a form of sliding scale where at one end there is a child with perfectly healthy bones, and then at the other end a child with rickets. When pressed that there was a real possibility that a lack of vitamin D could contribute to bone weakness his response was that the balance of evidence does not suggest that is a real possibility. He was challenged in relation to that, and it was clear that his difficulty with this proposition was that the phrase

"real possibility" tipped the balance too much, and he could not agree with that. In his view the evidence here pointed much more towards a non-accidental injury given the force that would be needed.

69. He accepted however that the reality is we don't have studies to assist us as to whether there might be a lesser level of force needed in a child with a vitamin D deficiency. He was partly troubled by this suggestion of the use of the terms 'stronger' or 'weaker', making it clear that these terms are in reality difficult to relate to the environmental age of a child, pointing out that young children need to have more flexible bones, and that therefore those terms were not necessarily the most helpful ones to analyse this.

70. He was prepared to accept that there was some unknown 'in between ground', or 'uncertainty' in relation to children affected by low vitamin D, and that it could be considered that there was some form of sliding scale between a child with properly formed and dense bones, and on the other hand a child with low vitamin D and rickets.

71. Mr Sampson KC moved on to asking him in relation to the genetic issue. He was prepared of course to accept that 10 years ago the medical profession did not fully understand Ehlers Danlos Syndrome, and that we have now come better to understand how these genes impact upon the collagen in the body.

72. Dr Olsen 's paediatric radiological report is next in time, being filed on 20 July 2023. His report is characteristically clear that he agrees there are two left sided rib fractures, the fractures were somewhere between half a month and 1 ½ months old on 6 April 2023. He was not of course able to say whether these had occurred together or separately, but they were consistent with having occurred on the same occasion. The mechanism was more likely than not a sideways squeezing of the chest, explaining that force applied simultaneously to the left and right sides if of sufficient magnitude would cause

accentuated bowing of the arc towards the back. The sideways squeeze did not need to be precisely from side to side but could have been applied slightly diagonally, but this was unlikely to be a front to back or back to front squeeze. He set out of course that in an infant with normal bone structure it is generally accepted that rib fractures are not caused by normal handling by a reasonable carer, and that there was no radiological sign of any underlying conditions, in particular rickets.

73. He was asked some further questions and responded by way of an e-mail dated the 21st of August. The substantive question of course was the father's explanation that on the 4 March 2023 he gripped AA tightly around the chest when he slipped on the stairs. Dr Olsen's response to that was that it was impossible to know how much force the father had applied, which of course is the most important determinant. He accepted this event could plausibly explain one or more of the rib fractures setting out that whether the child's immediate response would suggest fractures had occurred was a question he would defer to the court's appointed paediatrician.

74. In his evidence to the court Dr Olsen assisted by setting out that of course there was not a direct correlation between bone density and fractures in infants, partly because children of course have more pliable bones. He set out that in the absence of AA having any underlying problems, to fracture the ribs there would have to be a squeeze firm enough to deform the chest. The rib would break at the apex of the curve, giving the analogy of it being like a tree trunk if you bent it, it would break in the middle, where the curve is at its height.

75. In cross examination he was challenged in relation to one of the papers that suggested that there could be a loss of bone density of between 30 to 50% before that was visible on X-rays. He was clear he did not find that paper credible, commenting that in his view these

were people who 'travel around trying to be a success', and 'these are not the relevant experts'. He pointed out, that in his view that was irrelevant anyway as bone mass does not necessarily reflect the likelihood of fracture. Although he was pressed on the impact of rickets and vitamin D deficiency leading to a reduction in bone strength and bone mineralisation, he deferred that question firmly to Professor Greene.

76. He was content to accept that even in the absence of deficiencies in the bones, the father's explanation of the fall on the stairs could have caused the fractures if the force exerted was sufficient, and AA was in some form of at least partly sideways position. The squeeze exerted by the father would have had to be sufficient to deform the chest.

77. The next expert to report was Professor Dhavendra Kumar, a Consultant in Clinical Genetics & Genomic Medicine. His report is dated 11.9.23. It is of course complex.

78. At para 10 of his report, he sets out that as a consequence of the genetic analysis the following was found:

10. A missense variant in COL5A1 gene was detected (c.1879A>C, p.(Lys627Gln). This variant had not been previously found and no genome database has any reference of this variant. On this basis the genetic laboratory has classified this as 'variant of unknown significance- VUS'. The pathogenic (disease causing)
COL5A1 mutations and variants are associated with the classic Ehlers-Danlos syndrome (cEDS or EDS1) . The report includes the following statement- "COL5A1 c.1879A>C, p. (Lys627Gln) is classified as a variant of uncertain significance (VUS), as there is insufficient evidence to evaluate its clinical relevance. This variant should not be used for clinical decision-making or risk evaluation in family members. Management of the patient and family should be based on clinical evaluation and judgment. Genetic counselling is recommended."

79. He goes on to set out:

13. Based on the present genetic evidence, disease (pathogenic) mutations or variants in COL5A1 are not associated with pathological fractures. However, nonosseous musculoskeletal injuries are likely. However, non-osseous musculoskeletal injuries are likely. Bone fractures are known to occur in individuals with combined mutations (compound heterozygotes) in COL1A1 and COL5A1. (Appendix 10.5)

80. In accordance with that, Professor Kumar recommended further genetic testing, to include both parents which was carried out.

81. Within his opinion and recommendations Professor Kumar sets out at para 7 that his own clinical genetic review has not shown any recognisable dysmorphic congenital syndrome associated with fractures along with early bruising. He particularly addresses osteogenesis imperfecta, and Ehlers Danlos Syndrome.

82. He repeats the information that COL5A1 is a variant of uncertain significance, and that AA does not have any genome wide structural changes involving critical segments of the human genome. He describes COL5A1 in simple terms as being a variant in the collagen 5 gene, and goes on to give further detail from the laboratory report that:

*COL5A1 gene (OMIM *120215) encodes an alpha chain for one of the low abundance fibrillar collagens. Fibrillar collagen molecules are trimers that can be composed of one or more types of alpha chains. Type V collagen is found in tissues containing type I collagen and appears to regulate the assembly of heterotypic fibers composed of both type I and type V collagen. This gene has two isoforms with RefSeq ID. Autosomal dominant mutations in COL5A1 associate with classic Ehlers- Danlos syndrome type 1*

83. He then sets out that:

12. No gene changes or variants are detected associated with OI or any other diseases with bone fragility predisposing to pathological fractures. There is thus no genetic explanation for AA's two tib (sic) fractures.

13. Since the COL5A1 missense gene change is inferred as of no medical importance, it could not be used to make the diagnosis of EDS1. There are several gene changes are described in the classic EDS (cEDS; EDS1).

16. (sic) The clinical picture in EDS1 or cEDS is extremely variable with broad clinical spectrum of manifestations. Many patients may simply have recurrent easy bruising with soft and lax skin. The joint hypermobility is a known symptom in this connective tissue.

84. Under the heading conclusions, he sets out at paragraph 13:

13. Based on the present genetic evidence, disease (pathogenic) mutations or variants in COL5A1 are not associated with pathological fractures. However, non osseous musculoskeletal injuries are likely. Bone fractures are known to occur in individuals with combined mutations (compound heterozygotes) in COL1A1 and COL5A1.

85. His addendum report is dated 12 October 2023, and consists of many pages which are an exact copy of his previous report, until at paragraph 13 of his conclusions he sets out that the further testing has shown the same variant in DD. He describes this again as a variant of unknown significance, and opines that neither are significant to explain the occurrence of multiple bruises in AA.

86. Professor Kumar was questioned carefully by each of the advocates, with both Professor Delahunty KC and Mr Sampson KC pointing out a number of factual errors in his report and asking him to clarify if he was absolutely certain that he had properly checked his report in terms of his opinion and evaluation, in the light of those. One matter which rightly concerned the advocates, although there were a number, was that he appeared to be confused as to the status of Dr Kate Ward, describing her as the treating paediatrician, at the local hospital, and asserting that he had read her report, although that had not been filed until after the date of his report. There are a number of factual inaccuracies in his report, and general mistakes.

87. Mr Sampson KC also pointed out that Professor Kumar had clearly cut and pasted a large part of a case summary into his report, it seems dated 21st of April 2023, not all of which was agreed. Mr Sampson KC is clearly correct in relation to that, and indeed Professor Kumar did not deny it. That does make some paragraphs of the report rather odd in how they read, unless that is fully appreciated. Mr Sampson KC was also concerned, that although Professor Kumar made some assertions in relation to AA not having any bruises at that time, he had not in fact examined AA when he attended at the property for his

addendum report, although he had been instructed to undertake a full assessment. The other advocates all joined in these concerns.

88. Professor Kumar was asked in detail by Professor Delahunty KC about the interpretation of the results. He said that in his view this variant was of no consequence to the collagen and structure, explaining it further that COL5A1 is in fact part of the collagen structure, but in his view this was not causing any disruption to the structure.

89. In answering questions from Mr Sampson KC, Professor Kumar confirmed that this was his sixth family case that he had reported upon, having reported in approximately 3 criminal cases.

90. He accepted that new variants were being found regularly. He was questioned as to the exact terminology in relation to this variant, which had been described as a variant of uncertain or unknown significance, but it also been described as a variant of no significance. He confirmed that from a genetic viewpoint those phrases had the same meaning. He confirmed the classification of variants, and that that classification can change as medical knowledge improves in relation to a particular variant. When pressed he accepted that this variant could be 'harmful', which was clearly meant to be a wide term suggesting that it could be of some significance, whilst saying that in his view it did not look to be 'harmful'.

91. He was clear in his view that this variant was not related to fractures, but agreed with Mr Sampson KC that there were other well-respected experts who did hold the view that in relation to Ehlers Danlos Syndrome, there may be some connection to there being more likelihood of fractures. He accepted that there were papers that questioned if there was such an impact but was clear that to the best of his knowledge it was not accepted that

Ehlers Danlos Syndrome per se is a cause of fractures. He accepted that collagen 1A1 is associated with fractures.

92. He was pressed again in relation to the potential relevance of AA's genetics to bruising, and responded again that in his view COL5A1 was of 'no significance'. He was questioned carefully in relation to that. He was able to clarify that as a diagnostician, this would be classified as a variant of no consequence, but on a careful look as to whether it might cause problems, he would accept that AA has a mutation linked to the production of collagen, and that therefore we could not say one way or the other if it could contribute to easy bruising.

93. He pointed out that DD appeared not to have any such difficulties but went on to readily accept that just because there were no symptoms in a parent that did not mean the child would not have symptoms although he described that that would be surprising.

94. He accepted that in relation to Ehlers Danlos Syndrome that had a broad clinical spectrum of manifestations. Mr Sampson KC spent some time with Professor Kumar being very careful about the language that was used and pressing him to answer the questions posed. Professor Kumar was content eventually to agree that there is no link between this variation that allows us to link it to EDS, however the corollary of that was that he could not say one way or the other if that would cause easy bruising. It was clear from his evidence that he thought this was unlikely, also commenting that the evidence is insufficient to say one way or the other.

95. Unsurprisingly Ms King KC pressed Professor Kumar again when she began her questioning on behalf of the father. He agreed with her that one of the ways in which they would gain an insight into the impact of this issue was when they found more cases and were able to compare their clinical history. He accepted to her that he had not had a

discussion with the father about that and was not aware for example that the father had a history of nosebleeds.

96. He accepted that we did not know how COL5A1 would interplay with a vitamin D deficiency. He agreed that we had some further information about when COL5A1 was found together with COL1A1 and agreed that COL5 plays an important role in relation to the skin.

97. Ms King KC suggested to him that the picture in relation to Ehlers Danlos Syndrome was an evolving picture, and it was still not clear what all the consequences were, and how this might be connected with it. He accepted that the available information was very limited, and repeated that we don't currently have information about AA's genetic makeup being clinically significant.

98. The last expert report to be filed as would be expected is that of Dr Ward. She was instructed in this matter as a consultant paediatrician, and her report is dated 23rd of October 2023.

99. Her report is extremely detailed, and contains a detailed chronology, and an extensive review of the evidence filed to that point. Inevitably, in relation to many matters she defers to the experts in that field. She carefully sets out and attempts to catalogue the bruises or marks to AA, setting out the difficulties given the lack of proper photographs, and different descriptions of them.

100. Dr Ward's oral evidence inevitably focused to a large extent upon consideration and analysis of the marks. She was taken to the medical records and particularly what was recorded by the treating doctors when AA was first in hospital, where it appears at times that there are marks described as bruises noted one day, which do not appear the next day.

She made it clear that she found the issue of the marks very confusing and that she struggled to see the marks, and to understand what was being said in relation to them. She agreed some appeared to be seen one day, but gone the next,

101. It was put to her that this was a child who did not appear to bruise when she had her immunizations, there appeared to be no bruises associated with her birth, the neonatal heel prick or when blood was taken in general. She was reminded of the details of AA that we now know, agreeing that if there was some latent vulnerability to bruising, she would expect to see that as a result of the descriptions of some of the events, and that of course included the lumbar puncture. She accepted in relation to that that a child needed to be held very still for that and that was certainly more than normal handling.

102. She was asked about the relevance of the fact that it was the parents who reported many bruises, and the parents who took photos of them. She was asked whether her experience suggested that that would be unusual to suggest that they were therefore responsible deliberately for causing those injuries. She responded that it was not uncommon for parents to produce a child and the symptoms, and it was not unheard of for children to be presented by parents even when they themselves were the creator of the injuries.

103. In relation to the ribs, she agreed that the mechanism suggested by the father certainly warranted 'serious consideration' whether it could have caused the fractures, but again expressed concern as to the reports of how AA reacted to that. She accepted that in relation to other matters it appeared that AA had a normal pain response. She agreed it was surprising that if a child had two fractured ribs, they did not show pain when that occurred, but went on to say that it is accepted that not all children react in the same way, and she could not rule out her reacting in that way.

104. Mr Sampson KC asked her about the COL5A1 variant. Dr Ward gave her oral evidence before Professor Kumar. She agreed that if you have a problem with your collagen, it is not entirely clear how that impacts on other things and was content to accept that as this mutation had never been seen before, it was difficult to say what it does.

105. Mr Sampson KC took her through each of the marks.

106. In relation to the first reported, in December, she accepted that with no photos it is impossible to know in reality what that was.

107. That was similar in relation to the mark in mid-February.

108. In relation to the mark reported on 21 February, she was taken to the photographs and agreed that it appeared to be a complex bruise, not showing signs of being fingertip, and didn't look like a blow. She was asked whether it could be the buckle on the strap of something but considered that was only possible in a child who bruised easily.

109. She was taken to the mark on 26 March, on AA's right buttock. She was asked whether in reality that could be Cutis Marmorata, as she discusses in her report. She accepted that can be mistaken for bruises, and that the photo was quite blurry.

110. In relation to the photos taken on 29 March, of AA's torso, she accepted she could not convincingly see any bruising on that photo, and that it was not clear whether what was being seen was bruising or mottling. She said she thought there was a mark there that appeared to go beyond mottling and could be a bruise but accepted that if that was gone the following morning that would not be expected, and that she would normally expect a bruise to remain for a few days. She added that she could also see mottling of AA's skin on that photo and accepted that it was not clear what that was – she could not say if it was bruising

or mottling. The photo again was blurred. It could be a bruise, but she said that with these type of photos you really cannot be diagnostic.

111. It was put to her that the history of this case would be a most unusual story, that this mother was told by a consultant paediatrician of the possible implications of AA suffering unexplained bruising, and yet the parents continued to take photos, and press for a resolution of this. She said that in her experience such a situation would not be unique, but she agreed that most parents would be alarmed.

112. In relation to the mark on 5 April, that was seen after the parents have been told to come in for a child protection medical. She was told this was after the family had had a day out in London, and accepted it was an unusual bruise in an unusual site, especially if the child did not have a bruising tendency.

113. Dr A is the treating paediatrician. She gave evidence first. She was of course giving evidence of fact, not as an expert witness, although of course she is an expert in her field.

114. She first saw the mother with AA on 28 February, and was taken to the notes from that, which were written by a junior doctor whilst she was talking to the mother. She confirmed that the mother had told her there was bruising, on and off, it would last a few days and then would fade. She said she couldn't remember how often mother told her that there was bruising, but agreed it was significantly more than one or two times. She did not see any marks or bruises. Her understanding was that the bruising was coming and going, and she had therefore spoken to haematology in relation to this. She was not able to assist why no proper medical photos were taken in relation to these marks on AA's body by the hospital.

115. In cross-examination by Mr Sampson KC she agreed that what was described to her was not following a standard pattern for bruises. Looking at the notes of the medics who had

spoken to the mother before her, Dr C examines AA but sees no bruise, Dr N sees a bruise on the spine, but then when she saw AA 14 hours later there was no mark.

116. In relation to the very low vitamin D levels, Dr A had prescribed vitamin D, and confirmed to Mr Sampson KC that her view was that low vitamin D levels could cause easier bruising. She confirmed that she had spoken to the safeguarding lead and told the mother that as they did not appear to be any medical explanations, there would need to be a child protection referral. She recalled that conversation, in which she told the mother on the telephone that social services would be involved, and it seems may have suggested that the mother and father could be interviewed by the police.

117. She accepted that around 12 hours after that conversation the mother reported there was another bruise on AA.

118. She agreed that it was clear AA was hypermobile and had clicky joints. In terms of what the mother had told her more recently she clarified that she had been told that AA had had genetic testing done and that the mother had described that AA she had a genetic variation of Ehler's Danlos Syndrome. She considered it appropriate for there to be more testing of AA and that there may be another explanation as yet unknown for the marks.

Analysis of disputed issues, and other relevant evidence.

119. As I have set out above, the final medical reports were being received just as the case was due to start. It was apparent that the local authority had worked very hard to deliver an opening to the court and the other parties the day before evidence was to be heard on the first day which was Tuesday, 31 October. That opening, in conspicuously fair and balanced terms, set out the evidence that the local authority were going to present to the court, and a very detailed schedule of findings that at that point the local authority would seek.

120. When the local authority filed their closing submissions, it was clear they had reflected on the case in light of the evidence as they believed it had transpired. To summarise the findings that they now sought, they said the evidence now showed that there were a number of marks that the court should find were bruises upon AA, and that she did not suffer from any form of propensity to bruise easily, and therefore that these were inflicted bruises. In relation to the rib fractures, they sought a finding that AA suffered 2 inflicted rib fractures, that these were not caused by any accident, and were not caused in the father's fall down the stairs. They submit the Court should find that both sets of injuries were caused by the mother, and that the father had failed to protect AA. In relation to the assertion that the Court could find properly that these were deliberately inflicted injuries, the local authority say that the court should find that on the basis of the medical evidence coupled with the mother's oral evidence. The reasons for the positive assertion that the mother was the perpetrator of what they say are inflicted injuries is set out in detail by the local authority in their closing and is largely based on their views of her oral evidence.

121. That clearly represented a shift in position by the local authority. It was accepted (with significant complaint) on behalf of the parents that the local authority is entitled to now take that stance, although on behalf of the parents this position is described as 'astonishing'. The parents assert that the local authority inappropriately seek in closing to pursue and control the possible findings in matters that should be left to the Court. It is clear from the evolution of this case that stance from the local authority in closing was not one that had been anticipated before or during the course of the hearing.

<u>What are the marks on AA's body?</u>

122. The local authority now asserts that the following are the marks upon which the court should make findings, that they are inflicted bruises. I do not understand that the parents

dispute that there were marks on AA's body on these dates. I set them out below therefore for clarity:

i. 17.02.2023 ill-defined area of yellowish discolouration on the lateral aspect of the left lower leg at level of head of fibula.

ii. 21.02.2023 Cluster of bruises on the left side of the abdomen on a level and above the umbilicus. The lower session is triangular in shape. An upper rectangular bruise (both brown-grey) with a circular, faint bluish bruise laterally to the rectangle. There is a tiny abrasion below the triangular bruise and a few indistinct areas of bruising around about.

iii. 26.03.2023 bruise with curved edge on the buttocks extensive bluish- grey regular marks to AA's left, localised cluster of bruises on the upper outer quadrant of the left buttock measuring 0.5 – 4cm.

iv. 29.03.2023 linear bruise on the back of the left thigh,. The close up of the left thigh shows a curvilinear bruise to the posterior aspect of the thigh.

v. 05.04.2023 vertical/linear bruise lateral aspect of the left buttock. localised cluster extensive of bruises, possibly consistent with fingertip lesions, and on posterior-lateral aspect of the left thigh, clustered and possibly linear bruises over the soft tissue in this after. Fading bruise on left on the left buttock.

<u>The parent's evidence in relation to the marks</u>:

123. It is one of the most striking aspects of this case, acknowledged by all parties, that the people who have presented the evidence in relation to the marks on AA's body to doctors and the hospital are the parents. The photographs that have been provided have been provided by the parents, and both the mother and the father have given details to treating medics.

124. I note at this point again that throughout the case, both in written evidence and in oral evidence and in submissions, the marks have been described variously as marks, bruises, and bruise type marks. I have been cautious that just because the parents described them at

times as bruises, which they do in general in their statements, and indeed just as medics record them as bruises, sometimes based on what the mother said, that I must analyse what they actually are, rather than that word used. Within this judgment I shall use the word marks, as a neutral term, unless I am quoting what somebody else has said.

125. Both parents have filed detailed statements, the mothers contains an extremely comprehensive chronology.

126. In terms of the relevant matters for these marks, both parents have stated from the start that some would appear suddenly and also disappear very quickly.

127. The first mark that the parents describe was sometime in mid-December, there is no photo of it. The mother asserts that it appeared one day, and the next day it had completely disappeared. The local authority seek no finding in relation to this, and that is clearly appropriate.

128. The parents say that the next mark was noted to AA's leg/knee on 14 February. The father mentioned this to the nurse during AA's vaccination the next day. The description from the mother is that this bruise was around for a couple of days. The mother mentioned it at the 6 to 8 week check with the GP, Dr F, and stated she had been googling 'bruises in babies' and thought that it ought to be looked into.

129. The record from Dr F suggests that the mother had raised the question that she realised this might be something that the medical profession were concerned about. The mother had been asked about this in her evidence and responded was that she understood this is probably a 'taboo subject' for some people, but after her googling about bruises in babies, one of the 'hits' that she found was a potential for it to be a symptom for leukaemia, and

she therefore felt it was important to get it checked. The mother says she was certainly not nervous about raising it.

130. There is no photo of this bruise either.

131. In the mother's statement she asserts that she had told Dr F that there had been another mark at 3 to 4 weeks of age. She is clearly referring here to the potential mark in December. Dr F said that she would refer AA to the community paediatrics team for a full blood assessment to be done.

132. This is the mark that the local authority plead as the first bruise that the court should make findings in relation to. The parents accept that this mark was present on 14 February and still there on 17 February.

133. The next second marks in the final schedule of allegations, the parents report were found on AA's tummy on 21 February. These are at the bottom of her stomach on her left side, approximately where the top of a nappy would be. There are a cluster of marks in which the bottom one appears to be vaguely triangular. The mother reports that she took a photograph as she had not heard anything from the community paediatrics team, she thought it would be helpful for the paediatric team to consider it.

134. On 27 February AA had blood tests undertaken, and the parents were told that AA was deficient in vitamin D. The parents were told this could be a cause of the unexplained bruising. AA was prescribed a high strength vitamin D, but the parents describe AA as vomiting regularly after taking her vitamin D supplement, and they obviously queried how much of it was actually being absorbed into her body.

135. Within the medical notes are some taken by Dr C at 4.30pm on 27 February. This records 'since about 3 to 4 weeks of age mum has noted random bruises appearing on body all

shapes and sizes, mostly over legs, buttocks and abdomen'. It records that the mother said that when she noticed a bruise she thought she would ask the GP at the 6 to 8 week check. The record notes a small bruise around 2 mm in size on AA's tummy.

136. The next record is from Dr N, at 7pm on 27 February. He records that they saw the mother who gave a history of bruising, becoming more frequent now – 2 x weekly, bruises vary in position usually legs and trunk but anywhere. Photos on mum's phone showed a linear petechial bruise on the abdomen near the umbilicus, several centimetres in length. This bruise appeared 6/7 ago now only a couple of dots of bruise remain. Currently has bruises on back, appeared yesterday, described as two pinprick yellow bruises to the right of the spine.

137. Dr N sets out in the notes 'NAI?' but goes on to say this 'seems very unlikely, mum fully aware that we will consider this and cooperative'. The mother asserts that she only saw Dr N for 5 minutes and that no one took notes whilst they were with her.

138. The mother and AA were admitted overnight and seen by Dr A the next morning at 9.40am. She does not report seeing any bruising and gives us mother's history that she had noticed bruising at around 3 to 4 weeks of age. She reports that AA was slightly mottled on her lower limbs, and then records the bruising comes every couple of days in a new location on the body, i.e. bum cheeks, abdomen, legs. Disappears within 2 to 3 days. She prescribes the high-dose vitamin D. In her oral evidence she said that had she seen any bruises she would have recorded those, so assumes there were none.

139. The mother had taken AA for further blood tests on 22 March and was contacted by Dr A on 30 March. The mother told the paediatrician that there had been a period of no bruising but that it had recently occurred again, and upon being requested to send the photographs the mother did email those to her on 30 March.

140. The third mark set out by the local authority the parents say they saw at approximately 8.30pm on 26 March 2023. It is a mark or cluster of marks on AA's bottom measuring approximately 0.5 x 4 cm. There is a photograph of this taken by parents. The mother was clear it had not been noticed earlier on the day and asserts that she took a photograph to document this and to show people in order to understand whether there was something medically wrong with AA. Both parents say that it had disappeared by the next day.

141. The fourth mark pleaded by the local authority is a linear mark on the back of the left thigh. The parents say that they noticed this mark on 29 March, and took a photo of that, together with what they suggested were other marks on AA's chest or upper abdomen. In her evidence the mother said that this mark was there for less than 12 hours, and in relation to the marks that were on her trunk, which are not now pursued, they were not there the day before and not there the night before.

142. On 4 April the parents went on a day trip to London with AA. On the way back the mother was telephoned by Dr A to tell her that she had consulted her colleagues in terms of safeguarding issues, and that AA needed to come in for more tests. The mother was told that AA would need to come into hospital for a skeletal survey, CT scan and ophthalmic review. The mother was told in that phone call that the police and social services would be involved. In the mother's statement she says that she was shocked at that, as it appeared to be out of the blue against a backdrop of her reporting concerns and seeking answers.

143. On 5 April the parents say that the mark that is now allegation five appeared. It is a long shaped mark on AA's left buttock., which the parents say was first seen at about 7am. The photo again has been taken by the mother. In her statement she says that in the light of how the bruises will suddenly appear and go it seemed important for this to be documented. She sent that photo to the Drs and police on the 6 April.

144. In setting out the marks in the mother's statement, which is undated in the bundle but clearly from May, she carefully details each of them, and numbers them, and does not at any stage suggest that there were more.

145. The father's statement from May states in response to the local authority evidence that he did not agree that AA suffered bruises frequently. He says these were not frequent, and that he and the mother had identified seven bruises in total, which mainly showed when AA's vitamin D levels were identified to be as he puts it 'incredibly low'.

The parents' evidence about the argument in December.

146. Both parents say that this argument was because the father had assumed that he was going to his work Christmas party, which was being held only about three weeks after AA had been born. The mother describes herself as giving the father a 'tongue lashing', and she described him as saying very little, adding that she was annoyed that he had thought it was okay to make plans for his Christmas party. She told him that she felt he was letting her down, and she said he effectively usually stays quiet and sulks, she knew he was frustrated. In the father's oral evidence, he said that this argument occurred because he was inconsiderate.

147. After this argument, the father was angry with himself, and punched himself in the head, and then was so perturbed by his behaviour that he made a self-referral for some anger management, and completed two sessions of that. The mother said in her evidence that this was completely out of character for the father, she'd never known him punch himself before and never since. She described him as 'a very quiet agreeable man usually', and that she has 'never known him to have heated arguments with other people'. The father

said he was annoyed at himself and punched himself in the head, although he was clear it caused no mark or injury. He said this was very out of character for him, but explained that his father had anger issues, and when that happened he thought that he was not 'leading down this path'. He said that at university he had struggled with his mental health at times, and a few years ago his father had tried to kill himself, and all of those combined to make him think that he ought to find some help.

148. He said that he wanted to be sure that he was not letting the mother down by his behaviour, and that was why he sought some help. He knew about the way to do that as he had had some counselling a few years ago. When pressed on behalf of the local authority the father said he thought in general he was quite hard on himself, he doesn't like to let people down, and he thought on that occasion he had taken a selfish approach, then was able to reflect and say they were both first time parents, 'we were trying to be the best we can'. He said when he punched himself he was of course exhausted with a new baby. He accepted that action could be seen as anger, but he said he shocked himself, and was in tears. He added that the argument was quite minor, it was the action that he took that shocked him and whilst he could not really remember, he was sure that he would have apologised, and they would have gone to bed as normal. He did not tell the mother about his action at the time because he was ashamed, although he denied she would not have understood, but said she would have worried about him. When he did tell the mother, he said she did not seem to be particularly worried by it, she was shocked, and asked if there had been other times, but she would have understood why he was worried due to knowing about his upbringing.

149. The mother did not set out in her statement or at any point any details of the argument that they had had in December. When she was challenged why she had not, she said she did not think that her account mattered very much and denied that she had deliberately decided not

to give an account of this. She described it as a minor disagreement and was clear as was DD that she did not know about it until the summer when statements were being filed.

The parents' evidence about the rib fractures:

150. The father was obviously questioned extensively in relation to the possible explanation he gives of the incident on the stairs. In his statement he says he was carrying AA down the stairs, and 'I think she was facing towards me'. He says he was holding her upright, and her chest would have been around his chest area. He said he slipped on the second step from the top and fell down one step onto his bum. He says he gripped AA tightly to keep her safe, and that he was unsure how much of his full strength he used to grip her, but it was a shock to him, and he was sure he would have applied some pressure. He said he did not recall AA crying a lot, she did not cry out in pain. He said she expressed a moan, but not hysterical crying, and he would have recalled had she appeared to be in distress or severe pain.

151. In oral evidence he said that he had not mentioned this previously, because everyone seemed to be suggesting that the fractures were no more than 14 days old. It was only when they were aware of the true time window, that he then remembered this. He said that he was rushing up and down stairs packing AA's bag et cetera. He said that he fell to his bum, grabbing the right rail. He said he had AA in his left arm, with her arm over his left arm. He said 'I must've just tightened a bit, I fell down to my bum, immediately afterwards I looked at AA as she was a bit moany'. He said he continued downstairs, that AA was looking around and she seemed okay.

152. In cross examination on behalf of the local authority he said that he was holding some clothes, and holding AA. He was asked how he could grab the handrail if he was holding clothes and holding AA. He said having given it some thought that he thought perhaps he

had dropped the clothes, or had grabbed the handrail over the clothes. He described AA as having let out a moan, but she did not cry out. He was clear he did grip her more tightly. He said the reaction she gave did not seem to be a big deal, and accepted that when she had injections she had indeed cried in pain. He said from her reaction he didn't think this had caused two broken ribs.

153. The father was questioned again in relation to the incident on stairs on behalf of the mother. It was suggested to him that a moan is a slightly unusual noise for a baby. He stopped and thought about it for a while but then again said he would describe it as a moan.

154. The mother said that she remembered parts of the evening of that day. She said the father came upstairs and said that he had slipped on stairs. She said that AA was not crying, and they both checked her over and she was fine. She said that AA had tears in her eyes and they both checked AA's body looking for a red mark or a different mark.

<u>The parents' evidence about the father drinking:</u>

155. There is some discrepancy that at one of the health visitor appointments, the mother is recorded as having described the father as drinking in excess of 14 units a week, although at other points he is described as teetotal, or as a not drinking very much. In her oral evidence the mother said the father very rarely drinks. The father said in his evidence that was correct, and that although he went on a stag do in February, that was probably the last time he drank. He added that he might have had a drink at Christmas, but that would still only consist of a drink or two over a period of one day. The mother does not accept she told the health visitor that the father drank in excess of the recommended number of units

per week, and it is notable that that record was written up after the time of the discussion. The local authority say that the mother was lying and rejecting a written record.

The discussions at the hospital between the mother and the medics:

156. In her evidence the mother said that she thought this history set out in the notes was taken from the earlier notes by the doctors who saw her later, not that she gave those descriptions to each medic. She said the doctors seemed to have some knowledge of why she had been admitted, and that none of them made notes while she was with them. She said Dr N was there for five minutes, and in cross examination was clear that Dr N did not take a fresh history. The mother was asked about Dr N having described bruises on AA's back, but both she and the father were absolutely clear that AA has never had bruises on her back, they have never reported that, and nor has anybody else. The father was asked about this and said that when he saw that in the doctors' evidence he was confused, but he denied that the reason for those records was because the doctors were right, or that the mother was now trying to reduce the number of marks.

Discussion:

157. There is no straightforward evidential way to view the evidence in this unusual and difficult case. No advocate has suggested to the contrary, and they have all attempted to assist the Court by grappling with what even the local authority describe as the difficulty in trying to 'square the circle', and they accept the existence of 'anomalies'. In my view there are a number of important pieces of evidence which appear to point in different directions, all of which need to be analysed. I do not therefore consider the right approach to this case is to consider either the factual background, or the parents and their evidence, or the

medical evidence in isolation. Given the complicated medical situation, I do not consider it correct to decide firstly whether the marks are indeed bruises, and then to go on to consider who has caused them. Similarly, I cannot simply conclude that the rib fractures are inflicted on the basis of the medical evidence. In my view that would be to take an incorrect linear view. Given the very stark, seemingly incompatible evidence, I must weigh matters more carefully and globally, and then consider the standard and burden of proof.

158. To assist in that, I have set out below in shortened list form the various competing factors and then go onto consider my analysis of each.

Evidence which may suggest the marks are not bruises, or caused by inflicted injury.

a) There are no proper medical grade photographs of the marks. Those that have been produced are from the parents. Dr Ward was very cautious about what reliance could be placed on the photos, and very clear the problems with colour and perspective in relation to those type of photographs of bruises made any analysis very difficult.

b) A number of the marks do not behave as bruises would be expected to behave, and some which appear on a photo to look like a dark purple bruise, had entirely disappeared the next day.

c) The marks are in unusual places. Although some appear to be on AA's bottom/upper thigh, in a child of her age wearing nappies that may be less usual to have bruising to a bottom area. Other marks are e.g., on her stomach, and most are an odd shape.

d) Most of the marks do not show any obvious causation, i.e., clear fingertips, slap marks, or a linear blow from an object.

e) Dr Ward was very cautious about her view of the marks, and whilst she agreed she thought it was most likely some were bruises, she was prepared to accept that Cutis Marmorata was often mistaken for bruises, and at least one of the marks could be that.

f) Dr Ward was also clear that this was a child with mottled skin often, and that mottling can be mistaken for bruising.

g) Professor Greene accepted that there has been debate about the impact of low Vitamin D on a child's skin.

h) It is the parents who have presented AA to medics, taking photographs of the marks, and pursued further testing taking place.

i) There is no evidence to suggest the parents were unwilling for AA to be investigated, in fact quite the contrary.

j) The parents were told on 4 April that not only social care, but probably the police were about to be involved, and they needed to come to the hospital on 6 April. However, on 5 April they inform professionals that AA has another significant bruise, and took photos of that.

k) Once a proper investigation commenced, the parents continued to provide evidence and better copies of the photographs including right up until the point of this hearing.

l) There is no suggestion the parents ever missed a medical appointment, or that AA was not seen regularly by other people, including being undressed. She was far from a hidden child.

m) It is accepted that these are loving parents. There is not a single suggestion of either parent being anything other than loving and tender to AA in any observed incident at any point in the papers.

n) Both parents were at home together for a very substantial amount of the time that they were caring for AA. Both parents were clear that given the amount of time they spent together in the home if someone was hurting AA the other parent would know about it.

o) None of the usual areas that would cause concern such as domestic abuse, parental mental health difficulties, drug or alcohol abuse are present in this case. Apart from a few text messages, there are in general no signs of either parent finding parenting particularly difficult or challenging.

p) The parents' demeanour when giving evidence and listening to the evidence. Whilst there may be different opinions as to what the Court should surmise from watching the parents, both parents were certainly calm, polite, and tearful at times during the evidence. At no point did they appear agitated or angry.

q) The father spent a considerable amount of time agonising within text messages discussing with friends and family his concerns about the injuries to AA. The mother asserted that she spoke to friends more than text them, and that appears correct from the texts.

r) There are no obviously inculpatory text messages or google searches which were put to the mother or father, although it is accepted given the timescales for this hearing not all text messages were able to be considered.

s) Both parents are intelligent and entirely clear that if this court made some form of 'pool' finding against them there was a real prospect that they may not care for their daughter going forward. Despite that, at the point where the father has been 'removed from the

pool' by the local authority, he had clearly given explicit instructions that he did not join in that, or seek to accept that, but that in fact he considered that inappropriate, and not in accordance with the evidence.

159. Evidence which could suggest that these marks are bruises, and that the parents have caused them to AA.

a) Dr Ward did conclude that on the balance of probabilities she felt at least some of the marks were bruising.

b) Although the relevant experts were pressed about the possible issues about easy bruising being connected with low Vitamin D, none were prepared to consider that was accepted in mainstream medical opinions. Professor Greene accepted that there was some research that suggested that, but he did not consider that there was such a link.

c) Although the relevant experts were pressed about any possible connection with COL5A1 and bruising/collagen in the skin, there is no known connection.

d) Some marks could be described as behaving in a way that bruises may be expected to, in terms of length of time they exist, and the colouring.

e) The parents describe the marks as bruises to medics.

f) Each parent did at times have sole care, and so the potential opportunity.

g) There are some phone records that the parents were sending texts to friends and family that AA cried for long periods at times and was a 'fussy baby' not wanting to be put down.

h) The mother had an argument with her mother in December – she described herself as being very upset, and in a text message as being 'back at her lowest and crying all day'.

i) The parents' argument in December 2022, and the fact that the mother did not mention this in her witness statements.

j) Even loving parents can, when faced with a new baby, struggle with patience, or lose their temper in private.

k) The maternal grandmother told social workers that she was so worried about the parents and the father that she worried he might even be suicidal at the point that it became clear AA was going to be removed from the parents' care. Neither parent accepts that they were genuinely suicidal although they accept they were extremely distressed.

l) It is suggested by the local authority and to an extent by the guardian that the mother showed little emotion in the witness box. On behalf of the guardian it is suggested that the mother was devoid of any emotion for most of the time, and that she showed no empathy for the father.

m) The mother's description of how frequent the bruising was to the doctors at the hospital on 27 and 28 February, and the suggestion that there was more bruising. The local authority now assert the mother was now seeking to retract earlier things that she had said.

n) It is suggested by the local authority that that mother was making the evidence fit her narrative or manipulating the evidence in relation to what was said to the Drs, and the argument with the father.

o) The parents went to a wedding on 11 March, and although the mother gave copious instructions to the family members that she left AA with, she did not mention that there was a need to take any photographs or be cautious in relation to any marks that arose. The local authority suggested to the mother that this was because she knew that there would be no marks on AA's body if she was not there.

p) If these are bruises, then AA did not sustain significant bruising from some very distressing and invasive tests that were undertaken upon her, where her body had to be held very tightly.

q) Although the parents asserted very recently before the hearing started that AA had still been having some bruising in her grandmother's care, they had not brought that to anyone's attention previously. The mother and father assert that was because she had thought her mother was reporting them. The local authority suggest again the mother was manipulating the evidence.

r) If these are or are not bruises, then it does not appear that similar marks appeared whilst she was in foster care for a short period.

s) The parents accept that similar marks of the same severity do not appear to have been seen whilst AA has been in the care of her maternal grandmother.

t) The local authority suggested overall that the mother had shown herself to be not a reliable historian, and the Court should consider that aspect.

Rib Fractures:

160. Many of the factors set out above in relation to the marks on AA's body are also relevant to the issue of the rib fractures. I shall not simply repeat those but set out some additional factors in relation to the rib fractures.

Evidence that could suggest the rib fractures were caused by an accident/normal handling/in the fall on the stairs:

161. All the medics consider that the fall on the stairs is a potential mechanism, even if AA's ribs are not more likely to fracture than another child.

162. Professor Greene was prepared to accept that there is some form of sliding scale where there can be some reduction in the strength/pliability of the bone, which would not be able to be seen on x-rays, and which could change once a child is not vitamin D deficient.

163. This explanation given by the father was made appropriately once the time scales for the rib fractures were clear.

164. AA's response was to make a moaning noise, she had tears in her eyes, and Dr Ward accepted that whilst she might find that surprising, she could not rule out that being a baby's response to rib fractures.

165. It was not suggested to the father that he was lying in relation to this trip on the stairs, and it appears to be accepted that that is a genuine event.

166. If the ribs were fractured deliberately/in a momentary loss of control, then there is no evidence that either parent acted in that way in general in their lives, or towards AA, or that they held feelings towards AA that could cause them to do that.

Evidence to suggest the rib fractures were inflicted by the mother in a deliberate or out of control way:

167. If the fall on the stairs did not cause the rib fractures, then there is no other event put forward by the parents.

168. The father accepted that did not think the fall on the stairs caused the rib fractures.

169. Medics would generally expect this to be a memorable event and that a child would cry and be distressed with the pain, at least initially.

Analysis of the different factors:

170. When I weigh up all of those factors that I have set out above my analysis is as follows:

171. As can be seen from the lists above, a careful balancing exercise is necessary, and it is obvious the essential difficulty with which the court is grappling. Did one of these outwardly loving parents secretly inflict a series of unpleasant and painful injuries upon their daughter. Given the case now put by the local authority, did the mother inflict a whole succession of injuries upon her daughter, and photograph the aftermath of some of those. Did she assault her daughter so seriously that two of her ribs fractured, whilst at the same time presenting her to medical professionals and actively pursuing further investigation.

172. I turn firstly to consider the marks on AA. In my view I must be particularly cautious in relation to classifying these marks as bruises given the evidence. I do not accept that given all the evidence in this case, I should determine that as a standalone issue and then decide who caused the bruises.

173. Dr Ward made clear her unhappiness in relation to the marks, and although she was attempting to assist the court, in essence her evidence can be no more than on the basis of the photographs, they appear to be bruises. Every paediatrician is very cautious nowadays

in relation to bruising, not just in relation to dating, but in how bruises appear and change, and how long they last for. Whilst I accept that some of these marks do act in the same way as bruises, I cannot ignore the fact that a number of them do not. Even taking into account the caveats I set out above, it seems to me a very relevant matter of fact that some marks disappear in such a short space of time, which would be very unusual if indeed they were some form of dark purple bruise, given what dark purple bruising usually signifies in terms of the broken blood vessels.

174. When I consider that the parents describe these marks as bruises, that does not seem to me to take me any further. The parents are describing in truth dark marks on the skin, which most lay people would describe as bruises.

175. People who do abuse their children can abuse them in unusual and unexpected ways. However, when I look at for example the marks to AA's bottom and her stomach, it is very difficult to comprehend how these could be caused. A baby's stomach is a soft and pliable thing, and the mark to AA's stomach (mark 3) is such a strange shape, no matter how I consider it, or cast my mind to how that could be caused, it is difficult to understand how that could be caused such that it is a bruise. Similarly, whilst I accept children are certainly caused injuries to their bottom by parents effectively spanking or hitting them on their bottom, given AA would in general be wearing a nappy, for such a mark to be caused deliberately a parent would have to inflict that, having removed the nappy, or that is a very severe assault. Nappy changes can be difficult and frustrating time for parents, but there is no evidence that these parents struggled in relation to that matter. A Court conducting this exercise does not need to work out how injuries are caused necessarily to children, but it is striking in this case the extent to which it is difficult it is to comprehend how they could be caused. I accept that bruises can be caused to legs by grip injuries, but that amounts to only

really only one of the marks alleged by the local authority, and one for which there is no photograph.

176. Dr Ward of course accepted that AA is a child who suffers from mottling of the skin, and also that at least one of the marks could be Cutis Marmorata. Dr A supports the extent of the mottling. I must be cautious not to necessarily treat all of the marks the same, but given the poor quality of the photos, it is difficult to understand how if one of the marks could be Cutis Marmorata, or alternatively mottling, that others could also not be.

177. The court is also left with some uncertainty about the position as has been discussed in a number of cases over the last few years in relation to any suggestion that vitamin D levels may impact upon the likelihood of a child bruising. Appropriately in this matter, the experts accepted that whilst there appeared to be no medically proven link, there did continue to be some genuine debate in relation to this. I must be cautious not to elevate discussion and debate which does not seem to have a medical basis, to something which is a proper factor in my considerations. The same is true in relation to the genetic variation that AA suffers from COL5A1. I must again be cautious that simply because something is a variant of unknown significance, does not mean it can be used to explain any potential difficulties away. The balance must be struck of accepting the limits of medical knowledge at the moment, and how that can change, with a proper analysis of the actual evidence, rooted in realism, to which I then apply the appropriate legal tests when considering if the local authority have made out their case.

178. It is accepted on behalf of the parents that the severity and frequency of the marks observed to AA does not seem to continue whilst AA is foster care, or once she is being cared for by her grandmother. The evidence I have in relation to AA once she is in the care of her grandmother and whether she does sustain any marks is in truth very unsatisfactory. The

parents assert that there were some marks, but that not only did they believe the maternal grandmother would be informing the social worker of them, but that they have been specifically instructed not to take photographs of these of these. These intelligent parents would also be acutely aware that whilst this would certainly be relevant, it could even have the potential to threaten the placement of AA with her grandmother or could be viewed as them criticising the grandmother. AA is not yet one year old. As she begins to roll, then crawl, then cruise she is inevitably going to suffer some bumps and even potentially some marks or bruises. The parents do assert that AA appears to have quite a high proportion of bruises, and continues to have some odd marks, but with very few proper records it is very hard to work out whether there is any real relevance to this. Whilst of course one explanation for the lack of marks on AA could be that she is no longer in her parents' care, it seems to me there are also real and genuine question marks in relation to a baby potentially having marks being caused by some other issue such as cutis marmorata, or skin mottling. Given that uncertainty, if we do not know what really causes the marks, how do we know whether a change of carers removes whatever causes that, or whether a child growing older can impact on how their body reacts.

179. When I consider the important question of whether these marks are bruises, the local authority very understandably point out that despite some very invasive procedures being carried out on AA, she did not appear to bruise in any abnormal way from those. That of course is an entirely valid and relevant point if indeed the unexplained marks on AA are bruises, but if they are not, then of course that is of little relevance.

180. For the purposes of this judgment, it seems to me that I can take matters no further than as I set out above. I certainly cannot elevate those medical issues postulated into being some definite explanation for these marks. Similarly, simply because the medics have no real explanation other than inflicted injury, that does not enable the case to rest there. I do not

consider that I can make a positive finding that these are bruises, and then go onto consider who caused them. The medical evidence is simply not clear enough in that respect, and there are some genuine aspects that point away from the Court making that determination without in any sense straining with the medical evidence.

181. In relation to the rib fractures, we do know that the ribs have been fractured. I have set out above the careful and extensive evidence in relation to whether the ribs could have been more susceptible to fracture. The relevant medics were all prepared to accept a theoretical potential for there to have been some implications for AA's bones in terms of the deficiencies in vitamin D. They were also prepared to accept the father's fall on the stairs as a potential mechanism. Medical evidence in cases such as this is always set out with great care, and I am cautious not to elevate the fact that medics will very rarely say something is impossible. In my view however in relation to the rib fractures, the evidence goes further than that, to a situation where the medics considered that fall and AA's response to be an unlikely explanation, but one which they were prepared to accept could cause the fractures. Importantly of course, it was accepted that even if AA's bones were not susceptible to fracture more easily than would be expected, such an incident could still cause the fractures.

182. In relation to whether there is any relevance of the genetic evidence to AA's fractures, the Court is of course partly hampered by the poor quality of Professor Kumar's report and oral evidence. Again, I am conscious not to elevate an inability to rule things out with an ability for this issue to be genuinely relevant. However there remains in my view a question of whether there could be some relevance to AA's bones and bone density and possible fractures, when the issues with COL5A1 and vitamin D are combined.

183. Similarly therefore to the marks on AA, I must factor in that evidence with all the other evidence.

184. As I have already set out, the medical evidence does not stand on its own, and I weigh all that with the other parts of the case.

185. I must factor in the parent's behaviour in this case. The choice is stark that certainly in relation to the marks, the court would have to conclude that one of the parents was deliberately causing significant injuries to their child, and then taking photos and drawing it to the attention of professionals in the full knowledge of what was then likely to transpire. In relation to the rib fractures, the choice is equally stark that one of the parents had either deliberately or in a moment of loss of control caused those injuries to AA in what would have been a significant incident, and if that is the same parent having done that, then consistently presenting her to doctors asserting that there may be something else wrong with her, in a way which most people realise could lead to their being further investigation of AA. Even if a parent did not realise that they had broken ribs, if this had been some form of inflicted injury a parent would surely have suspected that there may be some evidence of that on further investigation.

186. On behalf of both parents, it is asserted that in essence what therefore the court would be finding is that this is behaviour which is either some form of sadistic attention seeking, and/or that it tips into a form of factitious illness behaviour.

187. In my view that is right, and in this case, it goes further than photos being taken and being sent and medical attention sought for some unfathomable reason. The court would also have to conclude that potentially the mother caused an injury whilst AA was in hospital in February, as was suggested to her. Similarly, given what happened on 4 April, then on that evening or on 5 April, either a parent knowing that a child is about to be examined the next

day is unable to restrain themselves to such an extent that they cause further injuries, or that a parent deliberately causes injuries to be able to gain attention in some way, or feels the need to inflict those injuries and cannot prevent themselves. I did not see any evidence to support those striking hypothesises, as I will set out below.

188. There is not a single piece of evidence to support either parent suffering from some form of psychological difficulty such as would cause them to act in that way. Given that both parents are at home together a substantial amount of the time, and in particular assert that they were both at home and together on 4 and 5 April, it is extremely difficult to understand how that latter postulated scenario could come about. The local authority seeks to persuade the court that despite the father being in the house, the mother would be able to create significant bruising to AA's bottom, which the father was entirely unaware was taking place.

189. In considering these matters, I must of course factor in how the parents have presented to professionals and others in their lives, how they have conducted themselves in these proceedings, in addition to my assessment of them and their truthfulness in the witness box.

190. I have considered the limited evidence before the court to suggest that the parents were at times struggling in caring for a new baby. It does not appear to me that the evidence suggests, even taken at its height, that they were struggling any more than any new parent would. I am quite sure that if the mobile phones of any new parents were considered there would be the occasional message suggesting that their baby seemed to cry a lot, or displayed some characteristics that were not always entirely positive, such as being 'fussy'. These were first time parents, and there were inevitably some challenging times, or times that seem challenging when you are very tired. I do not consider any of the evidence to be at a height to support a conclusion that as a result of that either of them would injure AA.

The mother had one argument with her mother which she found very distressing, at a point when she would undoubtedly be significantly hormonal, and spent some time crying about it that day. There is no other evidence that the mother in general was suffering from any form of low mood or depression, and the health visitor had no concerns about her.

191. The same is true for the argument between the parents. AA was 3 weeks old at that time. Relatively minor issues can seem very serious when new parents are tired, and also facing the responsibility of this new life, this baby being entirely dependent upon them. I have considered carefully the father's actions following that. I found his explanation to me in the witness box that he was cross with himself, and that at that moment he found himself worrying that in some way he might repeat some aspects of his childhood, or that he could in some way let AA and his wife down entirely credible. I do not consider his actions in hitting himself in the head, or of then deciding that he needed some anger management to be relevant in relation to the matters I need to determine. The local authority do not assert that the fact of the argument is relevant, and I agree. The father did not hurt himself, he clearly did not hit himself hard, and although his initial reaction was that he needed some form of anger management, clearly with the benefit of some time, and reflection, he decided that he did not need further assistance.

192. The local authority do assert however that the argument between the parents is relevant in that when the mother became aware of it, she does not set out any details of it in her statements, and they also suggest that her reaction to it in her evidence is relevant as it suggests she showed little empathy for the father. The local authority suggest that the mother has filed extremely detailed statements, and that her lack of explanation and acknowledgement of this incident could suggest to the court that she in some way displays characteristics that are relevant to whether she could harm AA.

193. I do not accept that suggestion from the local authority. The mother did not know about the father's actions until after her substantive statement had been filed. She was never directed to file a statement about that issue, and indeed of course all that she could ever say was that the father had told her about it, and her response to him. There is no other and surrounding evidence of difficulties in these parents' relationship. I do not accept that the mother's response and her evidence in relation to that was anything other than that of a concerned partner, but who was quite satisfied those actions were out of character for her husband, which he had resolved in a way that required no further input from her. She told me that when she discussed it with him, she was concerned about him, but did not view it as a very significant incident. I saw nothing concerning or untoward in relation to her responses to that.

194. I have considered as well in this context the submissions made on behalf of both the local authority and the guardian that the mother showed little emotion in the witness box, or even that she was devoid of emotion. Cases are not determined of course merely on how someone presents in the witness box. Judges must be extremely cautious not to substitute a few hours of observation of someone's demeanour, against many other recordings of how a parent presents. I did not however in any event view this mother as being emotionless in any sense. The way she presented in the witness box appeared to me to be the culmination of an event that she had been waiting for many months, knowing and expecting that it was going to be suggested to her that she may have caused these injuries to her baby, and that a judge whom she had not met previously would be determining what happens to her family for the future. My impression of the mother was that she was seeking to assist the court, and that she was holding herself together under immense pressure. That may have been viewed as being less emotional than she might have been, but we must accept everyone

deals with incredibly difficult matters in very different ways. I viewed her as being genuine and honest.

195. I remind myself as well that in relation to the mother's dealings with nurses, doctors, social workers, and for other court hearings all reports about her are that she is polite, courteous, and very human. There are voluminous contact notes, expressing entirely positive views about how the mother reacts to her daughter, and many photographs in the bundle all of which appeared to show an entirely normal relationship between her and AA. The mother did show significant emotion on a couple of occasions in the witness box, at the start, once when describing to me the lumbar puncture and her daughter's distress, and on another notable occasion when she was asked about the death of her dog. I found her to be a witness trying hard not to breakdown but taken by surprise on each of those occasions of how those memories overwhelmed her with genuine emotion.

196. I had the advantage of being able to watch both her and the father through the course of the hearing as they either sat facing me, or very close to me in the witness box. In my view they both responded in perfectly appropriate ways to the evidence and the questioning that was put to them. No criticism is made of the father by the local authority or guardian, but for the avoidance of doubt, his responses when talking about his daughter, and his relationship, and the problems in this case also appeared to me to be entirely credible and straightforward.

197. One of the aspects of this case which has assumed greater importance than was anticipated was the medical evidence from when the mother was at the hospital in February and being spoken to by a number of different doctors. I have thought carefully about the local authority's concerns in relation to this evidence. The situation where the Court does not have the benefit of hearing from those medics has come about by no fault of anyone's in

my view, apart from the fact that there was not able to be any proper analysis and reflection of what evidence was required.

198. I have no option but to analyse the evidence that I do have. It is important to note that the significance of those recordings really only became understood as the case was starting. From my reading of the papers, it had never been suggested before to the mother or father that there had been other marks that they had not reported. The parents had filed extensive narrative statements, in which they detail one by one the marks that they say they have seen, describing them and giving dates and their movements around those dates.

199. On behalf of the parents, it is asserted they had not understood this to be a significant part of the local authority case, and therefore they had not suggested those doctors needed to give evidence. The local authority argue that they had offered for these witnesses to give evidence, and were prepared for that. My recollection is that this was briefly raised before me at or the housekeeping hearing the day before this hearing commenced, and I was told they were not needed. I suggested that it seemed to me unlikely that the doctors were able to say anything more than what was set out in their notes, from what were clearly relatively brief encounters now some nine months ago. I had certainly not understood at that stage that the local authority would suggest that this assumed some significance in the case, or that it would be suggested the mother was now in some way seeking to retract or minimise the number of marks that AA had.

200. The mother's evidence was clear in relation to this matter; which was that she had not suggested to any medics there were more marks than had been reported already to medical professionals, that neither Dr C or Dr N took any notes once they were with her, and that particularly Dr N was only with her and AA for about 5 minutes.

201. Dr A was asked about the number of bruises. She said that her impression from the mother was that they were more frequent, but not as frequent as twice per week.

202. I am very mindful, as I set out above, that through nobody's fault the mother has not been able to challenge Dr C, or Dr N, and the local authority has not been able to demonstrate that written evidence orally. Dr A was not challenged by the parents in relation to her views that the mother was describing more frequent marks, but it is clear that partly this is due to the potential significance of that not being fully understood and for the parents, them not being on notice initially that this would assume such significance. Again, that is not a criticism of anyone, but simply how this case has developed. Mr Sampson KC suggested to me that courts often do see inaccurate medical records (as he suggests they are) in situations like this, particularly if they are written in retrospect. I must balance that of course with the fact that medical records are extremely important documents, doctors are aware they are extremely important, and which take great care in trying to record what they were told.

203. The most significant issue with this disputed piece of evidence however in my view, is that I do not understand how it fits together with the rest of the evidence in the case that the local authority present. Their case, of necessity, is that this mother is deliberately causing harm to her daughter and bringing that to people's attention. I simply cannot understand therefore, why, if it were right, the mother would not have been reporting to everyone at all points that there were other injuries. Similarly, why would she now deny that there were more injuries? If this is a mother who wants to draw attention to herself, or her daughter, why would she not have been suggesting to other medics that to there were more injuries? If there were more marks, why would she not take photos? Again, if the local authority assert that there were in fact more injuries, then that would involve the father in some form of ongoing deception as surely he would know about them given how involved he was.

204. If it is asserted, as it seems to be, that the mother is in some way manipulating the evidence, I found myself questioning what the relevance would be of that. The parents' statements detail the same marks on the same dates, and on any version there are a worrying number of marks in relation to this baby. The local authority assert that this evidence shows that the mother is in some way an unreliable historian. Given the local authority do not assert the father is being untruthful about this, the local authority must be suggesting that the mother was deliberately exaggerating the injuries to the medics. I cannot see any other evidence to support that and in my view it is far more likely that the treating medics, and indeed Dr A have become rather lost in how many injuries that were, and when they appeared and disappeared, just as even Dr Ward admitted she had with the benefit of an expert overview. I cannot find that mother was deliberately attempting to mislead anyone, nor can I see any reason why she would do that.

205. I can deal relatively shortly with the suggestion that the mother has been in some way untruthful about the father's drinking. There is no evidence that the father drinks to excess, and indeed very little evidence of him drinking in general. I agree that for many people if they describe someone as teetotal, they may well be using it correctly as someone who never drinks, but you would often hear the phrase of someone being 'virtually teetotal' or described as teetotal if they very rarely drink. The father's evidence in this case is that there are still cans of alcohol in his fridge leftover from Christmas. He describes himself as someone who hardly drinks. In every other piece of evidence the mother agrees with that, apart from one recording which it says clearly was made in retrospect. Given the totality of the evidence in relation to this, I do not accept that the mother was lying, or simply rejecting a written record. Again, I can see no reason and by far the most likely explanation for this anomaly in the records is that that recording is incorrect.

206. I turn then finally to the father's description of the fall on the stairs, AA's response, and his evidence that he did not think that caused the rib fractures. Again, I have thought very carefully about this. The advocates have all reminded me of the case law in relation to what the local authority must be able to prove to the court, and how the parents do not need to mount a positive position of what they say must have taken place. In this case I do have a potential answer being postulated by the parents. The local authority do not seek to suggest that the father is lying, but do say that instead of accepting that potential explanation, the evidence points to the mother having inflicted the rib fractures.

207. Given the medical evidence in this matter, when I balance all the information, I struggle to see how the evidence supports this being an inflicted injury by the mother instead of a credible and possible explanation of this being caused by the fall on the stairs. A parent rushing, holding a baby, and not only missing a step but then falling such that their bottom hits the stairs, would inevitably it seems to me clutch in a strong jerking fashion their child to them. The father was not clear exactly how he was holding AA, only that she was against him. It is entirely possible that she was slightly sideways or that at her age she was slightly wriggling, such that the grab towards the father with his arm was a sideways motion. The medics do not dismiss this explanation, and I cannot see how the Court can do that either.

208. In my view the father in his evidence was trying to be scrupulously fair, and worried that he would appear to be pressing this explanation. There must also be a factor where the father is aware that if he did cause this, and of course it is the rib fractures that really cause this case to move forward in child protection and these court proceedings, it would be very difficult for him to push that as a positive case given what has flown from that, and their child being subject to these proceedings.

Considering the case now put by the local authority.

209. The local authority have fulfilled their duty to the Court and to AA to properly explore all the potential evidence. They now assert that there are aspects of the mother's evidence that enables the Court to conclude she was responsible for deliberate injuries caused to AA.

210. The Guardian to an extent joins with the local authority in relation to this matter.

211. Whilst all judgments are of necessity linear in how they are set out, I have attempted within this judgment to balance all the different factors.

212. This case started and has been run throughout it seems up until the conclusion of the evidence on the basis that other than the medical evidence there is no other evidence to support the fact of either parent harming AA. During the course of the evidence, the local authority assert that information did come to light, which when taken together with the medical evidence enables the court to conclude the mother has caused these injuries. The local authority asserted in closing to explain why they now put their case as they do, that the evidence of the parents gave an added complexion to the case that was not obvious at the outset. The case now put by the local authority, which had been more nuanced at the start, with a greater acknowledgment of the difficulties in balancing and reconciling the evidence, they assert shifted as a result of the evidence, particularly the evidence of the mother.

213. I have carefully looked at and analysed each of those matters that the local authority assert could lead the court in conjunction with the medical evidence to make those findings to the required standard and balance of proof against the mother. I do not accept that any

individual one of those matters now relied upon, is made out, and of course that must mean that together they cannot be capable of leading the Court to that conclusion.

214. I do not accept that the evidence shows the mother to be an unreliable historian. I do not accept that she has lied about or exaggerated the number of marks in the past. I do not accept that there is evidence she was seeking to manipulate the evidence, or seeking to challenge factual matters, and I did not conclude that there was evidence that she displayed any form of unusual or significant reaction to the fathers' actions after the argument, or lied about it, or in general in her evidence. My assessment of her demeanour in the witness box was that she was a normal concerned parent, and that is in accordance with the vast weight of evidence about her behaviour, and reactions to her daughter and husband. My conclusion of the evidence before the Court in relation to the parents is as it was at the start of the case. There is simply no evidence that they are anything other than loving and concerned parents, with no evidence to point to either of them being able to inflict regular and significant injuries on their daughter.

215. I must therefore come back to whether when I analyse the medical evidence properly with the other evidence, I can conclude that the local authority have proved their case against the mother, or indeed the father.

216. I am not satisfied that the local authority have proved their case against the mother. For the avoidance of doubt, I also do not make any findings against the father.

217. As I have set out above, in my view the medical evidence is not so clear and unequivocal, that it enables the Court to push to one side all of the other factors which mitigate against either of these parents having caused these injuries to AA. I do not need to disagree with the expert evidence in this case, and for the avoidance of doubt I do not, as far as it can go.

That evidence is just one part of the evidence. For the court to conclude that on the balance of probabilities the mother has deliberately, or in a number of moments of loss of control has inflicted serious injuries upon her baby, and then behaved in the ways set out above, is simply not in accordance with the totality of this evidence, and I do not accept that assertion is proved. I do not have to reach a conclusion as to what has caused the marks to AA's body, but I am not satisfied to the required standard that the mother has caused those. Similarly, I do not have to reach a conclusion as to how AA sustained her fractured ribs, but I cannot conclude that the mother caused those.

218. Given I do not make the finding sought that the mother has caused these injuries to AA, the suggestion that the father has failed to protect of course is not made out. For the avoidance of any doubt there is no evidence which could support any findings against the father that he caused any injuries to AA.

Conclusion:

219. This has always been a single issue case. In the absence of the Court making the findings sought by the local authority, the threshold cannot be met in this matter.

220. I hope it is apparent from the totality of this judgment that there can be no doubt that the local authority were right to bring this unusual and extremely difficult case. This is not a case which could have been determined in any way other than testing the evidence. However distressing for the parents as to what has happened, and their separation from their child, this is not a case that could in my view have been dealt with any differently other than these Court proceedings.

END OF JUDGMENT