



[2018] EWHC 3553 (Fam)

Case No: BS16C01250

IN THE FAMILY COURT
SITTING AT BRISTOL CIVIL JUSTICE CENTRE

Date: 07/12/2018

Before :

MR JUSTICE WILLIAMS

Between :

Gloucestershire County Council	<u>Applicant</u>
- and -	
JD	<u>1st Respondent</u>
- and -	
AC	<u>2nd Respondent</u>
- and -	
JL	<u>3rd Respondent</u>
(Represented via the Official Solicitor)	
- and -	
The Children	<u>4th Respondent</u>
(Represented by their Guardian Liz Cowan)	

Claire Wills-Goldingham QC and Herc Ashworth for the **Applicant**
Charles Hyde QC and Benjamin Jenkins (instructed by **Langley Wellington Solicitors**) for
the **1st Respondent**
Fiona Farquhar (instructed by **WSP Solicitors**) for the **2nd Respondent**
Geraint Norris (instructed by **Barcan and Kirby**) for the **3rd Respondent**
Paul Gammon (instructed by **Cafcass**) for the **4th Respondent**

Hearing dates: 26th November - 7th December 2018

Approved Judgment

I direct that pursuant to FPR 27.9 no official shorthand note shall be taken of this Judgment
and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE WILLIAMS

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

Mr Justice Williams :

Introduction

1. On 8 August 2016 B, then aged three months, was admitted to hospital suffering from life-threatening head chest and abdominal injuries. The uncontested medical evidence is that they were inflicted injuries consistent with shaking, serious impact, or squeezing by human agency. For the last two weeks I have been embarked on the process of seeking to establish how B came to sustain those injuries. Two individuals have been identified as the possible perpetrators.
2. B, together with her brother P now aged three, have been represented by their children's Guardian Liz Cowan and Mr Gammon. JD their mother is one of the two perpetrators. She has been represented by Mr Hyde QC and Mr Jenkins. The children's father AC is not one of the alleged perpetrators. He is represented by Ms Farquhar. JL, the family's landlady, is the other possible perpetrator. She has been represented by Mr Norris via the Official Solicitor; she lacking capacity to conduct proceedings. The determination of who caused the injuries takes place within the context of care proceedings issued by Gloucestershire County Council who have been represented by Ms Wills- Goldingham QC and Herc Ashworth.

Background

3. B was born prematurely at 30 weeks on 10 May 2016. On 8 August 2016 a lodger at the premises where the family were living called 999. B was admitted to the Gloucester Royal Hospital with reduced consciousness and unexplained bruising; she required resuscitation and her injuries were considered to be life-threatening. Further investigations revealed B had multiple fractures to her ribs, a capsular tear and laceration injury to her liver, a lesion in her spleen and trauma to both frontal lobes of her brain.
4. The injuries were considered to be inflicted injuries and as a result, care proceedings were commenced by the Local Authority. In a judgment delivered on 8 June 2017, His Honour Judge Marston concluded that the vast majority of her injuries had been inflicted by JL, the landlady of the premises where the family were living. He concluded that lies told by the mother did not shed light on whether she was the perpetrator. However he concluded in respect of JL that her lies were so consistent and pervasive that she must be trying to hide something and that she was trying to put the blame on the father and on the mother in particular in an attempt to protect herself. He accepted that an injury to her clavicle and her left sixth rib were caused

accidentally by AC when B slipped when he was changing her and he grabbed her arm.

5. In his judgment, he said this:

18. I find taking everything into consideration that it is highly unlikely that this mother was responsible for those terrible injuries inflicted on her daughter. I can see no motive or reason for the assault, no emotional or psychological crisis or stress which would have induced her to do this and no diss inhibiting factor like drugs or drink which might have caused it. I find she lied out of desperation, fear and anxiety trying to set up an explanation that would bring the whole process to an end as quickly as possible. I do not find that this light casts doubt on her credibility on the other areas of the case. I believe her evidence that she did not hurt her baby daughter in any way and I therefore remove her from the pool of possible perpetrators on the basis that there is no realistic chance that she was responsible for the injuries of 8 August. That leaves us with a pool with one person in it, JL. I'm told not to speculate and I don't intend to, however I have accepted that she had consumed drugs within 24 hours of the injuries, she's obviously very angry with M and F from the night before and on M's evidence twice she goes upstairs and finds L's to the child, particularly the second time after hearing the doglike cry. I know this is an extremely serious finding to make against someone who is unwell and unable to speak for themselves however all of the evidence leads me to a pool with only one person in it. I also have all the concerns about her evidence and conduct I have set out above. In those circumstances I find that the injuries sustained by eye on 8 August 2016 were inflicted by JL either in one or two incidents upstairs at house they all occupied, when she was alone with the baby.

6. At the time of the hearing JL was suffering from psychiatric ill-health and was an inpatient in a psychiatric unit. Although some attempts had been made to engage her in the process the issue of her lack of capacity was not properly grasped and thus she was not represented by the Official Solicitor and was unable to give evidence at the hearing. Shortly after the judgment was delivered the Local Authority contacted the offices of the Official Solicitor, and requested a capacity assessment which at that stage concluded that she had fluctuating capacity and the psychiatrist recommended that she would benefit from a litigation friend and a reassessment. By 1 August 2017 a further psychiatrist instructed by the Official Solicitor concluded that JL lacked capacity which continued when further assessed on 22 January 2018. On 5 December 2017, the Local Authority applied to reopen the judgment of His Honour Judge Marston.
7. As the parents were exonerated, B returned to the mother's care when the care proceedings were withdrawn and the interim care orders discharged on 10 August 2017. However, on 17 November 2017, she was seen by the health visitor who noted bruising on her face. When she was further examined, further extensive injuries were seen. The children were voluntarily accommodated under Section 20 and on 23 November the Local Authority issued a further application for care orders. Expert evidence was obtained from Dr Robinson and from Professor Kinsey. The Local Authority sought findings against the mother [JD] in respect of the injuries B was found to have sustained in November.

8. The mother denied that she was responsible for any of the ‘November injuries’ and sought to explain their presence through overzealous play between B P and other children, objects being thrown at her by P or other children, B falling onto the floor furniture or toys, marks caused by allergy or self-inflicted marks. When B was seen on 29 November 2017 in the company of her foster carer all her bruising disappeared and there is no evidence of new bruises. A haematological abnormality was ruled out by blood testing carried out by Professor Kinsey.
9. The case was set down for a ten day a hearing before Mrs Justice Roberts to consider the November injuries and to determine the Local Authority’s application to reopen the judgment of His Honour Judge Marston. At the conclusion of that hearing Mrs Justice Roberts gave judgment concluding as follows:

1. B sustained the following multiple non-accidental injuries including facial and fraenulum injuries over the course of at least three episodes which were seen on examination on 16 November 2017 namely:-

- (i) bruising to her face which comprised three, confluent bruises over her right cheek, five bruises over her left cheek, a bruise over her left eyelid, a bruise over her left temple and a bruise behind her ear on her skull*
- (ii) bruising to her left earlobe which comprised two bruises over the rim of her left earlobe and a blue bruise on the skin of her skull just below the earlobe*
- (iii) a torn upper lip fraenulum*
- (iv) a yellow bruise on the back of the left shoulder*
- (v) bruising to her spine comprising a yellow green bruise on her lower spine and a bruise over her left buttock*
- (vi) bruising to her left arm comprising a linear red bruise on the outside of her left upper arm, a brown/yellow bruise in the mid area outside of her left forearm and a yellow bruise outside and back of her left wrist*
- (vii) bruising to her left thigh comprising a faint blue bruise on the top outside of her left thigh, a blue bruise a little further to the front, a light brown bruise at the mid left side at the front and three featherlight bruises on the side of it, grouped in an arch*
- (viii) a light blue linear bruise just above the left ankle*
- (ix) bruising to her right thigh comprising three linear blue bruises on the outside of her right thigh, placed in random directions with an “S” and a more rounded bruise further to the back of her thigh in the same area*
- (x) In respect of (vii) and (ix) above the court accepts the mother’s description that she made a grab to prevent B’ fall from the sofa and in doing so this caused bruising to one of B’ thighs but it is not possible to say which thigh was bruised in this way.*

2. Considerable force was required to cause the injuries far in excess of normal rough play/handling

3. *The injuries to B were caused by the mother*
 4. *B will have cried out in pain in the aftermath of such injuries having been sustained*
 5. *The mother was aware that excessive force had been applied and bruising will have appeared within a short period of time.*
 6. *The mother neglected B' medical health needs by failing to seek medical care for her*
 7. *P will have suffered emotional harm by witnessing the mother cause injury to B and/or B's distress in the aftermath of such injury*
 8. *As a result of the injuries having been sustained by B as set out above, P having witnessed these injuries was likely to have suffered emotional harm and may thereby have been exposed to physical harm.*
10. Mrs Justice Roberts found that the mother had plainly not told the truth in respect of a number of aspects of the case. She also concluded that the mother had deliberately missed appointments because she was reluctant to allow healthcare professionals to observe the extent of the bruising that B had sustained. She observed that the mother lacked insight into the physical needs of her children in terms of basic medical attention and found that the mother demonstrated a cavalier and peculiarly insensitive lack of understanding or empathy for B's needs. She concluded her lack of engagement in securing appropriate medical assistance for B amounted to physical neglect and emotional neglect as well. She found that the mother was under significant pressure and could become angry under pressure. Whilst she had shown love towards the children she concluded that she had caused most of the injuries noted. She also noted that the mother had withdrawn from the children since 8 March 2018 and concluded that this was a further indication of her inability to prioritise the children's needs over her own.
11. In respect of the application to reopen the judgment of His Honour Judge Marston, Mrs Justice Roberts concluded that there should be a rehearing of the causation of the August 2016 injuries for the following reasons:
- “... Once it became clear that she may have lacked capacity (and that much was self-evident after 20 February 2017 when the court was sent the letter informing the judge of JL's admission to hospital under section 2 of the mental health act), it was not open to the court-in my judgment-to proceed to make findings against her in the absence of a litigation friend*
- On 6 April 2017 when the matter returned to court for further directions, the judge once again made orders which warned JL that findings might be made in her absence. She was admitted to hospital the next day following a section 2 assessment and detention.*
- “It is for these reasons that I have found that the findings against JL must be set aside prior to any re-opening of the substantive enquiry into the events that gave rise to the*

catastrophic injuries which this child sustained in August 2016. In doing so, I make it plain that I am interfering to a minimum extent with any further decisions or findings which the Judge made in his Judgment of 8 June 2017. Any challenge to these decisions (and particularly those which affect the mother) will be the subject of the next stage of this enquiry. However, I am entirely satisfied that the next enquiry must proceed on the basis that JL continues to be represented by the Official Solicitor who has provided his consent so to act. The extent to which his client will be in a position to participate in that forensic enquiry will be a matter which will be kept under review in the intervening weeks. If JL's condition has not improved by the date of the next hearing, she will nonetheless have the opportunity through her legal representation to test the evidence and protect her interests through Counsel instructed for the purposes of that hearing. The essential safeguard was not available to her at the previous fact-finding hearing and it is the reason why the findings made on that occasion cannot stand.

12. At paragraph 21 of her judgment Mrs Justice Roberts said:

“as I indicated at the PTR in April this year, I'm entirely persuaded that-should the mother be found to have caused this harm to her small daughter-this alone would present grounds to revisit the conclusions reached by His Honour Judge Marston.

13. It is clear from her judgment (see paragraph 125) that Mrs Justice Roberts considered that she had undertaken the first stage of the *Re Z* process. At the hearing I undertook in October I expressed the view that the hearing that was to take place at the end of November would essentially be a full rehearing subject to evidential constraints. The recital to the order contained the following:

AND UPON the issue of the fairness of the rehearing having been raised with the Court on behalf of the First Respondent in light of the time elapsed since the previous hearing, the absence of the intervenor and the potential unavailability of witnesses and the Court indicating that fairness will be reviewed throughout the hearing.

14. Thus, since April 2018 it has been envisaged that the setting aside of any findings against JL would reopen the possibility of a finding that the mother herself was the perpetrator of the inflicted injuries.

The Issues before me

15. Mr Hyde QC on behalf of the mother raised the issue as to whether I should embark upon a determination of whether the mother was responsible for the August 2016 injuries or whether the appropriate course is to conclude that it is impossible to determine on the balance of probabilities whether the mother or JL was the perpetrator of the injuries but that both remain in a pool of possible perpetrators. Mr Hyde QC has argued that the evidential landscape is now such that it is so different to that which was available in the months after August 2016 or indeed up to the point when His Honour Judge Marston gave judgment in June 2017 that it is now not possible for the mother to receive a fair hearing of the issue of whether she was on balance of probabilities the perpetrator. Mr Hyde QC argues that the fact that the other possible perpetrator cannot give evidence and be cross-examined and the absence of other evidence and the passage of time means that it would be a breach of the mother's article 6 ECHR rights to a fair hearing to embark on the process of

seeking to determine whether she was the perpetrator. It is also argued that it is not necessary to determine the perpetrator of those injuries given that the threshold is admittedly crossed in respect of the November 2017 injuries.

16. The case law on the circumstances in which it is appropriate to determine facts where the threshold is already established shows that it is a matter of fact and degree as to whether it is appropriate to determine further facts which go to threshold having regard to the other facts which have resulted in the threshold being crossed. The nature and extent of the November 2017 injuries are wholly different in magnitude to the August 2016 injuries. It is not simply a matter of pragmatic use of court time. The circumstances in which those injuries were sustained are of interest not only to B and P as they grow older, but also of potential relevance to the mother and any partner with whom she has a child in the future as well as of critical relevance to child protection authorities in relation to any child that the mother care for or have in the future. Equally they are critical to anybody involved with JL.
17. In family proceedings, in particular, it is often the case that witnesses who are central to a factual allegation cannot be cross-examined. This will be particularly the case where an allegation is made by a child witness who the court concludes should not give evidence after a Re W hearing. However there may be cases where central witnesses have died or indeed where they have come to lack capacity and so cannot or should not give evidence. In the family court arena where hearsay evidence in the form of written statements is admissible as of right the contention that it would be a breach of a party's article 6 right even to embark upon the evaluation of evidence in order to ascertain whether a conclusion on balance of probabilities could be reached seems to me to be a very high hurdle to leap. Of course, in evaluating the evidence and deciding whether a conclusion can be reached on the balance of probabilities the court must weigh all of the evidence including hearsay evidence and must take into account the fact that a party has not had the opportunity to challenge a witness's account. That of course will be even more important where the witness is a central one; for instance as here the only other possible perpetrator.

This Hearing

18. The schedule of findings that the Local Authority rely upon sets out the following:
 1. *On or date(s) before 8th August 2016, while in the care of her mother, JD, B suffered the following injuries sustained, by way of more than one episode of trauma and presented at Gloucestershire Royal Hospital in clinical shock on 8th August 2016:-*
 - (a) *fractures of the lateral arc of the left 4th – 8th ribs*
 - (b) *trauma to both frontal lobes of the brain by way of contusional clefts/tears with subarachnoid haemorrhage,*
 - (c) *thoracic injuries, namely the partial collapse of the lower lobes of both lungs with an earlier collapse of the right upper left and lower lobes and small bilateral pleural effusion*
 - (d) *a small pericardial effusion*

- (e) *trauma, by way of laceration grade V, to the liver*
 - (f) *Trauma, by way of laceration, to the spleen*
 - (g) *A number of discrete bruises across B' anterior chest and upper abdomen. These were of varying sizes (3mm- 15mm), roughly circular in shape and blue-brown in colour - is identified on the body map attached to the report of Dr Montshiwa, consultant paediatrician Gloucestershire Royal Hospital as*
 - (a) *Sternum 0.9 x 0.9 brown circular area*
 - (b) *left nipple lower, 0.6 x 0.6 brown circular area*
 - (c) *sternum - to the right of the sternum 0.5 x 0.4 brown circular area*
 - (d) *sternum left 0.3 x 0.4 mark*
 - (e) *below (a) 0.5 x 0.4 faint*
 - (f) *chest right 0.5x 0.3 faint mark*
 - (g) *thorax lower right 1.0 x 0.6 irregular outline*
 - (h) *abdomen right anterolateral abdominal wall; brownish circular bruise 1cm x 0.8cm*
 - (i) *a faint blue bruise to B' lower back,*
 - (j) *a purple/red bruise 0.5 cm on the under surface of B' tongue*
2. *The above injuries are all non-accidental*
3. *The injuries were caused either by*
 - (i) *the mother, JD AND/ OR*
 - (ii) *JL OR*
 - (iii) *the mother, JD and JL are in the pool of possible perpetrators of the above non-accidental injuries sustained by B*
4. *In the event that the court finds that the mother, JD was not the perpetrator of the above injuries, or is unable to identify the perpetrator, the mother has failed to protect B at age 3 months from sustaining the non-accidental injuries as documented above*
19. JL continues to be represented through the Official Solicitor. The Certificate of Capacity filed on 25 June 2018 (C230) opined “*significant cognitive impairment affecting memory, orientation, attention and executive domains*”. Since then she has then been assessed by Dr Sanikop over two and a half hours and he has also filed a Certificate of Capacity. In essence she lacks capacity and Dr Sanikop opines that she

would not be a reliable witness giving evidence. The Court therefore only has her written evidence.

20. EC and IM were both witness summonsed to attend court on 29 November 2018. Neither answered the summons. I asked the Local Authority to make enquiries to ascertain whether they had been served with the witness summons and their reasons for not attending. In fact, an email had been received by the court in the week commencing 19 November from EC which asserted that his wife was unwell and he was caring for her and therefore not able to attend court. Enquiries of IM's home address revealed that she had allegedly returned to live in Portugal. At the time of writing this judgment enquiries of EC remain outstanding.
21. For the purposes of this hearing I have been provided with some eight lever arch files of documentation relating to the August 2016 injuries as well as several lever arch files dealing with the welfare aspects. I did not need to hear from any of the medical experts as their evidence was agreed and was largely contained in the note of their joint meeting and the transcript of their evidence from March 2016. I heard oral evidence from:
 - i) RL
 - ii) AD
 - iii) RE
 - iv) The mother with the assistance of an interpreter
 - v) The father by video link with the assistance of an interpreter.
22. In the course of the hearing I was provided with further documents including a number of authorities, a summary of the agreed law, copies of various redacted and unredacted versions of statements already in the bundle and an ambulance service safeguarding log.

The Parties' positions

23. The parties have provided me with position statements or similar at the commencement of the hearing. They have also provided me with written closings to which they spoke during oral submissions. I am grateful to them for the assistance they have given in their written and oral submissions. The summary of their positions that follows inevitably cannot do justice to the full and detailed submissions made but I hope that I have captured the essential points that each party relies upon.
24. On behalf of the Local Authority Ms Wills-Goldingham QC and Mr Ashworth made the following points
 - i) the medical evidence establishes that all of the injury is identified in the threshold are inflicted injuries. Indeed she points out that that is common ground.
 - ii) The Local Authority are unable on the evidence to clearly identify who inflicted the injuries on B. In adopting this position, the local authority have

given weight to the fact that the mother has been subjected to cross-examination but that the court has not heard from JL or been able to hear her evidence tested. It is clear that it was either the mother or JL. The Local Authority invite me, if I am able, to identify the likely perpetrator on the balance of probabilities. If I am unable to identify the perpetrator the Local Authority submit that the evidence is such that there is a real possibility that either the mother or JL might have caused the injuries.

- iii) The Local Authority also invite me to conclude that if the mother did not inflict the injuries or if I am unable to identify the perpetrator that I ought to conclude that the mother has failed to protect B.
- iv) They invite me to adopt a clean sheet approach in respect of the previous judgment of His Honour Judge Marston on the basis that it is the only fair way given the limitations imposed on that hearing and the deficiencies in that judgment.
- v) The findings of Mrs Justice Roberts are plainly relevant to the evaluation of whether the mother was the perpetrator of the injuries B sustained in August. The conclusions on both the mother's credibility and her responsibility for the injuries inflicted on B in November 2017 both support a conclusion that she was the perpetrator. However that only goes so far and the qualitative difference between the injuries inflicted in November 2017 and those inflicted in August 2016 reduce the weight that should be given to those findings. In this case the evidence suggests either that B was shaken and then thumped or suffered another severe blow to her chest or that she was shaken and severely squeezed at the same time. Although there may have been two incidents separated by a period of time it is more likely on the evidence the head and chest/abdomen injuries were inflicted at about the same time
- vi) The court has heard oral evidence but several key witnesses have not given evidence and that has an impact on their weight and the court has a difficult task to tie in the evidence which has been given and which has not been given. LB's account is more consistent with the mother's but is not consistent with the 999 call. IM's evidence raises concerns about the mother's commitment to the care of B but that is far from suggesting that she was capable of severely injuring her. EC's evidence corroborates concerns about JL but they weren't enough to put him off from arranging for the mother and father to stay there
- vii) The written material together with the evidence of RL and the father do not create a clear picture as to the situation in the house in the days preceding 8 August. RL appeared to be a credible witness who said her mother had become close to and cared for B and her evidence about the household activities was quite different to the picture painted by the mother and father. The father's evidence of finding JL passed out on the morning of the eighth August with a trashed kitchen was only given at the hearing before His Honour Judge Marston. Why did he not say that this had happened during his police interview? Why was the father unable to say what had passed between him and JL at the hospital? Is he covering up for the mother? Is he embarking on after the event fabrication?

- viii) The events of the night of 7 August 2018 may have some relevance to events of the morning of 8 August. If there was a wild party this might be relevant to JL 's state of mind the following day. However if there was not such a party what lies behind the assertion by the mother and the father that there was. If the father was concerned about the state of the house and JL 's presentation why did he leave the mother B and P there alone? Why was his account of this given so late?
 - ix) In relation to 8 August were there to occasions when the mother found JL upstairs by B's Moses basket or was there only one. If the mother had been concerned by JL 's behaviour earlier why would she have taken B back upstairs? If JL had been providing a significant amount of care for B in the preceding weeks is it likely she would hurt her? RL describes nothing unusual about her mother's presentation or drug use in the preceding weeks. There is nothing in the psychiatric evidence to suggest that JL 's mental state was of concern at that time. The mother's reaction to B' position to the paramedics might indicate she did not want B taken to hospital because she knew she had done something although the ambulance service referral form records the mother was showing genuine concern. The mother's account to Dr Montshiwa of B vomiting in the days before was inconsistent with the father's account as were other aspects of what she told the hospital immediately upon arrival.
 - x) The timings that the mother gives appear to be more consistent with JL 's account. What happened in the two hours that according to the mother lapsed between her beginning to feed B at 10am, coming downstairs at 10:30am and B being very ill shortly before 12 noon.
 - xi) It is clear that the mother has told lies but so have others. The court will need to consider a Lucas direction and determine whether any lies told shed light on who was responsible for B's injuries.
25. Mr Hyde QC and Mr Jenkins outline closing submissions as well as an updated document which incorporated much of the opening note that had been prepared by Mr Hyde's junior Benjamin Jenkins for the fact-finding hearing before His Honour Judge Marston in 2017. Mr Jenkins detailed analysis of the evidence and the deficiencies in JL 's evidence at that point is a powerful piece of written advocacy and no doubt played its part in persuading His Honour Judge Marston to the conclusions that he did; those being based in large measure on what was to be inferred from JL 's lies. I take account of the contents of that document.
- i) It is accepted that the injuries are nonaccidental or inflicted injuries. The mother also accepts that the pool of perpetrators includes only her and JL. The mother submits that the evidence points sufficiently convincingly to the conclusion that on balance of probabilities it was JL who inflicted the injuries on B. The mother accepts that if I am not satisfied that it was JL that the totality of the evidence may well leave both the mother and JL in the pool. The mother also accepts that the injuries indicate there were two applications of force to B at around the same time; a shaking which caused the brain injury and an impact or severe squeezing to B's chest which caused the rib fractures and other internal injuries

- ii) Mr Hyde QC accepts that the findings of Mrs Justice Roberts in relation to the November 2017 injuries are relevant but distinguishes them on the basis of the severity of the injuries themselves and how they were inflicted. They are so different that the court should be very cautious about relying on that finding in itself. He also accepts that Mrs Justice Roberts found that the mother had lied and that there is other evidence of her having lied in relation to these proceedings in particular the dog incident. However he submits that there are other explanations for her lies and that her lies and the previous findings have to be placed in the context of all the other evidence.
- iii) He reminds me that it is the Local Authority who have to prove their case and that it is not for the mother to provide an alternative explanation still less an alternative credible explanation.
- iv) The mother accepts that the previous conclusions of His Honour Judge Marston should be ignored for the purposes of this hearing. I should approach the case with a blank canvas; although the evidence given remains relevant.
- v) Mr Hyde QC emphasises that there are three key witnesses to events of the 8th August but two are unavailable. The mother has been very closely scrutinised in police interviews, in oral evidence twice and if inconsistencies have emerged I should be cautious about how I approach them. Neither JL or LB have been subjected to that sort of scrutiny and I should therefore be cautious in how I approach the weight I give their untested evidence. He also reminds me that people's memories may change to take account of what they have heard and read and I ought to bear this in mind in my evaluation of the witnesses.
- vi) In relation to JL, Mr Hyde QC submits that she was in a position of strength vis-a-vis the mother and father giving their vulnerable housing situation and that she took advantage of this by inserting herself into the care of B. The evidence of both the mother and father, but also RL, show that she had become far more involved in B's care than might have been expected. In effect perhaps becoming a grandmother like figure (my expression) both in relation to B but also the mother and the father. Did that indicate asked Mr Hyde QC rhetorically that she had become a little obsessive over B? Was she seeking somehow to delay their departure both because of the emotional attachment and the financial reliance she had on the family? These are issues that may have been operating on her mind which might be relevant to how she behaved that day.
- vii) It is clear that JL was heavily involved in drugs; her own evidence, her daughters' evidence, EC's evidence, the finding of amphetamines and drugs paraphernalia in the police search and her cleaning. The evidence is consistent with her having engaged in drug misuse on the evening of the 7th and it is consistent with her being passed out in the house with the kitchen in disarray on the morning of the 8th. The evidence of the paramedics and the father and of the police all support the contention that the house was in a state which is consistent with the party theory. None of these things have been capable of exploration with JL because of her incapacity.

- viii) There is evidence which supports the conclusion that JL is herself not an honest witness. That ranges from minor issues such as her describing herself as a landlady when in fact she was herself the tenant in arrears of rent, through to her taking food or money from the parents and in particular her failure to tell the police that she had punched the mother on the 8th.
- ix) The mother's account of the circumstances in which she came to be punched is more credible than JL's. The idea that JL had as she describes in her second statement come back into the house and that the mother grabbed B from her and that she then punched her in the face to get B back to stop the mother interfering with her is far less probable submits Mr Hyde QC than the mother's account of her leaning over JL trying to take B from her and JL then kicking out and punching her in the face.
- x) Curiously LB's statement given on 9 August describes JL and the mother arguing upstairs about the baby which followed from JL earlier saying that the baby didn't look well. His description of JL coming down the stairs followed by the mother is consistent with the mother's account and not with JL's. However, Mr Hyde QC concedes that LB's statement is itself inconsistent with the contents of the 999 call where he said he had only just got in from work. But how did LB come to give this account which corroborates the mother's account when he was not there?
- xi) JL's account of B being poorly at around 1030 and then being poorly later in the morning after the passage of some considerable time is also consistent with the mother's account of the two episodes although JL says B remain downstairs whilst the mother says she was put upstairs. In relation to JL's account of the time she was upstairs with B he notes that although she says she saw B was unwell and remained with her for five minutes she did not do anything and in particular she did not call the mother. Surely if she thought B was very unwell at that point and had no idea why she would have immediately called the mother.
- xii) JL also gives no account of hearing anything which would be consistent with the mother inflicting the injuries on B. The medical evidence is that B would have cried vigorously for some time. Whilst the mother from an early stage told people that she heard a weird cry JL offers nothing which would indicate an assault by the mother on B. Aspects of her account as recounted by RL are hard to reconcile with the timeframe that the contemporaneous evidence suggests events took place within (i.e. 10:04am through to 11:57am. RL's suggestion that JL had to hide at a neighbour's home does not fit with JL's account. If JL was genuinely concerned about P why did she not immediately take him to the hospital as she had indicated to the paramedic that she would? This would be more consistent with an attempt to divert the focus away from her by suggesting that not only had the parents injured B but they had also injured P. Her allegation of gentle cruising was also without foundation.
- xiii) The evidence as to the mother's alleged lack of concern or reluctance to seek medical evidence is not supported by the most recently disclosed safeguarding referral form. It is explicable by the mother being unaware of anything that had happened to B which would provide the foundations for concern and a lack of

understanding has between her and the paramedics. Overall the evidence supports the conclusion that she was appropriately concerned. Overall the evidence supports the mother's case that it was JL who demonstrated a change in attitude upon the arrival of LB. The mother's assertion in this regard is corroborated by what she told the father almost immediately and what she says in interview.

- xiv) The mother overall has given a consistent account. Inconsistencies as between her account given to the hospital her statement the police interviews and all evidence explicable by reference to interpretation issues at the hospital and understandable variations arising from the passage of time and reframing having regard to other material she heard.
 - xv) The evidence from the police of the reaction of the person who must've been JL on 10 August is consistent with her being capable of behaving in an aggressive way. The evidence that there was a lot of shouting in the house and the sound of smashing supports the contention that JL can behave irrationally and aggressively.
 - xvi) The medical evidence from Dr Sanikop supports the contention that when suffering from illness she could behave in extreme ways including violently. Although the evidence is not clear as to what her mental condition was in August there is material which is of concern. The combination of misuse of prescription drugs and the abuse of cannabis has to be considered.
 - xvii) Overall in respect of JL there is evidence which demonstrates on balance of probabilities it was likely to be her that injured B. There is much evidence which notwithstanding the findings of Roberts J and the mother's contestable lies cast considerable doubt on whether she was capable of or did assault B. Having regard to the fact that the mother has been in the spotlight and much of the evidence in relation to JL has been untested the court cannot conclude on the balance of probabilities that it was the mother who inflicted these injuries on B.
26. Ms Farquhar adopted a largely neutral position on behalf of the father. Given that no findings were sought against him in respect of the catastrophic injuries suffered by B she emphasised that the father's interest was insofar as possible knowing what happened. She invited me to conclude that the father's evidence in so far as it bore upon the events of the seventh and eighth of August 2016 was reliable. She submitted that the father's evidence as to the circumstances in which they moved to JL 's and the circumstances which existed whilst they were there was broadly corroborated by other evidence in relation to JL 's drug use her financial dependence, the care provided to the children by the mother and JL and the events of the evening of 7 August 2016. She submitted that the absence of an account in his police interview his statement of what he saw on the morning of the eighth should not detract from the detail of his account and how it fits in with other known facts. She emphasises that he has nothing to gain by this account. His evidence to the police as to how the injuries may have been caused included ascribing possible blame to himself which suggests he is not seeking to blame others unjustifiably. His evidence as to his concerns for B and his desire to get to the truth demonstrate his sincerity.

27. Mr Norris on behalf of the Official Solicitor and JL submitted that the various components of the evidence pointed to the mother as the probable perpetrator of the injuries. He submitted that:
- i) As a result of Mrs Justice Roberts's judgment we know that the mother is capable of injuring B and that is the reason this rehearing is taking place.
 - ii) In respect of JL she is a possible perpetrator only because of her presence in the house on that day. When and why he asks rhetorically did she do this? It is difficult to conceive of the situation where she would have gone upstairs and shaken and/or punched B so as to cause these injuries.
 - iii) In stark contrast we know from the judgment of Mrs Justice Roberts that the mother is capable of injuring B including in a similar way (namely the injury to the mouth), we know that she has told lies to cover up her culpability for those injuries and we know that she sought to avoid medical intervention in November 2017 in order to cover her tracks and avoid exposure.
 - iv) We find parallels in this case of her seeking to avoid B being taken to hospital, her fabrication of the dog incident to explain B's injuries and her unconvincing explanations for the bruising (lying on a dummy, lying on a blanket).
 - v) The father's evidence that JL was passed out on the morning of the 8th cannot be relied upon. It does not appear in his police statement or in his witness statement. He said in his oral evidence to this court that initially he was unsure of whether it was on the morning of the 8th.
 - vi) In fact, the evidence supports the conclusion that JL was concerned about the care being given to B and P and that she was protective of them. If that is so it is hard to reconcile indeed impossible to reconcile that with her then having deliberately harmed B.
 - vii) The circumstances in which she punched the mother where that the mother herself was being physically aggressive pulling on the blanket, causing JL to fear that B would fall to the concrete floor and that her actions were the culmination of an escalating process.
 - viii) The evidence does not support a conclusion on the balance of probabilities that she was the perpetrator. There is not even a real possibility that she was the perpetrator; she is simply a convenient scapegoat for the mother. She is unable to defend herself.
 - ix) In reality the mother is violent, she has lied, she avoids medical attention and that points to her being the perpetrator.
28. Mr Gammon on behalf of the children and the Guardian emphasises that from the children's point of view it would be beneficial for them to have as clear an understanding of their history as possible. However he also reminds me that I should not strain to find a perpetrator if the evidence does not justify such a conclusion. The totality of the evidence points to there being one event of violence close to the point where B presented to medical services. The nature of the two possible perpetrators is

also more consistent with a one-off event. I understood this to mean that as neither the mother or JL has an obvious track record of violence that this was more likely to be the product of some unpredictable and uncontrollable outbreak of aggression which was limited to this event. Mr Gammon emphasised that the court is hampered by the limitations arising from the evidence and the lack of clarity that has arisen as a consequence. He identified points where aspects of the mother's evidence were consistent with other known facts but also that the mother has failed to give a credible explanation for some of Bes other injuries. There are aspects of the father's evidence which appear hard to understand; why would he leave the house if he were so concerned about the state that JL was in in the state of the house? On the other hand his evidence about JL 's reaction to the possibility of them leaving appeared to be credible and genuine. In respect of JL as a result of her inability to attend or give evidence she has not been able to speak in her own defence or to be tested.

29. Even that lengthy summary of the parties' positions cannot do full justice to the written and oral submissions I heard that I believe demonstrates the essential arguments deployed by each of the parties.

The Law

The relevance of previous judgments

30. During this hearing I have been undertaking the second and third of the three stage approach set out by Mr Justice Charles in Birmingham-v-H and others 2005 EWHC 2885; an approach that has been endorsed by the James Munby P in re-ZZ 2014 EWFC 9 and Lord Justice Peter Jackson in St Helen's CC-v-M and F 2018 EWFC 1. The finding that the perpetrator of the August 2016 injuries was JL has been set aside. The finding that the mother was not the perpetrator was not formally set aside in judgment or order but as I have said above I consider that the issue of who caused B' injuries has been re-opened. Self-evidently I am not bound by the findings previously made in respect of those injuries or any part of the evaluation or fact-finding which contributed to those findings. I do not think this judgment is the time or the place to explore the perhaps subtle differences in approach to the previous fact-finding judgment evident between Sir James Munby P in re ZZ (above) and McFarlane J (as he then was but now the President) in Birmingham City Council -v- H and others [2006] EWHC 3062 (Birmingham No 2). I have approached this case on the basis of a blank canvas and have considered the case afresh albeit having regard to the fact that His Honour Judge Marston heard evidence closer to the events than I am including evidence that I have not heard.

Threshold

31. In order to make a care or any public law order the Local Authority must prove that the situation justifies the intervention of the State. This means that the Local Authority must establish the statutory threshold set out in s.31(2) Children Act 1989.

(2) A court may only make a care order or supervision order if it is satisfied

- (a) that the child concerned is suffering, or is likely to suffer, significant harm; and*
(b) that the harm, or likelihood of harm, is attributable to –
(i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or
(ii) the child's being beyond parental control.

32. The relevant date is 8 August 2016.

The burden and standard of proof

33. The Threshold is established by proving facts which establish the child is suffering significant harm and that the harm is attributable to the care given not being what it would be reasonable to expect a parent to give to him. In respect of the task of determining whether the 'facts' have been proven the following points must be borne in mind as referred to in the guidance given by Baker J in *Re L and M (Children)* [2013] EWHC 1569 (Fam) confirmed by the President of the Family Division in *In the Matter of X (Children) (No 3)* [2015] EWHC 3651 at paragraphs 20 – 24. See also the judgment of Lord Justice Aikens in *Re J and Re A (A Child)* (No 2) [2011] EWCA Civ 12, [2011] 1 FCR 141, para 26
34. The burden of proof is on the Local Authority. It is for the Local Authority to satisfy the court, on the balance of probabilities, that it has made out its case in relation to disputed facts. The parents have to prove nothing and the court must be careful to ensure that it does not reverse the burden of proof. As Mostyn J said in *Lancashire v R* [2013] EWHC 3064 (Fam), there is no pseudo-burden upon a parent to come up with alternative explanations [paragraph 8(vi)].
35. The standard to which the Local Authority must satisfy the court is the simple balance of probabilities. The inherent probability or improbability of an event remains a matter to be taken into account when weighing probabilities and deciding whether, on balance, the event occurred [*Re B (Care Proceedings: Standard of Proof)* [2008] UKHL 35 at paragraph 15]. Within this context, there is no room for a finding by the court that something might have happened. The court may decide that it did or that it did not [*Re B* at paragraph 2]. If a matter is not proved to have happened I approach the case on the basis that it did not happen.
36. Findings of fact must be based on evidence, and the inferences that can properly be drawn from the evidence, and not on speculation or suspicion. The decision about whether the facts in issue have been proved to the requisite standard must be based on all of the available evidence and should have regard to the wide context of social, emotional, ethical and moral factors [*A County Council v A Mother, A Father and X, Y and Z* [2005] EWHC 31 (Fam)].
37. The court is not limited to considering the expert evidence alone. Rather, it must take account of a wide range of matters which include the expert evidence but also include, for example, its assessment of the credibility of the witnesses and the inferences that can properly be drawn from the evidence. The court must take into account all the evidence and furthermore consider each piece of evidence in the context of all the other evidence. The court invariably surveys a wide canvas. A judge in these difficult

cases must have regard to the relevance of each piece of evidence to other evidence and to exercise an overview of the totality of the evidence in order to come to a conclusion.

38. Thus, the opinions of medical experts need to be considered in the context of all of the other evidence. While appropriate attention must be paid to the opinion of medical experts, those opinions need to be considered in the context of all the other evidence. It is important to remember that the roles of the court and the expert are distinct and it is the court that is in the position to weigh up the expert evidence against its findings on the other evidence. It is the judge who makes the final decision. Cases involving an allegation of non-accidental injury often involve 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. When considering the medical evidence in cases where there is a disputed aetiology giving rise to significant harm, the court must bear in mind, to the extent appropriate in each case, the possibility of the unknown cause [R v Henderson and Butler and Others [2010] EWCA Crim 126 and Re R (Care Proceedings: Causation) [2011] EWHC 1715 (Fam)]. Today's medical certainty may be discarded by the next generation of experts. Scientific research may throw a light into corners that are at present dark. 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."
39. The evidence of the parents and of 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 [Re W and Another (Non-Accidental Injury) [2003] FCR 346].
40. 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. The Court of Appeal has recently considered the law where only two possible perpetrators are identified. In Re B (a child) [2018] EWCA Civ 2127 Lord Justice Peter Jackson 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. When looking at how best to protect child and provide for his future, the judge will have to consider the strength of that possibility as part of the overall circumstances of the case [Re S-B (Children) at paragraph 43]

Lies/Withholding Information

42. 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 at all times that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear, and distress. The fact that a witness has lied about some matters does not mean that he or she has lied about everything [R v Lucas [1981] QB 720]. It is important to note that, in line with the principles outlined in R v Lucas, it is essential that the court weighs any lies told by a person against any evidence that points away from them having been responsible for harm to a child [H v City and Council of Swansea and Others [2011] EWCA Civ 195].
43. The family court should also take care to ensure that it does not rely upon the conclusion that an individual has lied on a material issue as direct proof of guilt but should rather adopt the approach of the criminal court, namely that a lie is capable of amounting to corroboration if it is (a) deliberate, (b) relates to a material issue, and (c) is motivated by a realisation of guilt and a fear of the truth [Re H-C (Children) [2016] EWCA Civ 136 at paragraphs 97-100].
44. In Lancashire County Council v The Children [2014] EWFC 3 (Fam), at paragraph 9 of his judgment and having directed himself on the relevant law, Jackson J (as he then was) said:

“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 reason. Further possibilities include faulty recollection or confusion at times of stress or when the importance of accuracy is not fully appreciated, or there may be inaccuracy or mistake in the record-keeping or

recollection of the person hearing and relaying the accounts. The possible effects of delay and repeated questioning upon memory should also be considered, as should the effect on one-person hearing accounts given by others. As memory fades, a desire to iron out wrinkles may not be unnatural - a process that might inelegantly be described as 'story-creep' - may occur without any necessary inference of bad faith."

45. All the evidence is admissible notwithstanding its hearsay nature, including Local Authority case records or social work chronologies which are hearsay, often second or third-hand hearsay. The court should give it the weight it considers appropriate: Children Act 1989 s.96(3); [Children (Admissibility of Hearsay Evidence) Order 1993]; [Re W (Fact Finding: Hearsay Evidence) [\[2014\] 2 FLR 703](#)].
46. When I turn to the evidence, I bear all these factors in mind in reaching my conclusions on whether the Local Authority have proved that B suffered inflicted injuries and who was responsible for them.

The Evidence

47. Attached is a detailed chronology, Appendix A, which sets out both the factual and procedural background to the case. Incorporated within the chronology is much of the documentary and oral evidence that I have read and heard. Insofar as I have needed to determine matters which relate to the background in which B was injured I have attempted to incorporate the evidence and my conclusions within the chronology. My assessment of the mother and JL and my conclusions in relation to their evidence are dealt with separately. A separate litigation chronology, Appendix B, charts the progress of proceedings from August 2016 to date.
48. Having identified that in determining the facts I must survey a broad canvas and must look at the totality of the evidence and how the constituent parts make up a whole I am also very conscious that the jigsaw is very much incomplete.
49. It is a most significant feature of this case that one of the key witnesses and one of the two possible perpetrators JL has not been able to give evidence. This of course is relevant both to her but also to the mother, the other parties and the court. She has not been able to give oral evidence in support of her own account that she had nothing to do with the injuries to B but rather was at all times acting out of concern for her and to protect her. However her incapacity has also deprived the mother in particular of the opportunity to test and challenge her evidence. Given some of the unusual features of the case in particular JL's admitted assault on the mother in the minutes before the ambulance arrived but also her drug misuse, her mental health, and medication use and their potential relevance to how B came to be injured have meant that the mother's team have not been able to tease out inconsistencies, challenge the motivation for lies or to explore the possibility of irrational and violent behaviour. Inevitably considerable criticism has been directed at the mother in relation to inconsistencies in her account, lies she has told and violent acts she has committed to B. Had JL been in a position to give oral evidence it seems inevitable that some of the focus on the mother's oral evidence and credibility issues would have been either diluted or to a greater degree balanced by similar points that would have been made about JL. Of course to a degree this must be speculation but the nature of the evidence is such that there is an evidential foundation for these points and in my overall assessment of the totality of the evidence and the weight that I give to it I must

bear in mind that aspect of it have not been tested and thus the picture which I have of JL 's case is lacking the clarity that might have been achieved.

50. In addition other significant witnesses have not been available. LB was the only other adult present in the house in the late morning of 8 August. He says he was present throughout although that seems unlikely given what he said to the 999 operator. However he was present during the minutes leading up to the arrival of the ambulance and appears to have been present in the house after the mother and B departed and for the two hours prior to the police arriving to collect P. He was clearly closer to JL than he was to the mother and father. They appear to have had a common interest in the drug scene. JL told the police that she knew he wanted to be as she put it "off grid". It seems probable that between the departure of the ambulance and the arrival of the police that he and JL were cleaning up her home most probably to remove some of the drug related items that might have been there. What evidence might he have given as to JL 's demeanour and conversations in that critical period. By 9 August he gave a statement to police which contained information which was more consistent with the mother's account than with JL 's and she had given an account probably late on 8 August. Did they speak between her giving her statement and LB giving his?
51. Other individuals who were required by the parties did not attend. IM appears to have moved abroad and did not answer the witness summons. Although her evidence was not directly relevant to the events of 8 August she gave important background or contextual evidence about the mother's care of B. Likewise EC did not answer the witness summons. I am awaiting fuller information although have been informed that his wife is unwell. Although he was not present at the house on 8 August he was spoken to by the father very shortly after the father had spoken to the mother at around noon. He had also been involved in what he said was a long telephone conversation on the night of the 7th. The mother and father were unable to rely on oral evidence from him which might have supported their case; conversely Mr Norris on behalf of JL was unable to challenge aspect of that evidence.
52. There are other gaps in the documentary evidence which have added to the difficulty in obtaining a full and clear picture. The absence of any material from the phones of the father and the mother and the subsequent destruction of the phones by the police is a surprising void in a case such as this. In his evidence before His Honour Judge Marston the father appeared to recall spontaneously that he may have taken a photograph of JL that morning given his surprise at what he says confronted him. However enquiries by the Local Authority with the police did not result in the production of any material but rather it seems confirmation that the phone had been destroyed. It would be bold indeed of the father to make such an assertion were he to have known both that the account of her condition was fabricated and that no such picture could exist. Given my conclusions on his general credibility in my view it is unlikely that he did make it up deliberately although of course it is conceivable that his memory was playing him. Furthermore there was no evidence as to what passed between the father and JL at the hospital when P was handed over to the father. It seems as though police were present and there is no police statement which sheds any light on either what was said or how each acted towards the other. In his oral evidence the father was asked about it and appeared to have difficulty recalling although was able to say that he had kissed P and had exchanged words with JL that he could not recall the detail of what was said although he said that she appeared to be running off.

He said she never came back; which he sounded surprised about. B' red book has not been available to confirm the contacts that B had with health professionals in the weeks after her discharge. It has been possible to piece together some of this from other documents but I'm not sure I have a complete picture. For instance the father describes taking one of the children to the health centre whilst they were at JL 's but this does not appear as far as I've been able to ascertain in any of the documentary evidence. It appears likely that he was giving accurate information about this given the context in which he described it and it is of some relevance in that it would tend to contradict JL 's evidence that the parents, in particular the mother were disengaged from or reluctant to engage with health services.

53. Thus when trying to piece together the jigsaw in order to achieve that all-encompassing holistic evaluation of the totality of the evidence I recognise that some of the key pieces of the jigsaw are either missing or damaged and that the picture which emerges is far from complete and where there are complete sections some of them are out of focus rather than clear. In other respects though complete and clear sections are present. In reaching my final conclusions as to whether the Local Authority have proved that the mother or JL probably caused B's injuries or whether there is a real possibility that they might have I am conscious of the limitations in the evidence and the associated limitations that that has placed on both the mother and JL 's ability to have a full hearing.

The Mother

54. The mother gave evidence through an interpreter. Apart from some very minor issues in the spectrum of interpreters I thought he was careful and accurate. He explained that when the mother and father used the words "little girl" that it was an affectionate expression commonly used in Portuguese. Overall I thought the mother was able to give her evidence well through the interpreter. Her presentation came across as rather detached - there were rare flashes of emotion when some question required her to connect more closely with the subject matter; for instance when I insisted that she looked properly at the photographs of B' bruised abdomen and try to explain how she had sustained those injuries. There has been no psychological assessment of the mother which might shed light on this appearance of detachment from her emotions. If it is a more general feature of her personality it might go some way towards explaining the concerns that various people have raised about her detachment (or lack of interest or lack of warmth) from B and P. She explained that she had been the victim of abuse herself at the hands of her mother in Portugal and that she herself had been put in a coma by her mother. This is not been verified one way or the other but nobody suggested it was fabricated. It again though was described in a detached unemotional manner which again suggests that the mother does not connect readily with her emotions or has disengaged herself from them. The account she gave in her oral evidence was largely consistent with the evidence she had given in 2017 and with her account in her witness statement and earlier in her police interview. She was pressed hard during cross examination on the events of the morning of 8 August but there was no significant alteration in her account. In the main she appeared to be able to hold her own although I thought there were occasions when she tired or appeared to flag or give up and so on occasions her responses were tinged with resignation. At times she paused and appeared to try to recall matters where I thought she was genuine rather than seeking the answer which she thought best presented her case. She

was at times apologetic about lies she had told. There were occasions when she might have sought to shift responsibility to others; for instance who gave the history to clinicians that hospital but she accepted that it was she who had provided most of the details not the father. On the other hand, she suggested that JL had done most of the talking with the paramedics and at one stage seem to suggest that she had not spoken to them. I do not accept that this can be right and it may have been an attempt by her to provide a false explanation for how the paramedics came to record what they did about her apparent lack of concern for B. Ultimately, I conclude that it is a mixed picture with the mother in terms of her credibility as a witness. Parts of her evidence would appear to be true; they are consistent with earlier accounts and consistent with other known facts or common sense. Other aspects were less reliable and of course she has told frank lies in relation to this set of injuries and has been found to have lied and behaved deceptively in relation to the November 2017 injuries. Thus no one size fits all rule can be applied to the mother's evidence.

55. The mother has undoubtedly got problems with her credibility. Mrs Justice Roberts found and Mr Norris rightly emphasises that not only has the mother lied about important matters relating to the November 2017 injuries, but she has lied about her willingness to take B to medical professionals. She has been found by Mrs Justice Roberts to have inflicted nasty injuries on B on a number of occasions by the use of clearly inappropriate force which would have been distressing to B. She continues to date to deny that she inflicted those injuries notwithstanding those findings. Mr Norris rightly points out that the mother frankly accepts that she lied to the social worker in August when she gave the account of JL's Akita dog treading on B as being a possible explanation for her chest and abdominal injuries. This is particularly germane to the question of who inflicted the injuries and why this lie was peddled. It emerges from her evidence that other lies have also probably been told. She told the police that she had not called an ambulance because she did not have credit on her phone but this is rapidly exposed as a lie because she called the father. In her witness statement she said that B had been with JL overnight for nearly a week. This contradicted what she had said in police interview. In her oral evidence she also said that it was only for a couple of nights. The father also was clear (and the way he gave that evidence it appeared to me spontaneous and connected with his recollection) that JL had only looked after her for a couple of nights. JL herself said in her first statement that she was caring for B every night which appears both unusual but of course incompatible with anyone's account of the morning of 8 August. At the time the mother made her statement the medical evidence as to when the injuries were caused was not clear and so the mother may have had a motive to maximise the amount of care that JL was providing. By that time the mother was of course aware of the contents of JL's second statement which was so very critical of the mother.
56. In her evidence to me the mother said that B had been sleeping in the room with her and the father for some days before the 8th. She said P come and join her when he woke up. She thought she had given B her 7am (ish) feed. There was some considerable focus on the timing of feeds and how long past. This was of most relevance in relation to the period between 10am and 12 noon. Insofar as the mother's evidence varied somewhat in what time feeds were given or how long they took I do not consider that this is significant. Individuals connection with time varies considerably in any event and unless there is any particular reason to be clock - watching many people will be unaware of the precise time and will not be noting how

long events are taking. Prior to about 10am or more likely 10:30-11am, this may have been a normal morning. If anything the mother's lack of accuracy about times is more suggestive of nothing significant having happened until sometime after 10. At this distance from events anyone's recall of timing is likely to be severely hampered. It emerged that the reference to B vomiting in the days before the 8th was nothing more than 'possetting'. This was consistent with the father's evidence. His reaction to the suggestion that he had routinely been adding baby rice to B's milk to make a porridge-like substance was revealing. It was spontaneous and I thought genuine when he responded with surprise and a degree of indignation at the suggestion that he would have been doing that. He accepted that he had added a little baby rice because they thought B needed more than just formula. That also would be consistent with them having altered the teats on the bottles to increase the flow of milk. The mother in her oral evidence was similarly indignant; it was one of the rare moments of animation. Overall I did not consider that the evidence from the mother and the father indicated a lack of care in their feeding of B. This of course is in complete contrast to the picture painted by JL and supported by RL. I conclude that the reason for the differences is probably to be found in a combination of JL considering she knew best, some cultural differences, a tendency of JL to dramatise and evidence being given in the hothouse of concern over who injured B.

57. The mother said that B then recovered after being downstairs for a while and that she put her back upstairs. She was cross-examined on why she would have put B back upstairs when she had already had some concern about JL's behaviour as a consequence of what the father had told her that morning and her finding JL in B's room shortly before. With the benefit of hindsight, it is understandable that the mother's actions in putting B back upstairs would be challenge. However if one attempts to put oneself in the mother's shoes on that morning before any serious concern had emerged putting B back upstairs is hardly unusual even if the mother had been told that JL might be a little the worse for wear or behaving slightly oddly. No one would have thought B would end up near to death that day.
58. She repeated that she was making food for P when she heard a cry from upstairs and she went upstairs to see what was happening. She said that B out of the Moses basket and was on the bed and JL was sitting next to it with her back towards the door. She said she could not see what JL was doing although her arms were moving. I did not take it from this that she was suggesting anything untoward at this stage. She said when she saw B she was very pale in the face with some bluish discolouration on her lips. She said that by the time the ambulance came her colour had deteriorated. There was some testing of what was said by the mother and JL at this point. The mother said in effect she said, 'what's up'?
59. The mother maintained her account that she was unaware of the marks or bruises on B until her Babygro was removed. She seemed to be saying this was when the paramedics were there. She also said that she was unaware of the bruise in B's mouth until she saw it with JL.
60. The medical records contain an entry would say that the mother alerted the landlady to the problem. This is inconsistent with both the mother and JL's account. In her oral evidence the mother said that she recalled saying that to the doctor (although it wasn't said to the doctor but to a language line interpreter). I am left unsure as to whether she did say this at all notwithstanding her saying she remembers saying it. It is

inconsistent with every subsequent account and I think on balance is more likely to arise either from an interpretation difficulty or the pressure of the situation. I do not consider it to be significant.

61. The mother described the to-ing and fro-ing between her and JL . She said she used the word ‘ambulancia’ and that JL was talking putting sugar under her tongue. She also said that JL would not give B to her. Her account of why she had not called the ambulance was hard to follow. She plainly had a phone and a phone which had credit on it as she called the father. Thus the account she gave the police of not calling an ambulance because she had no credit was not true. It is during this phase that she describes again how JL was sitting on the sofa holding B and she was trying to get B from her and that JL punched her and kicked her in the stomach. A possible discrepancy in this account has given to His Honour Judge Marston was explored but I was satisfied that the mother had gestured during that hearing and this accounted for the apparent discrepancy. This aspect of the mother’s evidence at first blush might be dismissed as the fabrication of a desperate woman seeking to divert attention from herself and to create an image of another possible perpetrator behaving violently in order to raise the possibility that they had also hurt the baby. However we know that she is telling the truth on this not least because JL in her statement of 28 October agrees that she punched the mother. It was also corroborated by what the mother told the father when they spoke at around midday and also by what the father told EC when they spoke shortly thereafter.
62. It is not clear from the mother’s evidence, but nor is it clear from JL ’s how long this phase lasted. It certainly ended by agreement between both the mother and JL when LB appeared on the scene and he called the ambulance.
63. When the paramedics arrived and as set out in the chronology they found B to be very unwell. In their statements they expressed some worry about the mother’s attitude but that has dissipated to a considerable extent following their oral evidence and the safeguarding referral form. Their concerns about her explanations for the bruising injuries remained. In evidence she was unable really to offer any explanation for the mother than the rattle or blankets explanation. When pressed to look closely at the photograph of B she became emotional but still was unable to offer any explanation as to how B came by those injuries.
64. The mother’s accounts, or aspects of it, is also given
 - i) at hospital (see the chronology)
 - ii) in her first police interview,
 - iii) to the social worker when she lied about the dog incident
 - iv) in her second police interview,
 - v) in her February 2017 statement
 - vi) in her oral evidence HHJ Marston

65. In her first police interview she gives a narrative account at G265 as contained in the chronology. The essential elements of that account have remained consistent throughout and it is broadly in keeping with the oral evidence that she has given. On peripheral matters she refers to the money going missing on the Sunday evening and there being a dispute with JL. She does not accuse JL of having caused the injuries. When the police explored the account with her [G276] there are some aspects which are inconsistent with her later account. She suggested that B being sick might have been connected with a bug that she herself had had. The police were clearly sceptical about JL having punched the mother. In her second police interview she also gave a narrative account [G404] (see chronology). Her answers to more detailed questions were again broadly consistent with other evidence she has given.
66. In her statement dated 22 February 2017, her account is broadly consistent with her other evidence. The additional detail which emerges in this account is she says that before the father left work at around 5am the father told her that the kitchen was a state and JL was passed out downstairs.
67. As I have already said the mother's oral evidence is a mixed picture of truth, lies and lack of clarity arising from the passage of time, the intensity of events and I think some degree of obfuscation. But the totality has to be fitted with other contemporaneous evidence and other accounts in order to seek to discern the probable truth.

The father

68. After some initial teething problems, the father was able to give evidence by video link with the assistance of the interpreter. In general I thought the combination of the interpreter and the video link worked well and the father was able to give good evidence. Overall he appeared to be trying to give as accurate an account as he could. He appeared to be quite child focused (for instance talking about the loss of the children's possessions being more important than the adults and how he was sad for B that her mother was not seeing her). He was balanced in relation to the mother being neither overly hostile to her or obviously protective of her. He expressed sadness at the fact that she had been found to have hurt B. He made clear that much of what he had said was based on what he had been told by the mother and said that he had trusted her. On various occasions throughout his evidence he said that he wanted to know what happened, when he was unable to remember something he generally said so and explained that he didn't want to mislead and on a number of occasions he either corrected himself or corrected counsel if they had made an error. In those ways I concluded that his oral evidence was in most ways honest. However it was equally clear that the passage of time had dulled his memory. There were many occasions when he said he could not remember or could not remember clearly and then occasionally some factual matter might spur his memory. However I do not think he now has a clear recall of what was said and done on 7 August, nor the morning of 8 August, nor precisely what was said on the telephone by the mother on 8 August or what was said at the hospital. A combination of the passage of time and perhaps the stress and distress of events on that day and subsequently mean that as at December 2018 his recall of events is more limited than it once was.
69. His account of the morning of the 8 August is contained in

- i) his first police interview,
 - ii) his second police interview
 - iii) his statement which is undated but appears probably to have been made in February 2017
 - iv) his evidence to HHJ Marston
 - v) his evidence to me
70. his oral evidence to me was much more limited in ambit than the police interviews or his earlier oral evidence. At [G208] he set out a narrative account of the circumstances leading up to 8 August and the events of the day before and the day itself. He explained that he had not been in the house himself but said that he got up to go to work at 6am and that during the night B had woken up for a feed eaten and then gone through the normal procedure and she had gone back to sleep. He said that after leaving for work he would be checking on the mother and children by sending messages or by calling and that on the morning of the eight the last time he had called all was fine. He said just good gone downstairs with P and B was sleeping upstairs. He said JD heard the baby crying and she went upstairs and saw that JL was with B he was pale. He interpolated that JL 's had punched and kicked JD before returning to the narrative of JL going downstairs and an ambulance coming. He said that the mother had called him and said B was not well and so he left his work and went to hospital. At the hospital he found the mother on the phone to somebody who was a translator. In the course of the interview the father was clearly anxious and concerned about what he should say. He did not seek to make accusations and was reticent about making allegations of any sort. He appears to have been somewhat reluctant to talk about JL and her drug use he was more inclined to look for explanations in what he might have done to B than to accuse others. He identified that he might have injured Bes shoulder when she fell from his lap. He wondered whether he had caused her internal injuries when he had massaged her stomach to deal with her colic. He said that he had left finger marks on B when bathing her as her skin appeared to be more sensitive although he did go on to say that they usually disappeared. When questioned on his account he repeated his narrative of B waking in the night and being fed by JD, him waking at six and leaving. He said he had to get the bus although it appears actually he was collected by a colleague that day. He said during his first interval he had called home and everything was fine.
71. In his police interview he described the incident on 31 July with the mother has being a little fight. He did not accept that there was any exchange of physical force. Given the evidence from JL, LB but perhaps most importantly the texts from JL to EC and the text from JL to RL together with the physical injuries that were observed by Rachel but also by the hospital it seems probable that the father was not being wholly truthful about the full extent of the incident on 31 July. On the other hand the account given by JL and LB may be slightly overdramatised. Does that mean that he is lying about other matters? An incident of domestic abuse is likely to result in the perpetrator seeking to minimise or cover up what they have done. They are likely to be embarrassed or ashamed or afraid of the consequences if they admit the full extent of their behaviour. Seems to me that this is a more likely explanation for the father's

lack of honesty with the police and in his witness statements. I do not think I should infer from this that he is lying about the events surrounding 8 August.

72. In his second police interview he was by large responding to the evidence put to him by the police and his responses are broadly consistent with his earlier accounts. Their eyes some inconsistency over how much time JL cared for B. During the interview he appears to suggest she was looking after her quite a lot and that he trusted her but later in the interview he says that if JL is saying she looked after B more and more and more that that is a lie. He recounted the incident with the dog but made clear that this was something he had been told by the mother. In his evidence to me he he said that the mother had subsequently told him this was a lie. He comes across in his police interviews as being generally frank in his expression of his views and the evidence that he gives.
73. In his witness statement he repeated the essential elements of the account.
74. It was only when he gave oral evidence to His Honour Judge Marston that he recounted the house being in a state when he got up to go to work and JL being passed out. His oral evidence came after the mother had included that account in her statement. The manner in which she gave oral evidence as depicted by the transcript but more importantly the manner in which he gave evidence before me appeared to me a genuine recall of events he had experienced. Mr Norris is right to point out that in his evidence he prefaced it during the early part of his evidence by saying he wasn't sure it was that day but then recalled clearly that it was that day. He again made the connection with having remembered that he took photograph of her passed out and in his evidence to His Honour Judge Marston when he recounted it it prompted him to laugh for which he apologised. That appeared to me to have a hallmark of him genuinely recalling JL passed out with red hair.

JL

75. JL very sadly has been diagnosed with early onset dementia. She has therefore been unable to directly defend herself in response to the Local Authority's allegations or for her account to be tested by the mother's legal team. Given the mother's account to police on 9 August and the fact that it emerged very early on that JL was clearly a person who had been closely involved with B' care on 8 August and prior to that it is yet another oddity that she was not interviewed by police. Her initial short statement given it seems late on 8 August was supplemented by a very detailed statement given on 28 October 2016.
76. Her first statement contains the following account.
 - i) *On Monday, 8 August 2016 Alex has gone to work early, about 6 AM. I got up at 7:45 AM and no one else was up. After about an hour I heard the children waking up and about half an hour later JD bought P downstairs with me. I asked her where B was and she replied that she was sleeping. JD fed P and gave him a drink and then she went to the bathroom on the ground floor. I then took the opportunity to go and check on B and I went upstairs with P into AC and JD's room and B was in the Moses basket on the floor. The basket was*

leaning across piles of clothes with the head end of the basket raised. This was approximately 10 AM. I noticed immediately that B's complexion was grey and her lips were bleached of colour and very pale. When I saw B she was awake with her eyes open, however she was silent and not making any noise. I noticed that her breathing was unusual-I would describe it as a fast pant. I bent down and removed the blanket and picked her up. She was non-responsive to anything that I did, for example stroking her cheek usually makes her smile and tickling her ear usually makes her shudder. When I touched her body, her temperature body colour seemed okay, however her face, fingertips and ears were grey. After approximately five minutes, JD came into the bedroom behind me and saw B and agreed that she was a bad colour. We decided to take B outside to try and boost her oxygen and improve her colour. As we walked downstairs to go outside, B started to stir and wake. We went outside into the rear garden and whilst I was holding her I patted B softly on her back. She did bring up some wind and appeared to relax and got a bit more colour in her face. After approximately 10 minutes we went back inside my handed B to JD. She then sat down on the sofa and cuddled her so I went upstairs to check the room that B was in. This was when I noticed a bottle on the side next to the Moses basket, which had approximately 2 ½ ounces left in the bottle. I took the bottle downstairs in the kitchen to make a fresh bottle and when I opened it to pour it in the sink I noticed that it was thick and had baby rice in it. I went back into the living room and gave JD the fresh bottle and she started feeding B. P was with us the whole time. I returned back to the kitchen to clean the other bottle and about 30 minutes later I went back into the living room and JD was winding B as she had drunk about half the bottle. I noticed that B looked grey again and the colour in her lips had gone pale. I said to JD that B was not right and that we needed to take her to the hospital. JD said 'no' and that she is okay. We laid B onto her back onto JD's lap to have a look at her. We were both looking at B and I turned up her top lip to see the colour of her gums and I noticed a bruise under her tongue where the skin joins the bottom lip. The bruise was not present to the day before because I had fed B the day before and would have seen it. JD seemed surprised to see the bruise and could not give an explanation for this bruise. I kept saying to JD that we needed to take her to see a doctor and I was getting upset because she was refusing. I pulled up B's vest to check her colour and see if she had any pain in her tummy and I noticed that she had about five individual bruises on her chest between her throat and abdomen. The bruises look like finger pokes. JD did not seem surprised to see these bruises and said that these bruises were from lying on the blanket. I would doubt that this was a feasible explanation as B sleeps on her back. JD tried to take B upstairs and she took a few steps up the stairs. I managed to talk her into coming back down and I took B off of her. JD was insisting that I gave B back and as I was going out of the front door, Lee arrived home from work. I told Lee that the baby was ill and to ring an ambulance straightaway which he did. I waited in the doorway for the ambulance and it arrived within about 10 to 12 minutes. JD was screaming behind me not to take her baby. When the ambulance arrived they examined B inside and JD started to cooperate.

77. Mr Hyde QC observes that it is concerning that if JL did indeed see B in the state that she describes that she did not immediately call the mother or do anything more than

observe her or tickle her. He also points out that the account is clearly tailored because it does not include the fact that JL punched the mother in the face.

78. JL gave a 29 page witness statement on 28 October 2016. I'm not clear how this statement came into being its length and the level of detail included within it together with the documents produced or referred to in it suggest that it was not the product of sitting down with DC McGurk that day but was rather a statement put together over some period and with considerable thought and care. As a result of JL not being interviewed by the police and not being able to give evidence neither her initial account or her subsequent statement have been tested either by the police in the form of an interview or in cross examination.
79. Aspects of both of her statements are consistent with the evidence of other witnesses or contemporaneous documents. Others in particular the events of 8th of August stand alone. In other respects her statement is silent on some matters of significance. Given the inability to test the evidence it is much harder to know what to make of JL's accounts. The length and detail of her October statement suggest either an incredibly meticulous and detailed memory, a degree of obsession or a partly created narrative. The language used in it at times feels overdramatised. She talks of incidents being horrendous or B's hand being all bloody from her nails being cut, the father being proper spiteful in the way he jammed B's bottle into her mouth. Although critical of the father she was also complimentary of his ability to learn. She was highly critical of the mother in terms of her childcare or ability to take advice from JL. The level of criticism she directs at the mother in terms of her interest in B or her capacity to care for her is not corroborated by anything the health professionals observed. His Honour Judge Marston thought this was a very significant feature and it forms a central component of his conclusion that JL was lying about the mother and that the reason underpinning that must have been connected with her desire to cover up her own actions and divert attention to the mother. She talks about how she took over the care of B who then made glowing progress being much happier and more alive than she had been before. Again this sounds like an exaggeration and does not find any parallels in the health professionals observations. She is critical of the mother's willingness to engage with medical services; regrettably the red book which would demonstrate the involvement that B had with health services in the three weeks prior to 8 August is not available. In her statement she complains that the mother and father had not paid her rent because they wanted to spend the money on shopping. This is wholly at odds with the mother and father's account and I think at odds with the father's nature. It seems likely that she was aware by this stage through DC McGurk that they were accusing her of having stolen money from them. She deals with her dog and his attitude to children which suggests she had been made aware of the mother's lie that the dog had trod on B.
80. She repeats her earlier assertion that she had had B all day on Sunday the 7th. This seems neither likely or consistent with the mother and father's accounts of that day and is an exaggeration. She says that the father became irritable in the course of the Sunday evening but does not say anything about why that might be. The other evidence shows that it is likely to be connected with his money going missing, the presence of a group of individual smoking drugs and the ill feeling that was generating together with JL's concern over their probable departure. In her statement she emphasises on a number of occasions that she couldn't understand why the

mother did not bring B down with her in the morning. It appears from the mother and father's accounts that the general routine was that after her 10am feed B would go down for a sleep. Her account of the events then broadly follows the account she gave in her 8th of August statement although she includes a lot of further detail about the conversation including attributing many direct quotes to what she and the mother said. It seems unlikely that those could truly have been recalled by her some three months after the events. Her account of the interaction between herself and the mother ranges from her yelling at the mother through to her crying in this causing the mother to become upset she then describes wrestling with the mother to get B back grabbing hold of the mother to stop her going upstairs and said that the mother then got physically aggressive at her which resulted in her punching the mother when the mother grabbed B and took her from her. She said that she thought about 20 minutes past between her first noticing that B was ill to the point of calling the ambulance. This is not at all consistent with her first statement in which she says that she was in the kitchen for around half an hour after they had come downstairs spent some time in the garden and then come inside again. She gives a very dramatic account of JD putting on an act wailing oh my baby my baby my baby but it all appearing an act and made her feel quite sick to be honest. She describes the mother as being hysterical when the ambulance arrived which is wholly inconsistent with the paramedics' accounts.

81. The second statement in particular has an overdramatised quality to it. This does not necessarily mean that the core factual account is not true but is simply illustrated in florid language. On the other hand it may be an indication of a concerted effort to paint the mother and the father in a bad light and to ensure the focus of concern is directed at them. Having been unable to see JL give evidence it is almost impossible to gauge where the truth lies. The absence of any other contemporaneous corroborative evidence as to the period between 10am and midday makes the assessment of JL's account of that period and the mother's account of that period a largely self-contained process. Of course, one can draw on other evidence which might illuminate how the individuals might be expected to behave. The overall picture though is so extraordinary and unusual that it is difficult to draw inferences by comparing it to what might usually be expected or by reference to common sense.
82. The failure to mention that she had punched the mother in her statement of 8 August can be equated to a lie. The suppression of information as much as the giving of false information can corroborate other in criminal evidence. But the Lucas rules apply like-for-like.
83. In her statement of 5 September 2016 RL says the following:

"...she explained that she had found B grey and that she had tried to comfort B. She also encouraged JD to do that same and got JD to put B inside her top for physical contact and warmth. She then told JD that she needed an ambulance as she thought B would die. JD pleaded with her not to and try to take B from her; she was tugging at the blanket but didn't manage to take B in any way. L came home whilst this was going on and took one look at B and phoned an ambulance. Mum had to hide at a neighbour's home with B as JD was running around and mum believed that JD was going to shut herself away with B. Mum said that when the paramedics arrived and removed B's clothes she had fingerprint bruises on her torso. Mum told me that whilst the paramedics were there and putting B in the ambulance JD appeared to display

concern and was crying saying my baby. Mum said that she went back inside and showed the paramedic the bruise on P's back and so the paramedic took P to. Shortly after that the police arrived and took mum to the hospital where she sat with P and police."

84. RL's account was given on 5 September and does not appear to be based on text messages but rather her then recollection of what her mother had told her on the morning of the 9th. There are aspects which are in general terms consistent with both the mother and Ms 's account. Interestingly she describes being told that Lee had come home (rather than having been at home). The suggestion that JL had to hide at a neighbour's home does not fit with anything the mother and RL say; although JL does talk about trying to attract the attention of a neighbour. The account suggests that the mother put on a show for the ambulance crew.
85. RL gave evidence about her mother as a person but also spoke about her experience of her mother's relationship with the mother father B and P in the just under three weeks prior to 8 August. In the limited parameters of the period over which she gave evidence and the issues on which she gave it I thought that she was attempting to give an accurate account. Clearly much of her evidence was either derived from what her mother had said to her or was to some degree influenced by what she had picked up from her mother. In a strange reversal of roles it appears that JL was hiding from RL both her financial difficulties but more importantly the extent to which she was abusing cannabis. It was clearly the case that RL had gained the impression both from her mother but also from her own experiences that the mother's and the father's parenting of B and P was a cause of concern. Having said that RL attributed this to cultural differences and the concerns were not so great that it caused her to do anything. Given that even then she had been working in a nursery for some two years had she been really concerned it seems probable that she would have raised her concerns with social services who were already involved in the family. Some of the concerns her mother raised appear to have been unfounded or exaggerated; notably the alleged bruising to B's genitals. It was clear from RL 's evidence that notwithstanding her mother's concerns this became a non-issue. Although only one example it does suggest that JL was capable of either misinterpreting or overdramatising concerns. It seems clear from RL 's account that her mother did become very quickly attached to B; perhaps the absence of her children created a void which was filled by B and P. The extent of her interest in them and her willingness to take on their care and her enlisting others suggests she had very quickly developed an attachment to them which is not entirely easy to understand. She clearly was concerned for them but equally did not raise any concerns with social services or the health visitor or a doctor all of whom were either visiting or a short call away. This might simply be a natural reticence to involve authority or might indicate that the stated concerns were actually not at the level JL 's statement depicts. Given RL 's evidence based on text messages corroborates a level of concern prior to 8 August it seems inconceivable that JL's later statement about her concerns was entirely an artifice to deflect attention from herself onto the parents. There may have course be an element of playing up the concerns at a later date but they are clearly not entirely manufactured. RL gave her statement on 5 September some four weeks after. The account set out of how the mother explained that she had found B grey and tried to comfort her and encourage JD to do the same and put B inside her top for physical contact and warmth followed by her telling that she needed an ambulance is a very

condensed version which is consistent with both JL 's and with the mother's accounts. The additional detail of her mother having told her that she thought B would die does not appear in JL 's first statement nor does the suggestion that it was LB who took matters into his hands by phoning an ambulance. The suggestion that JL had to hide at a neighbour's home finds no corroboration in any other statement. RL says that her mother told her that when the ambulance arrived JD appeared to display concern was crying saying my baby. Her mother appears to have told her that P went with the paramedics and that the mother followed shortly afterwards with the police. Given the passage of time and that the account is in any event a summary of what she recalls her mother saying to her in a telephone conversation it is of relatively limited help in understanding precisely what happened on the 8th. Some parts are consistent with other accounts. There are some aspects for instance JL hiding at a neighbour's home which can only come from JL and yet it does not appear in any other account. Either RL 's memory is playing her false or her mother told her something which was not true. The absence of any reference to her mother punching JD also illustrates that this is far from a full account.

86. RL 's depiction of her mother as a person and her descent into dementia seemed to me to be genuine; being told both from the heart and as a lived experience. The effect of her evidence was that it was very quickly apparent after her mother moved in with her that her mental health was deteriorating. Although RL said that her mother had seemed fine over Christmas this would not be inconsistent with the variable presentation that Dr Sanikop notes. It seems clear from her evidence that JL 's mental health took a clear downward path from January 2017 onwards. What is not clear is what the pathway was prior to that point.
87. Dr Sanikop, a consultant in forensic psychiatry was instructed to prepare a report on behalf of the Official Solicitor. He has provided a lengthy and detailed report principally directed at answering questions as to her diagnosis and prognosis and her capacity to conduct proceedings and her ability to give evidence. The report does not specifically address the question of her state of mind in August 2016 or seek any opinion on whether any aspect of her behaviour is consistent with or inconsistent with her having been suffering from any psychiatric symptoms at that point in time. Dr Sanikop was able to interview JL and has had access to her notes as well as the family court bundle. The following are some of the salient points he makes.
- i) Dr Sanikop found her to be mostly logical and coherent although there were times when she was distracted and confused. She did not display hostility or aggression. Her cognitive examination strongly indicated dementia. Her first break down occurred when she was 18 and she was diagnosed with postnatal depression/psychosis. She said she made a good recovery and had no further contact with mental health services until recently. She attributed her recent break down to a lot of different problems; the family leaving home, empty nest syndrome, struggling to live alone. She also said she had been on antidepressant medication for 20 odd years and that attempts to change this led to a significant deterioration in her mental condition. It is not clear when those attempts took place.
 - ii) Her medical history shows that in 1989 she had numerous very severe attempts at self-harm including overdoses a deliberate road traffic accident and jumping off the roof of a house. She had repeated admissions to hospital. She

recovered well with antipsychotic medication and thereafter was treated with antidepressants. Her family appear to have reported that she self medicated with excess tramadol in recent years and that she had been on paroxetine for most of her life.

- iii) Following the eviction from her home on 7 January 2017 she had become increasingly anxious and her daughter had reported increasingly bizarre behaviour.
- iv) Her account of the time the mother and father, P and B lived with her contain some elements which are consistent with her earlier account but contain other elements which are simply inaccurate; she said the parents were prosecuted and the father went to prison.
- v) She was aware that she had been accused of hurting the children and said that she treated the babies like her own and would never hurt a child.
- vi) She admitted abusing cannabis regularly but was unable to quantify the amount. Although she said she never had problems with alcohol she said that she had lost her licence because of drink-driving about four years ago.
- vii) She complained that she receives a lot of harm from staff saying that they pinned her down and that in retaliation she was aggressive. She wanted to go home. She said that she had not intentionally harmed anyone since she had been in hospital
- viii) Dr Sanikop notes that her 28 October 2016 statement consists of 29 pages and that at that point she was able to provide a detailed account. He notes that there is no evidence of any concerning her ability to provide the statement.
- ix) Her treating team believe she is suffering from early onset dementia. She sustained a significant head injury in 2002. Since admission she has had ECT. Her mental state is considered to fluctuate; occasionally her test scores being near-normal and at other times her test scores showing significant cognitive deficits. In January 2017 she was admitted under section 2 of the mental health act but on 19 February 2017 a mini mental state examination revealed no cognitive impairment. However by 20th of March 2017 she was brought to hospital behaving erratically was agitated and was grabbing people. By 7th of April 2017 she was readmitted under section 2. At that time her mini mental state examination was 23/30 and her Addenbrooke cognitive examination was 51/100. It was considered that her cognitive impairment was due to depression rather than dementia and her antidepressants were changed and an antipsychotic added.
- x) By July 2017 the working diagnosis was organic amnesiac syndrome. She is currently detained under section 3 of the Mental Health Act. Her notes indicate that she suffers from some form of psychosis.
- xi) Staff and hospital notes show that she can be unpredictable and can present with significant aggression towards other patients and staff without any apparent reason. She regularly assaults staff and patients is impulsive and can

be very hostile in the period July through to September; the notes document 14 incidents of her behaving violently or aggressively ranging from pinching through to slapping punching and throwing hot drinks at staff.

- xii) He notes that it was in February 2017 that a significant deterioration was noted which led to her being admitted under section 2 of the Mental Health Act. At the time there were significant social problems including having lost her home and a history of significant cannabis abuse. Her presentation fluctuated and although she was discharged she failed to stabilise and was readmitted.
- xiii) Investigations have not revealed any organic cause for her presentation and the current working diagnosis is one of early onset dementia. He notes that the diagnosis remains unclear and opine is that this is a very complex case the main feature of which is fluctuating cognitive deficits. Her symptom profile and presentation does not fit into any known categories. In the absence of an organic cause the profile by default is due to psychological problems including possible dementia. He was unable to provide a clear diagnosis although was in no doubt that she suffers a mental disorder of a severe nature. He thought the working diagnosis was appropriate. He notes that in relation to her abuse of cannabis there is no indication that such abuse was severe enough to consider any mental health diagnosis.
- xiv) He considered that information from her could be described as superficial and likely to be unreliable. She does not have capacity to conduct proceedings. He did not consider there were any adjustments or remedial measures that the court could take to ensure there was a fair trial. By this I think he means that she could not give evidence will stop her prognosis is poor and her capacity is not amenable to improvement by treatment.

Medical Evidence

- 88. The photographs taken on 8 August at the hospital taken together with the body map completed by Dr Montshiwa show the bruises that B had sustained. They are unpleasant and concerning to view. They show some 11 separate marks or bruises on her torso. In addition she had a bruise underneath her tongue.
- 89. The three experts conducted a telephone meeting with the Guardian's solicitor on 8 February 2017. The meeting was between Dr David Robinson (consultant paediatrician), Dr Chapman (consultant radiologist), and Mr Peter Richards (consultant neurosurgeon). The expert also gave oral evidence on the 3rd and 6th of March 2017. A summary of their oral evidence appears at A34. The salient points of their evidence appear to be:
 - i) The list of injuries
 - a) fractures of the lateral arc of the left 4th – 8th ribs;
 - b) trauma to both frontal lobes of the brain by way of contusional clefts/tears with subarachnoid haemorrhage;

- c) thoracic injuries, namely the partial collapse of the lower lobes of both lungs with an earlier collapse of the right upper left and lower lobes and small bilateral pleural effusion;
- d) a small pericardial effusion;
- e) laceration grade V, to the liver;
- f) laceration, to the spleen;
- g) A number of discrete bruises across B' anterior chest and upper abdomen. These were of varying sizes (3mm- 15mm), roughly circular in shape and blue-brown in colour - as identified on the body map attached to the report of Dr Montshiwa, consultant paediatrician Gloucestershire Royal Hospital as:
 - i) Sternum 0.9 x 0.9 brown circular area;
 - ii) left nipple lower, 0.6 x 0.6 brown circular area;
 - iii) sternum - to the right of the sternum 0.5 x 0.4 brown circular area;
 - iv) sternum left 0.3 x 0.4 mark;
 - v) below (i) 0.5 x 0.4 faint;
 - vi) chest right 0.5x 0.3 faint mark;
 - vii) thorax lower right 1.0 x 0.6 irregular outline;
 - viii) abdomen right anterolateral abdominal wall; brownish circular bruise 1cm x 0.8cm;
 - ix) a faint blue bruise to B' lower back;
 - x) a purple/red bruise 0.5 cm on the under surface of B' tongue.
- ii) Six of the bruises were associated with the rib fractures. This leaves about four bruises including the bruising to the tongue and the lower back which are not linked to the rib fractures.
- iii) A cleft is a tear and there are features which show to tears, one on each side. As brains don't tend to tear spontaneously an injury must have caused them.
- iv) The brain injury did not involve hypoxic ischaemic damage or subdural haemorrhages and so there is some uncertainty about how B would present with that unusual isolated injury.
- v) Although there was some debate between the experts as to the timing of the brain injury with Mr Richards being of the view initially that the brain injury probably occurred within the previous 10 days and not acutely at the point of

deterioration by the conclusion of the evidence heard before His Honour Judge Marston a general consensus had emerged between the experts that it was most probable that the brain injury and the abdominal injuries were both caused on 8 August. A reduced level of consciousness on eighth August was because of blood loss. The possibility of a severe head injury on that day cannot be excluded but she recovered from it rapidly once she'd been resuscitated from the other injuries if that were so. The clinical shock appears to be more probably connected to the liver lung and cardiac contusion.

- vi) Following the head injury which caused the frontal lobe cleft and haemorrhage she would likely have had a change in her presentation; perhaps a transient loss of consciousness then showed some recovery (perhaps not feeding properly perhaps not settled) then gradually returned to normal. However abusive trauma presentation can range from minimally symptomatic through to catastrophic and sometimes fatal collapse.
- vii) The serious liver laceration, cardiac trauma, lung injury along with the lesser injuries are likely to have occurred closer to the point of deterioration when there was rapidly blood loss which required resuscitation. The biochemical test results suggest an injury close to the point of deterioration.
- viii) The right clavicle (prior to 18th July) and left 6th rib fracture (30th June-7th July) are of a similar age but different to the fractures of the left 4th to 8th ribs (3rd – 8th August)
- ix) There is no evidence including from blood investigations of any underlying bleeding or other disorder which might contribute to the injuries.
- x) The brain injury was unlikely to be associated with B' birth (which was by emergency caesarean section because there was fresh blood in the cleft indicating bleeding in the 10 days prior to the eighth August and the pattern of damage are manifestation of a single event not a birth and a subsequent injury.
- xi) The injuries are all traumatic in nature. If they were accidental you would expect there to be an obvious history of a major accident. The lung injury is consistent with a severe squeezing or a direct impact, most commonly a direct impact. The cardiac injury is most likely from a direct blow with a fist or other blunt instrument or a severe squeezing to the sternum or front of the chest. It is a very serious life-threatening injury. If it is squeezing then it would be very severe causing asphyxiation and cyanosis. Bruising to the mouth is commonly caused by forced insertion of a bottle into the mouth. Bruising and rib fractures is more consistent with impact.
- xii) Following such injuries it is likely the child would be highly distressed and screaming and inconsolable and a care would immediately notice there was a different cry to normal. The baby would take a long time to settle. When cardiac enzymes rise pain may be extreme.
- xiii) If there was a shaking injury with head trauma a non-perpetrator seeing the baby shortly afterwards might see a baby who was being sick and appeared unwell. A non-perpetrator seeing a baby after direct impact injury might notice

the child becoming ill and requiring treatment. The perpetrator would see different things

- xiv) The cleft injury in the brain is unusual. It is probable it would require a significant degree of trauma; either shaking or impact or a combination of the two. There is no evidence of impact because there is no skull fracture or swelling so shaking is perhaps more of an option.
- xv) If P did not have a bruise on 9 August then it is highly unlikely that he had a large handprint bruise on 8 August

Discussion

90. Thus the answers that I am searching for are to the following questions
- i) Does the evidence establish that JD probably caused this injury and does the evidence establish that JL probably caused this injury?
 - ii) If the answer is yes in either case then the perpetrator is identified and the other is excluded.
 - iii) If the answer is no in both cases then in relation to each candidate is there is a real possibility that they might have caused the injury.
91. In answering these questions and in the discussion that follows I draw upon all the evidence, analysis and conclusions on matters of fact great and small that are contained earlier in this judgment and in particular in the chronology. The extent of the documentary and oral evidence that has been heard on central and peripheral issues is huge. Even this lengthy judgment can only include reference to evidence which bears centrally upon the issues I am determining. I do however have in mind much else that I have read and heard although it cannot be incorporated in this judgment or chronology.
92. I am satisfied that the account given by the father, the mother and corroborated by EC of there being events on the evening of 7 August in which money was taken from the father and which led to some dispute with JL probably occurred. The father's evidence together with EC's recollection of the telephone call the night before (and where he could not have been got at before he gave his statement) supports this conclusion. If there had been a dispute with the father and if there were other individuals around smoking cannabis which I conclude there were, I infer from that both that JL was likely to be upset to some degree and participated in cannabis consumption to a greater degree than she might on a normal evening.
93. I have concluded that the totality of the evidence supports a conclusion that the father's evidence of JL being passed out on the sofa and the house being in a state is likely to be accurate in broad terms. The fact of their having been a party, JL's text, the paramedics evidence and the two-hour clean-up prior to the police's arrival all point to the likelihood of this being true. Taken together with my conclusions as to JL's upset and probable consumption of more than her usual amount of cannabis it would fit with her having fallen asleep on the sofa. How the taps came to be on and

how the oven came to be on perhaps does not matter much it was perhaps some sort of teenage prank as the younger members of the party left.

94. However of course the fact that there may have been a big party the night before proves little on its own. JL may have had a very messy house and may have smoked cannabis on the night of the seventh; possibly a significant amount of cannabis. However that does not prove that she assaulted B. There is no evidence from Dr Sanikop that addresses the issue of whether the consumption of cannabis in combination with paroxetine and/or tramadol might lead to irrational, aggressive or other negative behaviours. Nor does Dr Sanikop address the question of whether the aggressive behaviour that is so clearly present in 2017/2018 might have had an early flare-up in August 2016. It is right that Dr Sanikop notes that a particular feature of JL's psychiatric presentation was a fluctuating degree of cognitive awareness but he does not shed any light on whether this might have had some relevance to her behaviour on 8 August. By January 2017 she had lost her home and had had to move in with her daughter. Whilst at her daughter RL noted worrying behaviour. RL said that in her view her mother was fine at Christmas time and it was the eviction on or about 7 January that marked a turning point. In this respect I think it would be speculation to somehow seek to back count or predict anything in relation to JL's psychiatric condition in August 2016. All one can say is that by then it is probable she had significant rent arrears which put her occupation of that property in jeopardy. It must have been a stress. It also seems probable that as a result of the meeting between social services and the mother and possibly JL seeing documentation that she was aware that the mother and father would not be staying long with her. This would have had a number of consequences. First of all it would lead to further financial pressure, secondly it would mean that P and B to whom she had become attached would be leaving. From what JL and RL have said it seems clear that she missed having children around her and say their departure would have been upsetting. If she was concerned about the parents care of the children whether at a lower level arising from cultural differences or at a higher level this might have added to her upset. Her misuse of tramadol apparently in conjunction with paroxetine together with her abuse of cannabis is likely to have had some effect on her mental state although it is impossible to delineate or identify any particular way in which this might be so. As I have already concluded it is probable that there had been a party of sorts during which she had consumed cannabis and probably more than she would usually consume in the course of a day. Thus on the morning of 8 August 2016 there are a number of factors which would be likely to have affected her state of mind that morning. One particular piece of evidence demonstrates how these matters may have affected her which I shall return to later.
95. The accounts of the mother and JL as to the precise sequence of events on 8 August is in fact not so far apart as might be expected. Both agree that the mother and P came downstairs after B's 10am (roughly) feed. This probably puts the mother and P downstairs at 10:30 to 10:45 allowing for making up the bottle, feeding B, winding B (or assaulting B) changing her and settling her. They both agree that JL went upstairs to B's bedroom and that after a short interlude the mother followed her up and found her with B in her Moses basket appearing to be poorly. JL had not heard anything prior to that point which indicates an assault by the mother upon B. The mother did not hear anything at this point (if her recollection is accurate) which indicates an assault by JL upon B. However if both of them agree that B appeared pale and unwell

at that point it seems most probable that B was already injured by then. If her injuries were, as is agreed by the parties, most likely inflicted on one occasion then it is most likely to have been then. Whilst the medical evidence did not rule out the possibility of two events separated in time that is less likely. They both also agree that B was then taken downstairs. The precise details of what happened downstairs then diverge with the mother having her winding B, B being sick and appearing better and her then falling asleep on the mother and being put upstairs again. JL has being brought downstairs has them going outside and her winding B who appeared better after burping. JL has the mother giving B another bottle; JL having noticed that B had not drunk all of her 10am bottle. This itself seems curious; if B had drunk some 3 ½ ounces of her bottle shortly before why would one try to give her another full bottle? JL then has the mother and B downstairs in the living room for some 30 minutes on her own whilst JL is in the kitchen. The mother's account is that she had put B back upstairs in her cot or she continued to get P his breakfast and that she then heard a weird cry from upstairs which caused her to go back up to B's room where she found JL again in B's bedroom. Thus both the mother and JL agree that there were two occasions on which B appeared unwell. Although I did not hear expert evidence on this issue if B had already been injured prior to the first occasion she was noted to be unwell and it appears to be more the likely sequence then it is hard to understand how having sustained such serious injuries she was able to drink a half a bottle of milk. It is also harder to understand if B was downstairs with the mother in particular but also with Ms L around that a period of half an hour or 45 minutes could pass with her to all intents and purposes being considered to be better until the point at which JL re-enters the living room and notices she is grey. I agree with Mr Hyde QC that it seems more probable that B was placed upstairs again in her Moses basket at some point after about 11 AM after her initial recovery because that would appear to be the mother is common practice and if it was thought B was looking better why would that have been departed from? If she was supposed to be napping why not put her down to nap. It also seems more probable because I find it hard to conceive of a situation where B was carrying the terrible injuries that she was and yet she was feeding normally in the presence of the mother with JL in the kitchen and yet for a period of 30 or 45 minutes nothing was noted to be wrong with her. It seems to me more probable that she was upstairs in her cot.

96. Although the mother describes hearing a weird cry or in her oral evidence before His Honour Judge Marston a doglike cry this does not fit the sort of description that Dr Robinson the paediatrician said was likely to be Bes response to an impact which is the most likely cause of her injuries. It might perhaps be consistent with a severe squeeze which Dr Robinson says would have led to B being unable to breathe. I suppose if a child cannot breathe they are not likely to vigorously cry. JL does not describe any cry at all although if she were downstairs in the kitchen with the television on as she describes being part of her usual routine it is entirely possible that she would not have heard anything. However, if it was the mother who assaulted B it would have been done in the presence of P. The evidence demonstrates that P was in the same room as the mother and B from around 7am. Given that the medical evidence points to B having sustained the injuries within a couple of hours prior to the ambulance being called and given that all of the evidence from the mother father and JL suggests that at around 10am B was well P would have been in the same room as B at the time she sustained the injuries if it was the mother who inflicted them. Of course he may have been asleep and if B did cry by the time he awoke he may have

understood her crying to be no more than normal distress. On the other hand if he were awake he would have witnessed an extremely violent incident in which his mother shook and/or squeezed and/or thumped his baby sister causing her to be extremely distressed for a period of time. The absence of any evidence from the mother or JL suggesting P was at any stage upset suggest that either he did not witness anything either because it did not happen in his presence or because if he was present he was asleep.

97. But if the mother did hear a weird cry - and it was mentioned to the language line interpreter or hospital at either 14:00pm or 14:50pm - what might that be connected with. Might JL have picked B up which if she was already injured may have caused her to cry? Is the cry connected with the infliction of injury? As outlined above this seems less likely given Dr Robinson's description of B's likely reaction to the infliction of the injuries although it might be consistent with a squeeze.
98. It is yet another of the curiosities of the evidence that LB in his statement gives an account of the lead up to the calling of the ambulance which is far more consistent in its account of events with the mother's than it is with JL's. It seems reasonably clear that after the ambulance left, he and JL remained in the property together until the police arrived to collect P and JL. For a couple of hours therefore they were in the property. One does not need to speculate very much to imagine the situation. It seems probable that they would have been concerned about the possibility of police attending. It appears likely that both would have wished to minimise the presence of drugs in the premises. It may be that the premises were in a state of disarray which they wanted to rectify. During that time it is likely that they talked about earlier events. How was it that LB came to say to the police that B had been unwell earlier in the morning and that later in the morning the mother and JL were arguing upstairs about her. It is either a figment of his imagination or it is derived from JL. It is of course perfectly possible that it is a misunderstanding of what JL told him but it also might be that it is what JL told him. If that is so it is of course consistent with what the mother said but not consistent with what JL said. His account of how they JL came down running downstairs with the mother following trying to take the baby from JL also fits more easily with the mother's account of their being a dispute as they were going down the stairs than with JL's who says that there was never any dispute upstairs with her running down the stairs (albeit she does say the mother started to go upstairs) and that both she and the mother were in the hallway with her going out of the front door by the time LB arrived home. I have concluded that the totality of the evidence leads me to conclude that JL was in some ways acting irrationally on the morning of the eighth. Therefore, the possibility that she may have given LB an account in that two-hour window and later that night given a different account as appears in her statement to the police is something which would be possible.
99. The totality of the evidence and inferences that I consider it reasonable to draw from known facts lead me to conclude that the mother's account of their being two instances when JL was upstairs is more likely to be the case than B having remain downstairs throughout. That is not to say that there are not outlying pieces of evidence which are not consistent with this conclusion. However, there are other pieces of evidence which would not be consistent with the conclusion that B remain downstairs throughout. That regrettably is a feature which permeates many aspects of this case.

However that does not in fact shed that much light on who caused B' injuries. Should I conclude that JL has lied in her accounts on 9 August and on 28 October or might she be simply mistaken in her recollection? If she was lying what should one infer from that? Is it in 'Lucas' territory where she might have tailored her account because she had picked B up and B had cried in pain because she was already injured but she felt guilty that she might have done something? Or is it because she had in fact caused the injuries to B and was seeking to cover that up? No clear answer emerges and no one has been able to explore the issue with JL .

100. Thus by about 11:30am B was upstairs with her mother and JL and a dispute was developing over what should be done. Here the mother's account and JL 's account diverges with the mother alleging that she was the one who thought B should be taken to hospital and JL suggesting that sugar be put under her tongue whilst JL says she was becoming frantic with concern over B the mother was giving improbable explanations for the tongue and chest bruising and the mother was saying B did not need to go to see a doctor.
101. While some of the marks are attributable to the severe chest injuries B suffered at least four are not, nor is the bruising to B's tongue. Although the bruising is not dated it seems reasonable to conclude that the bruising to her tongue cannot have been a result of something that happened after 10am that morning. Why did the mother not notice during the 10am feed that B had a bruise in her mouth. This was not explored by anyone during cross examination. Whilst I can understand that it 3am in the morning or possibly even 7am a feed might take place either in the dark or with very limited light this is less likely at 10am, although I suppose if P was still asleep the mother might have fed B with the curtain still closed. The mother's account of the normal routines involved B being bathed every day. Although both R and EC expressed concerns that P occasionally hit B on the head no one had seen him do anything to her in the days immediately preceding 8 August. The mother's explanation of bruising arising from how B lay on covers or from hot food dropping on her chest I agree are improbable. Given Mrs Justice Roberts's later findings I conclude that some of the marks seen on B can only be explained by rough handling most probably by the mother both in respect of feeding with a bottle (which is a common cause of bruising under the tongue) and in respect of two or three of the bruises which are not associated with the serious chest injuries B sustained.
102. Although the balance of the paramedic evidence supports the conclusion that the mother was concerned and that part of the problem is recorded in the eight paramedic statements arose from a lack of understanding of the need for B to go to hospital the totality of the evidence from the paramedics and from JL points more towards the mother not appreciating the seriousness of B's condition which would be more consistent with her not feeling it necessary to seek medical advice. That supports the conclusion that JL 's account of the mother's reluctance to call an ambulance and her desire to seek medical help is the more probable. But then why did the mother give an account in her first interview and has stuck to it subsequently that it was she who was concerned and that it was JL who did not want to seek medical attention? Again is this a deliberate lie and if so is it a lie within Lucas territory or a lie which corroborates other evidence pointing to the mother as the perpetrator? In her fear was the mother seeking to demonstrate to the police that she was always concerned? Was this fear of being uncovered as the perpetrator or fear of being unjustly identified? Was she

reluctant to have B seen by doctors because she knew that she had some minor bruising which she had caused? The latter is certainly likely having regard to Mrs Justice Roberts findings but does it go further than that and support the conclusion that the mother had inflicted a serious assault on B and was hoping for the best but seeking to keep her from medical attention?

103. It is in the context of the dispute between the mother and JL over what should happen to B that one of the most curious features of the case takes place. That is the assault by JL upon the mother. There is nothing from anything the mother or father or RL or EC that identifies JL as being somebody who behaves aggressively or violently and who one might predict would act violently under stress. However we know for a fact that she did punch the mother. I have also concluded that she did at least push the mother away with her foot - this has subsequently come to be described as a kick. For JL to have punched the mother, whilst JL was holding B is in my view something nobody who knew her would have predicted and is an act of violence which was wholly out of place in the situation that the mother and JL were in. Whilst I am able to accept that this was a distressing and escalating situation as described by Mr Norris I cannot accept that her response was in any sense reasonable or justified. It is more the act of an individual acting irrationally than of an individual acting rationally. It therefore supports the contention that JL's state of mind that morning was for one reason or a constellation of reasons not her usual one. Whilst this act of violence towards the mother took place it does not of course follow that JL was also responsible for an assault upon B. Punching and 'kicking' the mother in the course of a highly charged half-hour is plainly very different to shaking and/or squeezing or punching a tiny baby for no apparent reason. Mr Hyde QC floated the possibility that JL may have deliberately hurt B in some sort of misguided attempt to delay the departure of the mother and father and their children either because she had become obsessed with the children or needed the money or a combination of the two. The possibility that JL deliberately harmed B for any purpose I conclude can be discounted. There is absolutely nothing in her background which remotely supports the contention that she might behave violently towards a child. In fact quite the contrary. If anything the evidence suggests she is likely to be overly anxious albeit her evidence in relation to her concerns over B and P has I have concluded been magnified as a consequence of what I think is a tendency to overdramatise on her behalf and between August and October her 'need' to fix responsibility for B's injuries at the parents door. What the assault on the mother does give rise to though is the real possibility that JL was somehow behaving irrationally and unpredictably that day for reasons which it is not possible to reach a clear conclusion on.

Conclusion

104. So has the Local Authority established that it was probably the mother who inflicted these terrible injuries on B? Or has the Local Authority established that it was probably JL who was responsible? If the perpetrator is not established on the balance of probabilities is there a real possibility that either or both might have been responsible?
105. The length of this judgment in itself perhaps illustrates that determining what happened, evaluating what inferences might properly be drawn and reaching conclusions even on the balance of probabilities in this case has not been easy. The combination of what we know, what we know we don't know together with the

possibility of things that we don't know we don't know have made the evaluation particularly problematic for everybody; the parties, the police and myself.

106. If one were to compartmentalise the evaluation clear answers might emerge. If the ultimate test were out of the two who is the more likely to have done this, by reference to aspects of the evidence and to the court's experience of inflicted injuries on babies one might say it was more likely that the mother had inflicted the injuries than JL. However the compartmentalised approach, an approach which looks only at who is the more likely perpetrator is plainly the wrong approach. An approach which surveys a very broad canvas, which weaves all of the evidence together in all of its facets, which draws appropriate inferences from the evidence and from common sense and which incorporates the likelihood of one rather than the other being the perpetrator is the correct approach.
107. There is much in the evidence which points to the mother as being the probable perpetrator. She has already been found to have injured her daughter on several occasions; albeit injuries of a wholly different order of magnitude or manner of infliction to these. She has already been found to have lied in order to cover up her assaults upon her daughter. She has lied in relation to these injuries notably fabricating an account of JL's large Akita dog treading on B's chest. This lie though does not seek to blame JL but seeks to offer an 'innocent' explanation for B's injuries which perhaps is more consistent with the mother's explanation than with seeking to cover her tracks. If she knew what she had done would she not have offered an explanation consistent with B being shaken and thumped rather than trodden on. It does not of itself therefore corroborate other evidence that points to the mother as the perpetrator. She has been found to have lied by Mrs Justice Roberts and not to have been a credible witness in other respects by Mrs Justice Roberts. As Mr Norris points out all of this supports the conclusion that it was probably the mother. However I have myself concluded that the mother's credibility is a mixed picture where she has told lies yes but has also told truths on important issues. She certainly had the opportunity being the principal carer for B that morning. But P was also in her care. Could these injuries had been inflicted in the presence of P and without his being aware of and distressed by the events? The mother is capable of getting angry so found Mrs Justice Roberts. The parents were living in a very difficult situation in a house in which they were unhappy because of the drug use and the presence of others including JL with whom they had issues. Any young mother caring for two small children in such circumstances would be likely to be tired and stressed at times. Taken together that situation would provide a fertile ground for the sort of momentary loss of control often seen in shaken baby cases where in frustration and a flash of anger at a baby not taking her feed or some other minor behaviour a parent causes grievous injuries to their baby by shaking or throwing them. But these injuries were not just a shake. B was either subjected to a very serious impact to her chest and abdomen in the form of a punch or similar or she was squeezed so brutally that it broke her ribs and damaged her internal organs. What appeared on paper to be a real issue over the mother seeking to obstruct B being taken to hospital dissipated to a considerable degree when the paramedics gave evidence and when the safeguarding referral form emerged. What had appeared to corroborate JL's account of the mother being obstructive was not borne out by the totality of the paramedic evidence which rather supported a conclusion that the mother was genuinely concerned but did not understand the severity of the paramedics' concerns. Taking all of the evidence and arguments,

which point to the mother as being the perpetrator and making due allowances for the evidence that has not been capable of testing I have ultimately concluded that I would be straining to identify her as the perpetrator on the balance of probabilities looking at her not only in isolation but also together with matters relating to JL. Thus I do not find that the mother was the perpetrator of these terrible injuries on the balance of probabilities; I do not find it is more likely than not that she inflicted them. However the totality of the evidence clearly places her in the category of there being a real possibility that she might have inflicted the injuries in a short flash of anger and loss of control. She is therefore in the pool of perpetrators.

108. What of JL? There is much also that points to her as a possible perpetrator. Does it reach the threshold of the probable perpetrator? There is powerful evidence that she was in an unusual state of mind that morning which finds its most obvious illustration in her assaulting the mother. Does this mean that she might have behaved irrationally and violently towards B? A serious assault on a vulnerable baby is manifestly different to the circumstances in which she assaulted the mother. The mother was downstairs with P and yet she had nothing at this point which would indicate an assault upon B; this being the most likely point at or by which B had sustained her injuries. The mother denies being in the toilet which might have masked any noise from upstairs. On JL's own account she was alone with B for a period of time when B was first noted to be unwell. Why if B was so unwell when she first entered the room did she not immediately call the mother but wait for five minutes? On the other hand, she appears to have had little regard for the mother's maternal qualities and on first seeing B no doubt it might be reasonable to have thought that nothing was seriously amiss. Is JL's account of how B remain downstairs in the care of the mother after that point and which I have found to be either untrue or an erroneous recollection an attempt to divert attention away from the extent to which JL was alone with B on that day? On the mother's account though when she saw JL upstairs with B it was shortly after she heard a cry, a cry which was not consistent with the infliction of the serious injuries in the moments beforehand. If the injuries were not inflicted then what would be the purpose in JL making up an account of her not having been upstairs again? Does LB's statement which puts JL upstairs with the mother and which tends to corroborate the mother's account indicates that JL told him something different to that which she included in her initial account? If so again what inference in Lucas terms can properly be drawn from this? What of the exaggerated account contained within 28 October 2016 statement and the very considerable criticism of the mother and the father contained within that? Is it as His Honour Judge Marston found a deliberate attempt to seek to incriminate the parents and to divert suspicion away from her? In the context of JL being aware that she was the other person in the frame alongside the parents that she would have ramped up the level of concerns is perhaps not surprising and does not in my view indicate a fabrication which corroborates her having committed the assault. Given that there is evidence from RL and from contemporaneous sources that JL did have some concerns about the quality of parenting being given to B it seems to me that the criticism of the parents may be explicable simply through anxiety to ensure that she wasn't wrongly accused as much as being an attempt to prevent her being properly accused. Taking all of the evidence, drawing what inferences are legitimate allowing for the lies or exaggerations she has told (or the suppression of the truth) taking account of who of the two is more likely to be the perpetrator I conclude that the Local Authority has not established on the balance of probabilities that JL did inflict the injuries on B. However the totality of

the evaluation does in my view lead to the conclusion that there is a real possibility that she was the perpetrator not by deliberate infliction but in some irrational loss of control. She is therefore in the pool of perpetrators.

109. I am acutely conscious of the unsatisfactory nature of any conclusion which fails to identify the perpetrator of such serious injuries to a baby. I am troubled that I am unable to reach a clear conclusion but this is a classic case where I would be straining to identify the perpetrator having regard to my analysis above. The combination of the evidence which exists, together with the evidence which has not been available and the inability to test in particular the evidence of JL and LB has of course had an impact on the process of the evaluation of the evidence and undoubtedly has contributed to my inability to identify a perpetrator on the balance of probabilities.
110. At the outset Mr Hyde QC submitted that it was potentially an abuse of process to undertake a fact-finding exercise in the circumstances in which we found ourselves. I rejected that on the basis that the court owed it to the children in particular but also to the parties and more broadly to the process of justice to at least embark on the process to see whether a perpetrator could fairly be identified. I said then that it may be an easy route out simply to identify that there was a real possibility that the mother and JL might have caused the injuries but I did not consider that that would do justice to the very serious issues concerned. Having undertaken that very full investigation into how B's injuries were caused I am satisfied that no reasonably sized stone has been left unturned during the two weeks that I have been enquiring into this. I decline to speculate on whether a different outcome might have been possible either at an earlier stage or with different evidence. Thus all that can sensibly be done to get to the bottom of this has now been done.
111. Only one person knows the truth of what happened to B that day. For the purposes of these proceedings but also for the purposes of the lives of B and P and the father going forwards I'm afraid I can only tell them that there is a real possibility that B was seriously injured by her mother but there is also a real possibility that she was seriously injured by JL with whom they were lodging.
112. That is my judgment.

APPENDIX A

17.06.15	P born	
22.04.16	JD ('M') and AC ('F') arrived in England with P. They stay at the home of JS- cousin of M	
01.05.16	M, F and P leave the home of the R' family and stay with IM (C 214)	
10.05.16	B born (2 ½ years). She is born at 30 weeks gestation and requires respiratory support for first 4 days and remains in hospital, until discharged 29.6.16	
18.05.16	Health visitor and domestic abuse lead nurse visit M and F at home of JR. Family living in overcrowded conditions. No concerns documented M's handling of P. Hospital report M did not have sufficient money for deposit on unit	C135

	breast pump. Deposit waived.	
20.05.16	Incident between F and JR after JR put P in the washing machine. HHJ Marston concludes JR had made up allegations (B92)	C161c
21.05.16	Neonatal unit made aware M and F injected from accommodation and were staying with someone they had just met. The neonatal unit notes show periodic lack of communication from F or M for up to 48 hours. No observed problems with M caring for B. M assessed as competent in bottle feeding making up formula feeds and sterilising equipment.	
26.05.16	HV and community midwife visit M at home of IM. M confirms that she is happy for social services to be involved.	F585
29.06.16	Earliest date for clavicle injury.	
01.07.16	HV and translator visit M. Property overcrowded. No concerns documented re m's relationship with P or B B is weighed naked, weight 270g (C 141) No other HV input until they attend emergency strategy meeting on 8.8.16 ID'M expresses criticism over M handling P roughly and being inattentive to B [C123]	C137
14.06.16	Family move from IM to Travelodge	
14.07.16	M leaves B with Ms Martin whilst takes P for immunisations. M alleges Ms Martin son was occasionally mean. However, she says B seemed fine when she returned. On another occasion she left B with IM but again was not concerned that anything had happened when she returned.	
15.07.16	P attends accident and emergency department with laceration to right eye. Account given of him falling from a double bed in the Travelodge. F tells NSW P sustained this cut when he was walking and he slept.	
14.07.16	Latest date for clavicle injury	B91
18.07.16	M, F and both children are moved to stay at the Travelodge at Gloucester	
19.07.16	EC says P hit B with a doll	G38
20.07.16	B has 6-8-week check at Dursley HC. B had a bruise on her eye. M says this was caused by P picking up a toy throwing it is and it hitting B No clavicle injury noted	C161i
	F says that whilst at the Travelodge B was sitting on his lap whilst he changed her. She fell back and twisted away and the father heard a small click and she cried for a couple of minutes was a bit grisly for the rest of the day.	
21.06.16	M and F meet JL and RL at the Travelodge in Gloucester quays. RL says B had a black eye with a bruise to her right eyelid which the mother attributed to P hitting her	G43a
22.07.16	EC arranges for family to move in with JL, also known as J. He says he had reservations because he knew that jet had a history of drugs and a bad past in Dursley. RL gave evidence that her brother had been in trouble in relation to drugs but as far as she was aware her mother had not. He says that from what he saw both the mother and father would good parents and that IM's used to say that they were both great parents. He said that the mother was sweet and really nice but sometimes needed to concentrate more on looking after the children; he observed that she	G41b

	finds it tough with two babies. However he also said he had no concerns about her being around the children. After they moved in he says that they were constantly ringing him saying that they couldn't stay at Jets; concerns were raised about teenagers visiting and smoking drugs.	
22.07.16	M, F and children move in with JL ('JL'). <ul style="list-style-type: none"> - M and F pay £75 per week rent. Concerns about JL and Lee smoking drugs and teenagers visiting and consuming drugs. - M says JL was eating their food - F says property was in a very poor state with tobacco on the floor and dog hair everywhere. F says he cleaned everywhere to start with. - Mr Breen says they were constantly arguing, giving as good as they got. 	
23.07.16	RL says F told her boyfriend B had been conceived as a result of a failure of contraception. They describe it as a condom whereas M said it was due to an implant. The medical records confirm M had an implant.	G43b F585
24(??).07.16	EC visits. Note presence of cannabis outside. J tells him and his cousin she was concerned about a bruise on the side of B's face. EC says M told him that B had slept on her dummy. RL visits and takes various baby items including bottles and teats to replace those which were being used by the mother and father which had been cut to deliver milk more speedily. RL photographs a bruise near B's right eye. <u>The photograph is not sufficiently clear for me to see the bruise.</u>	G41b G49
25.07.16	RL notices a bruise under B's left eye. She takes a photograph. Bruise said to be three little circles. RL says her mother told her M had told her it was from sleeping on her dummy. <u>In the photo is not sufficiently clear for me to be able to see it</u>	G43b G50
26.07.16	RL says J starts having B overnight. RL says her mum was concerned because P would often hit B on the head when she was being fed or was a sleep in the bouncer	G43b
27.07.16	Home visit by social worker. Parents engaged well and were available for visits at home and at the hospital. No concerns identified in care being provided for P and B and the mother and father were noted to be affectionate an evening out the library d loving towards P and B. EC says awkward conversation about M and F seeking council accommodation, which J was unaware. <u>There is nothing in the social work statement that suggests she noted any bruising to B' right or left eye. RL did not raise any concerns with the social worker about the care the mother and father were giving.</u> <u>However at this point they had only been with her for five days.</u>	C6
29.07.16	J texts RL saying she had found nasty bruising on B's genitals and wanted to take her to hospital but the mother would not allow her to. It appears that jet also thought M had been avoiding signing the children up for medical care. In her evidence RL explained that the bruising had disappeared as quickly as it had appeared and she described it as a Moroccan blue spot and thus not of concern.	
End July/beg August 2016	M says B stayed each night with J F denies that JL took over care for B. He says there were a few occasions when she looked after B when they went out shopping.	C161m

30.07.16	<p>EC visits and says Alex is now really concerned about living there with people visiting the address at all hours.</p> <p>RL says her mother sent her a photograph of B which faintly shows a bruise on her right side of her hairline.</p> <p><u>The photograph is not sufficiently clear to identify the bruise. I think it is suggested this is different to the bruise that was seen on 21 and 24th July</u></p>	G43c/G53
31.07.16	<p>Argument between M and F.</p> <ul style="list-style-type: none"> - J (in her texts) says M told her F put his hands to her throat and pushed her down the stairs. F apologised but denied pushing her saying she slipped. The argument continued later with lots of shouting between both of them. M screamed and ran to her again and said F hit P. J also refers to F taking hold of M's hair, swinging her around and slapping her about more than once. - M denies any violence or shouting 'help me help me' or furniture being thrown. She accepts she threw a hairbrush at F. - LB says this was about 5th August. He said he heard M screaming for help. JL told them to stop through the locked door. She gave him permission to kick the door in which he says he did LB says M had red marks around her neck and F had marks down the side of his torso. They were both emotional and upset. They were affectionate to the children although he saw M slap P. They did not seem to show affection towards B. He says they told him B was a mistake - RL also confirms the incident took place on this day. She was therefore part of it. She said she saw the mother with bruising on her neck and right shoulder blade (she clarified this as meaning the clavicle i.e. at the front. 	C161e G41g G69a
02.08.16	J texts EC about the Sunday night incident (see above)	G41g-h
?? Aug	RL says P cut his eye while being cared for by her mother. She says the mother and father were both rough with him and that the father slapped the left side of his head.	G43c
05.08.16	<p>M says she and F when shopping at all the after F stopped work. B left with JL. M says B was crying a lot when they returned.</p> <p>M admits accidentally cutting B's finger and making it bleed when she was cutting her nails</p>	C161m
06.08.16	F working (Saturday)	
	M says a couple of days before 8 th August B started being sick quite a lot so she changed her formula. She started to give her water. She says she then appeared well until 8 th August	C161m
07.08.16	<p>11:22am: J texts EC.</p> <p>'Not going very well Elson. I am working from 4 AM one morning to 2 AM the next morn to cope with all the extra housework, cleaning, laundry and shopping!!'</p> <p><u>This would appear to be something of an exaggeration.</u></p>	
07.08.16	JL says in her first statement she was with B all day and that JD Lee Alex and P were also at home. She says that at 3 PM F went out to sort out a motorbike and when he returned home he was irritable and fed B and made her cry because he was rough, forcing her lips apart. She says they all then stayed upstairs. She had little in her second statement	G72c/G145t

M says the usual routine is for family to go to park and then have lunch and a nap. F went out at 3 PM to help miss 's friend with a bike.

M says 10 teenagers were smoking weed in JL 's house that day. On Sunday night F notice £20 was missing and there was an argument with JL and M about this. The money was for F to get to work on Monday.

The father's evidence was that by early August JL was becoming very difficult to deal with. He said they thought she was stealing their food and that she had found out they were planning on trying to get a council house and thus would be leaving her and removing a source of finance for her. The father says that Sunday was an ordinary day. He said that B had been colicky over the previous few days but did not give the impression that that was much of an issue. He said he had helped with a bike or motorbike in the course of the afternoon and had then been up and down stairs as he cooked dinner. He said that JL had several teenagers over and they were smoking dope in the living room. He said he had not remonstrated with JL because he had previously raised the issue and she had said that it was her house and if he didn't like it he could move somewhere else. He said that at some point when he checked his wallet he realised that £20 had gone from it and that he spoke to JL gesturing at his wallet. He said that she was tearful and said sorry. He said that the paperwork to do with getting a council house had been with his wallet and that JL appeared from her demeanour and facial expressions to be cross; he thought she was cross that they would be moving out and she would be losing the income. The police exhibits list [G62] which sets out all of the items seized from JL 's home refers to a documents folder containing birth certificates and paperwork. No copy of any documentation has been provided to me which confirms that the mother and father were due to either see a property or take keys for a property on the eighth and nor has the local authority been able to provide me with any confirmation confirming or refuting this assertion. In his interview on 9 August the father said that he was paying £75 a week rent which he thought went on drugs. He said he didn't want to cause jet any problems. He was asked whether anything unusual happened on Sunday and said he didn't remember and expanded on that say that he doesn't want say anything he's not hundred percent sure of which could jeopardise his case. In his evidence to His Honour Judge Marston he said that she was shouting and swearing and that they were smoking and partying until late.

Given the evidence of E it seems likely that there was an incident of some sort on the Sunday evening in relation to the money going missing and there being a gathering at which cannabis was being smoked. There seems little reason for EC to have made this up by the time he gave the police his statement on 9 August when the mother and father were still in custody. The father not mentioning the incident in this interview perhaps illustrates how he was reluctant to put information into the public domain which might be viewed as critical of others. At this early stage on 9 August he appears to be genuinely unsure of what has

	<p><u>happened and is not making any allegations against anyone. He suggests he might have caused the liver laceration by massaging B’s stomach. I therefore do not think that his account during this interview is a blame shifting exercise or anything like it. It comes across more as in being reluctant to put forward any theories or reach any conclusions about anyone. His failure to refer to JL ’s state in the morning might therefore be another example of his holding back from saying anything which could be construed as critical.</u></p> <p>EC says he and his cousin received a call from M in which M told them that JL had told them they hadn’t paid the rent. EC thought this could not be true as F pays the rent on Wednesdays. EC says he heard JL saying in the background she wanted the rent money and money for shopping. F then said “we aren’t going to sleep tonight there are 10 teenagers here smoking weed.” The call lasted an hour and during it the father said he had discovered money was missing from his wallet. Went to bed at 8 PM AC fed B at 11 PM</p>	
	<p>The police exhibits list contains a number of items identified as drugs - related (i.e. cannabis pipes, grinders, bong, drugs paraphernalia,) it appears that a small amount of amphetamine was also found in the freezer at the property. <u>Misuse of drugs might play a role in an individual behaving unpredictably or in a way other than might be usually expected of them.</u></p>	<p>B94 G61 G141/182</p>
<p>08.08.16</p>	<p>4am - M feeds B; doesn’t turn main light on but uses nightlight. Doesn’t notice B has a black tongue. B cries at 4 AM for her feed. M feeds her changes her, burps her she is sick and she then goes back to sleep.</p>	
	<p>5 AM. M wakes to get breakfast for F. F already up; tells M, JL has left tap and oven on and has passed out. M does not go downstairs. F collected by C’s husband F.</p>	
	<p>7 AM: M says B feeds normally and is changed and goes back to sleep. F says he rang at nine or 10 AM and both were fine</p>	
	<p>10 AM: M feeds B changes her and put her back in the basket. She then goes downstairs with P to feed him. <u>M says B was normal at 10am feed and her cry was normal [C298] [police interview]</u></p>	
	<p>10:04am: JL texts EC complaining about M being lazy and JL having to care for both babies every day all stop she says M is taking advantage of her good nature but that the father works hard. ‘I have many concerns about the kids’ welfare.... If they leave here and have no ongoing supervision. Some things they have done are barbaric and quite cruel! Mark for example putting P’s hand on oven glass door... To show him oven is hot!! I was mortified! The babies get many bruises from rough handling and overly severe punishments when either parent is angry! J has dreadful bruising on her back, from their fight!’ <u>The series of text messages would appear to be timed accurately given the later and earlier texts and how they fit into the chronology. This text would suggest that by 10:04 AM nothing of note had occurred. Its contents whilst coming across as perhaps somewhat exaggerated or dramatised do not appear to demonstrate irrationality, paranoia or any</u></p>	<p>G41i</p>

	<p><u>other obvious illustration of jet being in an unusual or concerning mental state. JL’s own account of her usual morning routine is that she would wake up between 8 and 9 AM make coffee let the dog out and then watched television for half an hour with her coffee before starting housework or any plans. She says that the mother’s routine would be to get up with P anywhere between 10 and 12 noon. The timing of this text might therefore be consistent with her writing it whilst having her coffee and watching television following a start closer to 9 than 8am.</u></p>	
	<p>11:30 AM. LB says he had the morning off and heard M and JL arguing upstairs about the baby. He says JL came running down the stairs with B in her arms followed by the mother who was trying to take B from the mother and screaming and saying the baby was fine. He says B did not look well; was pale with grey lips and a black tongue. She was not moving and not crying. JL shouted at him to call an ambulance. He says JL then went to get P ready to take him to hospital. Before she left the police arrived.</p>	
<p>11.57am</p>	<p>Call to the Emergency Services was made by LB</p> <ul style="list-style-type: none"> - LB tells the operator that the baby is awake ‘just really bad colouring’, ‘struggling to breathe’ - I’ve just got home from work and my landlady’s gone out to check the, one of the other lodgers and his baby and the baby is white, really pale and having a problem breathing. - LB says she is not completely alert she is not making any noise at all she’s pale grey very clammy - he says the landlady has got the baby in the house - [the phone is then transferred to apparently JL] <p>He made a statement on 9 August. He says that <i>‘...at approximately 11:30 AM I was sitting in the living room as he had the morning off and heard JL and JD arguing upstairs about the baby as JL had mentioned a short time earlier that the baby did not look well. All of a sudden JL came running down the stairs with the baby in her arms followed by JD who was trying to take the baby from JL and was screaming and constantly saying the baby was fine. I could see that the baby did not look well as it was pale with grey lips and gums and a black tongue. Although the baby was alive, it was not moving and not crying which I think would have been normal for the circumstances. Jeannette then shouted at me to call an ambulance. Because JL and JD were shouting at each other and JD was still trying to take the baby, I had to go outside to make the call.</i></p> <p>Some other relevant parts include</p> <ul style="list-style-type: none"> - the mother and father made an effort to speak English but it was very limited. The mother could speak the better English between them although it was still not very good - they were constantly arguing verbally and extremely aggressively and both of them gave as good as they got. - (Incident at end of July dealt with separately) - they were affectionate to P but they did not seem to ever show affection to B. M said B was a mistake and not wanted; even though said in broken English he thought it cold hearted 	<p>C32a</p> <p>G69a</p>

	<ul style="list-style-type: none">- he had often seen bruises on P and B. About a week before he saw B had three small circular bruises (five pence size) on her temple. They told him she had fallen asleep on her dummy. <p><u>The statement is inconsistent with the telephone call in terms of where LB was immediately before he made the call. I do not know whether he had some reason for wanting to withhold from the police that he had been at work that morning; it could be he was involved in some sort of work which was unlawful or was not declaring his income; I simply don't know. If he was in the house immediately beforehand then his evidence as to where they were could be quite important. If he had literally walked in the front door and the mother and JL were at the foot of the stairs arguing over B then it adds little to my understanding of events leading up to the calling of the ambulance. His witness statement is more consistent with the mothers account of events developing upstairs and JL then running downstairs with the mother trying to take B from her. It is however consistent with JL's account of the mother saying there was nothing wrong. His apparent observation of a black tongue is not consistent with what the medics saw.</u></p>	
12:01pm	AD and JM receive emergency call.	
12:03pm	<p>Paramedics arrive on scene</p> <ul style="list-style-type: none">- On arrival Ms was holding B who was swaddled in a blanket. M was present and spoke very little English.- Ms appeared very upset and extremely worried. B looked pale with a reduced consciousness level and was not reacting. M was also upset but did not quite grasp the seriousness of the situation.- Mr Day called for a double crewed ambulance.- ECG on arrival showed respirations of 72 per minute and heart rate of 152. (Normal would be 30 to 40 respirations and heart rate of 110 to 160) these were recorded on the- on undressing B they noticed bruising around the chest area. M said this was caused by folds in the blanket where the baby had been lying. A day thought this was very implausible.- It was mentioned there was bruising on the underside of the tongue the baby was being fed milk with serial (probably by JL but not sure)- M said a red mark in the centre of the upper chest was caused by hot food falling from a spoon which AD found to be strange as you would not feed a baby of that age hot food.- B had a rigid distended abdomen.- Later JL spoke about her concerns for P who she said also had bruises JM said he saw a round oblong -shaped bruise approximately 4 to 5 inches in diameter- JL said she would bring the child to A and E. <p>In his oral evidence AD said he had a little independent recollection of the day save what was included in his statement. He confirmed that B's appearance was consistent with her being profoundly unwell which he explained meant that she was at risk of death if not treated. He thought the conversations were with the mother and they may have been speaking slowly and using physical gestures. He couldn't recall if JL was helping. He thought that the mother was upset but did not grasp the</p>	

	severity of the situation and she was questioning why B needed to go to hospital. He accepted that she might simply have been frozen by not knowing what to do but ultimately still thought she was not as concerned as he would have expected her to be. He said he had become worried later when JL did not bring P to the hospital. There was nothing that he could recall which was worrying or significant about JL's presentation.	
12.06pm	Double crewed ambulance requested by AD	C43
12.17pm	<p>Ambulance on scene. Robert Edgar was the specialist paramedic. He completed the Patient Clinical Records. This was completed shortly afterwards at the hospital.</p> <ul style="list-style-type: none"> - Presenting condition: pale and breathless? NAI - 12.15: RR 168; Pulse; 80; airway clear - 12.25: RR: 158, Pulse 74 - 12.35: RR; 160bpm, Pulse 80. - HPC: ... 999 concern as feeding cornflakes and milk unexplained bruising seemed pale and short of breath - DHX; denied (clarified as no prescribed drugs) - SHX: multiple addresses in red book multiple names. (This seemed to give rise to some suspicion that the family were invading health intervention) <u>I don't think this would be justified.</u> Mum is Portuguese-broken English-language barrier - On Arrival: baby in arms of tenancy agreement owner, centrally action, bruising on chest, verbal (clarified as meaning making noise) - on examination bruising on tongue, abdomen mildly distended global boarding/rigid, chest clear reduced oxygen saturation, increased respiratory rate - cardiovascular system: pale ++, - Central nervous system: appropriate muscle tone, staring (clarified as not responding to visual stimulus or following) quiet whimpering after initial quiet cry - increased respiratory rate, abnormal abdomen? NAI-bruising-abdo and mouth feeding cornflakes - noted P-bruising on back? In a I brother-informed by friend in his evidence RE also relied very much on his statement. He said there were translation problems but again was clear that the mother was wondering why B had to go to hospital. He recalled trying to explain that he thought B was very unwell. In the end he picked up B to take her to the ambulance. He remembered the room being cluttered. He was very concerned about B. He also recalled being anxious that P had not been brought immediately to the hospital. He accepted that he might have recorded wrongly the suggestion that B was being fed cornflakes. He thought that the other crew members recalled it being said that serial been given to her. He clarified that when he had recorded in his statement that the landlady had had to physically push the mum to hold child and make 999 call what he had meant was that she had had to push the mother off in order to continue holding the child. He was clear that the mother had not grasped why they needed to go to hospital and didn't seem to understand why B was presenting as she was or why they were reacting as they were. He said the mum had produced the red book when 	G42 C43

	<p>asked. He didn't recall any friction between the landlady and the mother. The South-Western Ambulance Service and NHS Foundation Trust safeguarding log records concerns around the feeding regime for B, several small fingertip sized bruises to the chest. It says '<i>mum was showing genuine concern for the child but was not forthcoming with significant history of events, broken English.</i>' It notes '<i>mum appeared genuinely concerned and appropriately concerned although appearing not to fully understand the gravity of the situation. Language barrier as mum had poor English.</i> <u>It is not clear who completed this or when but it must have been based on information provided by the paramedics or ambulance crew. It paints a somewhat different picture of the mother's level of concern to that given by JL or LB and to the first impressions one gets from reading the written statements of the paramedics.</u> <u>It is clear from the evidence of the paramedics that they were immediately very worried by B's presentation in particular her rapid breathing the rigidity of her abdomen and her colouring. However there are aspects of their observations for instance that she was still making noise including a cry which might support the contention that she was not very obviously to the untrained eye seriously ill. However against that is JL's concern and LB's observations as recorded in the 999 call. What is one then to make of the mother's observed relative lack of concern. In her evidence she presented as somewhat unemotional or lacking in expression. It may be she is rather reserved and in control of her emotions. It is also clear from the paramedics that there were communication difficulties although both were clear that they had communicated with the mother. The Safeguarding Referral together with the oral evidence of RE and AD depicts the mother being appropriately concerned rather than disinterested or unconcerned. The mother's assertion in her oral evidence that she had not spoken to them directly at all appears unlikely to be accurate. An apparent lack of concern could be consistent with a lack of awareness of anything that had happened which would give any reason for concern or seeking to minimise concerns due to an awareness of having done something which she did not want investigated.</u></p>	
12.29pm	<p>B and paramedics leave in ambulance with M - AD remains to look at P and speaks to JL before going to hospital.</p>	
	<p>F says he rang at about noon and the paramedics were there. He says M told him that JL had grabbed B and then punched and kicked M</p>	C170/G226
	<p>EC says that he received a call from F asking him to ring M as J had punched her in the face and an ambulance had been called. EC calls M and says she was crying down the phone, telling him that jet has told her that the baby isn't well and when JD had tried to tell Jet it was her baby that jet has snatched B and punched JD in the face. <u>This account if accurate, would appear to be more consistent with JL noting that B was unwell and the mother being reluctant to accept that. What might be inferred from this is harder to determine. If the mother was unaware of anything which might have made B unwell she might naturally have been reluctant to take her to the hospital or to accept that she was unwell. Of course it might also be consistent with her being</u></p>	G41a

	<p><u>aware that B had been injured, either bruised. It also corroborates the mother’s account that jet had punched her. In JL’s statement given on 8 August she did not tell the police that she had punched the mother. It was only in her second statement on 28 October 2016 that she told the police [G145w] that she had punched the mother in order to get B back from her.</u></p> <p><u>EC has not come to court despite being witness summons. His email asserts that his wife is ill and that is why he has not attended. He does not appear to have an obvious reason for seeking to avoid attending in the way that LB might have. His evidence in relation to events of the day appears broadly consistent with the accounts given by others. His evidence about events preceding 8 August again is broadly consistent with other accounts both in relation to concerns over jets home and lifestyle but also in relation to the mother struggling to cope. He appears to be ‘generous ‘in his assessments of people erring on the side of being under critical rather than overcritical.</u></p>	
12.34pm	Ambulance arrives at hospital	
	The multi-agency referral form at F22 completed by the paramedic AD says “Brought into ED in a collapsed state after mum fed baby cornflakes with milk. Bruising and also noticed to chest wall. 999 view concerned about sibling as well? NAI. Sibling being brought to ED by neighbour”.	F22
12.34pm	<p>(Notes completed at 1535 by Dr Montshiwa) patient seen immediately on arrival pre-alert call ‘baby female 2/12 mother of child. Born prem 2/12 early. Found by landlady trying to feed cornflakes and milk. Airway clear. White. Pale. Solid Abdo. Bruising to chest. RR = 80. SPO to 80%. HR 160. BM 9.6 T = 34.6’</p> <p><u>this is likely to have come from the ambulance and ties in with what Mr Edgar said about cornflakes. It does not appear in retrospect that cornflakes had any relevance at all. If anything there may have been an issue over B being fed with milk mixed with baby rice. It is hard to gauge whether this has any impact on how anybody subsequently interacted with the mother. Whether her account which did not mention feeding conflicts and milk would have affected how they viewed her history is hard to know.</u></p>	
	On arrival carried in in nappy and coloured blanket by crew, mum with crew (tearful) [mum JD speaks Portuguese very limited history/English]	F35
	<p>Observations on admission</p> <ul style="list-style-type: none"> - Very cold axillary temperature of 31.8°C - capillary refill time prolonged three seconds - distress, crying and breathing quickly with increased work breathing - distended and tense abdomen - breathing rate 72 per minute pulse hundred and 80 per minute blood pressure 86/50 - oxygen saturation with masks 70 to 80% - abnormal acid production capillary blood pH of 6.82 - pupils equal and reactive - external injuries in the form of bruising across to anterior chest 	C57b

	and upper abdomen, bruise on the under surface of her tongue, faint bruise to B his lower back stop [bruise seen on JD's scapular (wearing vest)]	
	Initial treatment <ul style="list-style-type: none"> - high flow oxygen via mask - interosseous venous access [agitated, distressed appropriately to attempt at IVF access. Settled in between attempts. Pupils equal and reactive 3 to 4 mm bilaterally - blood tests showed serious metabolic acidosis - fluid bolus given antibiotic bolus given - Ultrasound is undertaken by radiologist Dr Smith disclosed suspicion of a cyst and fluid and intra-abdominal fluid - B was intubated and ventilated and a CT scan and x-rays undertaken CT scan results reported by Dr Georgios Chatzakis consultant radiologist	F43
	Ambulance report <ul style="list-style-type: none"> - leaseholder had concerns re-B. Told mum was going to call ambo. Mum felt not required. Leaseholder hit JD and removed B and called ambo (safe guarding concerns) <u>this would seem to be the first reference to J hitting the mother in order to get B away from her. It is not clear from the records or from any of the ambulance records or statements who gave this information to the ambulance staff.</u>	F39
13:20pm	handwritten medical notes for handover <ul style="list-style-type: none"> - found unresponsive by landlady mum fed solids less responsive be IBA 	F60
14:00pm	Medical records and letters or statements from Dr Montshiwa (02.00) "history taken from mum in the relatives' room at A&E GRH. Use of Portuguese Language Line. Mum initially on her own and then joined by dad after 15 to 20 minutes. Also present for most of consultation was Di Spiller nursing sister. Recent HX. › B very well. › vomiting 2 or 3/day over last three days. - no diarrhoea. - no FHX. - went upstairs this morning. - woke up at 0400 ÷ - 0700 fed milk. - then awake and fed at 1000 and then went to sleep. - Mum heard her cry. - Concerned as she appeared pale (white) and blue discolouration in her mouth. Rest of body was a normal colour. - Called her landlord/lady who called ambulance. PMH. B was in (hospital) for 1/12 with respiratory problems. - up-to-date with immunisation plus one at GP. - seen GP x 1 month red spot on sclera – after P (one-year-old brother	F32/C26/C53/F953

	<p>threw a toy at her). - No recent fall. - Mum aware that there are marks of concern on B – chest, tongue and back.</p> <p><u>Continuation (?) of HX by Dr Montshiwa explain</u></p> <p>(1) Marks on B’s chest are from about three days ago. Mum was in shower and heard a rattle noise (from a rattle toy). She believes that P was throwing a toy at B. She observed red marks on B’s chest only yesterday.</p> <p>(2) She has no exption of the mark on the tongue. They only observe a blue colour (?) in her mouth this morning.</p> <p>(3) B has birthmark on her lower back as does P</p> <p>Feeding HX. B is formula fed. A week ago she appeared hungry and was fed once in a powder mixed with? milk or water. Plus is fed to one-year-old P”. <u>the picture which emerges from the medical records in relation to how the mother gave her account to the treating clinicians on arrival at hospital and in particular Dr Montshiwa appears to be that she spoke on the telephone to a Portuguese interpreter. It appears likely that the interpreter then provided either a summary or a detailed interpretation of what the mother had said. It does not appear that there was a contemporaneous exchange between the doctors, the mother and the interpreter. Plainly the possibility for error to creep into such a methodology is greater in particular in circumstances where there is considerable urgency in the situation and anxiety on the part of the mother.</u></p>	
13:45pm	Medical photographer takes photos of B’s injuries. At 1415 a body map was done	F26
13:48pm	Hospital called Gloucestershire Constabulary. Concerns expressed by ambulance crew as to non-arrival of P with the neighbour. Concerns expressed by consultant over mistreatment. <i>‘One of the children was found by the neighbour this morning unconscious- and this neighbour is now looking after the other child</i>	G9
14:00pm	Notes by Dr Montshiwa <ul style="list-style-type: none"> - details of parents recorded - social history - reference to the mothers bruising and denial of any domestic abuse - parents JD very aware B very unwell way of safeguarding process - mum?? Tearful, no obvious distress from dad - all history from mum with additions of Portuguese from dad 	F45
14:17pm	intubated with ICU consultant present	F44
14:24pm	Police with P. <i>I can confirm that P was sat in a pushchair outside the address and it appeared[redacted] were caring for P whilst also cleaning the property. It seems probable that the individuals the police found that the property with P were JL and L. Given the conversation between JL and</i>	G10

	<u>Alexander day which was fairly clearly to the effect that JL would follow immediately with P it is surprising that some two hours has passed and JL was still not making her way to the hospital with P. In particular if she was concerned about P’s health which she maintained that she was in particular in relation to the bruise on his back (which turned out not to be a breeze) why did she not immediately take him to the hospital so that he also could be examined. The obvious answer is that she and LB were concerned that the property might be searched by police. That possibility would be magnified if they were aware of how seriously ill B was. If one of them knew that B had been seriously assaulted the awareness would be even more heightened. Given what was found by the police (including amphetamines) when they searched the property and given that JL admits using cannabis it is not a matter of speculation as to what had been removed or tidied away before it was searched. It seems probable that other drugs paraphernalia or drugs themselves had been removed. It may also be the case that genuine cleaning was being undertaken. If that was so that would be consistent with the property being in a state which could be consistent with a party having taken place the night before. The paramedic evidence as to items being in strange places also fits with the picture of the living room being in something of a state of disorder which would fit the party theory.</u>	
	triage/clinician notes at the time of presentation at F17 in the bundle show “Suspected NAI, multiple rib fractures, liver laceration, hyperdense spleen, clavicle fracture (healing) retrieval by WATCH, intubated and ventilated”.	F17
14:50pm	The multi-agency referral form at F22 completed by the paramedic AD says “Brought into ED in a collapsed state after mum fed baby cornflakes with milk. Bruising and also noticed to chest wall. 999 view concerned about sibling as well? NAI. Sibling being brought to ED by neighbour”.	F29
14:50pm	further history-handed over from Di Spiller paediatric nurse-more detail from Dr Montshiwa she were: <ul style="list-style-type: none"> - vomiting last 2 to 3 days - no fever fed at 10 AM today - mum heard unusual cry this morning - ??? As usual 	F29
15:35pm	Dr Montshiwa consultant paediatrician writes up notes <ul style="list-style-type: none"> - ‘paediatric consultant with mother (JD) brackets throughout. Mainly in Rels room. Taking history via language line. - on presentation she was very cold and struggling to breathe. She required resuscitation, incubation and ventilation. She was transferred to the regional paediatric intensive care unit at Bristol Children’s Hospital. 	F960 F35-40
16:00pm	Mum requested to be taken to PA you to see son. Informed that B would have been transferred. Difficult to gauge if mum understood. Tearful and wanted to see son. Police in situ on PAU. Dad sounded cross but in a different language. Unable to tell what was said.	F958
??	pH levels of 6.82 recorded; consistent with acid build-up connected with blood loss secondary to liver lung injury and cardiogenic shock secondary to blunt trauma to the chest. B in Clinical shock	??

20:46pm	EC texts J 'high JL do you know any news about JD and AC?'	G41k
22:40pm	The flat will be a crime scene. Occupants will need to go to the travel Lodge.	G12
9.08.16	00:19. J texts EC 'hey Elson. I am still with the police. I think A and J have been arrested. B is very ill in Bristol Children's Hospital.' EC-J: what about P and why they been arrested??	
	02:22 J-EC: I don't know only that the baby is the stop ill!! I think they believe one of them has hurt her. The police have made L and I leave my house. It is swarming with SOCO'... 'I'm scared for them and very worried about B. She had lost her colour and her lips turned grey 'the child protection team told me that they have found worrying signs when examining her! That's when A was arrested EC-J: so what's gonna happen with them?? J-EC: I don't know E. The child protection team are coming to see me 2moro.	
	06:17 J-EC 'I will message you as soon as I know more x' EC-J: 'okay thank you net.XX	
09.0816	JL phones daughter and gives an account of the events of the day before. RL provided a statement on 5 September. The contents are dealt with later in this judgment	G43d
	Dr Biu, consultant community paediatrician summarises the injuries as follows <ul style="list-style-type: none"> - 6/7 bruises on the anterior chest wall and abdomen - an old fracture to the right clavicle with callus formation - acute complete fractures to the left fifth sixth and seventh ribs. Less than 7 to 10 days old. - Incomplete fractures to the fourth and eighth ribs - a bleed in the spinal canal resulting from an inter-cranial injury - a liver laceration and capsular tear - haemorrhage to the left retina - bilateral lung contusions 	G36
09.0816	M interviewed Question: "So J what happened to lead you being arrested?". Answer: "What happened was in the morning at 10 in the morning my daughter woke up to eat, as it happens normally, I gave her the bottle, I change her nappy normally, she burped as normal and fell asleep. Her colour was normal, she was breathing normally. Then I have another child P so I went downstairs to feed P. So, I heard JL, the person who lives in the house to whom I pay for the house, she went upstairs and she took a long time there. So, I ended up by going upstairs, I have a little basket where I put the baby and I put the cushion underneath the basket and put the basket on top of it. So, when I went and I reached upstairs she was kneeling down and she was touching the baby. And as I noticed that the baby was pale, I sort of took her in my arms, I put the rug around her and I went downstairs to the living room. I folded my shirt and I sort of encouraged her to burp because she might be pale because	G262 at 265

something stuck and she did and sort of threw up on me all over me. She was, she seemed well her colour came back and she was breathing normally and she ended up by sleeping in my arms but as I have P and I have to feed P. I went upstairs to leave her there so I put her in the basket but I didn't leave the basket as it was on the floor, I took it, I put it on the bed against the wall. Then I went downstairs to feed my son but then I heard footsteps upstairs, I went up again, I saw her, she had taken the baby from the basket, put the baby on the bed and she was sitting by her. Then she took the baby. I asked her to give the baby to me, she did not give the baby to me, she did not want to. As I was going down the stairs she tripped over, I grabbed her by the back of her shirt so she didn't fall down as she had my baby in her arms. She went down to the living room. I wanted to take my baby to the hospital and when we were upstairs, she had told me there was no need for hospital and the baby had low blood pressure. All I had to do was put some sugar in her mouth. She went down, she sat on the settee, I went and tried to get my daughter, she kicked me on here on just here, she kicked me. And then there was a rug she was covering the baby so I removed the blanket so I could again try to get the baby. So, as I got closer, she punched me on the mouth. Then she got up, she started crying out of nothing. I don't know whether she was being forced or not. Then this young man who lives there arrived, he's called L. And she was crying and saying that the baby had fainted or had nothing hadn't got anything to call the ambulance. After she said that to Lee he was telephoning. From what I understood they were speaking in English she was telling the man it was me who didn't want to take my daughter to the hospital. And then her husband was here and she went round the bend and she was ringing the doorbell of the neighbours to see if anybody had a car to take the baby to hospital. The neighbour wasn't there so she came back into the house, sat down on the settee and smoked weed so she started smoking with my daughter in her arms. And again, I tried to get my daughter but she wouldn't let me and I didn't try anymore because I didn't want to hurt the baby. But when she went outside my daughter was wearing a top long sleeves and leggings and it was cold. So, I went inside to get the blanket to cover the baby as she was not giving me the baby and when the paramedics arrived, she started crying just saying lots of things which I didn't understand. When I was about to go into the ambulance, she started crying saying all she wanted to do was to help me, she didn't want to hurt anyone. And she said she was going to take my son P to be by my side. She did but she told the police as well she was angry at me because all this happened to the baby. I have told her that the council was going to give us a house on Tuesday which is today and on Thursday they would give us the keys so we could move permanently to the house. And from what I understand that she was talking in English with her friends and she said to them "they're going to go and the money for the drugs will no longer exist" and before that AC had £20 to buy the bus pass to go to work so we had this money in the wallet, the wallet was inside AC's rucksack he uses for work upstairs in the bedroom. And we went downstairs and when we looked for the money £19 had disappeared with £1 left in the wallet. I confronted her about the money,

	she wasn't happy, she wasn't happy because she had asked AC for money to give her money to buy drugs. And then AC said no because the money he had was to buy packets of milk for P. And in fact, he did go and bought two cartons of milk for the boy so all this confusion with my daughter I can't say it was caused by her but both times when my daughter was pale this lady was by my daughter's side. When I had left the baby, she was normal, she was breathing. That's it	
09.08.16	Father interviewed by police: 16.39-23.31	
	P in foster care. Foster carer reports that he appears a well socialised child who presents has a child who has been well cared for, used to receiving emotional warmth. Noted to be a very gentle and affectionate child.	
09.08.16	P examined by Dr Eldridge. <ul style="list-style-type: none"> - Bruising to forehead and small red scratch on the corner of his left eye. - Mongolian Blue Spot -on body map - <u>These seem likely to be the residue of the injuries P sustained when he fell into the coffee table when in the care of JL. No large bruise was found on his lower back</u> 	C7/H20/H29
10.08.16	Police log <ul style="list-style-type: none"> - 20.20: can we arrange boarding up please - 20.45 the lady who owns the address has arrived... There was lots of shouting in the house... She is refused to sign PC Wilkes PNB to take ownership of the house-we could hear smashing of stuff in the house after we had left. <u>If this refers to JL it may be an indication of her behaving in an aggressive way.</u>	G13
19.08.16	Ruth Foreman visits M and F. <ul style="list-style-type: none"> - M gives account of incident when she was with JL when she was upstairs with P and JL was downstairs with B. She says she heard a loud noise and B cry. She went downstairs and found B on the floor. She says Mrs 's dog (a large dog) walked over B's torso before M had a chance to pick her up. M said she did not say anything to JL about what had happened. She said she took B upstairs and noted a little scratch on her chest which was painful to the touch the following morning as B cried. She placed it in the week commencing 22nd July. Said she had not left B with JL after this. <u>The mother subsequently admitted that this was a lie.</u> <ul style="list-style-type: none"> - Contact was discussed and F said he would struggle to attend due to work commitments. - M observed to show a lot of physical affection to P but when P had hurt himself M had not reacted or comforted him. 	C37
	HV records Mongolian blue spot apparent base of P's spine and top part of his buttocks.	
20.08.16	B discharge from hospital to foster carer to join P.	
26.08.16	Contact. M leaves B in car seat for whole of contact. No attention given to her.	
31.08.16	Social work visit. M and F discuss and other incident when they left B in the care of JL and upon returning B was crying a lot. Said this was after	C39

	the incident with the dog.	
28.10.16	JL 's second statement completed.	
22.12.16	<p>Mother further interviewed: 15.11-18.04</p> <p>“It was a normal one. B and P woke up, B is start crying, as is normal when she is hungry. I went downstairs to make the bottle for her to drink. She had drunk all the bottle and she burped normal. I changed her nappies and she fell asleep again. I left her upstairs in my bedroom and went downstairs to feed the boy, he ate. But JL was taking quite a while upstairs and that’s not normal, that’s not habit. I don’t know, something could have taken place to her I don’t know. So, I went upstairs and I noticed that she was not in her bedroom, then I went to my bedroom. When I went upstairs, she was kneeled on the floor next to the basket, she was touching my daughter. And when I looked at the girl, she was white. I asked her to move out of the way. I took the girl out of the basket, I went downstairs again to the sofa, I put her against my chest and I kind of, tap her in the back because I thought maybe she wants to burp and she is a little bit, you know, with the air there. To be honest with you, she was a bit distressed because she didn’t burp the way she should burp. I managed to I tried to make her burp but she didn’t, so she ended up vomiting and made herself all dirty. I changed her, then she stayed in my lap, in my arms for a little bit more, and then I realised she was not well. I hadn’t finished feeding P at the time. Because I realised, she was well I went upstairs and put B inside the basket. And she slept (inaudible) like she was in the morning. I usually leave the (inaudible) basket on my floor next to the cushion but that time I lifted up and put on top of my bed closer to the wall. I went downstairs to carry on feeding P. P ate and then I heard she was crying and I went upstairs again. And once more, the girl was outside of the basket on top of my bed and JL was touching the girl, and again, the girl was white. And when I went upstairs and I ask what she was doing there she held the baby in her arms and I ask her why the girl was white again. She said that was normal, that was probably her pressure dropped, that I should put some sugar underneath her tongue. And I said “no I’m not doctor”. I tried to remove the girl from her arms but she went downstairs in the living room and was kind of in a position that she will not allow me to touch my daughter. And she went to the streets with my daughter with her body (inaudible) without long sleeves and with short legs. I almost beg her to get inside the house because it was very cold and the girl was outside. She come in and sat in on the sofa. I ask her to pass on the, my daughter, to me in a tranquil way, calm way she refused. She kicked me on the top of my scar (?) and she punched me around my mouth area. I did not want to remove the child from her because I could see the girl was not well. And I was scared that she would use some sort of force towards the girl and end up causing her injury. At this time, L came from work and out of nothing she starts to screaming and saying that I didn’t want her to take the girl to the hospital. That is when L called the ambulance”.</p>	G371 at G403
22.12.16	Father further interviewed	
February 2017	F statement. - Para 11 & 12	

	<u>There is no reference in this to MS being in a state that morning.</u>	
20.02.17	M statement <ul style="list-style-type: none">- M says she was never rough with her children- she was only concerned once about B when she left her with JL when shopping with P and when she got back B was crying almost hiccupping.- She saw JL hit P on his hand when he reached for a box of cannabis.- M says she left B with jet when she went shopping and occasionally overnight including one or two days after they moved in.- M says she lied when she told the social worker and police about the incident when B was on the floor and the dog trod on her. She says her cousin A told her to make up the story and tell the police.- M says B stayed with jet each night for almost a week in the second week they were there.	C161B

APPENDIX B – PROCEDURAL CHRONOLOGY

- 12.08.16 LA application under s.31 CA 1989 (BI-16).
Directions on Issue and Allocation of Proceedings (B26).
- 15.08.16 CMO1. HHJ Marston ICO granted.
- 02.09.16 CMO2. HHJ Marston.
- 05.10.16 CM04. HHJ Marston. Dr Robinson and Mr Richards to be instructed. PII order delaying disclosure from Police (B49-52).
- 12.12.16 HHJ Marston. Further disclosure order against the Police (B55-56).
- 11.01.17 HHJ Marston. JL directed to attend court on Monday 16 January 2017 to hear whether she wishes to intervene in the current proceedings. Order to be served by LA personally as soon as practicable and in any event by 12 noon Thursday 12 January 2017 (B57-8).
- 13.01.17 LA Schedule of Findings. Injuries caused by M, F or JL (A2-3).
- 19.01.17 HHJ Marston. LA to serve JL personally with an order requesting her to attend on 2 February 2017 to hear whether she wishes to intervene in the current proceedings (B65-6).
- 30.01.17 SW spoke with RL, JL’s daughter. RL said that JL was “not in a good way” and suffering from anxiety and depression (C130).
- 01.02.17 RL informed SW that JL did not feel able to attend court. Said her mum has “very bad days” and is “completely reliant” on RL (C131).
- 01.02.17 Application by Police for disclosure from proceedings (B67-76).

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- 10.02.17 JL personally served with order and documents 2.02.17. Recorded that she “was extremely distressed and in a highly emotional and hysterical state” (C161).
- 17.02.17 JL admitted to Priory Ward under s.2 MHA (Letter 20.02.17). [C161a]
- 27.02.17 HHJ Marston.
- 02.03.17 JL personally served “in the presence of mental health nurse” with order dated 27.02.17 (C173).
- 02.03.17 Email from RL, JL’s daughter, saying JL had recently been sectioned to Wotton Lawn under S.2 MHA “following a complete mental breakdown and is currently unfit to attend and support the case in court...please take her statements made to police at the time that her children were taken into care as her evidence to support the case against the first and second respondents.” (C152).
- 03.03.17 Day 1 of Fact-Finding Hearing. HHJ Marston.
- 13.03.17 HHJ Marston. JL attended and gave instructions to her solicitor and counsel representing her pro bono but then disappeared before the case called on. Case adjourned to 6.04.17.
- 07.04.17 JL admitted to Wotton Lawn Hospital after suffering a complete mental breakdown (C175 / C176).
- 02.05.17 Letter emailed by LA from Dr Talat, Consultant Psychiatrist, confirming JL inpatient at Wotton Lawn Hospital since 7.04.17. Sectioned been under s.2 MHA. Assessment and treatment plans are still being established and JL’s mental health is yet to be stabilised.
- 08.06.17 Date of Judgment of HHJ Marston
- 29.06.17 Position Statement by Counsel for LA seeking clarification of findings (A8-10).
- 03.07.17 M provided s.20 consent to children remaining in foster care pending agreement of reunification plan. LA to contact Offices of OS and arrange service of the Judgment on JL as soon as medical staff at Wotton Lawn confirm it is medically appropriate to do so.
- 10.07.17 Document filed by Solicitor for LA (19.37) questioning whether the Court had ever considered the issue of capacity under parts 12 and 15 FPR, PD12A and PD15B.
- 11.07.17 HHJ Marston. Permission to appeal refused.
- 17.07.17 Capacity assessment of JL obtained by LA from Dr Fear. Dr Fear’s view was that JL does have capacity but “ward staff report that her mental state fluctuates from day to day – this may affect capacity. She would benefit from a litigation friends and a reassessment if there are any doubts” (C234-7).

- 01.08.17 Capacity assessment of JL obtained by OS from Dr Karnath. Dr Karnath's view that JL lacks capacity and has a "significant fluctuating cognitive impairment that is still being investigated".
- 10.08.17 HHJ Marston. LA sought leave to withdraw care proceedings (A 18-20). M agreed to remain in the current placement with the children until 14.08.17.

All references below are in the 2017 bundle

- 23.11.17 LA issued further application under s.31 CA 1989 (B1-16).
- 24.11.17 HHJ Wildblood QC. Court made ICO (B50-50B).
- 08.12.17 HHJ Wildblood QC. Case to be listed before Baker J. Order for Police disclosure. Permission given to instruct Dr Robinson and Prof Kinsey. JL to file capacity assessment. LA to file evidence. Order for disclosure of medical records. Order providing for translation of documents (B70-77).
- 22.01.18 Further capacity assessment of JL, condition appears to be progressive (C148-151).
- 24.01.18 CM03. Baker J. Court declared that HL does not have capacity and is, therefore, a protected party. OS appointed as her litigation friend, subject to consent.
- 13.04.18 Hearing Roberts J time estimate 1 day. CMO number 5, Roberts J (B85-B90).
- 02.06.18 Claire Lidgett's (SW) PA of M. Conclusion that M is unable to meet the needs of the children. (C178-C198)
- 18.06.18 CMO number 6, Roberts J.
- 21.06.18 CMO number 7. Roberts J. (B90a-B90b)
- 25.06.18 Negative certificate as to capacity to conduct proceedings in respect of JL ("JL"). (C227-C230)
- 27.06.18 Roberts J Judgment stating there should be a re-hearing of the allegations of non-accidental injury in 2016.
Order that any Article 15 argument to be raised no later than 14.9.18.
List final hearing before Williams J with a time estimate of 10 days on 26th – 30th November and 3rd – 7th December 2018. Issues for determination likely to be (1) the re-opening of the fact -finding enquiry and its scope in relation to events around 8.8.16 and (2) subject to any contrary views expressed by the trial judge, welfare disposal.
- 22.07.18 Report relating to the immigration status of the children by Phil Haywood of Counsel. (E56-E72)
- 07.08.18 Parenting assessment of F and his partner M MC filed.

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- 31.08.18 SW Claire Lidgett viability assessment not recommending further assessment of Ms Teresa Alexandra da Silva Belo or her partner José Maria Peixoto Valente. (C278a-C278f)
- 24.09.18 Psychiatric report of Dr Sanikop on JL.
- 08.10.18 Updated police disclosure in respect of M and JL provided. (J74-J86 2017) Final Care Plans for both children. (D18-D46 2) Recommendation that P is placed for adoption. Recommendation that B is placed with F Final SWET of Claire Lidgett. (C279-C309)
- 01.11.18 G's position statement, setting out need for careful consideration and assessment. (A289-A292)
Position statement on behalf of JL by the OS. "The court will be invited to consider the mother [''] s propensity to cause deliberate harm to the children in the light of the findings of Mrs Justice Roberts. (A293-A295.)
- 02.11.18 CMO number 9. Williams J
- 09.11.18 M's response to LA's schedule of allegations re 2016 injuries, accepting that B suffered non-accidental injuries but not accepting that they were inflicted by her and denying knowledge as to how they were, and denying that she failed to protect B. (A72-A74 2016 bundle)
- 12.11.18 ICACU response to order dated 2.11.18. (C323-C340)
- 28.11.18 Rehearing starts