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Neutral Citation Number: [2020] EWHC 1573 (Fam)

Case No: ZC19C00351

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/06/2020

Before :

MRS JUSTICE LIEVEN

Between :

A LOCAL AUTHORITY

Applicant

and

THE MOTHER

First Respondent

and

THE FATHER

Second Respondent

and

SX

(By his Children's Guardian)

Third Respondent

Mr Nick Goodwin QC and Ms Gayle Bisbey (instructed by A Local Authority) for the Applicant

Ms Sam King QC and Mr Julian Hayes (instructed by Berris Law) for the First Respondent

Mr John Tughan QC and Mr Greg Davies (instructed by HarrisTemperley LLP) for the Second Respondent

Mr Alex Verdán QC and Ms Sally Bradley (instructed by **Eskinazi & Co**) for the **Third Respondent**

Hearing dates: **15 April – 15 May 2020**

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 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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MRS JUSTICE LIEVEN

Mrs Justice Lieven :

1. This judgment concerns a fact finding hearing in care proceedings relating to SX, a four year old boy who is presently in foster care under an Interim Care Order. Proceedings were issued following the unexplained death of SX's younger sister, AX, in April 2019 aged two months. At post mortem it was discovered that AX had suffered multiple unexplained fractures.
2. The Local Authority were represented by Mr Goodwin QC and Ms Bisbey; the Mother by Ms King QC and Mr Hayes; the Father by Mr Tughan QC and Mr Davies; and the Guardian by Mr Verdun QC and Ms Bradley. The fact finding hearing lasted in total for 19 days, although for many of those days the evidence did not take up the whole day.
3. The hearing was held remotely using the Zoom platform. I have issued a judgment setting out my reasons for proceeding with hearing the lay evidence remotely, see *A Local Authority v Mother and Father and SX* [2020] EWHC 1086 (Fam).
4. All the witnesses gave their evidence remotely through computers from wherever they were staying in lockdown. When it came to the Father giving evidence there were significant difficulties with his attendance during parts of the hearing. I will not set out the detail but on the morning of the second day of his evidence he said that his Wi-Fi was not working and that significantly delayed the morning session. In the afternoon he said that he had a flood in his kitchen and could not attend the hearing, although he ultimately did do so. Whatever the truth of these events, I took the decision that to ensure that the hearing could be completed he should complete his evidence from counsel's chambers. I ordered him to attend those chambers on the third day of his evidence and he completed his evidence on 13 May from a computer in chambers. Similarly, Ms King had a problem with her Wi-Fi whilst cross examining the Father. She agreed to travel into chambers, which happily was only 30 minutes away, so that she had a secure connection. I record these events in order to highlight that conducting a hearing such as this does require some flexibility and perhaps creativity, but on this particular case problems were capable of being overcome.
5. Overall, I am confident that the hearing was undertaken fairly, all the witnesses had the opportunity to give their best evidence, and the hearing was not materially impeded by being undertaken remotely rather than in a courtroom. Some of the evidence was extremely upsetting and there were times when the Mother, Father and the paternal grandmother obviously found the process distressing, but in my judgement this reality was not worsened by the evidence being given remotely. I set out below my judgement as to the truth of the evidence that I heard. I do not consider that my ability to judge the truth or otherwise of the evidence was materially hampered by the remote nature of the hearing. Although watching a witness via computer is different from doing so in court there are advantages as well as disadvantages. The witness appeared much closer and facial expressions were easier to pick up. The interaction between the cross examiner and the witness was surprisingly similar to that in court and, in my view, cross examination was as effective as would have been the case in court. I am also confident that each witness was on their own when giving evidence and was not seeking external advice.

6. I also record that all the advocates and, I was assured, the parties were entirely content with the process and felt that a fair hearing had been achieved. At the end of the hearing there was a clear consensus that the decision to proceed with the hearing had been the correct one. I want to emphasise this because I am conscious of the danger that the professional parties view a remote hearing to have gone well whereas the lay parties may sometimes feel less content. It took considerable effort to ensure that this was not the case here. There was no suggestion from any of the lay parties, or witnesses, that they did not feel satisfied with the process. I must also record my thanks to Mr Tughan who organised the technology in a most efficient and seamless way. In my view the process of having counsel manage the technology was an excellent solution. I had no concerns it was not being done entirely fairly to all parties and it meant that there was no burden on HMCTS or my clerk.
7. However, I must emphasise that my decision to go ahead with the lay evidence remotely and my comments about the efficacy of the hearing are entirely case specific. This was a case where all the parties were very well represented; the technology worked well; there were no interpreters or intermediaries and none of the witnesses were, in any legal sense, vulnerable. As the Court of Appeal said in *Re A*, decisions about whether to proceed with each case remotely have to be made in a highly case-specific manner.
8. The LA did not seek findings in respect of the cause of AX's death. By the time of the fact finding hearing it was almost a year since AX's death and SX had been in foster care throughout that time. There had been very considerable delays in obtaining the medical evidence. The lead pathologist, Dr Fitzpatrick-Swallow's final report stated that the cause of death could not be identified. The LA took the view that rather than delay the hearing in order to appoint further experts to give a further opinion on cause of death, they would ask the Court to simply proceed on the basis of the established injuries. Given the scale of those injuries I acceded to that course. Therefore, the cause of AX's death remains unidentified.
9. The LA did seek findings in respect of AX's head injuries; rib fractures; limb fractures and bruising to the chest. The findings sought were that one or both of the parents had inflicted these injuries; alternatively, that I should place both parents in the pool of perpetrators; that both parents would have known they had been inflicted and neither parent had sought medical attention. The LA also sought incidental findings relating to abusive treatment of SX; domestic abuse by the Father against the Mother and his previous partner, Ms Z; and domestic abuse by Mother against Father.

The factual background

10. I had written statements from all the witnesses referred to below and heard oral evidence from six medical witnesses and seven lay witnesses. The police had seized the parents' phones when they were arrested and the phones they subsequently purchased. The police had carried out covert surveillance on the parents. From these sources there were transcripts in the bundle of numerous WhatsApp and text messages, voicemails and transcripts of overheard conversations. I will refer to these where relevant below. The parties agreed which parts of this material were relevant and had reduced it to manageable dimensions from many thousands of pages. I am extremely grateful to them for doing this exercise. I am very conscious that what I have are the edited "highlights" and that there is a danger of this giving an

exaggerated or false view of the parents' relationship because it misses out the doubtless numerous more mundane exchanges. The material is however of the utmost importance in revealing a number of episodes and exchanges which the parents did not refer to in their statements.

11. The Father is now 25 years old. He had a somewhat troubled childhood with some reference to having been involved in at least one fight with a knife. However, I view this as being of little relevance to the matters I need to consider. The relevant history commences when he met Ms Z in 2012 and commenced a relationship with her when she was 15. They had a baby (Y) in 2014. They separated in 2015 and Ms Z alleges that the Father threatened her with violence on occasion and was highly manipulative of her.
12. The Mother and Father had had a relationship when the Mother was 15 and the Father 18. They are now aged 22 and 25 respectively. They separated after a few months when the Father discovered Ms Z was pregnant. The Mother and Father met again and commenced a relationship in 2015. On 30 May 2015 the Father was cautioned for criminal damage for punching his fist through his mother's door.
13. In October 2015 the Father applied to join the Army Reserves and was in the Reserves, at least for a time.
14. In March 2016 SX was born. In February 2018 SX was taken to the local A&E with a reported febrile convulsion. Doctors raised concern about a bruise to his left arm that resembled a bite mark and a chipped front tooth. Safeguarding enquiries were undertaken and SX was discharged home.
15. The parents moved with SX to a two bedroom flat. I have seen a plan of the flat and photographs. It is approximately 50m² in total with a living/kitchen area, a short corridor to the parents' bedroom and SX's bedroom on the left. The parents said that the doors between the rooms were fire doors. However, I note that the Father said that when SX was in his room with the door closed it was possible to hear the TV in the living room.
16. In December 2018 when the Mother was pregnant with AX the Father called 111 and claimed the Mother had threatened to hurt herself and had gone missing. There is a text on the same day in which the Father says the Mother had "*busted his lip*" and "*acted like a madwoman*". From this date onwards there are a number of texts in which the parents abuse each other. I will not set these all out but I summarise my perception of the relationship below and refer to specific texts and other messages as relevant.
17. On 25 February 2019 AX was born in hospital. The hospital records show it was a normal vaginal birth with no complications. On 26 February a midwife undertook a new-born examination of AX with the baby completely undressed. The record states that there was visualisation and palpation of the clavicles and limbs and all was normal.
18. On 10 March the Father phoned 111 to say that he had again been suffering from PTSD and had not been sleeping. He is recorded as saying; "*When he had been living with his mother he was 'really bad, honestly, like I was, but also aggressive, erm you*

know like punching doors off hinges. I would get into fights near enough every other week””.

19. On 11 March a health visitor visited the family home and conducted a new birth visit. The baby was asleep and was left undisturbed but is recorded as looking “*clean, well and thriving*” and both parents were observed to show affection when talking about and holding her. The Father mentioned his PTSD to the health visitor. On 12 March a midwife saw AX and noted that she was breastfed and was moderately jaundiced.
20. On 15 March the Father phoned 111 saying that he was unwell and had not had much sleep for 3 days. An ambulance was sent.
21. On 16 March another health visitor saw AX and Mother at the Health Centre for her BCG vaccination. No parental concern was reported about AX’s health or behaviour and none was observed. This was the first date when the texts record the Father complaining about SX having pooped in his room and the Father having to clean it up.
22. On 17 March the Mother phoned 111 and referred to the Father being unwell. Again, an ambulance was sent. On 19 March there is a very emotional text from the Father to the Mother complaining about the way she treated him and suggesting that she belittled him and made him beg for sex.
23. On 24 March a midwife saw AX and recorded she had mild jaundice.
24. On 29 March there is a WhatsApp message from Mother to Father after SX had pooped in his room saying; “*I slapped him 3 times cos he deserved it and he went wee on the floor and in the long John’s I just put on. I’ve had enough now!... He’s not playing with any toys or eating any snacks. He will have water until dinner and that’s it*”. The Mother also said “*Don’t fucking talk to me either*”. The following day the Mother sent a text which said, inter alia, “*... continue and you’ll end up living by yourself. Prick*”.
25. On 1 April the Mother called 111 to report that AX had woken up crying and coughing blood. The Father was also on the call. A GP rang back and advised they take the baby to A&E. The Mother asserts that the Father did not relay this advice to her. I have heard a recording of these three phone calls. On the first call AX can be clearly heard in the background and she is crying in a distressed manner.
26. On 2 April the Mother phoned the Hospital to cancel AX’s jaundice appointment.
27. On 4 April the Father texted the Mother “*I am just letting you know that I slapped his bum three times really hard and I am not even being funny it was really hard. He decided to go poo again and actually like put poo in, like empty out his drawers this is getting too much now, its taking the piss. So I put him in bed and I don’t care. ...*” The Mother’s response was to say “*please don’t tell me he poo’d again. If so don’t get vex like last time. Well try not to xxx*”. The Mother then texted about buying a lock, I think so that SX couldn’t go into his bedroom. And said “*obviously I don’t blame you for slapping him, but I hope it wasn’t too hard and I hope it wont leave any marks or anything. But yeah I’ll speak to you soon, love you bye*”.

28. On 9 April AX had her 6 week GP appointment with the doctor. She was weighed and the doctor said that her weight required close monitoring (she had gone from 3.6kg at birth to 4kg). The GP found her hips to be normal and that she “*handled well*”. The GP also conducted a post-natal assessment of Mother who said she was content, not anxious, not tearful and had a supportive partner. The “*first two weeks were tough but now feels like settling into routine*”. Mother and baby interaction was appropriate and nothing untoward was noted.
29. On 16 April the health visitor visited again for a planned check. She recorded that AX looked well and was appropriately dressed. She observed warm interaction with both parents. The Mother mentioned that AX “*tantrum cried*” when she was in Father’s arms but not her arms.
30. On 22 April the Father took SX to Burger King and there was an incident when SX knocked over a drink onto his food. The Father texted the mother recounting what had happened and said “*You know when you want to go ham, but one you are in a public place and two even when you get home there is not point so I was like its fine just be careful.*” I understand that “ham” in this context means “hard as a mother fucker”; though both parents denied knowing the precise words, both clearly did understand it meant having an extreme reaction to something. Later the same day there are texts from the Mother to Ms B, her sister, talking about buying baby paracetamol, the Mother did not remember why AX may have needed paracetamol and suggested it must have been for her immunisations a few days later. This seems very unlikely given that the context of the conversation was that it was needed quite urgently.
31. On 24 April there is a text from the Father to Mother as follows;

“...trying to give her her bottle but she’s not having it I’ve changed her pooey bum she’s been up 5 or 10 minutes um obviously I am going to persist with the bottle anyway you know what I mean so today I’m going to persist with the bottle or (inaudible due to distressed baby) and then just like if she ain’t going to take it then we just keep putting her back in the cot in her room and letting her cry it out so then eventually she’ll get so hungry to the point where she’ll just take the bottle and that seems like (baby makes high pitched cry) the most reasonable thing to do even though it sounds harsh it will get her on the bottle again”.

There is then a WhatsApp from the Father to the Mother at 15.25;

“Good news. She took some of the bottle so she’s getting the message that she can’t have the boob and she can cry all she wants but she’ll just keep getting put in the cot. It’s frustrating and hard but if we stay consistent (Except at night so we can sleep.) Then she’ll understand boob is only at night. Xxx”

32. On 25 April AX had her first immunisations at the GP. The doctor recorded that the baby “*appears happy and well looked after- Mother reports no concerns with baby.*”
33. On 26 April at 07.59 and 08.00 there are three Google searches on the Mother’s phone for baby first aid course, baby first aid NCT, and NCT. Both parents deny

making these searches. The Mother called 999 at 09.37, the paramedics arrived and AX was declared dead at 10.16.

34. On 29 April the parents went to the GP surgery and asserted that her death was caused by the vaccinations and that they believed there would be an official cover-up.
35. On 30 April there were texts to the Father on a sex website (Viva Street) from an unknown male.
36. The death was not initially considered suspicious. But on 1 May a multi-agency meeting was held and the following day a skeletal bone survey was undertaken. This identified a number of rib and long bone fractures which were highly suggestive of non-accidental injuries.
37. On 3 May 2019 the parents were arrested on suspicion of Grievous Bodily Harm and SX was taken into police protection and placed in foster care. On the same day there were texts from the Father on Viva Street suggesting that he was bisexual and was looking for homosexual sex.
38. The Mother's first police interview was on 4 May. On 9 May the Mother requested a series of further tests to be carried out. On 10 May a special post mortem was carried out by Dr Fitzpatrick-Swallow (consultant forensic pathologist) and Dr Marnerides (consultant paediatric pathologist). They found a number of fractures, bruising and head trauma. They found no evidence of any underlying metabolic condition or any structural abnormalities. There was no evidence of any predisposing condition that would explain AX's injuries. In the light of those injuries, and the strong possibility that they were inflicted injuries, specimens were sent to various specialists.
39. On 22 May SX said at nursery, "*Daddy brake my tooth*" and "*Daddy hit my teeth*". On 3 June SX said "*Daddy shout at my Mummy...He said shut the door, Shut the door harder, Daddy screaming, Daddy screaming at mummy*".
40. On 13 June there is a line of texts where Ms B had suggested that she had seen the Father picking AX up in an inappropriate way and the Mother then defended the Father saying that she had talked to him and he had said it had not happened like that.
41. On 18 June there are texts between the parents about the possibility that the house was bugged. It is clear from this that the parents thought it was possible that the police were using covert surveillance.
42. On 15 July there was an anonymous complaint to the police purporting to be from the parents' neighbour alleging that the Mother had been shouting at the Father. A police car was sent but when it arrived the parents were calm. The Father now admits making this call. On 16 July a phone call was made to the police by someone claiming to be the paternal grandmother saying the Father was a victim of domestic abuse by the Mother. I have no doubt this call was made by the Father. On 19 July there was an online complaint allegedly made by the paternal grandmother saying the Mother had something to do with AX's death. The paternal grandmother told the police it was not her who made this complaint. Again, I am sure this was the Father.

43. These events in July 2019 need to be seen in the context of texts which suggest that the parents' relationship was deteriorating again and the Father was becoming increasingly needy and the Mother increasingly dismissive. Some of these texts might suggest that the Father was hinting at them knowing what had happened to AX, but none are clear enough for me to attach any weight to them.
44. On 11 September both parents were again interviewed by the police. The Mother gave a no comment interview with a blanket denial. The Father's interview was partially no comment and he denied injuring AX.
45. There was no skull fracture but there were sub-scalp bruises identified at the post mortem to the forehead and occipital scalp. The lesion to the forehead was subsequently considered to be artefactual rather than a bruise. The brain, dura and spinal cord were sent to Professor Al-Sarraj. He identified a healed subdural haemorrhage in the infratentorial part of the dura. He also found multi-focal axonal injury to the brain. I will refer to the detail of his findings under his evidence.
46. A post mortem dissection and histological analysis of the eyes was undertaken by Dr Jo McPartland (consultant ophthalmic pathologist). There were no acute retinal haemorrhages or optic nerve sheath haemorrhages. She did find older multi-focal haemorrhages in the retina, the orbital fat and the extraocular muscles, evidenced by the presence of haemosiderin. On 27 November Dr Oates (consultant radiologist) reported. On 9 December both parents gave no comment interviews. On 12 December the Father now accepts that he forged a letter from Woolwich Magistrates Court. This letter purported to cast doubt on the veracity of the police audio recording of the Father's malicious 111 call on 15 July 2019 by asserting it had been manufactured by the police.
47. On 21 December the surveillance material shows the Father telling someone that the Mother had AX on her knee and had got frustrated with her and shaken her and AX's head had hit the back of the Mother's knee. The difficulty with this and other surveillance material from the Father is that he lies so frequently that it is not possible to tell whether he is recounting a real incident; whether it was actually him rather than the Mother who shook the baby; or whether he has made the incident up. Ultimately, I have concluded that I can put little weight on this material as there are simply too many doubts raised about it. It does give some indication that an incident such as this did happen, but more than that it is not possible to say.
48. Specimens of the skeleton and spine were sent for histological analysis by Professor Mangham. On 30 December 2019 he reported that he had found 41 rib fractures and 24 limb fractures inflicted on at least seven separate occasions. I will refer to the detail of his findings under his evidence.
49. On 19 December 2019 Ms King on behalf of the Mother filed a position statement setting out a series of allegations against the Father including that he had been guilty of extensive domestic violence towards her.
50. The hearing began on 21 April 2020 and the medical evidence was completed on 27 April 2020. On 5 May 2020 Mr Tughan on behalf of the Father filed a position statement in which the Father conceded that he had lied on three points.

General principles of law

51. The basic principles employed in fact-finding hearings were articulated by Baker J (as he then was) in A Local Authority v (1) A Mother (2) A Father (3) L & M (Children, by their Children's Guardian) [2013] EWHC 1569 (Fam):

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

46. Secondly, the standard of proof is the balance of probabilities.

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

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

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

50. Sixth, 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.

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

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

53. *Ninth, as observed by Dame Elizabeth Butler-Sloss P in an earlier case “The judge in care proceedings must never forget that today's medical certainty may be discarded by the next generation of experts or that scientific research would throw a light into corners that are at present dark.”*

54. *This principle, inter alia, was drawn from the decision of the Court of Appeal in the criminal case of R v Cannings [2004] EWCA 1 Crim. In that case a mother had been convicted of the murder of her two children who had simply stopped breathing. The mother's two other children had experienced apparent life-threatening events taking a similar form. The Court of Appeal Criminal Division quashed the convictions. There was no evidence other than repeated incidents of breathing having ceased. There was serious disagreement between experts as to the cause of death. There was fresh evidence as to hereditary factors pointing to a possible genetic cause. In those circumstances, the Court of Appeal held that it could not be said that a natural cause could be excluded as a reasonable possible explanation. In the course of his judgment, Judge LJ (as he then was) observed: “What may be unexplained today may be perfectly well understood tomorrow. Until then, any tendency to dogmatise should be met with an answering challenge.”*”

52. I do not need to refer to other caselaw on the general principles because it is so clearly and comprehensively summarised by Baker J. Ms King referred me to caselaw on uncertain aetiology, but as the parents accept that these injuries (or the vast majority of them) were inflicted I do not see the need to burden this judgment with more caselaw on the point.

Identifying a perpetrator

53. On the identification of a perpetrator in a non-accidental injury case the court's first task is to consider whether a perpetrator or perpetrators can be identified to the civil standard. If this is not possible, the court moves to consider whether a ‘pool’ of perpetrators may be identified. When considering whether to include an individual in a pool of possible perpetrators, there must be a likelihood or real possibility that such an individual caused an injury – see *North Yorkshire County Council v SA* [2003] EWCA Civ 839, [2003] 2 FLR 849. Butler-Sloss P. stated:

“26. In these difficult and worrying cases where the court has, as Lord Nicholls has said, to recognise and have regard to the differing interests of the adults and the child, Parliament has provided a two limb threshold which requires to be satisfied before the court has the right to consider the welfare of the child. The first is met in this appeal since the child was injured and suffered significant harm. In relation to the second limb, the attributable condition, it seems to me that the two most likely outcomes in 'uncertain perpetrator' cases are as follows. The first is that there is sufficient evidence for the court positively to identify the perpetrator or perpetrators. Second, if there is not sufficient evidence to make such a finding, the court has to apply the test set out by Lord Nicholls as to whether there is a real possibility or likelihood that one or more of a number of people with access to the child might have caused

the injury to the child. For this purpose, real possibility and likelihood can be treated as the same test. As Lord Nicholls pointed out in re O and N (Minors); re B (Minors) (above) the views and indications that the judge at the first part of a split trial may be able to set out may be of great assistance at the later stage of assessment and the provision of the protection package for the injured child. I would therefore formulate the test set out by Lord Nicholls as, "Is there a likelihood or real possibility that A or B or C was the perpetrator or a perpetrator of the inflicted injuries?". There may perhaps also be the third possibility that there is no indicator to help the court decide from whom the risk to the child may come, in which eventuality it would be very difficult for the local authority and for the court to assess where the child might be at most risk."

54. More recently, in *Re B (Uncertain Perpetrator)* [2019] EWCA Civ 575, Peter Jackson LJ clarified that the court must consider whether there is sufficient evidence to place an individual in the pool not whether they should be removed from a pool consisting of individuals who merely had the opportunity to cause the injury:

"46. Drawing matters together, it can be seen that the concept of a pool of perpetrators seeks to strike a fair balance between the rights of the individual, including those of the child, and the importance of child protection. It is a means of satisfying the attributable threshold condition that only arises where the court is satisfied that there has been significant harm arising from (in shorthand) ill-treatment and where the only 'unknown' is which of a number of persons is responsible. So, to state the obvious, the concept of the pool does not arise at all in the normal run of cases where the relevant allegation can be proved to the civil standard against an individual or individuals in the normal way. Nor does it arise where only one person could possibly be responsible. In that event, the allegation is either proved or it is not. There is no room for a finding of fact on the basis of 'real possibility', still less on the basis of suspicion. There is no such thing as a pool of one.

47. It should also be emphasised that a decision to place a person within the pool of perpetrators is not a finding of fact in the conventional sense. As is made clear in Lancashire at [19], O and N at [27-28] and S-B at [43], the person is not a proven perpetrator but a possible perpetrator. That conclusion is then carried forward to the welfare stage, when the court will, as was said in S-B, "consider the strength of the possibility" that the person was involved as part of the overall circumstances of the case. At the same time it will, as Lord Nicholls put it in Lancashire, "keep firmly in mind that the parents have not been shown to be responsible for the child's injuries." In saying this, he recognised that a conclusion of this kind presents the court with a particularly difficult problem. Experience bears this out, particularly where a child has suffered very grave harm from someone within a pool of perpetrators.

48. The concept of the pool of perpetrators should therefore, as was said in Lancashire, encroach only to the minimum extent necessary upon the general principles underpinning s.31(2). Centrally, it does not alter the

*general rule on the burden of proof. Where there are a number of people who might have caused the harm, it is for the local authority to show that in relation to each of them there is a real possibility that they did. No one can be placed into the pool unless that has been shown. This is why it is always misleading to refer to 'exclusion from the pool': see *Re S-B* at [43]. Approaching matters in that way risks, as Baroness Hale said, reversing the burden of proof.*

*49. To guard against that risk, I would suggest that a change of language may be helpful. The court should first consider whether there is a 'list' of people who had the opportunity to cause the injury. It should then consider whether it can identify the actual perpetrator on the balance of probability and should seek, but not strain, to do so: *Re D (Children)* [2009] EWCA Civ 472 at [12]. Only if it cannot identify the perpetrator to the civil standard of proof should it go on to ask in respect of those on the list: "Is there a likelihood or real possibility that A or B or C was the perpetrator or a perpetrator of the inflicted injuries?" Only if there is should A or B or C be placed into the 'pool'".*

55. Although it is in the public interest for a perpetrator to be identified, the court should not strain to do so when the evidence does not enable such a finding to be made on the balance of probabilities *Re D (Care Proceedings: Preliminary Hearing)* [2009] EWCA Civ 472, [2009] 2 FLR 668 and *Re S-B (Children)* [2009] UKSC 17, [2010] 1 FLR 1161.
56. Ms King referred me to *Re LW Children* [2019] EWCA Civ 159 about the need to bear in mind that few parents are perfect and standards of parenting may vary significantly.

Lies

57. The second area of legal principle particularly relevant to this case relates to the court's treatment of lies, the starting point being per Lord Lane CJ in *R v. Lucas* [1981] 3 WLR 120 - if a court concludes that a witness has lied about a matter it does not follow that he has lied about everything. More recently McFarlane LJ (as he then was) set out the importance of the proper application of the Lucas direction in *Re H-C* [2016] EWCA Civ 136:

*"Within that list of factors, although the judge does not expressly prioritise them, the finding that Mr C lied about the quietness in his flat that night is given the greatest prominence in this section of the judge's analysis. A family court, in common with a criminal court, can rely upon a finding that a witness has lied as evidence in support of a primary positive allegation. The well-known authority is the case of *R v Lucas (R)* [1981] QB 720 in which the Court of Appeal Criminal Division, after stressing that people sometimes tell lies for reasons other than a belief that the lie is necessary to conceal guilt, held that four conditions must be satisfied before a defendant's lie could be seen as supporting the prosecution case as explained in the judgment of the court given by Lord Lane CJ:*

"To be capable of amounting to corroboration the lie told out of court must first of all be deliberate. Secondly it must relate to a material issue. Thirdly the motive for the lie must be a realisation of guilt and a fear of the truth. The jury should in appropriate cases be reminded that people sometimes lie, for example, in an attempt to bolster up a just cause, or out of shame or out of a wish to conceal disgraceful behaviour from their family. Fourthly the statement must be clearly shown to be a lie by evidence other than that of the accomplice who is to be corroborated, that is to say by admission or by evidence from an independent witness."

The decision in R v Lucas has been the subject of a number of further decisions of the Court of Appeal Criminal Division over the years, however the core conditions set out by Lord Lane remain authoritative. The approach in R v Lucas is not confined, as it was on the facts of Lucas itself, to a statement made out of court and can apply to a "lie" made in the course of the court proceedings and the approach is not limited solely to evidence concerning accomplices.

In the Family Court in an appropriate case a judge will not infrequently directly refer to the authority of R v Lucas in giving a judicial self-direction as to the approach to be taken to an apparent lie. Where the "lie" has a prominent or central relevance to the case such a self-direction is plainly sensible and good practice.

One highly important aspect of the Lucas decision, and indeed the approach to lies generally in the criminal jurisdiction, needs to be borne fully in mind by family judges. It is this: in the criminal jurisdiction the "lie" is never taken, of itself, as direct proof of guilt. As is plain from the passage quoted from Lord Lane's judgment in Lucas, where the relevant conditions are satisfied the lie is "capable of amounting to a corroboration". In recent times the point has been most clearly made in the Court of Appeal Criminal Division in the case of R v Middleton [2001] Crim.L.R. 251.

In my view there should be no distinction between the approach taken by the criminal court on the issue of lies to that adopted in the family court. Judges should therefore take care to ensure that they do not rely upon a conclusion that an individual has lied on a material issue as direct proof of guilt."

58. In a recent decision of mine, *The Local Authority v Mother & Ors* [2020] EWHC 1216 (Fam), I considered at some length the decision in *Gestmin v Credit Suisse UK* [2013] EWHC 3560 (Comm) and the dicta of Leggatt J on the problems of the human memory and oral evidence. Mr Tughan referred me to *Gestmin* in relation to submissions that I should not have challenged his client on his apparent failure to remember a number of key events and the inconsistencies in his account. I deal with the Father's lies below.

Medical evidence

59. All the medical evidence was heard remotely through the Zoom platform. All parties agreed to this and the giving and questioning of evidence proceeded with no particular difficulty. All the medical witnesses were appropriately qualified for the evidence they gave. Each gave clear and careful evidence and I give the maximum weight to each of their pieces of evidence.

Professor Mangham

60. Professor Mangham is a consultant pathologist employed at Manchester Royal Infirmary and a professor at Manchester University. He has been a consultant pathologist for 24 years. He is experienced in the histopathological assessment of bone diseases and fractures. He receives over 90 bone specimens per annum from the police, of which about 40% are paediatric, predominantly infants.
61. He produced a detailed table recording each of the fractures, its precise characteristics and an estimate of the likely period prior to death on which it occurred. He explained the methodology by which the fractures are dated by using histopathological assessment of the bone tissue. In lay terms, this is the degree to which the healing process of the bone has taken place. It was clear from his evidence that this assessment cannot give a precise date or time and he was careful to give “windows” in which the various fractures will have been caused.
62. There were 41 rib fractures including re-fractures, there were partial and complete rib fractures and none of the rib fractures were displaced.
63. There were 24 fractures of the long bones. 19 were classic metaphyseal lesions (CMLs). These fractures were present in all four limbs. Professor Mangham said, and this is very well known, that CMLs are a type of fracture caused by the application of a traction force, often with a twisting element. This fracture is very strongly correlated with non-accidental injury. He said that the bony fractures which were not CMLs were caused by a direct blow, a bending force or a very severe traction force.
64. On the right distal femur there is an interrupted CML which is a complete fracture. There was some debate between Professor Mangham and Ms King about whether this was a wholly displaced fracture, but ultimately the level of pain likely to have been caused, which was Ms King’s question, was dealt with by Dr Cartlidge. This occurred between 4 and 12 hours before death. This is the fracture which has the narrowest time window because it was the most proximate to death. As such, it is the one where it was the most possible to pin down the parents’ movements, and I will return to it below. Professor Mangham said he could tell that it had occurred before death because there was extensive haemorrhaging. The fibres thicken quickly after a break and become visible under a microscope after 4 hours. The upper limit on the healing process on that fracture was 12 hours.
65. Professor Mangham’s assessment was that the fractures fell into at least seven different “windows” and that it followed from this that there had been at least seven different events when injury was caused, but there could have been far more events. Professor Mangham went through the indicators of ageing in each of the seven time windows and explained how it was possible to see the relative ageing process between the different fractures. There were a number of locations where there had been an original fracture and then a re-fracture.

66. It was his view that the rib fractures were caused by inflicted chest compression moving front to back with a probably side to side compression. The rib fractures could not have been caused by CPR on the day of death. He did not rule out shaking injuries but he said the lack of subdural haemorrhage and spinal haemorrhage was evidence against the injuries being caused by shaking.
67. Professor Mangham was clear that none of the bones showed any evidence of an underlying disease that would have made them more vulnerable to fracture. The appearance of the bones away from the fracture sites were normal. If there was a weakness in the bones there would be numerous microfractures with thinning of the bone and a cellular response. None of that was seen. He said that the various tests that the Mother had asked to be carried out would have made no difference to his conclusions.

Professor Al-Sarraj

68. Professor Al-Sarraj is a consultant neuropathologist and Clinical Director of Precision Medicine and Pathology at Kings College NHS Trust and a Professor in neuropathology at Kings College London. He is regularly consulted by Home Office pathologists and receives instructions both from the prosecution and defence in criminal trials. He told me he had carried out neuropathological examinations of well over 100 paediatric cases.
69. He was asked by the MPS to examine the brain, dura and spinal cord for any evidence of recent or traumatic brain or spinal cord injury. He was provided with a sample of the dura, and the spinal cord and brain. He told the court that the sample provided was a perfect sample for the examination he was to conduct.
70. Professor Al-Sarraj stated that this was not a brain which had been grossly traumatised but he identified two matters which indicated injury. Firstly, a thin, healed subdural haemorrhage in the infratentorial part of the dura with haemosiderin deposition. Secondly, multi-focal traumatic axonal injury detected by β APP staining process. It was his opinion that these injuries were the result of inflicted injuries whereas Mr Tughan on behalf of the Father advanced the proposition in cross examination that they could have been the result of the birth.
71. In respect of the subdural haemorrhage, the primary issue is the likely date of the injury. Professor Al-Sarraj explained the process which happens in the brain after the haemorrhage occurs by which macrophages come to the site of the injury and they are followed by haemosiderin, which leaves a pigment, and then the fibroblast cells. Over time more fibroblasts arrive and collagen builds up. The Professor was careful to state that the timings were not accurate and could only give an indication of how recently the injury had occurred. In his report he stated:
- “2. Recent intradural haemorrhage in the infratentorial part of dura but there is no evidence of recent subdural or extradural haemorrhage.”*
72. Mr Tughan cross examined Professor Al-Sarraj on whether the subdural haemorrhage could have been a birth related injury. The Professor accepted that there was evidence that vaginal birth could result in subdural haemorrhages, however he said that it was less likely that the subdural haemorrhage in the dura was from birth because if the

period had been two months he would have expected more collagen and greater hyalinisation. In a birth related injury there would be very small subdural haemorrhages which are quickly absorbed with a very small amount of pigment. What he saw in the dura was more consistent with post-birth trauma. He said that he could not absolutely exclude birth as the cause of the subdural haemorrhage but he thought it was less likely. He also pointed out that birth could not explain the axonal injuries.

73. In terms of the axonal injury Professor Al-Sarraj stressed that it was unusual to see axonal injuries in a young child. If they were present then that was a good indicator of trauma. If the axonal injury occurred in the lower part of the brain then it was significant and might well contribute to death. If in the higher part of the brain (as here) then it was more likely to give rise to a mild or moderate injury.
74. In AX's case the injury was multi-focal but not diffuse. There was a pattern of axonal injury which indicated trauma to the brain.
75. The existence and timing of the axonal injury was established by β APP staining. This showed occasional deposits of well-defined globules consistent with focal/multifocal traumatic axonal injury. The appearance of the deposits suggested that the axonal injury had taken place a few to several days before death. Professor Al-Sarraj said that if the injury had occurred within 24 hours then he would be able to easily establish that from the examination. In this case the injury was longer ago than that.
76. Professor Al-Sarraj was completely clear that axonal damage does not occur in a birth injury and there were no reports that it did so.
77. Professor Al-Sarraj also said that he found no vascular malformation, no evidence of disease process, no aneurysms and nothing structural to cause susceptibility to brain injury.
78. He referred to a bruise that had been noted at the midline of AX's forehead. He said this could be consistent with the injuries that he had observed but he said it would depend on the timing of the bruises.
79. In answer to Ms King, Professor Al-Sarraj was clear that none of the blood tests that the Mother had requested would have made any difference to his findings or conclusions.
80. Mr Verdan asked Professor Al-Sarraj about an incident that the Father had been heard to describe on the phone where AX's head allegedly hit the Mother's knee. The Professor said it was possible that an incident such as that could have caused the injuries he saw. He explained that for the axonal injury there would have had to be a good impact and that might be caused by the head hitting the knee.

Dr Oates

81. Dr Oates was instructed by the parties to carry out an independent review of the x-rays. He has been a consultant radiologist at Birmingham Children's Hospital since 2012. He has been a Fellow of the Royal College of Radiologists since 2009. He has a specialist interest in non-accidental injury and reports approximately 800 paediatric

imaging studies per year. He has produced a large number of expert reports to the Family Courts since 2017.

82. Dr Oates recorded the fractures as set out above and I will not repeat them. He produced the x-ray images and a skeleton body map which showed the location of the fractures. He said that in relation to the ageing and timing of the fractures he would defer to Professor Mangham as the histopathologist. He explained that the CML fractures were strongly indicative of inflicted injury on a young child.
83. Dr Oates found that the overall bone density and morphology was within the normal range and there was no radiological evidence of a pre-disposition to fracturing. One of the principal issues in relation to his evidence was the degree to which the fractures were displaced and thus would have led to swelling and more pain, and thus been more noticeable to a carer. He said that radiologically one of the long bone fractures was displaced, but he deferred to Dr Cartlidge on the issue of the pain AX was likely to have suffered.
84. He was asked about the likelihood of the rib fractures being birth related. He said that rib fractures in young children are very rare and it is inherently unlikely that rib fractures would be caused by natural birth as they are elastic and effectively designed for the birth process.

Dr Marnerides

85. Dr Marnerides is a consultant paediatric pathologist at St Thomas' Hospital. He produced a provisional report dated 23 January 2020 and a final report dated 15 February 2020. He conducted a joint double doctor post mortem with Dr Fitzpatrick-Swallow on 10 May 2019. He deferred in his evidence to Professor Al-Sarraj in respect of evidence relating to the head and spinal cord; to Dr McPartland in respect of evidence relating to the eyes; and to Professor Mangham in respect to evidence relating to the skeletal structure. Therefore, in practice his evidence was focused on the evidence of bruising that he found at the post mortem and the existence or otherwise of any evidence relating to cause of death.
86. The post mortem examination did not identify any morphological evidence of a specific natural disease process which would account for AX's death. There were no features to suggest an underlying abnormality or malformation. Nor was there any recent injury found to account for the death.
87. There was some evidence of bruising and I will deal with each in turn. There was an area of bruising noted on the right side of the chest. However, on histological examination this showed minimal fresh haemorrhage and no associated inflammatory result.
88. The bruising on the right external oblique muscle showed some haemorrhage but no associated inflammatory response.
89. The bruising noted on the midline of the upper forehead did not show any fresh haemorrhage. However, this finding was not confirmed on the histological examination. Dr Marnerides said that this could just be a red mark and it could be a post mortem artefact rather than a genuine bruise.

90. Dr Marnerides stressed that the ageing of bruises was a very difficult subject in pathology. There was nothing that correlated individual cases; the literature was on adults not children. He did say that the absence of reaction to the haemorrhage indicated that the injury had taken place within hours not days of the death.
91. He was cross examined on whether the chest bruises could have been caused by CPR. He said that it was very difficult to answer in isolation. He agreed that they could have been caused by CPR.

Dr Fitzpatrick-Swallow

92. Dr Fitzpatrick-Swallow is a consultant forensic pathologist with the Forensic Pathology Service and is on the Home Secretary's register of forensic pathologists. She acts on behalf of numerous pathologists in the SE of England. She said she undertook approximately 10 to 15 paediatric post mortems per year, for the last 3 years and most of those had been on babies.
93. She carried out the post mortem with Dr Marnerides and was then instructed as lead pathologist to review the reports of all the medical experts and draw an overview. The conclusions of the other reports are set out in her report and then commented upon. Her conclusions entirely accorded with that of the individual specialists. She deferred to the individual specialists, including Dr Cartlidge, on levels of pain. She said that there were occasions when she would override individual specialists because she was looking at the whole constellation of injuries, but in this case she did not disagree in any respect with those specialists.
94. She was asked extensively about the bruises found on the side of AX's chest. She said the siting of these bruises would not be consistent with CPR which involves compressing the front of the chest.
95. She also referred to the bruise on AX's forehead but noted that the histology did not confirm that as a bruise. There was also an occipital bruise which she thought was more likely to be a true bruise, but she said might not have had any significance.
96. She said that she could not ascertain the cause of death from the material before her. However, she said that the multiple fractures indicated assault upon AX. She said to Ms King that the tests which the Mother had asked to be carried out would have made no difference to her conclusions.

Dr McPartland

97. Dr McPartland is a consultant pathologist, with a specialism in ophthalmic pathology. Her evidence was not challenged and therefore she did not give oral evidence. In summary her report stated that she had found no acute retinal haemorrhages but identified, by the presence of haemosiderin, older retinal haemorrhages as well as bleeding in the orbital fat and extraocular muscles.

Dr Cartlidge

98. Dr Cartlidge was a paediatric consultant for 27 years until his retirement in 2017. He said that he had reported on approximately 1000 cases for court proceedings.
99. Very importantly Dr Cartlidge said that even in the context of his vast experience, AX had suffered a "*huge number of injuries*" in her very short life. He said that he had focused in recent years on the most serious cases, but these were exceptionally unusual and he could not remember seeing so many fractures. He was taken through each of the sets of injuries to seek to establish the level of pain that AX was likely to have suffered and the degree to which it would have been obvious to a carer that she had suffered trauma.
100. In respect of the rib fractures he said they would initially have been very painful, each typically for about 10 minutes. Thereafter the pain would have lessened but the discomfort would have made her more fractious than usual for at least a few days after the injury.
101. He said that it would have been obvious to someone who knew that trauma had occurred that the baby was distressed. However, babies have periods when they cry for a few days and if the other carer had no inkling that the baby had been injured s/he might not remember when it was.
102. He was asked about the degree to which babies exhibit different types of crying and said that in his view that could be overstated. However, he said that if a baby was in pain there would be sudden crying, whereas if it was tired or hungry the crying would come on more slowly. She would have cried when picked up but most people would have thought that she didn't want to be picked up. He agreed with Mr Goodwin that a two month old with this number of rib fractures would have been in almost constant discomfort.
103. In respect of the metaphyseal fractures, they would have been initially painful for about 5-10 minutes (less than the ribs) and the pain would then have lessened. However, the pain would have been exacerbated when the joint adjacent to the fracture moved.
104. The fractures on the distal shaft of the left radius and ulna would again have been painful for about 10 minutes but the pain would have been exacerbated when the wrist was moved. He said what might be noticed is the asymmetry, i.e. that AX was sensitive on the left wrist when being dressed but not the right wrist.
105. The fracture to the distal shaft of the right femur (the fracture Professor Mangham said was 4-12 hours before death) would have been much more painful if the end of the fracture could move. Dr Oates had said this fracture showed some angulation. Dr Cartlidge pointed out that there is a lot of movement in the knee of a small baby because every time she is dressed her knee moves considerably.
106. In terms of causation he said that the fractures to the ribs would be caused by compression of the chest, or perhaps a direct impact if it was the anterior aspect. A metaphyseal fracture is caused by yanking or twisting. A fracture to the shaft of the bone is caused by a twisting force.

107. It is of course impossible to test the force needed to break an infant's bones, but Dr Cartlidge said that they "*do not break without the application of an obviously excessive force*". The perpetrator would know that s/he had inflicted pain. Anyone present would have known that AX was injured.
108. He agreed with Mr Goodwin that it was difficult to imagine that a carer would have been unaware of AX being in pain and that the complete absence of parental report of a child who is crying at home jars with the level of injuries found. He did however accept from Ms King that different children will react differently to injuries and levels of pain and that, whereas most children cry a lot at first, the pain response after the initial injury was more variable. He also accepted that a parent could become acculturated to crying. I note at this point however that the Mother said more than once that AX did not cry a lot.
109. Importantly, he was taken by Mr Goodwin through a schedule of the seven windows of dates upon which Professor Mangham said the injuries had been inflicted together with the four dates that AX had been seen by health care professionals. It is difficult to reproduce this schedule within a judgment but having been taken through it by Mr Goodwin he accepted that, given those dates, although AX would have been exhibiting pain and discomfort "*he was not surprised a GP did not pick it up*". He said that in respect of the metaphyseal fractures they were much less likely to be found by a GP than a carer. He referred to the fact that there were so many metaphyseal fractures that it was more likely that a carer would notice. Although a child might be expected to cry when she was changed, dressed or bathed, the lack of symmetry in the child's response, because the fractures were not symmetrical, made it more likely a carer would notice. He also said that given the number of fractures and incidents, the carer would have had more opportunity to notice.
110. In respect of the subdural bleed, the axonal damage and the retinal haemorrhage, it was not possible to be definite but it was possible that each of these injuries was sustained in a single act by the baby being shaken.
111. He said that in his opinion all the fractures were inflicted and there was no other plausible explanations and no further tests were needed.

Lay evidence other than the parents

Ms Z

112. Ms Z had a relationship with the Father from 2012, when she was 15 years old, to 2015. They had a daughter, Y, who was born on 28 February 2014. I note that the Father now does not accept that Y is his daughter and has no contact with her. Ms Z was interviewed by the police on 16 July 2019 and made a statement. She said she had not had contact with the Father since they broke up save that he had in the last few weeks tried to contact her via WhatsApp. The Father has no contact with Y but his mother (the paternal grandmother) does make a small financial contribution towards Y and does see her fairly regularly.
113. She said that during her relationship with the Father she had seen him getting angry on a fairly regular basis every few weeks. This would involve him punching walls and doors. She said that his anger would be triggered by their having arguments.

114. She gave evidence of two specific incidents. The first was when she wanted to collect her belongings from her family home when she was moving to live with the Father and the paternal grandmother and she was pregnant. It was clear from the evidence that Ms Z's family were very unhappy about the relationship and had been hostile to the Father. The Father called the police and insisted that they accompanied Ms Z to collect her belongings even though she says that she did not understand why this was necessary. Ms Z says that she called the Father at work and he became very upset and angry and threatened to rip the baby out of her if she did not do what he wished.
115. Ms Z said that she was scared and didn't know what to do. She said she was very young, pregnant and her family were not happy about her pregnancy. She accepted in cross examination that the Father thought that Ms Z's mother had threatened him.
116. The second incident was when they split up. Y was nearly one, and Ms Z says that the Father had been going out and would "*just disappear for days*". She was "*nagging*" him about this behaviour and why he didn't have a job. He became very angry and came out of the kitchen into the living room with a knife which he was pointing at her and Y. Ms Z said she was very scared and after a short time he became very apologetic. Ms Z says she went upstairs, collected her belongings and left to move to her father's house.
117. The police surveillance material records the Father saying that he hit Ms Z once, punching her in the face. Ms Z says that she has no recollection of any such incident.
118. There is material which shows the Father denying that he is Y's father and suggesting that Ms Z was seeing another man when she got pregnant. Ms Z completely denies that this is true and says there is no question that Y is his child.
119. Ms Z said in answer to questions from Ms King that the Father had not wanted her to see her friends without him. After Y was born he did not want her to see her family.
120. Ms Z was clear that the Father was never physically violent to her and there is no suggestion that he was ever violent to Y.

The paternal grandmother

121. The paternal grandmother is the Father's mother. Sadly, she never saw AX because she and the Father had fallen out in the months before AX's birth and it is clear from the texts that he would not let her see the baby. She was deeply loyal to the Father in her evidence and said she believed that he had not harmed AX because he would never do such a thing. Subject to this loyalty, I thought she was an honest witness who was trying to do her best in an incredibly difficult situation.
122. She accepted that the Father frequently lied although she said this was largely to boost his self esteem.

Ms B

123. Ms B is the Mother's sister and having fallen out in the past they were close during the period of the Mother's pregnancy and during AX's life. She had seen AX on a number of occasions and she stressed that after the birth she and the Mother were

close. She said that she had seen nothing untoward with the baby. She had referred to one occasion when she said the Father had roughly handled AX, but on description this incident could not have caused any of the injuries. She said that she had been unaware of the Father's alleged domestic abuse until some months after AX's death when the Mother told her.

124. Ultimately, I did not find her evidence particularly helpful. She saw AX for relatively short periods and the fact that she says she never saw AX distressed tells me little about AX's general presentation or what the parents would have been aware of. The fact that she had apparently never realised that the Mother had suffered from domestic abuse in her relationship with the Father until the Mother told her in 2019 indicates that the Mother was very capable of hiding things from Ms B when she wished to do so, for whatever reason.

The maternal grandfather and Ms C

125. The Mother's father, the maternal grandfather, saw AX on two or three occasions and again said he saw nothing untoward. Again, I did not find his evidence helpful on any of the central points in the case. I also heard evidence from Ms C, another of the Mother's sisters. She had not met AX and claimed not to have known about the alleged domestic violence by the Father. I did not find her evidence of any assistance on the central points in the case.

The Parents' evidence

The Mother

126. The Mother has given three statements in these proceedings and three police interviews. She gave evidence in court, via Zoom, over three days (being part of the first day, the whole of the second day, and 2 hours on the third day). There were no difficulties with the technology throughout the time she gave evidence, she appeared to follow the questions with no difficulty, and handled all the references to documents without any problems. We had breaks approximately every hour. I have no reason to believe that her ability to give evidence was in any way hampered by doing it remotely, nor was the ability to cross examine her. I also do not consider that my ability to judge her evidence was impeded at all by the fact I was watching her on a screen.
127. I say at the outset, and I will return to this, that the Mother's evidence was frequently evasive and often, in my view, deliberately unclear. She resisted being pinned down on specifics, such as the frequency of domestic violence; often claimed to have a poor memory when her memory was perfectly good on other occasions; and very frequently sought to minimise her behaviour through the use of language, such as over "*tapping*" SX rather than "*slapping him*".
128. The Mother in all her statements and oral evidence has consistently denied doing anything to hurt AX and has also denied having any knowledge of how she was injured. There have however been some very important changes in the Mother's evidence during the course of the police investigation and these proceedings. In her

statement in June 2019 and her interviews to the police, the Mother said nothing about domestic violence by the Father to her and nothing about problems in the relationship. In her police interview she said that the relationship was fine and in her June 2019 statement she referred to her and the Father having an “*amazing bond*” with SX.

129. In January 2020 the Mother’s evidence changed. She disclosed that the Father had been frequently violent to her during the relationship and that she suspected that he might have harmed AX. She also referred to incidents when she now believed he had lied and sought to mislead her. She still made no reference to her and the Father slapping SX, or to his behavioural problems, even though the LA’s threshold document contained findings in respect of SX.
130. In her oral evidence the Mother said that she had first met the Father when she was 15 years old and they had had a relationship for a few months. They broke up when the Father discovered Ms Z was pregnant. They started going out again in 2015 by which time the Mother was 17 years old, and she had SX when she was 18. She says that through this period up to when SX was approximately 20 months old the Father was frequently abusive to her, including being physically abusive. Her evidence on how often this happened varied, or at least was “clarified” between her statement and her oral evidence. In her statement she said that he had physically abused her “*on occasion*”. In her oral evidence she said that it was on a few occasions each week and suggested that it was often two or even three times per week. She said that Father would go from being angry to quickly snapping out of it. He would say to her that it was the effect of his PTSD.
131. She said the physical abuse had stopped when SX was about 20 months. Although she did not say this in so many words, the strong impression was that it stopped as she became a stronger personality and more assertive. She said, and this made sense to me, that when she started to go out with the Father and was pregnant with SX she was very young and found it very difficult to stand up for herself. She said that she had changed through the relationship and had become much better at standing up to the Father.
132. When she discovered she was pregnant with SX, she decided to leave home and move in with the Father and the paternal grandmother. When she went to collect her belongings from her father’s house, the Father insisted that she was accompanied by the police. There was some kind of altercation between the Father and her brother. Save that this was evidence of the Father seeking to control the Mother’s contact with her family, I do not think this incident is particularly relevant to the issues before me.
133. The Mother, the Father and SX moved into a one bedroom flat when SX was three months old. Through this period she says the Father was frequently abusive to her both verbally and physically.
134. She became pregnant with AX in August 2018. Although my impression was that the pregnancy was not planned, it appears that both she and the Father were happy with the pregnancy. By the time AX was born the parents were living in a two bedroom flat. I have seen a plan of the flat, there is a very short distance between the living room and the bedrooms. The Mother accepted in evidence that if she was in the bedroom even with both doors closed she could hear SX in the living room if he was

shouting for his toys. She accepted that she would have been able to hear AX crying very loudly, but she said AX never did cry very loudly.

135. The Mother's picture in her statements of her parenting of SX was that there were no problems. She made no reference to behavioural problems or her or the Father ever hitting SX. However, the WhatsApp messages revealed a materially different situation. It was clear that at around the same time that AX was born and thereafter, the parents were having major problems with SX's potty training. He was pooing on the floor, smearing his poo on radiators and on at least one occasion putting it in drawers in a cupboard.
136. The WhatsApp message of 29 March has the Mother saying to the Father, "*I slapped him three times*". In her oral evidence the Mother said that she only "*tapped*" him.
137. In relation to the WhatsApp message of 4 April from the Father when he said that he had slapped SX "*really hard*" three times. The Mother said she thought that the Father was exaggerating. She said that she did not approve of him slapping SX and had spoken to him about it when she got home. However, the WhatsApp message from her does not suggest that she tried to stop the Father hitting SX or expressed any strong response to what he had done. She merely said "*don't get vex like last time. Well try not to xxx*". Neither parent could explain what happened "*last time*".
138. These incidents seem to me to be important for three reasons. Firstly, they suggest problems with SX's behaviour and the parents' response to it which is not mentioned in any of the Mother's statements or interviews. It is perfectly obvious that the Father slapping SX "*really hard*" because he was angry and frustrated with him is highly relevant to what happened to AX. The Mother did ultimately accept this. There is therefore clear evidence that the Mother was not being honest even in her later two statements and has not given an honest picture of what was going on in the family. Secondly, it suggests that the Mother too either lost her temper with SX or thought that physical chastisement was appropriate. Thirdly, it suggested a very striking lack of empathy with SX. This was a three year old child in a household with parents who were frequently angrily abusive to each other, certainly within his hearing, and, given the smallness of the flat, almost certainly within his sight. It is hardly surprising he was upset and this was impacting on his potty training. Yet the Mother in her oral evidence appeared never to have thought of this possibility.
139. I need to stress that the behaviour SX was showing was not within the normal range of difficulties with potty training. It was strongly suggestive of a distressed and upset child.
140. In terms of the relationship between the parents, by the time AX was born the Mother accepted in cross examination that it was "*toxic*". I have seen a large number of texts between the parents in which they are highly abusive to each other. The Mother accepted that the Father was very needy and that he was "*insecure*". She says that throughout the relationship he was controlling in the sense that if she went out with friends or family he would want to come too. There appears to be a pattern, certainly before AX was born, of him seeking to isolate the Mother from her family. The texts suggest that by the time of AX's birth he was constantly seeking reassurance, affection and often to have sex. He also appears to have been jealous and suspicious of other men, including suggesting that the Mother was having other relationships. A

suspicion which she totally denies and which I am sure was untrue. There is a very obvious pattern of controlling and suspicious behaviour by the Father to the Mother, and before that to Ms Z. Overall, the evidence indicates a relationship that had been characterised by controlling and manipulative behaviour but which had deteriorated into an angry and deeply unhappy one by the time of AX's birth.

141. The Mother said that the Father was a good father and was good with both children. She says she never saw him being inappropriate with AX. However, she did say that he would go out and disappear for periods and this is certainly borne out by the texts that I have seen. Although she portrayed the Father in this positive light in her oral evidence, the texts again give a somewhat different picture with the Mother angry and frustrated that the Father had left her with the children and that she was struggling to cope with two young children.
142. AX was breastfed throughout her short life. From about 3-4 weeks the Mother said that they started to give her expressed milk in a bottle. The Mother said that she was the primary carer as she was breastfeeding, but it was usually the Father who gave her bottles. The Mother said AX would take the bottle although she preferred to breast feed. There is a WhatsApp message dated 24 April which indicates that the Father was struggling to persuade AX to take the bottle and this was causing considerable difficulties.
143. The Mother's evidence was that AX was a content baby who slept and fed well save for the time she saw the doctor on 9 April when she had a bit of a cold and a snuffle. The doctor had weighed AX and recorded that, having been born at 3.6kg on approximately the 60th centile, she was now 4kg in between 10th-25th centile. The doctor had recorded that the baby's weight needed to be carefully monitored. The Mother had said that she thought the failure to gain weight had been because of AX's cold.
144. She said that AX did not cry much and did not cry for more than 5 minutes at a time, she had never heard AX cry in pain save when she had constipation. I find this part of the evidence difficult to believe. There is the text message of 24 May where the Father talks about leaving AX to cry in her room if she would not take the bottle. There is also the evidence that on the one night that was considered in detail, the night before she died when her femur had been broken 4-12 hours before death, she was up every 2 hours. There is also the objective evidence of her failure to gain weight which might well be a response to more than a mild cold. I do not think the Mother was being frank in respect to AX's general behaviour and I do not think I was being told the truth by the Mother about AX's crying, or her sleeping.
145. On 1 April (AX was five weeks old) the Mother called 111 because AX had coughed up blood. She said that she had been in the bedroom and the Father had AX in the living room. He had called her through and showed her muslin where there was blood. She said that the blood was the size of a 2p piece and looked like blood. She had then called 111 but when the doctor called back the Father had taken the phone while she was holding the baby. She said that the Father had told her that the doctor said it was bile and there was no need to worry. She did not know the doctor had told the Father to take the baby to hospital to be checked. She had believed that the doctor had said that it was bile and there was no need to do any more.

146. The Mother said that she accepted that many of the injuries were non-accidental and that she now believed they had been caused by the Father. She consistently said that she had seen nothing wrong and from what she saw the Father was always “*gentle, kind, loving and careful*”. She said she had not seen the Father angry when he had been caring for AX. She did say that when he was massaging AX’s stomach (for constipation) he held her up in the air and AX “*didn’t seem to like it*”. She also told the health visitor that sometimes AX would cry when she was with the Father.
147. On 25 April she said that the Father had been disappointed about not getting a job. She said he was “*not in the best of moods*”. The text messages show that on the evening of 25 April they were arguing about the Father alleging that the Mother was seeing other men. She said that she and the Father had a “*few disagreements*” that evening. She said that AX woke up multiple times during the night. It was exceptionally difficult to get a clear narrative from either parent of what had happened that night. However, the Mother’s evidence seemed to be that she went to bed and it was the Father who looked after the baby during the night.
148. She denied Googling baby first aid at 8am on the morning of 26 April and said it must have been the Father who had access to her phone. She said she had gone back to sleep and the Father woke her saying the baby was unwell.
149. She was asked about the Father’s parenting of SX and, apart from saying that she sometimes disagreed with the tone he used, she said that “*she didn’t have anything to disagree [with him] on*”.
150. Despite saying that she now believed the Father had caused the injuries, she expressed no anger at the Father and said virtually nothing about being upset about AX’s injuries when she found out about them. She said that she didn’t hate him but she felt sorry for him, that she had just cut him out of her life and that she just didn’t think about him at all. She also said that she felt she was still in shock and still taking everything in. She said she did not blame the Father for AX’s death and she did not blame him for SX being in care.
151. The sequence of events after AX’s death was that on 3 May the parents had been told about the initial fractures that had been found. Through the course of May to December they were given further reports. Dr Oates’s report which set out the detail of the fractures was given to the parents in mid-November.
152. The Mother said that initially she thought the fractures might have been caused by the vaccination, or perhaps there was some underlying medical cause. It was only with Dr Oates’ report that she began to wonder whether the Father might have been responsible for the fractures.
153. The Mother and Father separated in December 2019 after the Mother’s police interview on 9 December. As I understand her evidence, she said that it was at that interview where she was played a tape of the Father obviously lying and seeking to place some possible blame on her and suggesting that she had hit him that she decided to tell the truth about the domestic violence. I note that even on 16 December the Mother sent the Father a text talking about “*co-parenting*” SX. In an interview with the Guardian on 17 December the Mother said that they had been raising AX fine and that it was a load of rubbish that AX had been harmed.

154. In respect to the Father's lies about his past, the Mother said that she had believed that he had been in the Army and in the Marines. Her explanation for not telling the police about the domestic violence was that she said she did not think she would be believed. She said she was "*in shock*" which is why she didn't tell the police about the problems in the relationship when AX died.

Assessment of the Mother's evidence

155. I found the Mother a difficult witness to judge. She was calm and very controlled when giving her evidence. She obviously found it a very difficult and emotional experience and dealt with that by exercising a high level of self-control even when pressed hard in cross examination. In cross examination she kept her answers extremely careful and rarely lapsed into any emotional response. It is important that I do not conclude that the Mother was not deeply upset by AX's injuries, her death and SX being in care because she controlled her emotions when giving her evidence. She was undoubtedly trying to block out much that had happened.
156. However, I did find some of her responses very strange. She said that she thought the Father had caused AX's injuries. She had listened to Dr Cartlidge's evidence and knew that there were 65 fractures and these were some of the most serious injuries he had ever seen on a baby of this age. Yet she expressed no anger towards the Father, no remorse, she denied (to Mr Verdan) feeling any sense of responsibility and said that she had done nothing wrong. When the issue of the Father slapping SX came up she sought to protect the Father by saying that she thought he had exaggerated. This was not as a result of still loving the Father (that much was obvious). It seemed to me the explanation was that she knew that if she said too much bad about the Father's conduct with the children, it would reflect on her conduct and indicate that she knew more than she was telling the court.
157. She also seemed to have no curiosity or interest in discovering what happened to AX. Although I am not asked to make any findings about AX's death, I find it very unusual that the mother of a two month old baby who died with serious head injuries and 65 fractures shows so little apparent interest in finding out what happened to her. This is not a moral judgement on the Mother, but rather an indication that she was not being honest. I think her lack of curiosity was an indication that she knew what had happened to AX.
158. I was also struck by the Mother's attitude to SX. This was a child living in the midst of a "toxic" relationship with a father who the Mother described as frequently angry and with a bad temper. SX was showing the most obvious signs of emotional distress. However, the Mother apparently made no link between that distress and the parents' behaviour and saw nothing wrong with the Father slapping him "really hard" because he spread poo. Either this was the most startling lack of empathy to a small child or it reflected the Mother's lack of care for the well-being of her children.
159. The text messages suggest a highly dysfunctional relationship with the parents being very rude and abusive to each other. The text messages show the Father being very emotionally needy, jealous and manipulative. The Mother comes across as being just as capable as the Father of being emotionally abusive and standing up for herself. She also seems completely fed up with the Father in many of the texts.

160. Overall, I agree with Mr Verdan; the Mother came across as oppositional, evasive and unhelpful in her evidence. She was constantly trying to avoid giving a straight answer to a straightforward question; and using language very deliberately to minimise her knowledge and her role. Ultimately, I could only conclude that she took this approach because she was not telling me the truth in respect of a number of key matters.

The Father

161. The Father gave evidence over 3 days with a number of breaks and delays for various reasons. He was extensively cross examined. He did not use the electronic bundle and all references were read to him. He appeared to follow the proceedings well and I do not think he was disadvantaged by the remote nature of the proceedings. Mr Tughan on his behalf urged me to continue with the hearing, and said that his client would prefer the hearing to be held remotely. Equally, Dr McEvedy, who had assessed the Father's capacity at the end of the medical evidence, said that it would assist the Father's mental health problems if the case was held remotely rather than in court.
162. The Father was adamant throughout his evidence that he had not harmed AX and had not caused any of the injuries. He did not say that he had ever seen the Mother harming AX, but he eventually accepted that if his case was that he had not harmed AX then the only logical conclusion was that she must have done so. He was extremely reluctant to expressly blame her for the injuries.
163. The Father commenced his oral evidence by making three concessions on matters which he accepted he had lied about. These concessions had been presaged at the start of the lay evidence once I had decided to continue with the hearing. The concessions were that he had lied about having been in the Army and having served abroad; that he had lied about having cancer in early 2019 and that he had lied about a letter from the hospital. These were the only lies that the Father formally conceded in writing through his counsel. However, through cross examination it became clear, if it was not so already from the rest of the evidence, that he had lied extensively about other matters. His account of many issues changed during his oral evidence and it became at times difficult to understand what he was saying in relation to key points. He accepted that he frequently lied, and his mother confirmed this. I should note at this stage that the fact he frequently changed his evidence, and did not seem to have any grasp on having promised to tell the truth, did not in my view result from the nature of the hearing. The Father is a man who lies compulsively and with no compunction. I have no doubt he would have done the same in any setting. The fact that he frequently lied to the court does not mean that none of his evidence was true, but it does make setting out a coherent account of his evidence very difficult. The Father repeatedly said that he had a bad memory and that much of what he had said in previous statements was wrong because he had been stressed. However, when it suited him he said that what he had said in previous statements must be true because it was nearer to the date of the key events. In my assessment he was a witness who did not wish to tell the court the truth and lied whenever he saw an advantage to himself in doing so.
164. The Father sought to explain much of his behaviour by saying that he had been abused as a child when aged eight or nine years old by a neighbour of his grandmother. He had told nobody about this as a child and had only told his Mother in 2019. He initially said that he had been abused by one person, then said it was the neighbour and a friend. He then, in cross examination, for the first time, said he had

also been abused by his father. When the paternal grandmother was asked whether the Father had ever told her that he had been abused by a previous partner of hers (as maintained by the Father on one of the surveillance transcripts) she was palpably surprised and said she had never heard that.

165. I am not asked to make findings about childhood abuse of the Father. However, I have to say that I am extremely sceptical. The Father's history of telling lies in order to excuse behaviour, the way the story has changed and become more exaggerated, and the fact that he has only said this once he needed a different excuse seems to point strongly against believing what he says on this.
166. More believably, the Father said that he suffered severely from lack of self esteem and that he often told lies to make himself more interesting and more "*manly*". This fitted in with the paternal grandmother's view of why he sometimes lied. However, I accept Ms King's submissions that his lies go much further than this and often involved shifting responsibility and trying to manipulate people.
167. The Father said that he lied as a result of mental health problems. He would feel down, panic and then start lying, including undertaking sustained deceptions.
168. The Father denied that he had been abusive to Ms Z although he did accept that he pushed her at times, but said that this was always in situations where she had started it. He said that on one occasion Ms Z had attacked him with a knife and he had defended himself. It was a feature of his evidence that whenever he conceded that he had been violent it was invariably the other person, whether Ms Z or the Mother, who had started it and that that he was only defending himself.
169. He denied having a short temper and being aggressive although he accepted that he got angry when he was younger.
170. He also denied the Mother's allegations of domestic violence against him. He said that there had been some "*pushing*" but that she had started it and that it was far less frequent than the Mother had alleged. He alleged that the Mother had been violent to him, including on one occasion attacking him with a knife. I note that in his police interview in September 2019 he had denied that the Mother had ever been violent to him.
171. His portrayal of the Mother was that she was cold and uncaring towards him and, at times, towards SX. He suggested that he had done much of the caring for the children. He agreed that by March 2019 he felt utterly rejected by the Mother and that is why he had signed up for dating and sex apps.
172. He accepted, and this is beyond doubt, that by the time AX was born the relationship between the parents was toxic. He accepted that there had been frequent very serious arguments with shouting and screaming at each other. He said that the Mother gave as good as she got and was frequently extremely unpleasant in a personal and demeaning way. This is all entirely borne out by the electronic messages.
173. He said that the parents shared childcare with him often looking after SX when he wasn't working. He said that he also looked after AX a good deal and it was mainly

him who tried to bottle feed AX. He did not suggest that the Mother had been abusive to the children but he did portray her as being uncaring with them.

174. He accepted that he had hit SX “*really hard*” three times on 22 April. He said that he very much regretted it and had immediately regretted it. After considerable pushing by Mr Verdan he accepted that SX’s problems with potty training and his behaviour was likely to have been caused by the appalling relationship between the parents at the time and the fact that he was overhearing frequent loud and aggressive arguments. He denied abusing SX and said that he would never have done that.
175. He described AX as being a baby who was both smiley but also who was grouchy and whingey. It was clear from his evidence that she consistently did not sleep well in the night and he said she was a “*night owl*”. This was in noted contrast to the Mother’s evidence which was that she was a good baby who didn’t cry much and generally slept well.
176. On the 111 call on 1 April 2019 he said AX had been asleep on his chest then she woke up and coughed up what he accepted looked like blood. He had called the Mother, who was in the other room, and she had called 111. He said that when the doctor rang back he had found it difficult to hear the conversation and that when he did not hear something he was inclined to just agree. I remained more than a little confused as to whether or not he accepted that the doctor had plainly told him to take AX to hospital to be checked. He said that after the call he told the Mother that what was coughed up was bile. He did not tell the Mother that the doctor had said to go to hospital.
177. This part of his evidence was not believable. I have heard the 111 call. The doctor says absolutely clearly that the baby should be taken to hospital and says nothing about bile. I do not believe that the Father did not well know at the time that the doctor had told him to take AX to hospital to be checked. The other important aspect of the 111 call is that it is possible to hear AX crying loudly in the background. The call was played to the Father and he accepted that the crying was of a distressed baby, but he said that he did not realise that she was distressed or was in pain.
178. On 25 April, the day before AX died, the Father said he came home from work at about 2.30pm. He had had a bad day because he had travelled to what he believed was a job as a security guard but then discovered he had been given the wrong address. He was particularly disappointed because the job was fairly local and he had been looking forward to it. When he got home he said that AX was grouchy which he believed was because of the immunisations.
179. It was very difficult to get a coherent and consistent narrative on what happened between when he got home and the following morning when AX died. This is particularly important because on Professor Mangham’s evidence this is when AX sustained the fracture to her femur (4-12 hours before she died), so some time that evening or during the night.
180. The Father has given different accounts of who put AX to bed, how much she was up in the night and what happened in the morning. The account that he gave the doctor at the hospital was that AX had been up at 1am and the Father picked her up and the

Mother fed her. She then went back to sleep for a short period, was fed again and went to bed with the Mother. She then woke again at 7.45am.

181. In oral evidence, in response to questions from Mr Goodwin, the Father said that he could not remember who put AX to bed. He initially said he could not remember if he and the Mother had argued but, when shown the WhatsApp messages of that evening, accepted that they had. He said that he had gone to bed but when he woke up neither AX nor the Mother were in the room. He initially said that he had slept through the night but when shown his police statement where he had said AX had been awake with diarrhoea and vomiting he said his statement must be correct. He said he noticed nothing unusual when he changed her and didn't think she was in pain. He denied Googling baby first aid.
182. Ms King took the Father to the surveillance material where he is overheard with a new girlfriend, Ms P, who he had started a relationship with in late 2019 or early 2020. The importance of this material was that it showed a strikingly similar pattern of the Father lying to this woman about his past, in particular about having been in the Army, in order to excuse his behaviour and to manipulate the woman. It also indicated that there had been some incidence of violence with Ms P, which again the Father described as pushing and which he excused by saying that Ms P started it.
183. Ms King also took the Father to surveillance material which showed him seeking sex, with both men and women, in late 2019 via the internet. This was both before and after he split up with the Mother on 9 December 2019. The most striking thing about this material is that it shows the Father being prepared to lie about the most upsetting and extraordinary things such as wanting to be paid for sex so that he could afford to pay for his daughter's funeral. This does suggest that the Father has simply no moral boundaries on what he is prepared to lie about.

Assessment of the Father's evidence

184. The Father, on his own admission, has told frequent lies to the police and to the court in statements. He has also lied to his partners, his mother and others. This is plainly a significant part of his characteristic behaviour. That does not mean that all his evidence is untrue but it does make it exceptionally difficult to pick out the elements of truth within his evidence.
185. I do not accept that his lying is simply to make himself more important or to get attention although that did seem to be a facet of some of the lying, e.g. about the Army or about having cancer. He also, in my view, lied to shift blame as I am confident he did in respect of many of the allegations of domestic violence.
186. It is much more difficult to assess his evidence in relation to the children because I only have his and the Mother's evidence. However, I note that he told the police that he never hit SX when the texts tell a completely different story. The only incident of violence to the children that he has owned up to is the one recorded in the texts where he effectively had no choice but to accept once disclosure had taken place. Given his history of lying and what is said in the texts I do not believe that only time that he hit SX was on 22 April as recorded on the WhatsApp messages.

187. The pattern of the Father's behaviour appeared to be him losing his temper and then being violent, my word not his, and then regretting it and being sorry. This is a pattern described by the Mother and it also fits into hitting SX and then saying he immediately thought that it was the wrong thing to do. That the remorse is genuine, if only for a short period, may well be true.
188. I do not accept that the Father's memory of key events is any way near as poor as he suggests. I accept memory is a difficult and complex thing, see *Gestmin* above. But in relation to the 111 incident the recording is perfectly clear about taking the baby to hospital; either the parents jointly decided to ignore this advice or the Father chose not to tell the Mother what the doctor said. The Father's alleged failure of memory does not apply only to single events, where memory may become confused through passage of time, trauma and re-telling, it applies to day to day life in the flat and care of the children. Whether or not he slapped SX is not a failure of memory, unless it was so frequent it was not memorable for that reason, it was a deliberate choice not to tell the police and the court in his statements. Equally, his account of the night of AX's death is irreconcilable with the medical evidence. The baby had a femoral fracture inflicted between approximately 5am and 9pm the previous night and this would have been seriously painful for a time. I do not believe the Father's account. In relation to the night before AX's death, when she sustained the femur fracture, the Father gave the doctor at the hospital a detailed account and he then gave Mr Goodwin a very different account having initially said he was asleep. In my judgement the Father was deliberately lying to the court about that night in order to obscure the truth and pretend he is not well aware of the fact that he injured the baby.

The parties' submissions

189. I will only briefly summarise the submissions because I refer to many of them in my conclusions. The position of the Local Authority was that I should make findings that each parent inflicted injuries although it was not possible to specify in respect of the fractures which parent inflicted which. In respect of the head injuries, the Local Authority sought a pool finding on the basis that in all probability there was one unifying mechanism for these injuries. In the alternative, the LA sought a pool finding against both parents in respect of all the injuries and, in the final alternative, a finding of failure to protect against the parents.
190. The LA relied on the full scope of the medical evidence, much of it not contested, as set out above. Mr Goodwin referred to the toxic relationship between the parents and the escalation of those problems in the period after AX was born. He said that the conclusion of abuse of AX by the Father was inescapable on the evidence. In relation to the Mother, he pointed to the fact that she had slapped SX and had plainly lost her temper on occasions, the extreme strain that she was under as shown in the texts disclosed, her toleration of the Father slapping SX, and her apparently cold and unempathetic response to SX and more generally in her evidence and the text messages. Most importantly Mr Goodwin relied on the multiplicity of injuries and the extreme unlikelihood of the Mother not knowing AX was injured, and of her failing to tell the truth at the outset about various critical matters. This, Mr Goodwin argued, pointed to the fact that she had been party to the abuse and she and the Father had colluded in not telling the truth.

191. Mr Verdan on behalf of the Guardian supported Mr Goodwin's analysis. They both highlighted the Mother's portrayal of AX as being a happy contented baby as being completely inconsistent with Dr Cartlidge's evidence and the 111 call. Mr Verdan placed a good deal of emphasis on the 111 call, both for the fact it showed a seriously distressed baby, which was quite inconsistent with the parents' evidence, and because it suggested the Mother's story about not realising that AX should be taken to hospital was unbelievable. I agree with Mr Verdan's position on this.
192. Mr Verdan also pointed out that if the Mother's family's evidence is to be believed, then she had managed to hide the tensions in the relationship from them and had not told them about the 111 call incident. He also said that it was striking that the family were so incurious about the cause of AX's injuries. I agree that this was a very odd aspect of the case. If the maternal grandfather and Ms B were telling the truth about how little they knew about AX's injuries, then it seems that the Mother is filtering the truth to them and seeking to avoid them asking difficult questions.
193. Mr Verdan carried out a detailed analysis of the week before AX's death showing how the parents were rowing with each other fairly constantly through the period; the reference in a text on 24 April to problems with AX taking a bottle; the text about buying baby paracetamol; the Mother searching on "feeling low" on a mother's chat site; and her reference at the GP's to increased stress.
194. The Mother's case was that she did not dispute that the multiple fractures, the head injury and the bruising to the back of her head were inflicted injuries. She did not dispute that AX had no pre-existing relevant condition, but she said that she had never seen any indication that AX had been injured. She relied strongly on the fact that the Father had been physically abusive to her in the past and continued to be emotionally abusive throughout the relationship. She said that the Father must have inflicted the injuries and she had not failed to protect her daughter. She said that she had only slapped SX on one occasion.
195. The Mother placed much emphasis on the Father's lies, most of which have now been proven not to be true. She says that she continued to believe the Father in many respects until the truth about AX's injuries became increasingly clear.
196. Ms King places reliance on the fact that the Mother sought further tests to try to establish the cause of AX's death, which she says shows the Mother was trying to discover the truth. I do not accept this submission, it is just as likely that the Mother was asking for these tests in order to deflect attention from the reality of AX's treatment.
197. Ms King also relied on Dr Cartlidge's evidence that AX would probably only have been distressed for 5/10 minutes after the rib injuries and somewhat longer for the bone injuries, and that a carer who did not know she had been injured might well not have realised that she had been hurt or had any injuries. In respect of the last fracture, she says that the Mother had relatively little contact with AX during this period (having gone to bed) and therefore it is reasonable that she did not realise AX had been injured and thought that if she was unsettled it was the result of the immunisations. She says the Mother did not see any bruises on AX and the chest bruises might have been caused by CPR.

198. The Father accepted that the injuries were inflicted and that the only logical consequence of his position was that they were inflicted by the Mother. Mr Tughan argued that his client's frequent failure to remember material events and answers that whatever he said when first interviewed was more likely to be correct should not be a source of criticism. He placed reliance on the dicta of Leggatt LJ in *Gestmin* about the unreliability of human memory; and of Peter Jackson J in *Lancashire CC v The Children* [2014] EWFC 3 about the problems of a witness who is asked to give repeated accounts of the same events.
199. Mr Tughan argued that the Father had a longstanding problem with lying and there had been no real change in the pattern of his lies and that he had admitted his lies. However, he continues to be adamant that he did not harm AX and that he did not commit domestic violence. Mr Tughan argued that the lies were connected with seeking a sense of acceptance and were not related to AX's death.
200. He argued that the texts showed that the Mother was well capable of standing up for herself and that she had failed to be truthful about a number of incidents. He also argued that Ms Z's evidence was unsatisfactory because she minimised problems with her own family and had a motivation for wishing ill-will to the Father because of his treatment of Y.
201. He submitted, as did Ms King, that Dr Cartlidge's evidence supported the case that the non-perpetrating parent would not have realised from AX's cries that she had been injured. He emphasised that the Mother had been left alone with the children on many occasions when the Father was at work and the texts showed that she was struggling to cope.

Conclusions

202. This is a most tragic case. AX was just two months old when she died and she died with a truly horrific list of injuries. Having listened to the medical evidence, much of her very short life must have been spent in pain and presumably, at some level, fear.
203. The medical evidence is completely unequivocal, the majority of her injuries were beyond any doubt inflicted injuries. None of the medical evidence has found any evidence of any pre-existing condition which would explain her injuries or that would give her any susceptibility or predisposition to fractures (or brain injury). Importantly, there is also no evidence that she had any condition that would diminish her pain response. The Mother asked that a series of additional tests be carried out, for various reasons these were not possible, but again all the medical evidence was that they could have made no possible difference to the witnesses' conclusions.
204. The parents put weight on the fact that the health professionals who saw her through her short life failed to spot any injuries or that she was suffering overall. But it is equally important that none of those professionals saw anything that suggested that she was not a normal baby in terms of her response to pain or discomfort. Her response to the immunisations the day before she died seems to have been an entirely normal one, i.e. that she cried for a short period but then settled. So there is no evidence that AX had an abnormal pain response, nor do the parents suggest that this was the case.

205. In terms of the details of the injuries, Ms King on behalf of the Mother does not contest that all of the injuries were inflicted and Mr Tughan suggests some may not have been. Given the concession, beyond doubt properly given, that many of the injuries were inflicted, the only real relevance of whether all the injuries were inflicted is that the more times the baby was injured the less likely that one of the parents could have been unaware that she was being regularly and seriously abused.
206. Dr McPartland in her report accepted that the retinal haemorrhage could have been a birth related injury. It is also possible, though less likely, that the subdural haemorrhage was birth related. However, on the facts of this case I find that it is much more likely that both these injuries were inflicted. The axonal brain injury was undoubtedly inflicted according to Professor Al-Sarraj. On the balance of probabilities, the likelihood that AX suffered a relatively unusual subdural haemorrhage at birth but was then abused in a way that caused axonal injury to her brain seems slight. Dr Cartlidge thought that there was probably a single traumatic event involving abusive shaking and Dr Fitzpatrick-Swallow agreed that there could have been a unifying mechanism. I find that there was in all probability one unifying explanation for her head injuries which was that she was shaken so badly these injuries occurred. It may be that that was at the same time as one of the early sets of limb injuries was inflicted, but that is not possible to say with any confidence.
207. Mr Tughan argued that the latest rib injuries could have been caused by poorly executed CPR. In my view that is very unlikely. Firstly, fractured ribs from CPR in babies are very unusual according to Dr Fitzpatrick-Swallow. Secondly, the fractures being at the side are in the wrong place for them to have been caused by CPR. It is also highly unlikely, if not impossible, that any of the rib injuries or long bone fractures were caused at birth. It must be more likely, and I find, that they were inflicted injuries. For these reasons I find that all the injuries AX suffered were, on the balance of probabilities, non-accidental injuries.
208. The rib injuries were caused on at least three occasions and the bony injuries on at least seven. So there were a minimum of seven different injuring events and there could have been far more. It is difficult to overstate the effect this would have had on a baby who only lived for two months. I will come to Dr Cartlidge's evidence on pain response when I consider the Mother's likely level of knowledge below.
209. The position in relation to the bruises is more complicated given that some may not have been true bruises. Given her history of non-accidental injuries and the multiple rib fractures it seems highly likely that the chest bruises were inflicted, as probably was the occipital bruise. It is highly unlikely that the chest bruises were caused by CPR both because of timing and position.

The context of the abuse

210. Very importantly, between AX's birth and her death, the parents' relationship was extremely toxic. They were living in a small flat with a three year old exhibiting challenging behaviour and a new born baby, matters which would have created some strain on any couple. This was doubtless exacerbated by the fact that they were largely isolated or closed off from outside help by the Father's falling out with his mother and the Mother apparently hiding the problems in the relationship and with SX from her family. The Mother and Father's relationship was falling apart and they

were giving each other very little support. The text messages are full of anger, hostility, aggression, suspicion and blame. They are taken up with the parents attacking each other in as hurtful a way as possible. The tensions and anger between the parents seem to have been escalating up to AX's death.

211. I do not accept the evidence that AX was a happy smiley child who rarely cried as portrayed by the Mother. Firstly, this is wholly inconsistent with the evidence of Dr Cartlidge who said that with this level of injury AX would often, if not usually, have been in pain and discomfort and would have been grouchy for much of the time. That does not mean she would often have been screaming in pain, save for the short periods after the injuries had been inflicted, but it does suggest that she would have been unhappy and often hard to look after. Secondly, the Father's evidence about her being a poor sleeper and a "night-owl" was one part of his evidence that rang true. Thirdly, the parents' evidence about AX rarely crying and never showing distress, save when she was constipated, was exposed by the 111 call on 1 April. AX was crying in distress on that call as the Father accepted. It is simply unbelievable that the only occasion when she cried like that was the brief moment when she was captured on a recorded call as the Father tried to suggest. In my view the parents lied to me about how AX presented and she must have been unhappy, grouchy and hard work to look after for much of the time. This is hardly surprising given the extent of her injuries.
212. It may be that one trigger for the abuse were the attempts to bottle feed AX. In the light of the parents' lies about what happened it is not possible to be confident, but it is possible, that the Father got frustrated with AX's unwillingness to take the bottle and that is when at least some of the injuries occurred. This might be the background to the 1 April incident and AX having blood in her mouth.

The Father

213. I have no doubt whatsoever that the Father inflicted the injuries. There is no doubt on the evidence that he is a man who has a temper and is capable of aggressive and violent behaviour. He accepted that he had hit SX, aged three, "really hard" three times. He said that he had not lost his temper with SX but I do not accept this. I think he was angry and frustrated with SX and lashed out at him. Although this was only one incident, it was the one captured in the WhatsApp messages and I think it is overwhelmingly likely that it merely brought to light a not unusual form of behaviour by the Father.
214. I also believe that the Father has a history of domestic violence to women, including the Mother. He admitted punching Ms Z in the face and he admitted punching walls and doors in anger and frustration. The fact that an adult will be violent to another adult, including their partner, does not mean that they will be abusive to a small child. However, it does show a man who is capable of violence, who loses his temper and who can be aggressive. I will return to more detail on the domestic violence when I come to my conclusions about the Mother.
215. It is not disputed that the Father is somebody who has frequently and consistently lied including about very important matters such as his having PTSD caused by military service and having cancer. However, I find that his lies are much more extensive than that and also are very deliberate and thought out rather than just being an emotional

response to insecurity as he sought to suggest. I express no views as to whether he was or was not abused as a child. I simply do not have the evidence to express a view on this but, in my view, it is irrelevant to the findings of fact I am asked to make.

216. The Father lies to shift blame; to manipulate; to cover his tracks. The evidence of Ms Z and the Mother is very consistent in terms of him lying to gain sympathy and to manipulate, and this entirely fits in with the surveillance material of his conversations with Ms P. But he also lies in a calculated and strategic manner to seek to gain an advantage, as with the forging of the letter from the Magistrates Court suggesting that the police may have fabricated evidence. There also seems to be some pattern of him lying but shifting what he has done onto the other person. On each allegation of domestic violence, he turned it round and said that the woman had pushed him or come at him with a knife. I think it is much more likely that he was the one who initiated violence in his relationships.
217. The real issue for me is what weight I can put on any of his evidence given the breadth and frequency of the lies he has told. I am fully aware of the principle in *R v Lucas* that the fact someone has lied about one thing does not mean that none of their evidence is true. I also fully take into account what Leggatt LJ said in *Gestmin* about the way that memory works. An important event which might be perceived to be memorable may well not give rise to a clear and consistent memory of what happened. However, those principles have to be applied on the facts of a particular case and to a particular witness. In my view, the Father has lied in this case in a calculated way to hide his responsibility and he has claimed a poor or muddled memory of events in order to avoid answering difficult questions. A difficulty for the family judge as opposed to the commercial judge in a case such as *Gestmin*, is the lack of documentary or reliable third party evidence to use as a way of working out what is true or untrue. In this case, the vast majority of AX's life was spent behind closed doors and with no way of knowing how her injuries were caused or precisely what lies are being told.
218. However, in relation to the last injury as identified by Professor Mangham, the right femur, we do have a slightly more detailed timeline and a number of wholly inconsistent reports from the Father. According to Professor Mangham that fracture was inflicted 4-12 hours before AX died. Her death was recorded at 10.17am but could have been somewhat earlier, so the fracture probably occurred between about 9pm and 6am on the night of 25/26th April. The Father told the doctor at the hospital that the baby had been up at least twice in the night, but he had not thought she was in pain or distressed. He gave inconsistent evidence orally. It is not possible that someone looking after AX that night would not have realised she was distressed. I conclude that the Father lied to me about that evening and that he inflicted the injury on AX.

The Mother

219. The case in respect of the Mother is less straightforward than that of the Father. The Mother was an evasive witness who tried very hard to minimise any aspect of the case which gave her any responsibility and who claimed a poor memory, again in a very strategic way. There is no doubt she lied in her initial police interview and court statement when describing both the state of her relationship with the Father, the general atmosphere in the household and the history of domestic violence. It is

equally important in my view that she failed to tell the police or the court about the Father slapping SX “really hard” until this was revealed by the disclosure. So even at the point when she claimed to be being honest and truthful about what had been happening, she wasn’t actually being truthful. She can have had no possible doubt about the relevance to AX’s injuries of the fact that the Father had hit SX really hard. In my view she continued to lie to the court in her oral evidence on a number of points as I outline below.

220. My overarching conclusion about the Mother is that she probably did not inflict any of the injuries. I cannot be sure, but on the balance of probabilities, I think it is more likely that the Father inflicted them all. However, I am sure that the Mother knew that AX was being abused by the Father and that AX was highly distressed at times. The Mother chose to do nothing about it and has chosen to lie to the court about what she knew. She has taken this course in order to protect herself.
221. In terms of the background, I accept that the Mother was the victim of domestic violence by the Father up to when SX was 18-20 months. There is a very clear pattern in the Father’s abusive behaviour towards the Mother and Ms Z, and probably with Ms P as well. Both the Mother and Ms Z were very young when the Father first went out with them and both were told he had PTSD because of military experience. Both record a similar pattern of manipulation by the Father. I suspect that the violence was less frequent than the Mother now claims and I note that her claims have escalated from the Father being violent to her “occasionally” to “occasionally every week”. In my view the Mother’s has increased the allegations in order to paint the Father in a worse light, but the frequency of the historic domestic abuse does not assist me with findings on AX’s injuries.
222. The domestic violence is part of the background to the toxic relationship at the time of AX’s death but the Mother does not claim that she remained in fear of the Father or that he continued to be physically abusive other than perhaps one incident of mutual pushing. By the time AX died the pattern of the relationship was that the Father was needy, insecure and begging for attention and the Mother was largely dismissive and hostile. The children were both caught in the middle of this hostility and it is a striking and enormously sad part of this case how little emotional attention the children seem to have been given by either parent. This emerges both from the text messages, but also the evidence of the parents in court. The fact that it does not appear to have occurred to either parent that SX’s difficulties were probably caused by their behaviour speaks volumes about their lack of empathy and the degree they actually thought about the children’s needs save in the most utilitarian manner. I was very struck by the way that even in oral evidence they seemed far more concerned about their relationship than the reasons for the death of their daughter.
223. The domestic violence is important in that it shows the Mother was very well aware that the Father had a temper, which he easily lost, and was capable of being violent when angry. This is obviously highly relevant to what happened to AX, but the Mother chose not to tell the police or the court about the Father’s behaviour for many months after AX died. The sequence of events suggests that the Mother did not conceal the Father’s behaviour because she was trying to preserve the relationship or out of shame and embarrassment, but rather in order to conceal the level of her own knowledge of what had been happening to AX.

224. The Mother herself had slapped SX on at least one occasion as she accepted. It is very possible this was not a single occurrence. The WhatsApps suggest that the Mother thought physical chastisement was acceptable, including on a three year old who had problems with potty training. Although the Mother's family members all say that she was kind and loving to the children, I note that they appear to have been wholly unaware of the history of domestic violence despite the Mother's evidence of it having been so frequent in the early years of the relationship, and unaware that both parents slapped SX. This suggests that the Mother did not share much information with her family, including Ms B, and that they were not particularly good at spotting what was happening. The same is true of the slapping of SX when neither Ms B nor Ms C appeared to know how SX was being treated.
225. The Mother slapping SX shows that she was capable of being angry and then reacting against the children. However, there is a very great difference between slapping a three year old who you (wrongly) think has behaved badly and shaking/manhandling a very young baby so badly as to inflict these injuries. The Mother was cold and unempathetic to her children, and certainly became frustrated with SX, but there is little evidence that she is likely to have lost her temper with AX in a way that gave rise to the type of physical abuse involved in these injuries.
226. There is a difficult to unpick surveillance record of a conversation between the parents on 25 September 2019 which seems to suggest some incident at night between the Mother and a child, but this is in my view too slight a piece of evidence to conclude that the Mother physically abused AX.
227. I therefore conclude on the balance of probabilities that the Mother did not inflict any of the injuries.
228. However, it is in my view overwhelmingly likely that the Mother knew AX was being abused by the Father and chose neither to intervene nor to tell the truth. She was with AX fairly constantly throughout her short life. Although there were occasions when the Mother went out to the shops, or took SX to nursery on the bus (a journey which took about 1.5 hours both ways), there was nothing to suggest that she was regularly out of the house for significant periods.
229. The family were living in a small two bedroom flat with an open plan living room/kitchen. The evidence suggested that there was limited soundproofing in the flat with the Father saying that he could hear the TV playing in the living room if he was in SX's bedroom with the door shut. The Father said he could hear the Mother smacking SX from the other room and the external walls were such that the neighbour could hear the parents arguing. Both parents referred to the doors being fire doors. However, in my view, if AX was in one room with the Father, and AX was crying in the way I heard on the 111 call, then anyone in the flat would have been aware of that crying with or without the doors closed. Dr Cartlidge's evidence was that each time she was injured she would have cried with distress for 5-10 minutes.
230. The other critical factor in the extreme unlikelihood of the Mother not knowing AX was being abused is the multiplicity of injuries and of abusive events. Dr Cartlidge referred to AX having suffered more injuries than he had ever seen in an infant and they all took place over a period of about 6 weeks. The chances of them always taking

place when the Mother was out and did not return in time to see the baby distressed seem extraordinarily unlikely.

231. In my view, the Mother lied to me about AX's general presentation and behaviour and the only reason the Mother would have done so was to cover-up her knowledge. She described AX as a generally happy smiley baby who rarely cried and who she never heard in distress save for the constipation. The Mother's depiction in oral evidence bordered on the idyllic – "She was a good baby, I didn't have any issues or anything. She slept well, fed well, she was growing well. A little bit grumpy, but usually herself, her cold went away, there were no major concerns". This is completely at odds with the medical evidence. Further, the 111 call shows at least one instance when AX was very distressed with the Mother in the room and, as I have already said, it is exceptionally unlikely that this was the only occasion AX was so distressed. But this evidence is also totally out of keeping with Dr Cartlidge's evidence about AX's likely presentation after she was injured but also more generally.
232. The 111 call is also important because it strongly suggests that the parents, including the Mother, actively avoided taking AX to hospital to be checked, probably because they were worried about what the hospital would find. The recording of the conversation between the Father and the doctor (the third tape) shows the doctor very clearly telling the Father to take the baby to hospital. The Father repeats the name of the hospital to the doctor and the Mother was in the room and the baby was not crying at this point so, contrary to her evidence, she would have heard this. I find the story that the Father told the Mother it was bile and the doctor said in that case it was not necessary to go to hospital not believable. I think it is much more likely the parents decided not to take AX to hospital because of whatever had happened to her. The Mother accepted that she had seen blood on the baby muslin and she knew the baby was very distressed. It does not make sense that she would then decide it was only bile. Any responsible parent in those circumstances would have taken the baby to hospital to have it checked. This was not a family who were generally avoiding medical attention, the Father having regularly attended A&E. That the Mother knew AX was injured would tie in with the Mother cancelling the jaundice appointment the next day. This might have been genuinely because AX no longer had jaundice, it is simply not possible to tell.
233. The parents both put a huge amount of weight on the fact that AX had been seen by a number of healthcare professionals during her short life. However, when these visits are carefully analysed it can be seen that they show little if anything. Dr Cartlidge said that he would not be surprised that a doctor/health visitor would not have spotted that the baby was being injured given the nature of the injuries. The schedules of timings of the injuries show that they could well have been inflicted at points when there would have been no reason for the professional to realise there was an injury. With the exception of the right femur in the hours before she died, none of the injuries have a sufficiently small time window to be sure precisely how it related to a visit to the doctor/health visitor, but the schedule shows quite clearly that they could all have been at a point where nothing would have alerted the professional. It is however important that a doctor did find that AX was not putting on weight at a normal rate and had slipped down the growth charts which fits with, though is not in any sense conclusive, a baby who was not feeding well.

234. That the Mother knew the Father had abused AX is also strongly supported by her approach to the evidence and the timing of information she has given to this court and the police. The Mother now accepts that she did not tell the police the truth about her relationship with the Father and his history of domestic violence until December 2019. The parents were both told about the initial findings of fractures in May 2019 having been sent the x-ray report on 20 May. Although further detail was revealed by Dr Oates' report, that AX had serious injuries and that these were very possibly inflicted injuries must have been plain from at least early June. That the Father's history of violence to the Mother and his anger and loss of control with SX were highly relevant is utterly obvious. The Mother is not lacking in intelligence and the relevance of the Father's conduct must have been obvious to her. The fact that she did not tell the police the truth about the Father's past behaviour until December suggests to me, very strongly, that she was trying to avoid revealing anything about her own level of knowledge. She changed her position when she realised that the Father had lied about the 15 July 2019 audio recording and that whatever tacit or otherwise agreement they had reached was breaking down.
235. This history does not suggest a parent who had no idea how their child was injured and wanted to know the truth. The Mother's overall approach to the Father and to AX's injuries and death were inexplicable unless she was trying to hide the truth about her own knowledge. She expressed no anger towards the Father despite now saying she believed he had inflicted 65 fractures on her daughter. She took absolutely no responsibility for failing to protect AX even though she says she was living with a man she knows was violent.
236. Mr Goodwin argues that the fact that the Mother has failed to reveal the truth about the Father's conduct indicates strongly that she was guilty of abuse herself. I can see the logic in this argument but, in my view, she may well have not revealed what she knew about the Father's conduct to SX and past domestic violence because she was worried about exposing that she knew about the abuse of AX. Although logically she might have been better off saying at the outset that she knew the Father had abused the baby, she may well have realised that would inevitably lead to a finding of failure to protect and have extremely serious consequences for her. I therefore do not accept the full force of Mr Goodwin's submissions. I think the more likely scenario is that the Mother knew about the abuse and colluded in covering it up.
237. I therefore find that the Mother failed to protect AX. Although this is a lesser finding than that of inflicting the injuries, I wish to stress that the Mother's failure to protect in this case is in my view a very extreme case. AX was a two month old baby who died after having been abused repeatedly and in a very violent way through her short life. This is not a case of a parent having made a terrible mistake in failing to intervene once, or not being sufficiently watchful. In my view this is a case of a parent who deliberately allowed her daughter to be harmed again and again, who knew she was in pain and distress, and who chose for whatever reason not to stop the abuse.
238. In respect to the other matters in the LA's schedule of findings (paragraph 25 onwards of the final Threshold document); I find that the Mother slapped SX three times and texted the Father that "*he had deserved it*" proved on the balance of probabilities. I find that the Father was violent to the Mother on occasions, as referred to above. I find that the Father threatened Ms Z, including once with a knife, and was controlling

and manipulative to her. I do not find it necessary to make findings on the other parts of paragraphs 25 -34.