

IN THE BARNET FAMILY COURT

Neutral citation: [2022] EWFC 109  
Case No: ZW21C00443

Courtroom No. 6

St Marys Court  
Regents Park Road  
Finchley Central  
London  
N3 1BQ

Wednesday, 25<sup>th</sup> May 2022

Before:  
HIS HONOUR JUDGE OLIVER JONES

B E T W E E N:

LONDON BOROUGH OF HARROW

and

- (1) "MOTHER"
- (2) "MR ADAMS"
- (3) THE CHILDREN "EMMA" AND "FIONA"
- (4) THE INTERVENOR "MR CLAY"

MS C LEE (Solicitor) appeared on behalf of the Applicant  
MR M FLETCHER (instructed by All Family Matters) appeared on behalf of the Respondent  
Mother  
MISS F MUMANI (solicitor of Duncan Lewis Solicitors LTD) appeared on behalf of the Second  
Respondent Father  
MR J SCHMITT (instructed by Miles & Partners) appeared on behalf of the Children through their  
Guardian, Hester James  
The intervenor did not attend and was not represented

JUDGMENT

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*This judgment was delivered in private. The judge has given leave for this version of the judgment to be*

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

HHJ OLIVER JONES:

1. This judgment will in due course be transcribed and, subject to any further representations, published with the names and the details of the children and of the lay parties suitably anonymised to protect the identities of the children. However, to assist with the understanding of the narrative of the events, I will not replace names with initials. Instead, I am going to replace names with false names which entirely fictional and have been chosen at random.
2. By contrast, subject again to any further representations, the professionals and experts in the case will be named as I do not consider that there is a risk of the children's identities being revealed. It is important for transparency that the identities of those who work in the family justice system should be known and particularly when their evidence has been considered in these cases.
3. These are care proceedings in relation to two little girls: "Emma" born in 2019, and "Fiona" born in 2021. The Local Authority that brings the proceedings is the London Borough of Harrow. They have been represented by counsel Mr Tregdido and today by solicitor Miss Lee.
4. The mother of the children is represented by her counsel Mr Fletcher, I will simply refer to her as "the mother". The father of Fiona I will refer to as "Mr Adams". He is represented by his solicitor Miss Mumani. The children are represented through their Children's Guardian Hester James and by their counsel Mr Schmitt.
5. Also, the intervenor is "Mr Clay". He has not attended nor been represented at any point in the proceedings, although I am satisfied that he has been given good notice of the hearing and also of the allegations that are alleged against him.
6. For the purposes of this judgment, I will use the following false names or pseudonyms:
  - the mother;
  - the father of Emma as Mr Adams;
  - the mother's former partner as Mr Barry;
  - the intervenor, I will refer to as Mr Clay;
  - the father of Fiona as Mr Dunn;
  - the mother's cousin, I will refer to as Mr Ellis
  - the two children as Emma and Fiona.
7. This is a fact-finding hearing. The primary issue is to determine the causation of injuries that

Fiona presented with in October 2021.

### **The background**

8. The mother is a young mother. She had been in a long-term relationship with Mr Barry since the end of 2018. That relationship ended around August 2021. They both believed he was the father of Emma and Fiona. He is named on the birth certificates for both girls and both girls have his surname.
9. There must have been some doubts about paternity because Mr Barry and Mr Barry's mother arranged for DNA testing to be conducted on the children without the knowledge of the mother. For Fiona, those DNA test results were dated 17 September 2021, and for Emma they were dated 1 October 2021. Repeat DNA testing has also been conducted within these proceedings which confirms that Mr Barry is not the father of either of the children.
10. The identity of Emma's father is unclear. The mother has indicated her belief that the father is Mr Dunn. He has been contacted but indicated that he would not consent to DNA testing, and he said words to the effect that when Emma is 18 years old, she can find him if she wants to.
11. The identity of Fiona's father has been confirmed through DNA testing as Mr Adams. He has never been in a formal relationship with the mother, but they have been friends for a number of years. The mother entered into a relationship with Mr Clay in August 2021.
12. On 5 October 2021, there was an incident when the police were called to the mother's address after Mr Barry's mother had attended. This was not long after the DNA tests. The mother refused to let Mr Barry's mother in and alleges that she was assaulted by Mr Barry's mother. Subsequently, according to the police records, the mother did not engage with the police and the investigation was closed.
13. On 11 October 2021, the mother rang the NHS 111 service and as a result subsequently Fiona was taken to the Accident & Emergency where it was identified that she was suffering from bronchiolitis. It was reported that she had vomited that day, which the mother had noticed had fresh blood in the vomit. I have heard evidence from Dr Cohn in these proceedings in which he explained that the presence of blood in the vomit on that occasion was likely to have been caused by coughing due to the bronchiolitis.
14. The mother attended hospital with Fiona again on 23 October 2021. At that point, Fiona was only four months old. The medical examination showed that Fiona had suffered a torn labial frenum. She was also seen to have three bruises on her face and no explanation was given for any of those injuries.

15. On 24 October 2021, both children were removed by the police and made subject to police protection. The same day, the mother and her partner, Mr Clay, were both arrested and were interviewed the next day. On 26 October 2021, the mother consented to the children being accommodated under section 20 of the Children Act. On 22 November 2021, the case came before me when I made interim care orders in relation to both children, and they remain subject to those orders ever since.
16. Also on 5 November 2021, the mother rang NHS 111 and indicated that she believed she was having a miscarriage and said that she was under 10 weeks' pregnant. There was some discussion during this hearing about what was meant within the 111 call report, but I have listened to the audio recording and that has dispelled any confusion because the mother clearly says to the operator that she is under 10 weeks' pregnant. The relevance of this is that because there was a real possibility that the mother believed she was pregnant at the time when the allegations against her and Mr Clay were being explored by the police.

### **The law**

17. Mr Tregdido has prepared a note on the law and Mr Schmitt has provided an addendum to that. The contents of those documents are agreed, and I am grateful to the advocates for their help. I distil from those notes the following propositions:
18. (1) The burden of proving an allegation falls on the party that makes the allegation. In this case it means the Local Authority must prove the allegations against the mother and against Mr Clay. It must do so to the civil standard of proof, the balance of probabilities. The Court must be satisfied that the occurrence of the facts in question was more likely than not.
19. (2) It is not for the mother or Mr Clay to prove that they did not do something that is alleged. The burden of disproving a reasonable explanation put forward by the mother or Mr Clay falls on the Local Authority.
20. (3) The inability of a parent to explain an event cannot be relied on to find the event proved. In *Re M (A Child)* [2012] EWCA Civ 1580, Ward LJ said:

“that absent a parental explanation, there was no satisfactory benign explanation, ergo there must be a malevolent explanation. And it is that leap which troubles me. It does not seem to me that the conclusion necessarily follows unless, wrongly, the burden of proof has been reversed, and the parents are being required to satisfy the court that it is not a non-accidental injury”.
21. (4) That findings of fact must be based on evidence including inferences that can be properly drawn from the evidence but not on suspicion or speculation.

22. (5) The Court operates a binary system in which the values are 0 and 1. This applies to the conclusions as to the fact in issue, did it happen yes or no, not the value of individual pieces of evidence which fall to be assessed in combination with each other.
23. (6) Evidence cannot be evaluated and assessed in separate compartments. A judge must have regard to the relevance of each piece of evidence to the 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.
24. (7) Findings must be based on all the available material, not just the scientific or medical evidence, and all that evidence must be considered in the wider social and emotional context.
25. (8) The roles of the Court and the expert are distinct and it is the Court that is in the position to weigh the experts' evidence against its findings on the other evidence.
26. (9) The *Lucas* direction is appropriate where a lie has a prominent and central relevance to the case. If the Court concludes the witness has lied about one matter, it does not follow that the witness has lied about everything. A witness may lie for many reasons, for example, out of shame, humiliation, misplaced loyalty, panic, fear, distress, confusion and emotional pressure. A lie should not of itself be taken as direct proof of guilt, although where the relevant conditions are satisfied, the lie is capable of amounting to a corroboration.
27. (10) The same approach is to be applied to the identification of perpetrators as to any other factual issues in the case.
28. (11) There is no obligation for the judge to decide, even on the balance of probabilities, who has caused the harm to the child. It is not a necessary ingredient to the threshold criteria. The judge should not strain to identify the perpetrator, but if an individual perpetrator can be properly identified on the balance probabilities, then it is the judge's duty to identify him or her.
29. (12) The judge should not start from the premise that it will only be in an exceptional case that it would not be possible to identify a perpetrator.
30. (13) Where a perpetrator cannot be identified, the Court should seek to identify the pool of possible perpetrators on the basis of the real possibility test, whether the evidence establishes there is a real possibility that a particular person is involved.
31. (14) The Court should not approach this by way of ruling out a person or making a finding of exculpation which would reverse the burden of proof and set the bar too high.
32. (15) The Court's approach should be to 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 probabilities and should seek but not strain to do so.

33. (16) Only if the Court 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 a real possibility that A or B or C is the perpetrator or a perpetrator of the inflicted injuries? Only if there is, should A or B or C be placed into the pool.
34. (17) To assess the likelihood of harm having been caused by A or B or C, one needs as much information as possible about each of them to make the decision about which, if any of them, should be placed in the pool. Therefore, where there is an imbalance of information about some individuals in comparison to others, particular care may need to be taken to ensure that the imbalance does not distort the assessment of the possibilities.
35. (18) Failure to protect comes in innumerable guises. It often relates to a mother that has covered up for a partner who has physically or sexually abused her child or, one who has failed to get medical help for the child in order to protect a partner, sometimes with tragic results. It is also a finding made in cases where continuing to live with a person, often in a toxic atmosphere, frequently marked with domestic violence as having a serious and obvious deleterious effect on the children in the household. The harm, emotional rather than physical, can be very significant and damaging to a child.
36. (19) Any Court conducting a finding of fact hearing should be alert to the danger of such a serious finding becoming “a bolt on” to the central issue of perpetration or of falling into the trap of assuming too easily that, if a person was living the same household as the perpetrator, such a finding is almost inevitable.

### **Evidence**

37. I have received two electronic bundles. The first was 1,356 pages, and then a supplemental bundle of updating material.
38. I have received a number of updating documents in the course of the hearing, namely: a chronology dated 5 May 2022; a ground rules document; a letter setting out attempts to serve Mr Clay; a statement from Mr Walker - a process server dated 6 May also about attempts to serve Mr Clay; a statement from Mr Barry; a statement from the mother dated 11 May 2022; a social work case note dated 6 April 2022 detailing the social work visit to the mother and Mr Clay on 26 October 2021; transcript of the mother’s NHS 111 call on 11 October 2021; 135 pages of additional police disclosure; 699 pages of police downloads from the mother’s mobile phone; 95 pages of police photographs of the mother’s phone; six pages of what I will call the pre-exam photographs of the mother’s mobile phone; and 19 pages of material from

the police phone downloads, which have been suitably expanded so they can be looked at and a copy of Emma's red book.

39. I have also viewed the police interviews of the mother and of Mr Clay. These were video recorded. Summaries of those interviews were obtained but no full transcript had been made available, although I was able to make my own detailed note of what was said within them.
40. I did not hear from John Dowsett, consultant clinical psychologist, who assessed the mother, but I have carefully considered his report on Mother dated 9 December 2021, and have borne his findings in mind, in particular:

“(1) That the mother's overall IQ is in the average range, and she clearly does not have a general learning disability.

(2) That she scored much better on measures of verbal comprehension and visual spatial ability than she did on work in memory and general processing speed.

(3) Atypical profiles, like the mother's, are often associated with the presence of specific process of disorders such as dyslexia, ADHD and autistic spectrum disorder.

(4) The mother reports that she was diagnosed with dyslexia when she was at school.

(5) The mother scored above threshold on screening measures for dyslexia, ADHD and ASD and potentially meets the criteria for all three of them. Mr Dowsett did not have access to any of her records and was not able to make any diagnosis on the screening measures alone, but at that stage indicated that it is clear that there are significant issues in how the mother processes information.

(6) An intermediary assessment is not needed”.

41. In the light of Mr Dowsett's report, ground rules were considered and adopted for the mothers' evidence and the hearing generally. Regular breaks were taken, in particular during the mother's evidence, although it was my observation that when breaks were offered the mother seemed generally quite relaxed about needing a break.
42. I had evidence from Dr Cohn, a consultant paediatrician, who, alongside a paediatric registrar, conducted child protection medicals on Fiona dated 25 October 2021, and on Emma dated 26 October 2021. Dr Cohn is a very experienced paediatrician who for many years has been safeguarding lead in his hospital. I was impressed by his evidence. He was unshaken in cross-examination, and I accepted his evidence.
43. I heard from Dr Rahman, who is the Court-appointed expert paediatrician. He had conducted a paediatric overview of both children. His evidence was entirely consistent with Dr Cohn's. He was, I think by virtue of being heard after Dr Cohn, far less rigorously questioned and appropriately so, given the near identical positions of the two doctors. However, he was

unshaken in cross-examination, and I accepted his evidence.

44. I heard from Mr Barry. He told me a lot about the social groups that he and Mother are part of. His evidence went into the background and the circumstances, but he has no direct knowledge about the events that led to Fiona being injured. His contact was sufficiently far in the past before then that he was not deemed to be potentially in the pool of possible perpetrators.
45. Mr Barry often struggled to remember details and repeatedly referred to being emotionally distraught at the time. He provided a statement dated 8 May 2022, in which he wrote that “the mother’s overall care of the children was very up and down for the last two years with Emma and six months Fiona”. In his oral evidence on 10 May, only two days later, he effectively disowned that statement and when asked about it he said that, “when I was there, the mother was caring for the children very well”.
46. The mother’s most recent statement was made available only after Mr Barry had given his evidence, so it was not possible to ask him about the mother’s evidence that Mr Barry had known that she had resumed her relationship with Mr Clay during these proceedings. I found Mr Barry to be an evasive and unsatisfactory witness and I could place little weight on his evidence.
47. I heard from Mr Adams. His evidence also related to the general circumstances. I accepted his evidence.
48. I heard last from the mother. I will deal with my impressions of her evidence more when I deal with the findings of fact.

### **The findings of fact**

#### **Allegation one**

49. This allegation relates to the mother’s relationship with Mr Clay. It is broadly accepted, and I find following:

- (1) That the mother entered into a relationship with Mr Clay.
- (2) That Mr Clay has a history of criminal behaviour, including offences against the person and offences relating to domestic abuse and breach of a restraining order resulting in sentences of imprisonment.
- (3) That Mr Clay suffers from and/or has suffered with emotionally unstable personality disorder, paranoia and depression, including having been hospitalised after making threats to harm himself and others in November 2020 at which time he was found to have a knife in his possession.
- (4) That Mr Clay has not always been compliant with his medication and at the time when he met the mother, he had been having suicidal thoughts.

(5) That Mr Clay used cannabis during the time when he lived with the mother.

50. The fact in issue relates to the mother's knowledge at the relevant date about these facts. The mother's case is that prior to the injuries to Fiona, Mr Clay had in effect been a model boyfriend. Shortly after the injuries were found and they had been arrested, she described Mr Clay to social workers as being, "amazing with the kids".
51. Her case however has moved on as was revealed in the course of a fact-finding hearing, but she says that it was only later that he became very aggressive, very controlling, jealous and abusive, that he had stopped his medication and became in her words, "extremely paranoid about everything". In her evidence, she says that that change occurred after she resumed her relationship with Mr Clay after breaking up on 2 November 2021, and the resuming a relationship at the end of November, two or three weeks later.
52. However, there were elements of the mother's evidence that show that if she did not realise that there were serious issues with Mr Clay then she ought to have realised. The mother told me that she was aware that Mr Clay had been in prison and that he was on licence, although she was not sure what being on licence meant, but she knew that it was similar to being on bail. She said that Mr Clay had told her he had been returned to prison for breaking his licence previously.
53. The mother told me that she had asked Mr Clay about his criminal background but did not get any answer. She said that she had asked the mutual friend who had introduced them, and he had said that he had no concerns about Mr Clay being around her children. She said she tried to pursue that but again did not get an answer.
54. The mother did know to some degree about Mr Clay's prison sentence. She said he told her that he had been in prison when he was between 18 and 20 years old. When she tried to find out about what that offence had been but could not get an answer, in my judgment, that ought to have been a significant red flag.
55. It would not have been hard for her to find out about him. Mr Adams was well aware of Mr Clay's bad reputation in the area and also knew about the allegations that Mr Clay had seriously abused a former partner by throwing her down the stairs, hitting her and threatening her. Mr Adams himself has seen injuries on that friend in the aftermath. This was knowledge within their social group and according to Mr Adams, Mr Dunn also was aware about it.
56. At the point the mother could have found out, she should have kept a suitable distance between Mr Clay and the children at least until she could make better enquiries. I note that

separate to enquiries within the social group, Mother makes references in her penultimate statement to Clare's Law. She was not asked whether she knew about Clare's Law at the time but generally speaking, the public do tend to know about the ability to check up with the police about whether partners are violent.

57. The mother was also aware about Mr Clay's use of drugs. The telephone messages demonstrate this. When he was at the mother's home, he was messaging her, saying he was going to roll a "zoot", meaning a cannabis joint. She was also aware that he was using cannabis around the same time as taking his medication, although having seen the way she misunderstood the question initially, I am satisfied that the mother simply was not aware about the dangerous effect that combining medication and cannabis can have for people with mental health issues.
58. Mr Adams in his evidence told me that he had warned the mother about Mr Clay. However, it was clear from his evidence that this conversation only took place after the injuries had occurred to Fiona.
59. As to paragraph two of the findings, I am satisfied that the mother being in a relationship with Mr Clay risked exposing the children to domestic abuse, to drug use and untreated mental health issues exacerbated by drug use and physical harm due to violence. However, the mother's level of knowledge is relevant as to her culpability for this. I am satisfied that she knew enough about Mr Clay's history to have caused her to make better enquires about him so that she could have found out about his history of domestic abuse.
60. I am also satisfied that the mother was aware of his drug use and that her relationship with him risked the children being exposed to drug use, albeit that she says he only smoked cannabis away from her home. However, the phone messages show that he was preparing his drugs in her home and the police discovered a cannabis grinder with a small amount of cannabis in it at her home when they attended.
61. I not satisfied that the mother is culpable about the risks derived from Mr Clay's mental health issues. In her written evidence, she has been clear that she only learned about his mental health difficulties from the Court papers. In her oral evidence, she said she was aware after their relationship resumed in November 2021. However, there is no evidence of anything that means she was or should have been aware of his serious mental health difficulties by the time of the relevant date.
62. Paragraph three alleges that the mother only superficially recognises issues with her pattern relationships with partners and shows little insight into the importance of relationship choices

with respect to her parenting and risk assessment. That is a finding that is sought by the Local Authority based on the written report of Mr Dowsett.

63. When I look at his report, he puts those views in quite cautious and guarded terms:

“I think the mother superficially recognises that there are certain issues and questions about her pattern of relationships with partners, but it was unclear to me whether she was particularly interested or curious about this aspect of herself or saw it as something which she might need to understand more about not least for her future. She told me that she did not intend to have other relationships. However, I suggested that this might not be a realistic long-term strategy, she agreed, but again seemed uninterested and perhaps had limited insight at this point in time into the pertinence of this issue for her parenting and future risk assessment”.

64. On the basis of the mother’s oral evidence, her relationship with Mr Clay has certainly been abusive. However, I do not consider that the findings sought by the Local Authority in this paragraph ought to be determined as part of the fact-finding process at this stage. These are issues which will need to form part of the wider determination for welfare in due course.

65. Paragraph four relates to the mother’s alleged drug use. The mother was cross-examined about the presence of white powder on the kitchen worktop, which the police photographed. The suspicion in the police CRIS report was that it was cocaine.

66. The police officer records, “White powder ‘cut marks’ suggesting cocaine use visible on the kitchen counter surface”. The next line was rather dramatically written in full caps to point it that this was, “NEXT TO BABY BOTTLE STERILISER AND DUMMY”.

67. It is entirely speculation as to what that powder was. It has never been tested. In my judgment, it is unlikely that cocaine would simply be left out on the work surface in that way.

68. The marks in the powder seen in the photograph look like the sort of scrapes that would be caused if a parent were to spill a box of baby milk powder and move the box around in the spilt powder afterwards. That would also explain its location amongst the other baby paraphernalia. I am not satisfied that the white powder was drugs.

69. There was the cannabis grinder found in the location of the home. Both Mr Clay and the mother are clear that that belongs to him.

70. The mother has been hair tested for drugs. There are two reports. The first, from December 2021, covered six months in monthly samples between the end of May 2021 to the end of November 2021. The results detected cannabinoids and cocaine, but not enough evidence was found to support the hypothesis of the active consumption over the monitored period. It states, “Taken in isolation, these findings are more likely than not to indicate that

cannabis and cocaine have not been actively abused by the donor of the sample over the six-month period before the hair sample collection”.

71. The mother’s hair had been regularly bleached or dyed “a few times a month” with the last dye having been on 20 November 2021. That recent treatment may have affected the metabolites of drug markers in the hair and if bleached may have significantly reduced the level of analytes to the point of not being detectable.

Therefore, plainly, the mother’s use of hair products raises the question as to whether her results have been reduced by those products.

72. There is a second hair testing report on the mother dated 11 April 2022. That covered a three-month period testing for amphetamine, cannabinoids, cocaine and opiates. That testing detected the presence of cannabinoids, but only again in such low quantities as to being sufficient to support a hypothesis of active consumption of cannabis. It did not detect any levels of cocaine and it was reported that hair dye might have been used over the previous six months at that stage.

73. The mother in her evidence explained the low presence of cocaine for her hair sample as being as a result of working in a pub and cleaning the toilets. She explained that there had been issues with the customers using drugs on the premises. The expert report from DNA Legal describes that, “exposure may include passive drug exposure, such as through neglected/contaminated environments or passive smoking or drugs handling, from previous consumption of the drug prior to the tested period, whereby detection levels may be attributed to telogen phase hair, or from the consumption of drug use in small and/or infrequent quantities over the tested period.”

74. In my judgement, the mother has given a credible explanation as to how she may have come into contact with cocaine at her work environment. The Local Authority would need to prove that that credible explanation is not the case, and it is has not done so. Therefore, I make no finding about the cocaine levels detected in the hair strand test being caused by the mother’s consumption of cocaine.

75. As to the levels of cannabis detected, the mother states in her second report that she has been around people who smoke cannabis once or twice a week. In her evidence she has told me that she considers that hair result has been affected by Mr Clay’s use of cannabis, and I accept that that has been the likely cause of the presence of cannabis in her hair samples. As a result, I am not satisfied that this paragraph of the findings sought is made out in such the way as to that meet the requirements of the section 31 threshold criteria.

76. Paragraphs five and six of the schedule relate to the injuries to Fiona. I will deal with those two paragraphs together.
77. On or about 24 October 2021, whilst in the care of the mother and/or Mr Clay, Fiona sustained the following non-accidental injuries:
- “(a) A 1cm by 0.5cm bruise under the left side of her chin.
  - (b) A 0.5cm by 0.5cm yellowing bruise above the left eyebrow.
  - (c) A 0.6cm by 0.6cm pale bruise on the left side where the forehead meets the hairline.
  - (d) A torn superior labial frenum”.
78. I pause to note that the term “frenulum” has been used almost universally by both Dr Cohn and by Dr Rahman, as well as in documents. In the Royal of College of Paediatrics and Child Health Systematic Review on Oral Injuries published in 2014, a comment is made in parentheses that “a torn labial frenum is often inappropriately referred to as a frenulum”. It is not clear to me why the term “frenulum” is inappropriate.
79. Dr Rahman said the two terms mean the same thing and could cast no more light on it than potentially the term “frenum” being a more often used term in the USA, which has now been imported through the literature. I do not consider anything turns on which term that is being used and I treat them as meaning the same thing.
80. The mother accepts that these injuries were present, and she accepts that they must have been sustained non-accidentally. I accept the evidence of Dr Cohn and Dr Rahman that in a non-mobile child, as Fiona was at the time, these injuries would have been brought about by the application of force and that Fiona could not have caused those injuries to herself. Dr Cohn told me that at the time of the frenum being torn the child’s pain reaction would and should have been obvious.
81. He considered that there would have had to have been someone present at the time because Fiona was non-mobile. He said that when clinically they see a non-mobile child presented with an accidentally torn frenum, the parents present the child very rapidly and the kind of accounts they give have been witnessed and observed, such as falling out of somebody’s arms and landing on the side of a table.
82. Dr Cohn could not say how long Fiona would have exhibited stress for after the injury. He said that the injury to the frenum could have been caused by something inappropriately inserted, like the force of a dummy or a bottle, into the mouth. He said that it is not something that could happen with a teat put appropriately into the oral cavity.
83. Dr Cohn’s opinion was that the location of the bruises on a non-mobile child were highly

indicative of the injuries being inflicted. When I consider the injuries that were seen, I am satisfied that the tear to the frenum was a recent injury as there was active bleeding observed by the mother and Mr Clay.

84. The three bruises are harder to provide a timing. The mother gives an account that she noticed the bruise to the chin around 6pm that evening. She has also produced a photograph from earlier that day when she says that Fiona had no marks. Mr Clay said in his police interview that he saw the bruise to the chin at around midday or one o'clock and that he had told the mother about it.
85. The positioning of the bruises is significant. They are on three very different aspects of Fiona's head. It is difficult to imagine how a fall or an accidental knock could create marks in those three positions. However, Dr Cohn explained, and I accept, that it is possible to see how those three marks could be caused at the same time, potentially by an adult abusively or forcefully holding Fiona's head, which potentially also could have occurred at the same time as pushing something into her mouth with sufficient force to cause a tear to the frenum.
86. As to who had the opportunity to cause the injuries to Fiona, there are only three people who were around her at the time: the mother, Mr Clay and Emma. Emma was only one year and 11 months old at the time. She has variously been described as a boisterous and hands-on toddler who does not know her own strength and can behave in ways that are overly physical with Fiona.
87. However, the evidence from the mother and from Mr Clay in his police interview is that they were aware of previous incidents such as Emma having thrown a toy piano and had also thrown a bottle which had hit Fiona, and as a result the two children were never left unsupervised together.
88. The mother raised the possibility of Emma having accidentally caused the injuries to Fiona with professionals. It was explored in the course of this hearing, in particular with Dr Cohn. Dr Cohn was firm in his evidence that he considered this possibility to be without foundation. He explained that it would be difficult for a toddler to cause those different bruises to the different parts of the face. He pointed out that there are many babies who have a boisterous older toddler as a sibling, but the presentation of a torn frenum is not common. By the time she gave her own evidence, the mother accepted and shared her view that the injuries could not have been caused by Emma.
89. When I factor in all of the evidence about Fiona's injuries and about Emma, I am satisfied that Emma could not have caused the injuries to Fiona. Firstly, because she simply did not

have the opportunity to do so because they were never left unsupervised together, and there is no report of her having accidentally hurt Fiona around that time. Secondly, because she was unlikely, in my judgment based on Dr Cohn's evidence, to be able to exert the necessary force to tear Fiona's frenum.

90. Thirdly, there would need to have been a series of accidents for Emma as a toddler to cause the four separate injuries, the three bruises and the torn frenum to Fiona. That is even more unlikely given that no accidents were observed or reported involving the two girls. There is no account around that time of Fiona having been upset and found with Emma having had recent and observed access to her.
91. The Local Authority in its schedule invites me to find that the injuries were caused by the mother or by Mr Clay. The mother resists that finding and suggests that Mr Clay has caused the injuries. Mr Clay obviously has not availed himself of these proceedings, but in his police interview denied causing injuries to Fiona and indeed, the mother tells me that he has always denied causing injuries to Fiona when he has spoken to her.
92. There have been a series of accounts given about the injuries. The first account was given by the mother to her sister by telephone shortly after Fiona was seen to have blood on her face. I have heard no evidence from the mother's sister about what was said in their telephone call.
93. The second account was given by the mother to the 111 NHS operator on 23 October 2021 at 6.49pm. I have listened to that recording. The mother sounds calm. She says that she had called two weeks earlier because Fiona had blood in her sick, and she had gone to hospital, and they said it could be from coughing because she had bronchitis. However, she said that there was more blood this time; that Fiona was throwing up and there were clots in it. She makes no mention during that telephone call of having seen a torn frenum or any injury to Fiona's mouth.
94. The third account was given by the mother at the hospital when Fiona attended at 8pm on 23 October. I pause to note that I make no criticism and the Local Authority seeks no findings about the time it took to get Fiona to hospital. There were significant demands on the ambulance service at that time and ultimately, the mother with help from the NHS travelled by taxi to the hospital.
95. The initial assessment at 8.25pm records:

“Bleeding from mouth? Teething then vomiting blood. Well otherwise. Bottle fed. Taking feeds. Normal nappies”.

Lower down on the same section it states, “Torn frenulum, has dummy”.

96. The fourth account was made to the paediatric registrar at 11.35pm, also on 23 October. It records:

“At 6pm, Mum heard her cry, so she went to check on her and noticed bright blood around her mouth. She then vomited once straight away. Second time, 20 minutes later, after she had a bottle of feed, dark blood (Mum showed pictures on her phone). Mum thought she may be teething. She has no teeth. No bleeding elsewhere. No blood in her stools or urine. No nosebleed. Today at 6pm, Mum also noticed the bruise under the left side of her chin. No fever. No coryza. No cough. Feeding well, Aptamil, 7oz every four to five hours”.

97. Later in that it records:

“Mum denies any history of trauma to cause the bruise or vomited blood. Mum also saw a bruise on her right cheek two weeks ago, the same size as today’s bruise. Unknown cause. No known trauma. Sister sometimes kisses her and touches her cheek with her hand but not hard. Mum supervises these interactions. Mum says she bruises easily. No diagnosed bleeding problem. No known bleeding disorders on Mother or Father’s side”.

98. A further account is recorded by Dr Papafio at 1am on 24 October 2021. The doctor completed a pro forma titled “Safeguarding children documentation” that records the history as:

“Mum says that Fiona was in her Moses basket alone in Mum’s bedroom at 6pm and she heard her crying, so went to check on her and saw blood around her mouth. She vomited blood straight away, had a bottle of feed and vomited blood again 20 minutes later. Mum said she called 111 at 6.30pm”.

99. Later in that document it also records:

“Mum has been with her current partner, Mr Clay, for two months. He came to visit at 2pm on 22 October 2021 and stayed overnight and is still there now but Mum says he has not been alone with Fiona in this time”.

100. The mother was interviewed under caution by the police on 25 October. The mother said that she noticed Fiona had blood around her mouth when she picked her up. She called her sister, who said it was probably from teething and to check inside her mouth. She checked but noticed the top of her lip was ripped from the inside, the frenulum. Her sister said, “There was nothing you could do about it, just leave it and watch out in case she swallows the blood”. She said that Fiona had thrown up blood, which was dark and clotted, and she took pictures and took her to hospital; that Fiona had thrown up a couple more times before going to hospital.

101. She noticed Fiona had bruises on her chin, which the maternal grandmother had noticed on her face before. In her police interview, the mother would not say how the torn frenum had occurred but said that Emma is quite heavy-handed and quite boisterous; that she likes to swap the children's dummies and is sometimes quite harsh. She said that Emma had left bruising on Fiona's arm before from trying to lift her.
102. The mother was unable to identify a cause for any of the three bruises and could not explain how the blood came to be around Fiona mouth and in her vomit. She told the police that she is the only person that Fiona would let feed her. She said no one else has looked after the children.
103. She explained that two weeks earlier their dad, which I take to mean Mr Barry, decided he does not want to be a part of their lives anymore and wants to come off the birth certificate. Mr Barry had used to have them overnight, but the last time was a couple of weeks ago.
104. She also said that she had not experienced any duress or threats of violence. She described Mr Clay as:

“brilliant with the children, genuinely loved them. He really tries to be friendly and interact with them as much as possible”.
105. Mr Clay also gave his police interview that day. It is the only account that the Court has from him as he has chosen to avoid engaging with the Court process despite being aware of the proceedings and having been put on notice of the allegations that he is facing.
106. He said that on Saturday night he had gone over to put in Fiona's dummy, and she was crying and had blood on her face. He said he panicked when he saw the blood and took her to the mother, who looked in her mouth, saw blood in her mouth and “this bit bleeding”.
107. He said the mother was in the kitchen tidying up. He said he told her to take Fiona to the hospital. He said his relationship with the kids is good, he loves them, and described that they had gotten him out of being “rock bottom”. He said, “They are amazing, lovely kids”. He said, “Fiona's cries, but she is a baby and that's what they do”. He described Emma as energetic and likes jumping over things and climbing on furniture.
108. He said he had only looked after the children by himself twice, once when the mother had an eyelash appointment and the other time he looked after Emma while the mother was at hospital with Fiona. He said he noticed the bruise on Fiona's chin around midday or 1pm, and he asked the mother, but she did not know where it came from.
109. The mother provided her statement in the care proceedings on 1 December 2021. She wrote in that statement that there was no explanation for the blood she found in Fiona's mouth and

that once Fiona had the medical examination, it was found that her frenum was torn, and this had caused the bleeding.

110. Later in that statement, she explained that she had been cooking a chicken dinner with Emma in highchair; that she was handling raw chicken when Fiona was crying and asked Mr Clay to go and see to Fiona and put the dummy back in. He went in. Fiona stopped crying for a moment and then continued crying.
111. Mr Clay carried her out and showed her that she had a small amount of blood on her cheek. She put Fiona on her bed and telephoned her sister. Her sister asked her to check her mouth, which is when she saw the split frenum. I pause to note that within that statement there was a plain contradiction about when the mother first discovered the split frenum as to whether she looked in Fiona's mouth or whether it was first discovered by the medics.
112. She went on to state in the statement that she was aware of Fiona's bruises, which were very small, and she was not openly concerned as she would always be supervising the girls and she assumed that Emma was the cause of them. She stated she had no previous reason to suspect Mr Clay, but when she read about his previous convictions and confronted him about it, he denied them, which gave her, in her words, "the ammunition to end their relationship", which she did so on 2 November 2021. She states in terms that she believes Mr Clay was the perpetrator of the injuries to Fiona.
113. The mother provided a response document to the final threshold dated 29 March 2022, in which she states that the injuries were most likely caused by Mr Clay; that she was mostly supervising the children; that she would never leave the children with Mr Clay for a long duration but would if she had to go to the shops quickly and this would not happen very often; that if the injuries were caused by Mr Clay then she agrees that she failed to protect Fiona. However, she did not see or hear anything of concern.
114. In the course of that document, the mother makes reference to only finding out about Mr Clay's history after they separated and states that she was not in contact with Mr Adams during her relationship with Mr Clay.
115. The mother provided a statement in the course of the fact-finding hearing dated 11 May. In that statement she set out that she had resumed her relationship with Mr Clay in November 2021. She says she did not attempt to restart the relationship, but Mr Clay was insistent and had refused to leave, and then started to try to isolate her from friends and family and made her feel like she had no choice as he had threatened her and her family's lives. She says that only two people knew the whole time, one was Mr Barry, and the other was a friend who

- talked her into telling the maternal grandmother.
116. She said that since he had returned in November, Mr Clay had remained in her flat most of the time, was frequently under the influence of drugs and alcohol, including cocaine, crack cocaine and cannabis, and that she had to give him her money. She said he was controlling, physically abusive, hitting her, strangling her, threatening her with a knife, banging her head against the wall, had thrown a phone at her, and that he was mentally abusive, threatening her loved ones or that he would inform Social Services that he was staying there and blame her to make sure she did not see her daughters again.
  117. She said that she had decided to go to the police that weekend. She said that she was staying at the maternal grandfather's house more and more and had not been back to her flat for two weeks. She said that she had shown to the police threatening WhatsApp messages from Mr Clay.
  118. In her oral evidence, the mother gave a similar account to her Court statement about having raw chicken on her hands and asking Mr Clay to see to Fiona's dummy; that he had brought Fiona to her, shouted to her, met her halfway and said he had seen blood on her cheek. She repeated the account about talking to her sister, checking on the torn frenum and seeing blood in the vomit.
  119. She said that Mr Clay had had access to all of her emails and social media so he could see everything that she had said, and that if there was anything in it that he did not like, it would cause a massive argument. She accepted her earlier account about ending the relationship with Mr Clay had mislead professionals. There was, in my judgment, a stark inconsistency in her account around this. If Mr Clay was controlling what the mother said in her statements, then why did she maintain in all of those statements that he was responsible for causing Fiona's injuries? The only part of written evidence that she says was censored by Mr Clay was about the resumption of their relationship. That does not make sense and I formed the view that even in her most recent version to the Court, the mother was not giving me a full account about what had happened in her relationship with Mr Clay.
  120. The mother's accounts of who first went in to see Fiona and found her with blood on her face were inconsistent. Her initial accounts to the hospital and the police were that it was she who found Fiona with blood. However, her account has changed over time so that by the time of her statement within the proceedings in December, she said it was Mr Clay who found Fiona like that. It was Mr Clay in his police interview who first suggested that it had been he who had first found Fiona like that.

121. The mother was also inconsistent about whether Mr Clay was ever alone with the children. Initially, she maintained to professionals that that had never happened. However, by the time of her oral evidence, she accepted that it had and in the case of her eyelash appointment, she must have left him with the children for quite an extended period while she travelled to another town for a beauty treatment and then travelled back. There were also her accounts in her most recent statement of having left him with the children while she went out to the shops on occasions.
122. There are major issues with the mother's credibility. She has admitted not being honest in her statements. I remind myself of the *Lucas* direction when the mother says she lied about ending the relationship because she was being controlled by Mr Clay. However, I do not believe her explanation because in those same statements she was able to state that he had inflicted the injuries on Fiona.
123. I consider it more likely that the mother either never ended the relationship with Mr Clay or they only briefly ended the relationship before resuming, and that she intended to mislead professionals about it. In my judgment, it is likely that the mother's claim to have separated was a response to the pressure of the proceedings and in the hope of getting her children back, while also being able to continue her relationship with Mr Clay.
124. Unfortunately, those plans fell apart because subsequently Mr Clay's behaviour became abusive and increasingly intolerable for the mother. Faced with a need to protect herself, but also trying to explain away this damning series of decisions and actions, the mother has sought now to explain her actions as having all been under duress from Mr Clay throughout. However, I am not satisfied that that was how matters have occurred.
125. When I consider the question of who inflicted the injuries on Fiona, there are a number of factors that I need to consider. There are certain aspects about Fiona that made her a difficult or demanding baby to care for and that would have, in all likelihood, increased the tiredness, frustration and annoyance potentially in those caring for her. Fiona had been born prematurely and was in special care during the first part of her life for a thankfully relatively short period.
126. However, she continued to have problems with feeding. She would have to be held in certain positions while she was being fed because she would vomit frequently. She would require feeding throughout the night.
127. There were periods of time when she would reject anyone else apart from her mother feeding her. There were periods when she would be unable to hold down her feed and so she would

be an upset, hungry baby who then would not feed well and vomit and continue to be upset. She had recently been unwell only a few weeks earlier with bronchiolitis and was coughing up blood and required being taken to hospital. Therefore, there are a number of factors about Fiona which meant that she would have been demanding to meet her needs.

128. There are also certain factors about the home environment in general. Firstly, it was not just Fiona that had to be cared for, there was also Emma. Two children under two which means that there would have been a very high level of care needs for both of them in terms of feeding, cleaning, bathing, dressing, stimulating in their routines in general, as well as the particular need for constant supervision of the two girls when they are together because of Emma's boisterous nature. In addition, the flat was small and at times, certainly in the police photographs I have seen, it was untidy and messy.
129. There are certain factors about Mr Clay that I have to consider. Mr Clay was a new boyfriend who had recently arrived on the scene and these children were not his, although the evidence from him and indeed from the mother was that he was very good with the children. Nonetheless, it is possible that he was at times resentful or jealous about the demands of the children or about them taking away from his time with the mother.
130. Mr Clay has serious mental health problems. In his police interview, he described having emotionally unstable personality disorder, paranoia and depression. He said he hears voices "and stuff like that", which he blocks out and takes medication if he needs to.
131. He explained that with EUPD, he has very heightened emotions. He gave a number of examples, but one of them was that if he gets angry, he "will be fucking fuming". He said that before he met the mother, he was a lot worse and had been trying to kill himself every day, but that his mental health had not been a problem since he had met the mother and the girls.
132. Mr Clay was also a regular drug user. He admitted that in his police interview, and the mother corroborates it, that he would smoke cannabis which he would usually get on his payday. He said in the police interview that he did not use other drugs, but in the mother's account most recently to the Court is that at least after November he was using a number of substances, including crack cocaine. I take judicial notice that cannabis use, which was admitted, is notorious for its damaging effect on mental health and it is particularly unwise for those with pre-existing mental health conditions.
133. Mr Clay has an alarming criminal history for domestic abuse and violence. He has evaded engaging with the Court process and answering the allegations against him, although plainly

he has been fully aware of the case, not least because he has been present at the mother's home whilst she has been dealing with the case.

134. It is also clear that if Mr Clay went into the bedroom, he had the opportunity to cause the injury to Fiona. There is no evidence that he was annoyed or upset at that time, nor is there evidence that he was annoyed or upset in the immediate aftermath, but it is possible that he could have lost his temper and been vicious towards Fiona while in the bedroom.
135. There are a number of factors in relation to the mother. She also has mental health issues. She suffers from anxiety and depression. She has received support from CAMHS in the past and is currently awaiting cognitive behavioural therapy. I have already detailed her unusual cognitive profile and the possibility that she may have some neurodivergent condition or conditions such as Autistic Spectrum Disorder or ADHD.
136. At that time in September and October 2021, the mother was having a very difficult time. Her relationship with Mr Barry had ended only two or three months earlier, and they were having difficult communications as seen by the text messages, whilst she was also keen he should maintain his relationship with the girls. However, only two or three weeks before the injuries to Fiona, the DNA test results had come through and Mr Barry was walking away from his role with the children.
137. That had created a conflict between the mother and Mr Barry, who she referred to on her mobile telephone as "sperm donor". It also led to a conflict with Mr Barry's mother, who had allegedly assaulted the mother at the front door to her home.
138. As well as that conflict, it meant that a major element of support or respite had been lost because Mr Barry and his family would often take the girls, and the mother would get some respite from caring for them. That factor also actually applies to Mr Clay because it means also that periods of time when he and the mother could be together without the children present had simply ceased. The state of the home when the police saw it suggests that the mother generally was struggling to cope at the time.
139. A further factor is the mother was likely to have suspected or believed that she was pregnant at the time as she contacted NHS 111 on 5 November, which was less than two weeks later, and said she thought she was having a miscarriage and that she was 10 weeks' pregnant. She may well have felt upset or stressed about the prospect of being pregnant and potentially having three children under three years old to care for at the same time.
140. On the positive side, the mother clearly loves her children. I have heard from Mr Adams and from Mr Barry positive things about her care for children and their belief that she would not

hurt them. The mother also had support from her own family, through her parents and through her sister and so she was not isolated.

141. When I factor in all of the evidence, the conflicting accounts given by the mother and Mr Clay, and the mother's lack of credibility generally, Mr Clay's self-imposed absence from the proceedings and his refusing to answer the allegations against him, as well as the factors I have outlined above, I am not able to determine on the balance of probabilities any single perpetrator of the injuries to Fiona. I am satisfied there is a real possibility that either Mr Clay or the mother caused the injuries to Fiona. They both had the opportunity to do so.
142. Either one of them might have been the person who went into the mother's bedroom and harmed Fiona. It must have been one or the other of them that did this, but unfortunately on the evidence before me, I cannot identify whether it was the mother or Mr Clay that did it.
143. I turn now to paragraph seven which alleges that the mother failed to notify health visitors that she had moved address in July 2021.
144. It is accepted that the mother did not change the registered home address for her and the children when they moved from the maternal grandfather's address. The mother says she did not make a secret of that move and had told the health visitor about it. I have not heard from the health visitor.
145. It is also accepted that the address that the hospital and the health visitor had was the maternal grandfather's address and the mother had no trouble traveling to her old GP. I am not aware of any specific problems that arose from the mother using the old address instead of her new flat.
146. She told me that any post came there, her father would contact her, ask if he could open the letter and either read it to her or send her a photo of the contents. The mother was able to access services appropriately. She and the children were contactable at the father's home. In the circumstances, I am not satisfied that this allegation meets the section 31 test, nor am I satisfied that this was in some way an attempt to disguise her or the children in the light of Fiona's injuries.
147. Paragraph eight alleges that the mother has not been honest and has led Mr Barry and his family to believe that Emma and Fiona are his children and are members of his family. As a result, the identity of Emma's father is unknown and until 4 February 2022 the identity of Fiona's father was unknown. This will lead to the disruption and cessation of established attachments that both children have with Mr Barry and his family causing emotional harm.
148. The mother's response is that she believed that Mr Barry was the father of the children and

she did not plan on intentionally misleading anyone.

149. Questions of paternity are often raised within the work of the Family Court. Even for medical professionals, there is a level of biological uncertainty about counting back accurately to identify the dates of conception. Given that the mother was in an established relationship with Mr Barry at the time when both children were conceived, on one level it is not unreasonable for the mother and Mr Barry to believe he was the father of the children.
150. The Local Authority in effect raises a wider question. For most pregnancies, the mother of a child is in a uniquely privileged position of knowing who is or could be the father of the child. In the cases of Emma and Fiona, the mother presumably would have known who she had had sexual intercourse with around the time when she became pregnant.
151. However, the Family Court is not a Court of morals. My role is to approach this through the lens of the section 31 threshold criteria.
152. I do not doubt that for Emma and Fiona to have had Mr Barry play a role in their lives and then withdraw that involvement would have been disruptive and may have been upsetting to them and they may have missed him. However, I do not know at what point the mother knew or realised that Mr Barry was not the father.
153. Mr Adams was clear that he had asked the mother about it because Fiona bears a resemblance to him and members of his family when they were babies, but the mother had told him that the dates did not match up. However, it is not clear when that conversation took place.
154. I am not satisfied that on the basis of the evidence before me that the mother knowingly misled Mr Barry and told him that he was the father of the children when she knew he was not. It is likely that for most of the time that Mother believed also that Mr Barry was the father.
155. The mother's reaction after the first set of DNA testing was identified is perhaps more problematic because even after those results, the mother continued to insist to Mr Barry that he was a father and berated him for abandoning his children. In her oral evidence the mother told me that she was in denial.
156. However, I remind myself of the words of Hedley J in *Re L* [2007]1 FLR 2050:

“Society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent. It follows too that children will inevitably have both very different experiences of parenting and very unequal consequences flowing from it. It means that some children will experience disadvantage and harm, while others flourish in atmospheres of loving security and emotional stability”.

157. I have reached the conclusion that the incorrect identification of Mr Barry as the father of the children falls squarely within the very diverse standards of parenting that Hedley J described. While the circumstances relating to Emma and Fiona's paternity have turned out to be messy and no doubt painful for the adults involved, there is, in my judgment, a puritanical assumption in the Local Authority's case that the mother should have known the father's identity and should not have misled Mr Barry. I did not make that assumption, and for these reasons I do not make the finding the Local Authority seeks as I do not consider that this meets the test under section 31.
158. Paragraph nine alleges that on 23 October 21 that mother failed to supervise Fiona and paragraph ten alleges that the mother failed to protect Fiona as a result of which she suffered the injuries that I have already set out in whilst in the mother's care. It is the mother's case that she did not cause the injuries, but that she accepts that she failed to supervise and failed protect to Fiona. On the basis of her admission, I find both paragraph nine and paragraph ten to be established.
159. Paragraph eleven, I do not need to deal with it because in the course of the mother's closing submissions the Local Authority withdrew that allegation.
160. On the basis of the findings that I have made, I am satisfied that at the relevant date both Emma and Fiona were suffering or were likely to suffer significant harm, and that the harm or likelihood of harm was a result of the parenting that they received or were likely to receive not being what it would be reasonable for a parent to give to them.
161. Lastly, I would like to express my thanks to the advocates on the case for the assistance that they have given to the Court. That is my judgment.

**End of Judgment**

Transcript from a recording by Ubiquis  
291-299 Borough High Street, London SE1 1JG  
Tel: 020 7269 0370  
legal@ubiquis.com

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