IN THE FAMILY COURT SITTING AT MILTON-KEYNES

MK19C00034

IN THE MATTER OF SECTION 31(2) CHILDREN ACT 1989

AND IN THE MATTER OF A (a child)

B E T W E E N:

Local Authority X

Applicant

and

S

1st Respondent

and

R (a child)

(through a children's guardian)

2nd Respondent

and

C

3rd Respondent

Heard 14th, 15th 16th 19th 20th 21st August and 3rd September 2019.

Mrs Samantha Reddington and Mr Chipperfield-Taylor for Local Authority X

Mr John Vater QC and Ms Haider-Shah for Sylvie

Miss Hannah Mettam and Miss Sophie Gayner for Claire

Mr Robert Littlewood for the Child's Guardian

This judgment was delivered in private. For the avoidance of doubt, the strict prohibition on publishing the names and addresses of the parties and the child applies where information has been obtained by using the contents of this judgment to discover information already in the public domain. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court.

APPROVED JUDGMENT

1. The court is concerned with the welfare of a little girl who I shall call Rosie for the purposes of this judgment. She was born in 2018. She is the subject of care proceedings instituted by Local Authority X. The court is asked to determine the likely cause of the injuries sustained by Rosie.

2. Rosie's mother I shall call Sylvie. Rosie was born with the assistance of a sperm donor known only as 'N' through an unregistered fertility programme. Sylvie's partner I shall call Claire. Claire is the acknowledged second parent of Rosie albeit she is not registered as Rosie's parent and does not share parental responsibility.

3. Rosie was born prematurely at 32 weeks gestation by elective caesarean section. Her conception was planned and prepared for by the two mothers. She is clearly well loved by both women. She was in hospital for the first ten weeks of life.

4. In the early hours of 25th February 2019, Rosie was brought to the A&E department at X Hospital by Sylvie and Claire with serious injuries to her head. The injuries found included three skull fractures and a bleed to the brain. The hospital doctors felt that the injuries did not accord with the explanation provided by the two mothers and that moreover the

injuries were the likely consequences of inflicted injury caused deliberately or recklessly.

5. Sylvie said that the injuries occurred when Rosie was in her sole care. She described Rosie flinging herself from her arms and landing on a hard floor.

6. Rosie's bony injuries have healed but the long term consequences of the bleed to the brain are unclear. There is no evidence that she suffers from any form of blood, tissue or bony abnormality that might explain or have contributed to the injuries.

7. Rosie was made the subject of an EPO on 28th February 2019. She was made the subject of an ICO on 5th March 2019. She has remained the subject of statutory orders since that date. She was placed in the care of the maternal grandmother on her discharge from hospital where she has remained. The two mothers have time with Rosie under professional supervision on five occasions each week.

8. The court was originally asked to deal with the cause of injury as a single issue. The local authority reviewed their position following disclosure of the parties' medical records and police disclosure. Many of those documents came in during March and April. However it was not until the PTR in August that the local authority raised the additional matters that go to threshold and which they invite the court to consider.

9. After the close of evidence the local authority further reviewed its case. They no longer assert that Claire is in the pool of likely perpetrators for Rosie's injuries. This court is now required to determine the facts

giving rise to Rosie's injuries and to consider the local authority threshold as to:

a) whether Rosie has suffered and is likely to suffer emotional harm and neglect in the care of Sylvie and Claire;

b) whether Rosie has suffered non-accidental injuries perpetrated by Sylvie;

c) whether Sylvie and/or Claire pose a risk to Rosie;

d) the ability of Claire to protect Rosie.

10. The local authority also seek to establish;

e) the failure of one/ both mothers to be open with professionals;

f) the impact of the mothers' longstanding mental health problems;

g) whether Rosie has been exposed or is at risk of exposure to violence/volatility in the parental relationship.

11. The Applicant is Local Authority X. The Local Authority is represented by Samantha Reddington and Matthew Chipperfield-Taylor, Counsel. The solicitor with conduct of the case is Wendy Ratcliffe.

12. The first Respondent is Sylvie. She is represented by John Vater QC and Shazia Haider-Shah. The solicitor with conduct of the case is Gary Noble.

13. The second Respondent is the subject child, through her Children's Guardian. The second Respondent is represented by Rob Littlewood, Counsel. The solicitor for the child is Chris Bell of PS Law LLP.

14. The third Respondent is the Mother's partner, Claire. She is represented by Hannah Mettam and Sophie Gayner, Counsel. The solicitor with conduct is Denise Higgins from Woodfines Solicitors. Claire was added as a party to proceedings on the 14th March 2019.

15. I have read the court bundle, which is a little over 2700 pages. I have seen the three recordings of the ABE interviews of the two mothers and heard a recording of a call to the emergency services. I have seen a series of photographs of Claire and child produced by Claire and a video of Sylvie and the baby from the evening/night of Rosie's admission to hospital, together with police disclosure of photographs from the phone of Claire which came in on the second day of trial. It is regrettable that the police took so very long to comply with orders for disclosure made many months before.

16. I have heard evidence from three of the four medical experts instructed namely; Dr Adam Oates – Paediatric Radiologist, Mr Jayaratnam Jayamohan – Consultant Paediatric Neurosurgeon, Dr Rylance – Consultant Paediatrician. Dr Keenan – Consultant Paediatric Haematologist was not required. I have also heard from both mothers.

17. I am very grateful to all advocates for their practice direction documents and their recent submissions. From time to time I may borrow from those documents but make clear that any determination of issues of fact are made by me on the balance of probabilities.

Background Summary

18. Sylvie and Claire were referred to Social Care during Sylvie's pregnancy with Rosie. Sylvie was not previously known to X Social Care. Claire was known to Social Care as a young child. The limited involvement of Social Care from June 2018 focused on issues of housing and the couple's mental health.

19. Claire suffers from acknowledged anxiety and depression. Her medical records have been disclosed, revealing her enduring challenges with poor mental health. Her condition is largely managed by her GP. Sylvie has long standing difficulties with a diagnosed Unstable Personality Disorder, OCD, depression and anxiety. Sylvie has worked with the mental health services and acknowledged her history to the midwife. The family was referred to the Early Support Services in X. X Social Care closed the case with each referral to its service.

20. On 15th June 2018 X Social Care received a referral of anti-social behaviour following a complaint from a neighbour. X Social Care noted concern about the presentation of both women with both demonstrating high levels of stress and anger. Both women presented as paranoid and showed diary entries to the worker, which expressed thoughts of violence. I pause here to caution myself that this account is not from a primary source.

21. On 30th October 2018 Sylvie shared her mental health history to the Midwife and the referral to Children's and Family Practice was made.

22. On 26th November 2018 a referral was made from the X Hospital after both women made known their concern about an aggressive and intimidating neighbour and the stress generated by him.

23. In December 2018 Police received a complaint from Claire that she had been verbally abused by an ex-partner. No offence noted. Information was shared with Children and Families Practice. X Social Care again closed the case.

24. The women have known each other for 20 years. They have been in a relationship for the best part of seven years. Claire has been Sylvie's registered carer for most of those years and has taken responsibility for helping her with medical appointments and the administration of medication when she is not well enough to do so. Her role is otherwise a supportive one.

25. Neither woman has a criminal history save for Claire's conviction for drink driving a number of years ago.

26. Baby Rosie was premature at birth. She was born by elective caesarean section because of concerns about restricted growth and reduced activity. Rosie was initially placed in the Neonatal Care Unit. She remained in hospital for her first weeks. Her condition was good at birth but in view of her prematurity she was admitted to the Neonatal Care Unit. She then experienced a number of complications during her stay that included 19 days in intensive care, 42 in high dependency and eight in special care.

27. Rosie had a period on a ventilator. She had respiratory distress syndrome, difficulties feeding and had reflux, colic, and anaemia. Neither mother was allowed to hold her for the first two weeks. On any

account it must have been a very distressing and stressful time for these two women.

28. Rosie was discharged to her mothers' care and then readmitted four days later with a history of two days of vomiting and weight loss. She was discharged for a second time after two days admission. She had a period of bronchiolitis. On 22nd February 2019 she had a flu jab. She was examined and noted to be clinically well.

29. Sylvie and child initially lived with the maternal grandmother whilst Claire sorted out the family's move to alternative accommodation. The family moved to their current accommodation on or about 15th February 2019. The move to alternative accommodation was a result of an emergency managed move. The intervention of a former councillor enabled the family to be moved away from the anti-social activities of a neighbour. The nursing teams supporting mother and child were concerned that Sylvie's mental health was being undermined. Claire was responsible for getting the new property ready whilst Sylvie was Rosie's primary carer.

30. In the early hours of 25th February 2019, Rosie sustained injuries to the head. Claire rang the ambulance service and later spoke briefly to the Police. An ambulance was not called. Rosie was brought to X Hospital by the two women at approximately 2.40am.

31. At the time of the injuries she was only 15 weeks old and not yet fully mobile.

The Trigger Event

32. Clinical assessment on admission revealed that Rosie had sustained bilateral scalp haematomas, three separate parietal skull fractures involving both parietal bones, occipital bruising and an intracranial bleed.

33. The baby was clerked in by Nurse Webb. The history recorded in Nurse Webb's progress notes made in the early hours of the morning are echoed in the history provided to Dr Oommen, who was the on call consultant paediatrician. He records:[G48]

' I took the history in further detail. At 1:30 hours [Claire] was feeding Rosie, who took 60mls of the 90mls. [Sylvie] had been exhausted. [Claire] passed Rosie to [Sylvie] and she went out to walk the dog, which is routine for them. Rosie then took another 10mls and then [Sylvie] put her on her chest and was reclining on their sofa. Rosie flung herself and fell backward and fell to the floor. [Sylvie] was not asleep at this time. Rosie's head hit the back of her head. There was no vomiting but Rosie was crying. They checked her head and noticed a swelling. They called 999 but decided to make their own way to hospital. Since her arrival in hospital Rosie had been uncomfortable and was slightly sleepy but had taken two bottles.

Parents explained that Rosie arches her back frequently as a result of colic. Rosie screams and pushes herself back as if in pain and does this with every feed. Parents felt Rosies arching had been getting worse and note she had been vomiting a little during the day.'

34. The hospital noted that the parents accounts were consistent with each professional.

35. Sylvie and Claire were arrested at the hospital. Sylvie was clerked in by the custody sergeant with no reported injuries. PC Childs conducted a cell watch during which she noted Sylvie to repeat elements of her account. She advised Sylvie not to talk about the allegations. Sylvie was distressed and spoke of harming herself. Sylvie does not recollect what she said to the officer who noted she *'needed to talk about it as its all she can see in her head*' PC Childs records '*she was repeatedly telling me how she was really tired as her daughter had been up screaming in pain and had had very little sleep, she put her daughter on her chest as it was a comfort to her daughter and for herself, she was relaxed with her on her chest but all of a sudden her daughter threw herself back and she fell onto the floor. Sylvie said the flooring in her home is like concrete and when her daughter hit the floor it made a horrible sound.'*

36. In interview Sylvie demonstrated how the baby fell from her arms. She was clear that the only thing she had done wrong was to take the baby when tired. ' *I took a bad judgment. I should not have took my daughter tired. That is my that's what I'm guilty of, I should not have taken her tired, I should have said no. But because obviously, as a Mum you just kind of plod through you don't think and I didn't think that was gunna happen, she just done it out of nowhere like she does'*

37. As to the mechanism for the injury she said ' *Well, the armchair is here, on my sofa, now the police which have been in my house, they'll see that the flooring is exactly that out there, it's like concrete, it's solid. So like I say, I was slouched down on the sofa, not too far down, my daughter' head was here, yeah, so she wasn't very high, but high*

enough to hold her up, because she does not like laying down, and she doesn't, so I held her up and my arm was just here, so when she flung back, she done it with an almighty force, now she's done that with other people that have held her because she doesn't wind very well, and that you know and because I was tired my reaction was pretty delayed. That is what happened. Do you know what I mean, it happened really quick'

38. Within proceedings Sylvie filed statements repeating her account of Rosie flinging herself to the floor; exhibiting photographs to illustrate the lay out of the room, the sofa, its height from the floor and how the incident had occurred.

39. She continued to give that account to Rosie's treating medical professionals, the police, to social care, her CPN, her Psychologist, and at least three other members of the mental health team engaged in supporting her mental health.

40. Sylvie says this is the account she gave her partner as to the cause of Rosie's injuries. Both women say that the full detail of the first account of what happened didn't come out until they were in the car on the way to the hospital.

41. Claire was not in the room at the time Rosie was injured. She says she relied on what she was told. Claire's account of events that evening has remained unchanged since the events of that night. In summary she says that around 1.45 – 2.00.am she was upstairs getting everything ready to take the baby up to the bedroom, leaving only the Moses basket to be collected. As she was on the landing she heard a thud, or possibly a sound like a slap. There followed a period of silence. She

then heard her partner Sylvie shouting in panic. She dashed downstairs and on reaching the bottom of the stairs she heard the baby cry and shouted '*what the fuck happened?'*

42. Claire readily accepts that she defended her partner who she felt was being wrongly blamed for hurting their daughter.

43. The admitting hospital medical team did not communicate their scepticism about Sylvie''s account directly with the parents but within a very short time the parents became aware that the doctors didn't really think the mothers' explanation was satisfactory. The written social work evidence does not assist in identifying what was and was not discussed directly with the two mothers. The two mothers however each recollect that the possibility of a stamping or crush injury was raised early on in the enquiry.

44. Both mothers say that for the many months after Rosie was injured their relationship was strained. Claire accepts that she asked questions because she want to know more. However they both say they couldn't have a full 'discussion' about that night. It was all too raw.

45. On 19th July 2019 Sylvie filed a statement significantly changing her account of the night of the 25th February 2019. She says she told her partner the truth on the 5th July 2019. Claire made contact with Sylvie's legal team on her behalf. In her revised account of 19th July, Sylvie says this: '*Previously I had said that Rosie had thrown herself out of my arms onto the floor. I am now writing this statement to confirm that my previous account was not a true and accurate account. I am wholly and*

truly sorry that I was not honest from the beginning. I was absolutely terrified, and I still am and I panicked'.

46. In her second account Sylvie described feeling exhausted. She said that during that evening she was having problems with her arm and her leg; her hands were tremoring. She provided a detailed account of how baby Rosie was positioned in the moments before the incident [C71] '*she was positioned on my chest upright* with *her head close to my left shoulder, as I had been advised previously due to Rosies reflux. I winded Rosie and she fell asleep on me. My right hand was under Rosies bum and my left hand was supporting Rosies neck'.*

47. She went on [C72]

' *I tried to get up from the sofa. I shuffled forward whilst holding Rosie and I struggled to get up. I was disorientated and exhausted. As I stood up, I got really bad vertigo and I felt as though I was falling off a tall building. I tried to move and just felt dizzy and faint. I then fell onto Rosie. I still do not know if I fainted in the process of falling.*
This is when [Claire] heard the thud and shouted downstairs. I came to and it felt like I had been asleep.
I had fallen at an angle from the sofa…Rosies head was underneath my left shoulder. I had fallen on her with my left hand partially behind her head and my thumb directly on the right side of her head. Rosies head was facing the wall. I always wear a very thick, silver thumb ring on my left hand.
I screamed for [Claire]. Rosie was not crying. I cannot remember exactly what happened. I managed to get up onto my knees and picked Rosie up. I cradled her in my arms and she was floppy. I noticed a mark on her head and saw some swelling.

48. Sylvie has produced a photograph of her holding a small baby doll to illustrate how she was holding baby Rosie with the thumb ring in view. Her video from the early evening on 24th February 2019 shows a happy and contented pre-term baby who is being affectionately cuddled. Photographs of Claire taken after 1.45am show a baby who appears well with no obvious markings or discomfort. These photographs and the video were provided to the reporting experts before they gave their evidence. The local authority assert that the likely window for injury was whilst Rosie was in her mother's care in the early hours of 25th February 2019 whilst Claire was upstairs.

Medical Evidence

49. It is accepted by all of the reporting doctors that Rosie did not present with the attendant features of a baby who had been shaken. Aside from the significant head injuries she had no other bony injuries and no marks to her body.

50. Dr Keenan Consultant Paediatric Haematologist reported 9th May 2019. No clotting or blood disorders were identified. An addendum noted outstanding blood tests. No relevant blood disorders noted.

51. Dr Oates is a Consultant Paediatric Radiologist with the Birmingham Children's Hospital. As with all four experts he wrote both an original and addendum report. His first report is dated 4th June 2019. At the conclusion of the doctors oral evidence Mr Vater QC, leading counsel for Sylvie advised that Sylvie was not taken through the report until she met with her

legal team on 12th July 2019. Claire met with her solicitors to go through his report on 10th June 2019. She reports she was not given a copy.

52. Dr Oates preliminary findings were: [E106] '*The appearance is in keeping with a traumatic impact injury to the head. This may be secondary to the head impacting with a hard static object (e.g. the floor or wall) or alternatively, the head being hit with a hard object. Given that the skull fractures are bilateral (i.e. both sides of the head) we also have to consider the possibility of two separate impacts or alternatively a crush injury'.*

53. In commenting on the features of the fractures he observed the two bilateral parietal fractures with associated soft tissue swelling which were suggestive of two separate impacts with a possible 'bouncing effect' on impact with the floor. Of the right parietal fracture he observed that the margins of the right parietal skull fracture were suggestive (although not definitive) of a more significant impact.

54. When considering the level of trauma likely to give rise to the parenchymal injury. He observed; '*to sustain a parenchymal injury in the accidental setting, there has to be a very significant level of trauma. Although this is only a small sample size, this mirrors my own practice in which injury to the substance of the brain is very unusual after typical domestic-type low-impact events, and requires more significant levels of force'*

55. He accepted in his written report and in his oral evidence that it is not always possible to predict the type or severity of an injury secondary to a particular traumatic event. When considering the mother's first account he

concluded that her account was unlikely to be a causative mechanism adding; *'Ultimately I believe the injuries may be secondary to a crush injury (i.e. both sides of the head are compressed), two separate impacts with a hard surface, or alternatively (but less likely) a solitary impact but with a greater involvement of force/height than that associated with falling from her mother's chest onto the floor (approximately 89 cm). Radiologically, however it is not possible to definitively distinguish between these 3 scenarios'*

56. In his addendum report his response to the mother's revised account was [E231]: *'I believe that if the court accepts the revised description of events in which Sylvie fell onto Rosie from a standing position (with her ring-bearing hand under 35 Rosie's head) this could potentially and not unreasonably account for the severity and pattern of the injury's seen.*

I note the described weight of Sylvie is 19 stone and 6 Ib. As I have previously stated the injuries in question are severe however Sylvie's description of events would likely involve significant momentum from her own body weight and with both an impact event (as Rosie's head impacted the floor), and a crush injury as she fell on Rosie. As such I believe the radiological appearance is compatible with the described event. Although clearly I cannot be certain, I believe the thumb ring as shown in the photographs may potentially produce the small, focal depressed component of the right sided skull fracture.'

57. When looking at timing he opined that the skull fractures were difficult to date and that the likely window ran from 15th February 2019 to admission. However timing would be more likely informed by other injuries and her presentation. He observed that Claire had noted a

swelling to the head on first inspection which alerted her to the need for medical attention.

58. In evidence he observed that as a doctor working in a large children's hospital '*we see a lot of head injuries but a crush injury is exceptionally unusual'.* He accepted that from a radiological perspective '*I cannot distinguish between a crush or two separate impact injuries. Crush injuries are exceptionally unusual so one can make the argument two impacts are more likely, but based purely on the radiological parameters and the limitations of radiology I cannot distinguish between those two scenarios.'*

59. When asked to consider the likely significance of the mother's weight and softness Dr Oates did not consider there was any way to ' *quantitate[sic] that in real terms'.* He could find no evidence in the literature of a parent falling onto a child and causing such extensive injuries but accepted *'I cannot say what degree the softness will have on the overall injury'.*

60. On being asked to consider the absence of any injury to mother he qualified his response noting only that his clinical experience would suggest that the absence of injuries in the mother *'does surprise me very much'.*

61. Dr Oates made a point of considering relevant research papers on crush injuries to assist in the preparation of his report. A research bundle was produced for the assistance of all experts. From the literature Dr Oates was prepared to accept that ' *the different fracture patterns secondary to crushes they are highly variable, so no I haven't*

seen imaging of a crushing injury with one one side and two on the other but I recognise the variability of crush injury patterns'.

62. Dr Oates was content to defer to Dr Rylance Consultant Paediatrician on surface injuries. When considering the brain injury he accepted that a brain injury would require a significant level of trauma saying ' *my position is that a crush injury is potentially very significant and can impact on the deeper substance of the brain, it could cause serious injury'.*

63. He acknowledged that if the court believed the mother's second explanation '*my belief is that if the court accepts that Mother fell forward with Rosie in her arms and landed on her such that Rosie was crushed between the floor and the Mothers shoulder, then the injuries could potentially occur in that scenario.'*

64. When asked to consider the likely mechanism if mother's explanation was not accepted Dr Oates said '*Two possible scenarios: One of those would be crush injury which theoretically could be secondary to an impression of a perpetrators hand against the skull, alternatively by two separate impact injuries to the head. I believe it could be part of the same process. So for example a child being thrown against the wall may get fractures on one side from the wall and then squently impacting the floor causing the other fracture.'*

65. He went on '*I discussed single impact in the report, in the literature and my experience I have seen bilateral skull fractures secondary to a single impact but in this instance that would be a less*

likely scenario because we have two on one side of the skull and one on the other side and both sides had swelling suggesting both sides sustained some form of impact.'

66. Mr Jayaratnam Jayamohan is a Consultant Paediatric Neurosurgeon at the John Radcliffe Hospital. He prepared two reports and gave oral evidence. He does not consider either of Mother's explanations to provide a full account of the mechanism for the injuries to Rosie but accepts mother's account could provide a 'possible' explanation.

67. He noted Rosie's early medical difficulties and the enduring concern about her poor weight gain. On 24th January 2019 the care of the two mothers was noted to be to be competent and caring. GP records reference Rosie's prescription for Neocate powder for feeding due to malabsorption secondary to cow's milk intolerance. All critical testing has been completed. There is no suggestion that the baby was lacking in nutrients that predisposed her to bony injury.

68. Mr Jayamohan recounts the results of the MRI and CT scan [E200];

'*An MRI scan was also performed and in conjunction with the CT scan it was determined that there were three large linear fractures, intraventricular blood in the middle to the brain, localised parenchymal haemorrhage within the tissue of the brain itself, subarachnoid haemorrhage and subgaleal haemorrhage (bleeding on either side, outside of the skull'*

69. In considering the CT scan he reports [E203]:

‘ The fontanel is bulging, *in keeping with raised intracranial pressure. The skull shows evidence of bilateral fracturing on 3D reconstruction, although the bone itself appears to have normal mineralisation to my neurosurgical eye. On the left parietal bone are two long , almost horizontal fractures and overlying this area is a significant area of scalp swelling. In the right parietal bone, also underneath an area of significant swelling is one long complex fracture where the anterior most part includes a significant depression of the upper bone of the fracture, with widening of the fracture lines or diastasis, in keeping with either significant intracranial pressure separating the two edges of the fractures, or that significant force has been involved in the fracture mechanism forcing them apart from each other. Given the evidence of the depression within the fracture line, and the appearance internally, I would suggest that it is more likely to be related to the force of the fracture as the brain swelling internally does not seem that great, although of course both may be playing a part. In particular it would seem that if there was generalised intracranial swelling there would be diastasis of the left fracture also, which is not apparent. The bi-parietal scalp swellings are separate from each other and there is no evidence of swelling posteriorly over the occiput where the bruising was noted by the admitting physicians. Therefore, this* should *be counted as two separate areas of scalp swelling rather than one contiguous one*’.

70. Of the MRI scan he says;

‘This confirms evidence of blood within both occipital horns of the ventricular system and bleeding within the parenchyma of the medical left occipital lobe, as well as a small amount of extra-axial blood on the surface of the brain in the interhemispheric fissure between the two posterior parts of the cerebral hemispheres. A small focus can be seen

over the vertex bilaterally, as well as in the right occipital lobe and the cerebellum shows some small traces over the left cerebellar hemisphere also. There remains evidence of prominent scalp swelling bilaterally over both parietal regions with evidence of a fluid level in keeping with there being some subgaleal bleeding seen in the midline region posteriorly'

71. On the issue of timing Mr Jayamohan considered that the clinical timing would be associated with Rosie's change of demeanour, crying, altered consciousness and behaviour which on the account of both women would put the event in the early hours of 25th February 2019.

72. He considered that the bilateral fractures did not come from one impact. '*The fracture on the right side, including an anterior depression would require a significant impact injury. Most likely this was not on a flat surface- to cause the depression it would more likely have been onto a protuberance. The scalp swelling that is seen on the right side is over the area of the fracture and does not continue over to the other side in one large scalp swelling. Therefore, this could all have occurred from one impact, but it was there on the right side. The fractures on the left side need to be considered as to be caused by a separate impact; firstly due to their significant anatomical separation from the other fractures and secondly due to the scalp swelling seen separately overlying this fracture area'.*

73. He considered the photo taken of the back of the head by the two mothers. Adding ' *if the area around the occiput is indeed a separate bruise discoloration'* it does not overlie either of the areas of the

fractures and is not anatomically linked. He thus raises the possibility of a third impact.

74. Mr Jayamohan dismissed the first account of Sylvie. He accepted that the injuries likely occurred in the early hours of 25th February 2019.

75. When considering Sylvie's second account Mr Jayamohan queried mothers description of her hold on Rosies head. He was assisted by the photo she produced. In evidence he said '*I can see how the silver ring would be placed overlaying the right side of the child's head in a location that would accommodate the cause of the depressed fracture on the right side of the child's skull, so I can now envisage that as a mechanism to cause the depression, the rest of my opinion about the caveat of the likelihood of the injuries being caused remains the same '.*

76. When asked to consider the mother's second account he went on '*My understanding of the final history of what happened is that Mother was holding the baby as shown in the photograph today, she is unclear about how. It appears she fell holding Rosie onto the floor, she can't remember if she blacked out or not and she came to. The inference is that she has fallen on to the child on to the floor with her shoulder being on one side of the child and the ring being on the other. So if you like, in order for the ring to explain the depressed fracture it would be that Mother's hand was under the child with the ring on the depressed area of the fracture, so the right sided fracture would need to be with the child's head on the finger of the mother and the left side, the two fractures, which is really really rare to see two fractures next to each other, in contact with her shoulder and/or collarbone, I know mother is described as larger but the collar bone is still prominent on most*

people, so it seems the collarbone would be the prominent point on that side causing two fractures, that in itself would be an unusual constellation of finding but you could get fractures from it with associated scalp swelling but in that instance the fracture has taken a fair amount of the energy of the fall, and it tends to be bone that is fractured, there can be deeper injury to the brain but it tends to be…If we look at the evidence it tends to be after much greater events, cars, hard heavy television falling on the child. Bleeding in the centre of the brain, the fluid space, the ventricles and the brain itself is not something I tend to see after household falls and not something you tend to read about in the literature, it can happen, it's been reported, but its rare. I guess where I am is, there are several rare events that are noted in this child from the history, so is it possible? Yes it is. Do I think it is likely or the complete explanation? Probably not. Maybe because Mother's history is missing or because there is a completely different explanation'.

77. Under cross examination by the local authority Mr Jayamohan observed that *'the intracranial findings in the fluid space in the middle of the brain, and at the back of the head in the brain tissue, those are injuries I would see after serious major impact injuries, car accidents, falls out of windows and other high level, I don't see them after children falling off of tables or bunk beds or such like, I add in of course the mother landing on top of the child, there are two events here but even in the household falls we see this is not something I see, when there is blood in the ventricles. This is a low level fall, if you showed me the scan, the last thing I could think was a fall or stumbling from a chair. Is it impossible, no, but it is low down on my list of possible causes.'*

78. Mr Jayamohan was challenged by Mr Vater QC to consider the variables he had looked at in assessing the nature of Rosie's injuries. The doctor accepted that the mother's account may be lacking in detail because of memory or circumstance. Mr Jayamohan was prepared to concede that the mother's account may be incomplete and that the cause of the injuries were not necessarily nefarious.

79. Nonetheless Mr Jayamohan still struggled to understand the mechanism as illustrated by the photo. In response to questions from Mr Vater QC he accepted that a hard floor increases the likelihood of the thumb ring contributing to the depression fracture with the head held in mother's hand. In this scenario the two skull fractures on the left side would have developed where the baby was in contact with the mother's body.

80. The doctor was asked by Mr Vater QC whether he had allowed his own assessment of mother's credibility to influence his objective forensic assessment of the injuries. Mr Jayamohan said it did not. He observed that it was very unusual for a parent to delay in providing an accurate account. Moreover he noted some variability in the details of the mother's second account. Mr Jayamohan accepted that he had introduced into his evidence some features of his clinical care noting. *'the history given could have been vital to the care of the child. When the court considers the level of care that can be provided, it is absolutely critical. That history was not given and as my job, I have to highlight that'*

81. Mr Jayamohan expressed concern that the birth mother's failure to provide an accurate history on Rosie's admission could have compromised he treatment.

82. He acknowledged that there *'are two separate parts of my report, the mechanism and as a secondary thing as a doctor, I do not understand as a doctor and someone who takes histories, I don't understand why it was not given. When all of the evidence is taken in to account, the Court may consider/ say I understand why that account was not given but as a doctor I do not understand why it wasn't given.'* Dr Jayamohan considered that Sylvie's reluctance to give an accurate history could have seriously undermined the care she required.

83. Whilst Mr Jayamohan did not consider that mothers second account explained the constellation of Rosie's injuries he accepted that '*if the Judge believes Mother's evidence then that would be the explanation that caused these injuries*. However he considered the injuries an unlikely consequence of the event described because of the nature, pattern and severity of the injuries saying he had he no personal experience of such sequalae from a domestic fall. '*I have come across lots of people who have fallen over with their babies and crushed their babies, I have not come across this constellation of injuries from this type of accident'*

84. Dr Rylance is a retired Consultant Paediatrician. He ceased in clinical practice some six years ago. He was in post as a paediatrician for 41 years and spent 33 years as a consultant. He is regularly instructed to prepare medico legal reports.

85. He observed that the delay in mother giving a full history to the admitting doctors would not have delayed appropriate testing/ scans and treatment for Rosie. He distinguished the value of an accurate history when treating injury and when treating symptoms saying '*so if you ask me is history important in finding out what is wrong with a child who is presented to you, it is the basis of diagnosis in most of those situations, in an injury situation it is less important as regards what one does for the child there and then in the acute presentation situation'*. The value of an accurate history in an injury situation is thus reduced albeit relevant.

86. As to the relevance of the mother's ring to the depressed right fracture as provided in the second account he thought it unlikely that there would be much in the way of a mark on the baby's head. For the purpose of his deliberations he treated the mother's account as describing the child being trapped by the fall with the child's head between the floor and the thumb with a ring between the baby's head and the mother's body. He observed that when most people fall onto a ring it sometimes creates an imprint on the finger rather than an imprint on the surface. His consideration of the relevance of the ring was thus on the basis of the thumb ring pressing on mother and not the hard floor. He posited that a more direct injury, like a depression of the bone underlying the skin tissue from a protuberant object you would almost always leave a significant mark on the skin.

87. When asked about the constellation of injuries noted on Rosie he opined that a case of two fractures one side and one fracture on the other had never been reported. He was keen to distinguish the mechanism of a crush injury from a crush fall. He clarified for the court

that in his view fractures on both sides are rare in crush falls as distinct from crush injuries.

88. The research literature produced by Dr Oates focused on crush injuries to children, the principal examples being serious bilateral fracture injury caused by a child's head being run over by a vehicle or an object falling onto the child, as distinct from a child crushed by a parent who is holding the child in a domestic fall. It identifies the range and variability of injuries. I have considered that literature.

89. Dr Rylance observed that even fractures from crush injuries are rare. In the experts meeting he posited that the mechanism of crush injury was much less likely than two separate impacts as an explanation for Rosie's injuries.

90. When defining 'rare' in that context he added that 'if it has never been reported that one might see two fractures on one side of the head and one fracture on the other that would seem to be a very remote possibility because it has never been reported'. He contrasted the enhanced likelihood of fractures from an impact which whilst uncommon were repeatedly seen.

91. Dr Rylance described the level of likely force required to cause Rosie's fractures and the insult to the brain. In doing so he referred to the likely force generated by an assault with a cricket bat; I consider this passage of evidence to be of purely illustrative value.

92. Dr Rylance agreed with Mr Jayamohan that *'because of the severity of the intracranial injuries Rosie had, it would suggest the*

force involved for any of the impacts were really quite significant to cause the degree of injury insider the skull'. He remained of the view that the fall described by mother does not explain the injury.

93. Dr Rylance considered that two impacts were likely and possibly a third because of the presence of the bruise to the back of the head. When asked by the court to consider how Claire's chronology of events might inform his assessment he replied

'I think you might be saying, and you didn't go this far, that there was one noise, a period of quietness and then a cry which went on for some time which implies there was just one impact, I think that is probably overstating it and not because I just believe there was probably more than one impact, but I think the chronology was right, a noise, a period of quietness, babies are often stunned and then they cry I can't say more than that, but I would say that as described in this statement there appears to be one episode of injury a noise that doesn't seem to have been prolonged, a period of silence and then a cry which was meaningful to a carer, it does imply there may have just been, both injuries or even a third occurring at one time.'

94. Dr Rylance acknowledged that the issue of the mother's veracity is a matter for the court. To that end my consideration of his evidence is limited to issues of medical assessment.

Mental health.

95. The lives of both mothers have been blighted by poor mental health. I am asked to consider their health and their relationship history as part of the wider landscape. I make clear that their mental health

history is not directly probative of any of the allegations under consideration but the significant challenges both women have faced are relevant to my review of the evidence.

Sylvie.

96. Sylvie has been very open with the court and the professionals about her childhood history of trauma, drug misuse, poor physical and mental health. She has engaged well with the mental health services and has had a positive working relationship with medical professionals even when she has felt their support was wanting.

97. It is to the credit of both women that they have their addressed historical misuse of drugs. Sylvie has admitted using cocaine, cannabis amphetamines and speed (C19). They attended drug recovery together. It is an extraordinary feat of self awareness and determination to achieve abstinence in circumstances where it was a feature of their relationship and a coping mechanism for stress, anxiety and depression. I understand both mothers to say that they did not seek to move on with their plan to have a family until they had got themselves into a better place.

98. Sylvie is currently prescribed Lorazepam (tranquiliser) , Sertraline (anti-depressant) and Aripiprazole(anti- psychotic). She was diagnosed with Emotionally Unstable Personality Disorder a number of years ago. Following which she was diagnosed with Emotionally Unstable and Antisocial Personality Disorder. The diagnosis was later refined identifying her as Impulsive. Impulsivity is an enduring feature of her illness.

99. Sylvie has struggled with her mental health from a young age being raised in a house with an alcoholic father and significant domestic abuse. There are early accounts in her medical records of depression and anxiety with suicidal ideation. For a number of years she has engaged with medical services to assist her in managing her mood swings. She self-reported feeling her temper was out of control and incidents of self-harm.

100. Her GP notes record accounts of her head butting and punching walls with incidents of self-harm to release stress and anxiety. She acknowledged having violent fantasises which fascinated and troubled her. After her diagnosis was refined to Emotionally Unstable Personality Disorder (Impulsive) a clinic review noted impulsive acts coming out of nowhere.

101. Elements of paranoia are noted on a number of occasions over the years and just before the baby was born. Her levels of stress and anxiety were impacted by an aggressive neighbour. Just before the baby was born, she was struggling to cope, depressed and anxious describing hyper vigilance.

102. The baby's early arrival and Rosie's poor health understandably impacted on the mental and physical health of Sylvie. Her newly born baby daughter was very sick and she had to endure prolonged separation from her. In discussions with the X Hospital in December, Sylvie reported a decline in the mental health of both women. Her physical health had been impacted by the birth. She self-reported that she was 'manic' and on sedatives at night to sleep. She was still

struggling with the neighbours and felt her mental health problems were escalating with fatigue. She was prescribed Ariprazole (10mg) in December 2018. She did not take it for very long as she felt it was making her drowsy and affecting her care of Rosie.

103. In the period before Rosie's discharge the two mothers achieved a managed move to alternative accommodation supported by the perinatal team and a local councillor. This positive move designed to relieve and reduce the stresses on the family reRosieuired Claire to take on more responsibility for getting the new home ready.

104. In a GP consultation on 8th January 2019, Sylvie spoke of 'feeling overwhelmed' by the thought that Rosie would soon be discharged. She is noted to be more emotional than she has ever been. She had an extraordinary set of challenges to cope with on any analysis.

105. In consultation with the hospital teams Rosie was discharged with Sylvie to the maternal grandmother's home whilst Claire took on the task of managing their accommodation move where she remained for approximately two weeks. Sylvie was the primary carer for baby Rosie but was assisted by her mother's support. The maternal grandmother had Rosie for one or two nights after the move to the family's new home.

106. Rosie's removal from parental care has not surprisingly had an ongoing impact on Sylvie mental health. She has expressed suicidal thoughts and feels targeted and blamed by police. She has continued to relive events with Rosie. On 27th February 2019 GP records note that

she can't get the image of Rosie flinging herself backwards out of her head.

107. On the 28th February 2019 the mental health teams considered a mental health hospital admission because of increasing concern about each mothers mental health being impacted by the other.

108. The perinatal team remain concerned for Sylvie's mental health and the pressures that are generated not just by the fact of her separation from Rosie and Rosie's poor health but the pressure of these proceedings.

109. Claire has been a mainstay of Sylvie care for at least the last six years. She is Sylvie's registered carer and has worked effectively with Sylvie's mental health providers insofar as Sylvie's mental health and their relationship permits.

Claire.

110. Claire had a troubled childhood with a period in care and was a victim of sexual abuse. She had intermittent issues with depression and anxiety with increased reference to reports of suicidal ideation and self harm and angry feelings. Like Sylvie she recognised the undermining effects of street drugs and alcohol on her mental health. An extraordinary feat for someone who was clearly feeling vulnerable and depressed. Street drugs have not been an issue in this case.

111. She resumed taking anti depressants in 2014 and in 2016 expressed feelings of paranoia towards her partner. She has spoken openly in

court of currently seeking help for anxiety and depression through her GP. Both women are said to have demonstrated paranoia and shared diary entries recording violent thoughts in June 2018.

112. Claire is described as the stronger more resilient partner but in the immediate aftermath of Rosie's injuries Claire's mental health was significantly affected. GP records note that both parents are stating an imminent risk of suicide. Claire reported panic, anxiety, poor sleep and eating. Such responses are unsurprising in the circumstances. Claire readily acknowledges that the couple's relationship has been really difficult in the month since Rosie was injured.

The couple's relationship

113. There is no doubt that Sylvie and Claire love each other. Claire has been the mother's carer for many years. She has supported her with her medical appointments and with the other agencies when Sylvie has been unwell or when she calls upon her to do so. It was she who managed the couples move to alternative accommodation. She is described by Sylvie as the stronger more resilient partner.

114. The court was provided with a window on the women's relationship through the text messages exchanged between them for the period 13.02.18- 23.02.19. These messages make up but a few hundred of the 7500 messages I understand the police have downloaded. They were generated during a time of great change in their lives.

115. The entries increase in length and emotional intensity in the days following Rosie's discharge from hospital. Sylvie speaks of the relationship being over and the selfishness of Claire.

116. On 26th January 2019, Sylvie speaks of '*3 days no sleep barely any food to keep sallow[sic] goinh. I've had it. And this relationship is a fucking joke don't even like ypu'*

117. On 27th January 2109, Sylvie raises the possibility of seeking a mother and baby unit so she can get some '*proper help with me and the baby'.* She is critical of Claire for failing to provide support.

118. Claire's sympathetic reply is ' *I'm working flat out to get you home so u and me and [Rosie] can be a family you were possessed earlier really angry that was hard to watch I just hope you are ok with Rosie's sympathetic saying ' I've never seen you get that bad that's scary I'm concerned about you'*

119. Rosie's discharge with Sylvie to the home of the maternal grandmother is a difficult time for the two women. Mother is the primary care for Rosie whilst Claire is trying to sort out their new home. Tensions build and on the 17th February 2109 there is a prolonged disagreement by text where Claire challenges the criticisms levelled at her. Claire describes the exchanges in her statement as demonstrating *' a degree of immaturity and a lack of stability'* This is the first time in the limited exchanges disclosed that Claire retaliates.

120. Claire refers to *'bullshit promises and violence'* which she advised the court was an allusion to a single occasion when Sylvie used

violence in temper, attempting to strangle her when she was provoking her partner. Claire later makes reference to bruising to her neck and body, which both women now say was the consequence of consensual engagement in BDSM sex.

121. The argument of the 17th February 2019 begins at approximately 13:09 and continues until 17:05. A total of 245 texts were sent over that four hour period whilst Rosie was in the care of the mother.

122. In evidence both Claire and Sylvie spoke of their difficulties in talking things through. Claire assumed much of the blame when arguments erupted. Of the 2014 assault she said that she had been provocative. She had been going on at her partner. Both women were misusing drugs. She was reluctant to characterise that event as 'violent'. When discussing the texts in evidence she described her own actions as selfish. She apologised to Sylvie for failing to put the Sylvie and Rosie first.

123. Sylvie did not see the angry text exchanges as anything other than an argument that was managed remotely and from which Rosie was protected. She described the texts as '*an argument'*, '*like we would get it out in text, that's what we would, rather than getting it out around my daughter.'* She did not accept that she would have been affected by these text exchanges not that they would impact on her mood or care of Rosie.

124. The texts display a range of rapidly changing emotions from both women within very short periods. In one moment they (particularly

Sylvie) accuse, challenge and insult the other and moments later the women are exchanging kisses.

The law

125. The burden of proof is on the local authority being the party who makes the allegations. It is not reversible. It is not for other parties to disprove an allegation.

126. There is only one standard of proof in these proceedings, namely the simple balance of probabilities. As Baroness Hale of Richmond in the case of Re B [2008] UKHL 35 said :

"My Lords, for that reason I would go further and announce loud and clear that the standard of proof in finding the facts necessary to establish the threshold criteria under section 31(2) or the welfare considerations in section 1of the 1989 Act is the simple balance of probabilities, neither more nor less. Neither the seriousness of the allegation, nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts. The inherent probabilities are simply something to be taken into account, where relevant in deciding where the truth lies."

127. Findings of fact must be based on evidence not speculation, as Munby LJ observed in Re A (Fact Finding: Disputed findings) [2011] 1 FLR 1817 at para. 26:

"*It is an elementary position that findings of fact must be based on evidence, including inferences that can be properly drawn from evidence and not suspicion or speculation."*

128. The law relating to disputed findings of fact was helpfully summarised by Baker J, as he then was in *Re IB and EB [2014]EWHC 369*. I have considered that and the authorities referred to within it, in preparing this judgment. I have asked counsel to agree a schedule of authorities to be appended to this judgment. I have also reminded myself of BR (Proof of facts) 2015 EWFC 41 which provides a summary of key issues in relation to evidence and sets out a non - exhaustive list of risk factors and protective factors derived from the NSPCC materials, the Common Assessment Framework and the Patient UK Guidance for health professionals.

129. Mr Vater QC, leading counsel for Ms Sylvie also refers me to the *Sri Lanka v Secretary of State for the Home Department and Gestmin v Credit Suisse cases* . The court is asked to consider the words of Leggatt, J (as he then was) in the Gestmin case at [17]:

"…memories are fluid and malleable, being constantly rewritten whenever they are retrieved. This is true even of so-called 'flashbulb' memories, that is memories of experiencing or learning of a particularly shocking or traumatic event. (The very description 'flashbulb' memory is in fact misleading, reflecting as it does the misconception that memory operates like a camera or other device that makes a fixed record of an experience.) External information can intrude into a witness's memory, as can his or her own thoughts and beliefs, and both can cause dramatic changes in recollection. Events can come to be recalled as memories which did not happen at all or which happened to someone else (referred to in the literature as a failure of source memory)."

130. The same point was put, more laconically, by Lord Justice Browne in an extra-curial speech, quoted by the late Lord Bingham in his essay, 'The Judge as Juror: Judicial Interpretation of Factual Issues' (in his collection 'The Business of Judging', (2000, OUP):
'The human capacity for honestly believing something which bears no relation to what actually happened is unlimited.'

131. The courts assessment of the lay witnesses forms a critical part of the courts assessment of the evidence. I remind myself that witnesses who attend before the court may lie from to time to time. I give myself a **LUCAS** direction to ensure I do not misdirect myself on the point. The principles established in **R v Lucas [1981] RosieB720** remain a powerful reminder of the courts task when considering credibility which is particularly pertinent here.
If the court concludes that a witness has lied about one matter, it does not follow that he 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.

Sylvie's evidence

132. Sylvie gave evidence over the course of one and a half days. She is a vulnerable witness who managed her evidence in the witness box calmly and politely. It had been the hope of the court, Sylvie and the advocates that she would be able to conclude her evidence within one day but with breaks and the range of questions that was simply not possible. With the instruction of leading counsel, the mother's treating psychiatrist, was invited to prepare a short note to assist her legal team. It was not a report prepared in contemplation of proceedings and does

not constitute an experts report. It was lodged by permission of the court.

133. Sylvie took regular breaks throughout her first day of evidence but there can be no doubt that the experience was a tiring one. After two short breaks during the afternoon session the court broke at 5.00pm. The courts enquiry about the need to adjourn to the following morning is not recorded on the advocates note of evidence albeit Mr Littlewoods intervention is. There is no doubt that she managed the challenges of giving evidence very well.

134. Sylvie acknowledges that for some five months she deliberately misled everyone (she says including Claire) about what happened on the night Rosie was injured. She says that the couple were not able to talk and that every time she wanted to talk ' '*Carrie said she didn't want to'.* She said she couldn't speak to her mum as she was caring for Rosie. She had a new CPN who went on leave. She said she felt '*so alone'.*

135. Sylvie said she felt her mental health was suffering and that she could not eat or sleep. She said that on 5th July 2019 '*I could not hold it in any longer. I went upstairs and [Claire] asked me if I was ok. She said that I had not been ok for some time. I broke down and told her the truth. [Claire] asked me why I didn't tell her and I opened up and told her that I felt like I couldn't approach her because she just shuts me down.'*

136. In evidence Sylvie spoke of wanting to speak to her CPN. Claire called the CPN on her behalf on 28th June 2019 as Sylvie wanted to talk. The CPN wasn't around. Time passed.

137. Sylvie challenges the local authority's proposition that she changed her story after receiving Dr Oates report. Enquiry by Mr Vater QC confirmed that Sylvie did not receive a copy of the report and did not see her solicitor to discuss it before the 5th July 2019. Claire saw the report with her legal team on 12th June 2019. I am told she was not given a copy. Both women acknowledge that the possibility of a crush injury was raised by the treating team on Rosie's admission. Claire says she didn't discuss the report with her partner.

138. Sylvie clearly adores her baby girl. I have been left in no doubt through her evidence that Rosie was a planned baby and is well loved. Sylvie had poor physical health during the pregnancy with pre-eclampsia. The two mothers spoke openly of the challenges they faced in the immediate community with their neighbours and accommodation. Both presented as paranoid, angry and stressed on community assessment in June 2018 and for Sylvie she continued to be impacted by stress and paranoia.

139. The early arrival of Rosie; Rosie's poor health and the strain of those first 10 weeks would likely have impacted on any new parent. The overlay of the stress arising from the move and mothers sense of her own vulnerabilities are evident in the evidence she gave this court.

140. Sylvie says in evidence that she lied because she was frightened people would judge her because of her mental health. She felt that her

partner blamed her for the injuries and in consequence she could not tell the truth.

141. In written submissions leading counsel for Sylvie suggests that the case against Sylvie rests on two fundamental paradoxes which he suggests are;

a) In telling her admitted lie until July 2019, M demonstrated a capacity for telling a detailed lie, repeatedly and convincingly. Yet, says the LA, the account she now gives is likely to be dishonest because it has not been told consistently or with a sufficient level of detail; and

b) The emergence of M's 'crushing' mechanism after service of Dr. Oates' report is said to suggest a tailoring of evidence and therefore a lie. Yet the 'crushing mechanism' was also obviously 'in play' at the very first hearing of these proceedings on 28th February 2019, but M did not dishonestly tailor her evidence for months.

142. Whilst I see these two points as presenting more of a conundrum than a paradox they each require the court to consider the mother's credibility. I remind myself even as I begin the exercise of considering her credibility that the burden of proof rests with the local authority which must be discharged on the balance of probabilities. When looking at the inherent probabilities it is common sense that stands to be applied.

143. In considering Sylvie's credibility I must first look at the acknowledged lie she told when Rosie was first injured. This false account was given to her partner, the hospital nurses, the treating

doctors, social care, her own psychiatric team, the police, her legal teams and the court.

144. In her ABE interview Sylvie was clear and concise in her account. She was emphatic that she had done nothing wrong. She challenged the proposition that she had hurt the baby. She was clear the baby had '*flung herself*' as she was loosely held by her exhausted mother on the sofa. She was able to give a detailed account of how the baby fell, from where and to where. She was able to repeat that account; with little variation in detail, over the subsequent four and a half months.

145. Sylvie's adherence to her account might have persuaded a listener as to the internal consistency of her account but for the fact that the baby's injuries were simply not consistent with that account. It was a lie. It was a lie well told with little variation. It was told with conviction and persuaded her partner of many years that Rosie had caused these injuries by her own actions. Sylvie's first account was not accepted by the medical teams on Rosies admission but she held onto that account for months.

146. Mr Vater QC reminds the court in his written submissions that the court's consideration of mother's presentation must be informed by this mother's history. She has a chronic and active mental health history. She is currently displaying features of PTSD. She has issues with trust and self esteem. He also invites the court to consider whether the mother's long held false account could have, in some way, contaminated her eventual telling of the truth.

147. Whilst these features may help the court understand her fear of reprisal; her fear of blame by her partner; her fear she would be prejudged because of her mental health history; they do not shed any light on how or why she could perpetuate and maintain the detail of her lie for so long.

148. Rosie was a planned child. The circumstances of Rosie's early birth and her subsequent poor health would have challenged any new parents. Sylvie was acutely aware that her baby was medically vulnerable. She had been to see her every day whilst she was in hospital. Nonetheless she failed to tell the hospital what she now says is the true account of Rosie's injuries. It is hard to reconcile those two positions.

149. Mr Jayamohan made comment in his report of how important a history can be to a child's treatment plan. Dr Rylance was less concerned about the absence of an accurate history with a child presenting with injuries. An accurate history would however be critical if a child is symptomatic. Both doctors were challenged by Mr Vater QC for introducing clinical practice into the forensic process. As is evident from the answers of the doctors, clinical practise varies but I pause to question whether Sylvie considered at any point what difference her first account might make to the medical treatment her baby received.

150. So why did Sylvie then change her account? Why did she change her account at the time that she did? How should the court consider her second account in light of her earlier acknowledged dishonesty? As Mr Vater QC submits the fact that Sylvie gave her first untruthful account

does not in itself amount to evidence of guilt of anything save for the telling of the lie. It does not automatically mean that the account she gives now is a false one. Can and should the court draw adverse inferences?

151. The local authority ask the court to consider that Sylvie's account changed after she had sight or came to have knowledge of the report of Dr Oates dated 4th June 2019 which described and discussed the likely cause of the injuries as consistent with a crush. Mr Vater QC advises, and I believe all accept, that Sylvie didn't in fact see the report with her own legal team until mid-July. She was not provided with her own copy. Claire acknowledges that she saw the report on 10th June 2019 albeit she wasn't given a copy of it. She does not accept that she discussed it's content with Sylvie.

152. I am not persuaded that the timing of the second account followed on from the two mothers seeing or discussing the report of Dr Oates. The possibility of a crush injury was being discussed by the treating medical team, the social worker and is referenced in the mothers' medical notes and contact record long before Sylvie changed her account. Indeed Sylvie's notes from the mental health centre of 14th March 2018 anticipate enquiries of mother's medical records to address the possibility of a manual head crush. The mechanism for injury was clearly an issue with which Sylvie was fully engaged.

153. Sylvie's second account for Rosie's injuries is set out across two statements. Her written account was very detailed in some of it's particulars. She could describe how she was before the fall and where she fell. She was clear as to the position of the baby's head underneath

her left shoulder. She confirmed that her thumb ring was on the right side of the baby's head with her left hand partially behind her head. She said that the baby was looking at the wall. Which wall has not been established. In evidence the mother said she and the baby were facing the same way. For the mother's account to put the baby's head against the hard surface of the floor, the baby would likely be looking to the wall to the left of the sofa.

154. The clarity of some passages of the written evidence serves to contrast with the Sylvie's oral evidence. I am not entirely surprised. It was a long time ago. She is currently suffering significant mental health problems and I am aware that she has found the proceedings difficult. Nonetheless there were features of her evidence that gave me considerable cause for concern. When asked by counsel for the local authority what it was that brought her round from her faint she said it was the screams of her partner which is at odds with the evidence of Claire who spoke of the screams of Sylvie bringing her down the stairs. She was clear that she was still holding the baby when she landed on the floor. She said she hurt her right forearm and knee as she fell and that she sustained injury and that she had a red mark to her forehead after it hit the floor.

155. Mr Vater QC on behalf of the mother's team acknowledges that mother mentioned that she had hurt her arm and knee in the fall as she described it to them in conference in July 2019. However no note is made of any injuries to mother when she was clerked into the custody suite by the police later on the 25th February 2019 and there is no mention of a red mark to mother's face in Claire's account nor the notes of any of the treating physicians.

156. Sylvie was asked to help the court understand where she fell and how she managed to get to her feet. The detailed diagram annexed to her statement has a rug immediately in front of the sofa from where the mother says she was sitting. She was not questioned about its position nor how she came to fall on the strip of bare concrete between the sofa and the rug.

157. When she was asked to describe how long it took her to get to her feet Sylvie said it felt like 10-15 minutes. No one suggests her assessment of the time is accurate but what both Claire and Sylvie are agreed on is that Sylvie was standing facing the door with the baby in her arms by the time Claire got downstairs. Thus, the passage of time between the thud or slap Claire heard, the subsequent scream of Sylvie and the baby's cry, heard by Claire at the bottom of the stairs, was sufficient for Sylvie to get to a standing position. Whilst likely less than 10-15 minutes it must have been more than a few seconds. Sylvie was, as now, almost 19 and a half stone and has some attendant difficulties with her mobility.

158. Both Dr Rylance and Mr Jayamohan noted the variable range of detail with some unease when considering the mother's account. Under cross examination they both accepted that matters of veracity are the domain of the court. I make clear that it is my observations of the anomalies in mother's account, which inform my assessment of Sylvie's evidence.

Claire's evidence

159. I found Claire to be a largely credible witness of fact. Like her partner she has had long standing issues with her mental health. She manages her own care and that of her partner who she evidently adores.

160. Claire was clearly very nervous as she gave her evidence. She told the court her heart was beating wildly but she nonetheless remained calm throughout. Her voice was clear and her modulation normal. This is the voice we hear when the call was made to the emergency services on the night Rosie was injured. The local authority invites the court to consider that early call as evidence of possible collusion between the mothers in consequence of Claire's calm presentation. I reject that allegation. In my view there is nothing in the tone or content of that call that could reasonably found the allegation of early collusion.

161. Claire's oral evidence about the events of 24th /25th February 2019 was consistent with that of her written account. The couple and the baby had been living together for a little under two weeks. She had taken on the role of sorting out their new home. Rosie's health was a continuing concern for them both. In the day following Rosie's discharge from hospital she had been readmitted at least twice and her sleeping and feeding regime was still problematic.

162. The two mothers took Rosie out in the early evening with a view to settling the baby. As this was February there can be little doubt that it was dark when they took her out. Sylvie was exhausted. Neither woman speaks of any particular relationship problems that day but both report that Sylvie was very tired.

163. The relationship between these women has endured for many years and a friendship before that. The local authority say the relationship is characterised by violence. Both women accept that a number of years ago, Sylvie strangled Claire at a time when they both were using drugs. Both say that there has been no other violence save for the use of consensual force leaving Claire with bruises to her neck after a session of BDSM in late January 2019. Sylvie alleges that she was previously the victim of violence from a former partner who stabbed her in the hand. There is no suggestion that Claire has used violence.

164. The text messages between the women allude to an event on 27th January 2019 wherein Sylvie says she needed help and perhaps a mother and baby placement and Claire speaks of mother being 'possessed' and 'really angry' 'never seen you get that bad'. Claire said she couldn't remember what happened to make her say that to mother. In my view that passage of her oral evidence did not ring true. Claire was a loving and attentive partner. For her to make such an observation in her text she must have witnessed something out of the ordinary.

165. The lengthy text exchange of 17th February 2019 is but a week before Rosie is injured. Thus, whilst I accept that there is no evidence of any particular problem or event in the hours leading up to Rosie's injuries the court cannot ignore the backdrop to the lives of this young couple living under extraordinary stress and highly charged emotions. The need to support and assist in managing Sylvie's emotional regulation and impulsivity was an enduring and ever present challenge for them both.

166. Claire told the court that on the 25th she was upstairs getting everything ready for the baby and Sylvie to come up to bed. She said that mother and baby Rosie had been asleep on the sofa. In the minutes that followed Claire went to the kitchen and then upstairs and was working on the landing. She said she heard a noise. She is clear that she didn't shout down to Sylvie. It seems to me entirely probable that she would pause and wait to find out what that noise was. It wasn't the baby's cry that brought her downstairs. That was something she heard later. The sound that brought her down was mother shouting in panic. It is only if there is a pause of some length, that Claire's account of arriving to see mother standing with the baby in her arms makes any sense.

167. I accept the account of the parents that in the moments after Rosie's injuries they had a limited exchange about the incident. The focus was to get the baby to the hospital. I accept on the evidence that Claire was not told by Sylvie what did happen and that accordingly her dealings with the professionals were on the basis of what she was told. This is entirely in keeping with Claire's questioning of her partner and her challenge to professionals and contact supervisors alike that occasions when Rosie was arching her back might be a relevant matter to observe.

168. The local authority also ask the court to conclude that even if Claire did not know of what had happened to Rosie at the time, she came to learn of it later. The local authority assert that it would have been impossible for these two women not to speak of events on the 25th February 2019 and that over time they colluded to create a story that would best fit the medical view. They allege that Claire must have

shared her knowledge of the report of Dr Oates with Sylvie which in turn brought about the change in account.

169. Both women accept that they were aware that a crushing injury was in play from Rosie's first admission. The strategy meeting on 28th February 2019 discussed the mechanism of mother falling on the baby's head. The relevance of the report of Dr Oates is therefore reduced. Furthermore, I accept that both women found it very difficult to critically examine what happened that night. On Sylvie's evidence she felt that Claire blamed her for Rosie's injuries. On Claire's evidence they could not have 'a complete discussion'. I find that account entirely plausible in the context of the relationship of these two women. The dynamic of Claire's role as carer for Sylvie is necessarily challenged by Claire's need to know more about what happened to their daughter.

170. Claire has, quite appropriately during passages of her evidence become tearful and upset. From time to time she has shed tears whilst hearing from others. I noted that she listened intently to the evidence of the doctors. Her love for her daughter and her partner has been very evident throughout.

171. I am bound to say that she appears to assume rather too much responsibility for problems in the relationship. She was reluctant to see herself as a victim of an assault; taking the blame for the incident because she had been provoking Sylvie. She assumed responsibility for the injuries she sustained in the consensual sex saying that she did not use the code word for the asphyxiation to stop. She blamed herself for upsetting Sylvie in the days after Rosie's discharge; describing herself as selfish for seeking affection and time for herself when Sylvie needed

support. That dynamic calls into question whether Claire can prioritise baby Rosie over her relationship with mother. Sylvie has been clear that if it's a choice baby comes first. The question of whether Claire would be able to choose baby Rosie over Sylvie remains to be considered.

My analysis and findings

172. I remind myself that Sylvie does not have to prove anything. It is for the local authority to prove its case on the balance of probabilities.

173. The local authority allege that on the 25th February 2019 Rosie was seriously injured whether maliciously or recklessly by the actions of Sylvie. Mr Vater QC submits that the local authority have singularly failed to establish on the evidence that Sylvie caused these injuries and submits that the mothers account is consistent with the injuries and is the only plausible explanation.

174. I have considered the account of Sylvie very careful in the context of the lives of these two women and against all the medical evidence. I make clear that I have kept an open mind as to the likely cause of Rosie's injuries but now conclude that Sylvie caused the injuries to Rosie during a momentary loss of control in the early hours of the morning on 25th February 2019. I do so for the following reason;

I) That at the time Rosie was injured mother's mental health had been significantly impacted by the stress of caring for a preterm baby girl with multiple practical challenges such that Sylvie was considering a residential placement

II) That in the period preceding the injuries the relationship of the two mothers was strained as illustrated in the texts exchanged in the month before the event

III) That Sylvie's impulsivity is an enduring feature of her mental health condition which is vulnerable to stress

IV) I accept the evidence of Mr Jayamohan, Dr Rylance and Dr Oates that the injuries likely involved two impacts. Adopting Mr Vater's submission, the third sited injury of the head bruise might easily follow from such an event. Such catastrophic injuries can flow from a momentary loss of control entirely consistent with the chronology of events described by Claire whether the sound was a single thud or a slapping sound.

V) Mr Jayamohan considered that the constellation of bilateral fractures was rare and not one previously reported from a low level fall. He was prepared to accept that it is not always possible to predict the type or severity of an injury particular to a particular traumatic event. He acknowledged the theoretical possibility that a crush injury might give rise to a wide variation of bony injuries but observed that Rosie had not only sustained an unusual constellation of bony injury she had also sustained damage to the brain tissue which as his report suggests 'would have involved a significant traumatic event'.

VI) Mr Jayamohan was prepared to acknowledge that the mother's account could provide a 'possible' explanation but he did not accept the assertion that it was more than that.

VII) Mr Jayamohan accepted that the depressed skull fracture could potentially have been caused by the mother's thumb ring if the ring was against the floor under the child's head but this would mean that the two fractures on the left side of the skull would be consequent on the child's skull coming into contact with mother's collar bone as the other solid prominence which is itself very rare.

VIII) The positioning of the mother's hand such that her thumb was around the back of the child's head would involve an extraordinary and in my view unlikely dexterity, not illustrated by the mother's photo.

IX) That the event the mother describes is of her falling **with** the child rather than falling onto the child. This feature of her account remained fixed as she confirmed she was still holding the baby as she came to.

X) Dr Oates treated the mother's account as involving ' *significant momentum from her own body weight and with an impact event (as Rosies head impacted the floor) and a crush injury as she fell on Rosie'.*

XI*)* Dr Rylance distinguishes the consequences of a crush injury and crush fall. He treats the mother's account as a description of a crush fall where she fell with the child as one unit, rather than a crush injury (as principally described in the research papers referred to by Dr Oates). In consequence Dr Rylance concludes that the child's injuries are not consistent with the mothers account as the force generated by the child falling with the mother would not be sufficient to cause that level of trauma. On balance I consider the assessment of Dr Rylance to be more closely aligned to the account the mother gives of the fall. He

concluded *'I don't think the fall explains the injury- it just remains a relatively remote explanation'*

XII) I found Sylvie's second account to be lacking in credibility. There was an extraordinary amount of detail about how she stood up from the sofa, how she was holding the baby as she stood up, how her hands were positioned around the baby's head after the fall. Her recollection was detailed enough to enable a plan to be drawn identifying exactly where she was in relation to the sofa, the rug and the door but she struggled to help the court understand how she fell or where she hurt herself. She referenced injuries not mentioned to the custody sergeant later that day and a red mark to her head not observed by anyone. Moreover, she was clear that the only thing that brought her round from her collapse was Claire shouting. I prefer Claire's account.
I remind myself of the challenges particular to Sylvie but that does not assist in understanding the anomalies in her accounts.

XI) Mr Vater QC submits that the mothers account is the only account that plausibly explains all injuries and that it would be extraordinary for a parent to manufacture an account of such detail. Here I remind myself that Sylvie managed to maintain a detailed lie for almost five months. I conclude that her second account is driven by an understandable desire to avoid blame and a real fear of losing her baby. Why she made up the second account when she did I do not know but the proximity of this hearing was coming ever closer.

175. Turning now to the balance of the allegations. The local authority say that there is sufficient evidence to enable the court to conclude that

Claire has failed to protect the baby. For that allegation to be made out the local authority would need to persuade the court firstly that Sylvie deliberately or recklessly caused the injuries to Rosie, that the harm or risk was foreseeable, and that Claire should have taken some form of protective action.

176. The primary evidence for this plank of the local authority's case is Claire's awareness of mother's poor mental health; her assumed understanding of Sylvie's deteriorating health and the fact that she allowed Rosie to be left in the sole care of Sylvie.

177. Both Claire and Sylvie have worked well with the mental health services. Claire has been a committed carer for more than six years. Both women have engaged in work with social care as well as the mental health teams. Claire and Sylvie planned this baby. They changed their whole life style to bring this child into the world. They gave up drugs, sought a move, managed their respective health conditions. The couple did not hide their history. Referrals to social care were quickly closed.

178. The pressures these two women were under was considerable but I can see nothing in the professional records that suggests that they were concerned about how Sylvie presented with the baby. None of the agencies sought to intervene in family life. The baby had only been in the sole care of these two women for less than 10 days. In those circumstances I fail to see how the local authority can make out to the requisite standard that Claire failed to protect in the days leading up to and on the 25th February 2019.

179. I do not find that the parents colluded in the concealment of events from professionals. Sylvie's sense of isolation following the injuries to Rosie serves to underline how divisive the events of 25th February 2019 were for the couple. Claire worked quickly to support and enable mother to seek advice as soon as she was told of Sylvie's second account. She was entitled to believe that account whilst it was under investigation. The challenge for Claire and Sylvie will be what they make of these findings.

180. I understand that the local authority propose to invite the court to consider the parents openness with professionals and the volatility /violence within their relationship at the welfare stage of the process. Whilst I accept that Sylvie deliberately misled treating doctors, her psychiatric team, social care and the courts she did so at a time when she was fearful of being blamed and losing her precious child. There is no evidence currently before the court that would found such an allegation against Claire. The evidence of violence within the relationship is limited. The local authority would be in considerable difficulties in establishing a threshold finding of actual significant harm to Rosie by her exposure to the parental relationship on the evidence currently before the court.

181. Sylvie mental health will be the subject of further assessment. I am concerned to understand her ability take responsibility for the events on the 25th February and to understand how her mental health can be managed. Claire will also need time and help to understand the implications for her, her relationship and for the planning arrangements for baby Rosie.

182. I make clear that I do not challenge Sylvie's assertion that she has been a good mum. The professional observations to date are positive. Claire regards Sylvie as a fantastic mum. I do not know and do not speculate what caused Sylvie to lose control on the 25th February 2019. Mr Vater QC quite properly reminds the court that there are many examples of 'fantastic' parents who flip and hurt their children. Very sadly that is what I find happened here.

Acknowledgments

183. I am grateful to all leading and junior counsel for their assistance with this case. I also extend my thanks to all of the experts who assisted the court. I would be grateful if the local authority could arrange for copies of this judgment to be provided to them in an anonymised form in due course.

184. I would also like to thank the parents. I am aware how very difficult these proceedings have been for them. I wish to thank each of them for the way they conducted themselves in court.

END OF JUDGMENT

Draft judgment circulated 5th September.

Judgment handed down 9th September