

IMPORTANT NOTICE

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 child[ren] and members of their [or his/her] 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.

Case No: SE19C01810

IN THE FAMILY COURT SITTING IN SHEFFIELD

IN THE MATTER OF THE CHILDREN ACT 1989

AND IN THE MATTER OF THE ADOPTION AND CHILDREN ACT 2002

Date: 2nd November 2020

Before: HHJ Pemberton

Between:

A Local Authority

Applicant

And

MN

First Respondent

And

QA

Second Respondent

And

The Children

(by their Children's Guardian)

Third and Fourth respondents

And

FA

(by the Official Solicitor)

Intervener

Pennie Stanistreet-Keen for the Applicant

Naomi Hartridge for the 1st Respondent

Nick Frith for the 2nd Respondent

Justine Cole for the 3rd and 4th Respondent

Jane Wheatley for the Intervener

Hearing dates: 12 to 16 October 2020

JUDGMENT

1. The names used in this judgement are fictitious.
2. This case been listed for me to determine how, when Lucy was only 4 weeks old, she was found to have sustained multiple rib fractures and fractures of the spine which the experts say were caused by at least two applications of force.

Lucy was born in July 2019. Her mother is MN, and her father is QA. I shall refer to them in this judgement respectively as “the mother” and “the father”. Lucy has an older brother, Peter, who was born in May 2018.

3. On 4 August 2019 the mother took Lucy to the hospital because she was worried about Lucy having bloodshot eyes. The doctors noted “small faint conjunctival haemorrhages” in both eyes but there was no other concerning evidence of injury identified at the time.
4. The following day the mother took Lucy to the hospital again, reporting that she had found Lucy face down on the floor with her brother Peter on top of her. A section 47 investigation was commenced but the skeletal survey undertaken at that time did not reveal any injuries. A repeat skeletal survey performed on 22 August revealed a total of 24 fractures to the ribs and the vertebra. Other than the incident with Peter that the mother had described (which the medics found to be unlikely to have caused the injuries) the mother was unable to offer any explanation for the injuries. In the absence of a known or witnessed significant traumatic event or injury, the hospital was concerned that these injuries were highly suspicious of inflicted injury. Social care was notified, and the mother agreed to the children being placed in foster care following discharge from the hospital. These proceedings were commenced, and the first interim care order was made on 30 August 2019. The children have remained in foster care since that time.
5. I have read all the papers in my electronic CaseLines bundle and have heard oral evidence from the Social Worker; the Independent reviewing Officer; The School Welfare Officer at the paternal aunt’s school); the mother’s support worker; the mother; the paternal aunt; the paternal grandmother; the mother’s Pastor and the Pastor for the paternal grandmother and aunt. I have also viewed a video recording of some agreed questions being put to the paternal aunt (the intervener).

The Law

6. The parties have helpfully agreed the law to be applied in this case and a summary of those legal principles is attached to this judgment. I confirm that I have had all of those matters in mind in my approach to this judgment

The Evidence

The Medical Evidence

7. During these proceedings, medical reports have been jointly commissioned from a Consultant Paediatrician, Dr Elias Jones, a Consultant Paediatric Radiologist, Dr Olsen and a Consultant Ophthalmologist, Dr Kelly.
8. Dr Olsen has prepared two reports. He concludes that Lucy had sustained 24 fractures (22 to the ribs on both sides and 2 to the spine). In his view all the rib fractures were less than a week old on 6 August and the vertebral fractures cannot be dated. There is no evidence of bone fragility from a radiological evidence. He concludes that Lucy has suffered significant trauma with at least two separate episodes of application of force to her chest and spine, the force applied being far in excess of the force applied due to rough handling. He excludes the proposition that Peter falling onto Lucy could have caused the injuries. He also excludes the possibility that any of the fractures were as a result of birth trauma. None of the fractures were spontaneous, self-inflicted or caused by rough handling and in his view therefore, they all remain unexplained.
9. The vertebral fractures are likely to have been caused by a mechanism of over bending and/overstretching of the back.
10. Dr Olsen was asked further questions and prepared an addendum report in which he again excluded any possibility that Lucy's injuries were caused by either herself and her brother falling from the sofa together or her brother falling/lying on top of her or indeed jumping on her.
11. He also considered a video of the mother demonstrating how she held Lucy. In his opinion the video demonstrated the normal handling of a baby and would not explain her injuries.
12. Dr Olsen has not been required to attend court to give evidence and his evidence is therefore effectively unchallenged.
13. Dr Elias Jones notes that Lucy was born via an elective caesarean section with no need for active resuscitation. The blood investigations have revealed no

abnormality and Lucy's radiological bone density is normal. In his opinion there is no organic or benign cause for the multiple rib fractures which are likely therefore to be the result of a non-accidental injury. The likely mechanism for the rib fractures is either a blow or blows to the chest but more likely have been caused by forceful gripping around the chest.

14. He expresses the view that the conjunctival haemorrhage is probably a result of her birth and not a non-accidental injury.
15. Again, nobody has required Dr Elias Jones to attend court to give evidence and his evidence is therefore unchallenged by the parties.
16. Dr Kelly was the Consultant Ophthalmologist who was jointly instructed to consider the bilateral conjunctival haemorrhages which led to Lucy's first presentation at the hospital on 4 August. He has reviewed the medical records and comments on the absence of any photographs taken at the time.
17. Dr Kelly refers to research which has identified sub conjunctival haemorrhages as being a potential indicator of non-accidental injury in infancy.
18. However, from an ophthalmology perspective, subconjunctival haemorrhages represent a benign ophthalmic matter with very many aetiologies.
19. The sub-conjunctival eye haemorrhages were almost resolved by 6th August. There is therefore a temporal link between the sub conjunctival haemorrhages noted in the first few days of August and the timing of the inflicted rib fractures as were subsequently diagnosed in retrospect by the radiology.
20. On the balance of probabilities such sub conjunctival haemorrhages and such rib fractures occurred in or around the same time. He notes that the rib fractures are concluded by the Experts to have been caused by a gripping injury to the infant's chest and of considerable force. In his view such compression of the chest, by a gripping mechanism, could also have caused sub conjunctival haemorrhage as is seen following "Valsalva" or coughing and where a sudden increase in intrathoracic pressure occurs.

21. There appears to be some conflict therefore between the view of the Consultant Paediatrician and the Consultant Ophthalmologist. On balance, I prefer the analysis and reasoning of Dr Kelly and I would anticipate that Dr Elias Jones would have deferred to Dr Kelly on the issue of these haemorrhages, given their respective areas of expertise.

The evidence of the Psychologist

22. Dr Emma Taylor is a clinical psychologist who was jointly instructed to prepare a psychological assessment of the mother. Her report is dated 4 March 2020.

23. In her conclusions, Dr Taylor summarises that the mother had grown up with multiple disrupted attachments, parental rejection, and abandonment alongside domestic and sexual abuse. She presents with low self-esteem and mistrust of others. She is used to fending for herself and taking too much responsibility which leaves her depleted and resentful.

24. The mother presents with a history of emotional dysregulation and resorting to harmful coping strategies to manage her emotions and fulfil her attachment needs. She is described as having survived much, clearly loving her children and having improved functioning and mood. Her patterns of thinking and behaving are described as long-standing and are likely to continue to affect her functioning and ability to parent unless they are addressed. Psychotherapy is recommended.

25. The report from Dr Taylor contains the mother's own account of her personal history and events leading to these proceedings. I have found it helpful to set out some of that history within this judgment to provide some context to the issues I am being asked to determine.

26. It is clear from the assessments that the mother had an extremely difficult and indeed harmful childhood. She was placed with foster carers for some time in her teenage years but sadly the foster placement, where she felt most settled and cared for, came to an end abruptly. A subsequent foster placement was not successful.

27. When she was 19 (2016), the mother met the father, and they commenced a relationship. Peter was born in 2018 which appeared to have been generally a welcome and positive experience. However very shortly after Peter's birth, Lucy was conceived. The mother reports that the father was not positive about this pregnancy and encouraged her to terminate the pregnancy.
28. The mother's account is that the father offered her little support or assistance and the parents formally separated in December 2019.
29. During the course of the psychological assessment, the mother described how she had been low in mood after the birth of both of her children. She described that she had "not been there in her mind" and that "something inside of her had died when she conceived [Lucy]". She had nobody to help her and had felt she needed guidance on how to parent. She described crying throughout her pregnancy with Lucy and that nobody in her community spoke positively about her pregnancy.
30. She described losing interest in things, including her church. She turned down invitations from friends and did not want to take Peter to the park, thinking that people would judge her. The midwife suggested that she take medication for her mood, but the mother did not think that her low mood was significant enough to justify taking medication. Following Lucy's birth, she was unable to stay in hospital for more than one night because the father (who was looking after Peter) was not able to stay for even a few days. She also told Dr Taylor that Peter would not take food from anyone other than her.
31. The paternal grandmother came to stay to support the mother in caring for the children for a week after Lucy's birth. She brought the paternal aunt, aged 13 to assist. When the paternal grandmother returned to her home in the Midlands, she left the paternal aunt with the mother and the two young babies.
32. The mother told Dr Taylor that she found the paternal aunt's behaviour challenging and didn't know how to manage it. She described the paternal aunt losing her temper very quickly and refusing to assist when asked to carry out tasks.
33. The mother described Peter as her main priority because she was worried that he was going to miss out. She described a feeling that Lucy did not like her

because she (Lucy) would not stop crying. This feeling became circular as it led to the mother not wishing to be with Lucy. Her feelings were of such despondency that she described how she would have freely given Lucy away back then, as Peter was always by her side.

34. The mother described that Lucy “cried and cried” and that she didn’t want to hear it and would walk away. She described going days without sleeping whilst at the same time being responsible for cooking and cleaning and generally being responsible for the home.
35. She described to Dr Taylor that she contemplated suicide during this time, feeling that she wanted to start afresh and wanted to walk away but her commitment to Peter prevented this.
36. Things came to a head with the paternal aunt on the 16th or 17th of August when the mother describes asking the paternal aunt to leave. Due to a lack of support from the paternal family she was forced to take the paternal aunt back to Wolverhampton on the bus, having to take both Peter and Lucy with her as well.
37. In respect of the injuries to Lucy, the mother told Dr Taylor that she was clear that she had not caused Lucy’s injuries.
38. In Dr Taylor’s opinion, the mother demonstrated limited insight into the very serious consequences of her not taking responsibility for her own well-being including offers of support or medication. She concentrated instead on other people’s failure to help her.

The evidence in respect of the paternal aunt

39. The mother suggests that the injuries must have been caused by the paternal aunt. The evidence in relation to the paternal aunt comes from a number of sources. I have not heard directly from the paternal aunt herself as she was assessed as not competent to give instructions nor to give evidence. She has learning difficulties and has an education, health, and care plan. This plan was put in place in 2016. She is described by her school as operating educationally

and emotionally at about four years below her chronological age. She also has some health needs as she suffers from a bilateral cataract hypermetropia, meaning that she can see at 3 m what an average person can see at 6 m. She requires a font size of 14.

40. An intermediary assessment concluded that there were no measures that could be taken to assist her with this. Instead, it was agreed with all parties that the paternal aunt's solicitor would ask her a series of pre-drafted questions which have been seen and agreed by the parties and by the court, and that this interview and the paternal aunt's responses would be video recorded.
41. I have considered that video. In the video, the paternal aunt presents as hesitant and quietly spoken. She presents as much younger than her years from the limited opportunity I have had to assess her.
42. Much of the information in respect of the paternal aunt comes from her school. In the statement from the Welfare Officer, the paternal aunt's behaviour in school has been described as good and there have never been any concerns about her behaviour. However, it is apparent that she can behave in a more defiant way. There is a report from her mother (the paternal grandmother) from March 2019 that the paternal aunt had been presenting with extreme challenging behaviour at home and is described as constantly losing her temper. She had verbally and physically assaulted her sister and the report from the school records that in the most recent incident, she had taken a knife to her sister and threatened her. A referral had been made to the community learning disability team.
43. The Welfare Officer has given evidence to me. She is clearly an experienced school Welfare Officer and told me that she is also a qualified social worker and had undertaken specific Safeguarding training. She confirmed her description of the paternal aunt as a compliant and calm young woman.
44. She told me that the school that the paternal aunt attends caters for much younger children some of whom would often display distress at loud noise in the playground. The Welfare Officer told me how other students would go to support the younger children, but the paternal aunt appeared to be oblivious to them.

45. The Welfare Officer quite properly accepted that the way in which children behave at school can be different to the way they behave at home or in other settings but from her and her colleagues' experiences there had been no challenging behaviour from the paternal aunt. I found The Welfare Officer to be an impressive witness who appeared to have a clear understanding of the young people that she worked with and their particular needs.
46. The paternal grandmother has filed a statement and has given evidence to me. It was at times difficult to hear her evidence and to follow what she was saying as she was giving evidence over the phone.
47. Her statement refers to one incident from March 2019 which she described as an argument over a phone when the paternal aunt became angry and started crying and then bit her sister. The paternal aunt is described as calming down shortly after this incident. This was effectively the description that she gave in her oral evidence. This is in contrast to the referral that was received by the school which records that "[the paternal aunt] took a knife to her sister and threatened her".
48. I was left with the impression that the paternal grandmother was seeking to downplay the description of the incident in March 2019 and that the school referral form is a more accurate record of what occurred at that time.
49. Whilst I heard evidence from the Pastor for the paternal family in respect of the paternal aunt's presentation, his evidence does not really assist me in terms of determining how Lucy's injuries were caused.
50. the paternal grandmother and the father have both given evidence that they made it clear to the mother that the support that the paternal aunt could offer would be relatively basic and would be to assist with basic household chores such as sweeping and washing up. Both remained clear that the paternal aunt was never put forward to assist in the care of the children and that this would have been beyond her capabilities.
51. The mother's Pastor also gave evidence by telephone having filed a statement. She described how much the mother loved her children. Her evidence was slightly at odds with the established timeline as she described visiting the mother when the father was present which must have been shortly after Lucy's

birth and therefore prior to the paternal aunt being left in their home with the mother and children alone.

52. She does not appear to have visited the mother again and it was not clear how often she spoke to the mother by telephone, yet her evidence was that the mother complained to her Pastor about the paternal aunt's behaviour and described the paternal aunt losing her temper on a regular basis and becoming "incredibly angry" and that it was making things more difficult for her. The Pastor reported that the mother had said to her that she could not cope with the paternal aunt and wanted her to leave. I find it surprising that this did not lead to the Pastor taking any further steps to provide support to the mother and the children. The evidence of the Pastor has not been particularly helpful to me in determining who was responsible for causing Lucy's injuries.

The evidence of the Social worker

53. The Social Worker is the allocated social worker for the children. She is a very experienced social worker, of 20 years or so. She has completed a parenting assessment in respect of the mother which is a full and comprehensive document. The assessment is dated 24 April 2020.
54. The Social Worker also records the mother's own account of the time around Lucy's birth. The mother described to her that she had been in a lot of pain, she was trying to do everything and felt she was being pushed/pulled with things that were beyond her control. She described how she also had "responsibility" for the paternal aunt and that things were overwhelming for her. She described feeling exhausted as she hadn't slept properly, and she felt so alone and unsupported.
55. The Social Worker observed that the mother's mood was significantly improved following her separation from the father. By the time of this parenting assessment, she is described as presenting as enthusiastic and engaging in discussions and her manner and attitude towards the foster carer had changed significantly.
56. The Social Worker has given evidence about a conversation with the mother following a looked after review meeting on 27 November 2019. This meeting has been the focus of much of the evidence at this hearing. I have also read

and heard evidence from the IRO on this issue. The Social Worker, the IRO and the mother are all agreed on one thing, that the mother was extremely distressed following the looked after review meeting.

57. The Social Worker recounts the mother vividly describing her feelings around the time of Lucy's injuries. She had described to the Social Worker how she was in a dark place and feeling exhausted and overwhelmed. The Social Worker told me that the mother described holding Lucy tightly with Lucy's arms under her armpit what she had both her arms wrapped around Lucy's body while she was trying to soothe her. In the witness box over video link, the Social Worker demonstrated what she said she observed the mother doing. She has also produced a video of this. I accept that the demonstrations were slightly different but the overall description and impression that was given to the Social Worker has remained consistent.

The evidence of the IRO

58. The statement of the IRO deals with the meeting with the mother following the looked after review in November 2019. He recalls that the mother spoke about how her life had become more difficult after Lucy's birth particularly with the extra pressure put upon her by having to care for the paternal aunt. She said she could not manage the paternal aunt and there had been a number of arguments and conflicts. The IRO describes that the mother became more emotional saying that she had told her barrister "everything". The IRO believe this to mean that she had disclosed how the injuries to Lucy had been caused.

59. The mother described to the IRO and the Social Worker that she had been in a lot of pain following Lucy's birth and felt she had very little support and none from the father and his family. The IRO records that the mother felt that Lucy didn't like her as she cried a lot and that the mother found it very difficult to calm her. He records that the mother said that Lucy "cried all the time".

60. He goes on to recall that the mother had said that she held Lucy very tightly prior to presenting her at the hospital. She had said that Lucy continued to cry and that she held her very close and demonstrated holding her very tightly between her body and her arms moving her up and down. She reported that she just wanted Lucy to stop crying.

61. The IRO's evidence is that the mother became very upset and distressed as she was talking about this but that he believed that the mother was describing the stress and emotional turmoil she had experienced following Lucy's birth and that her description of how she held Lucy "could be a partial disclosure of how Lucy's injuries occurred".
62. Both the Social Worker and the IRO proceeded on the basis that the mother had acknowledged how Lucy's injuries had been caused. Within the parenting assessment there is an assumption that Lucy's injuries were sustained at the time of extreme stress for the mother who may have been suffering from postnatal depression, had a clear lack of support, was sleep deprived and feeling out of control. As a result of these difficulties, she was unable to soothe and form a bond with her baby Lucy.
63. The assessment concluded that the mother has shown a commitment to learning and developing the ability to care for her children and provide appropriate stimulation. She has done all that has been asked of her, is regularly accessing therapeutic support and counselling from Centrepoint and engages in the family time contact (which at the time of the parenting assessment being was taking place through Skype).
64. The recommendation of the Social Worker, having assessed all of the information and evidence, which was supported by The IRO was that the children should be rehabilitated to the mother's care.

The evidence of the mother's support worker

65. The mother's support worker has filed a statement and given evidence to me. She described feeling concerned that pressure was being put on the mother to persuade her to admit causing the injuries to Lucy. However, she is unable to provide much assistance in terms of establishing the circumstances around Lucy's injuries as, on the mother's own admission, she did not discuss with the support worker how she was feeling following Lucy's birth. The support worker did not visit at that time, wishing to give the family some space to welcome their new-born.
66. The support worker has remained at court following giving her own evidence in order to provide support to the mother. I'm very grateful to her for that.

The mother's evidence

67. The mother has filed a total of six statements and has given oral evidence to me. The first part of the mother's oral evidence in chief took a considerable amount of time as the mother wished to clarify a number of apparent inconsistencies within her statements.
68. In her first statement the mother sets out that she is unable to account for the injuries. She describes that Lucy cried a lot, so she is unable to identify a time when she was particularly upset. She said that since Lucy's birth she was either in hers, the father's or the paternal grandmother's care. She says that Lucy had never been left overnight and that there was no one else who had sole care of Lucy.
69. In her second statement and in accordance with the directions of the court, the mother sets out a timeline of who had care of Lucy. Her evidence in that statement is that the paternal grandmother had some sole care of Lucy until she left on Friday 26th July 2019. The paternal aunt assisted in the care of the children from 27th July onwards, but mother had sole care until 4th August 2019 when the father arrived at the mother's home. He had sole care of Lucy on 4th, 5th, 6th August 2019. The mother states that other than father and the paternal grandmother, no one else had sole care of Lucy. There had though been times when the paternal aunt had been in the same room as Lucy while the mother had been in another room in the home.
70. In her third statement, the mother seeks to correct the dates for the father's attendance at her home. She clarifies that father did not attend at her home until 6th August 2019. She said that she took both Lucy and Peter to the hospital with the paternal aunt on 4th August 2019 and went back on 5th August. Peter and the paternal aunt stayed with mother and Lucy in hospital until 5- 6 pm when her friend Jane came to collect Peter. Peter was cared for by Jane overnight until she took him to father who had arrived at the mother's home.
71. I accept that the mother was mistaken in respect of the dates for the father being present with her and the children in their home. I accept that this was a

genuine mistake, and the evidence is now clear and undisputed as to the actual dates that the father was present. He was not present at the time Lucy's injuries were sustained.

72. In her oral evidence the mother attempted to clarify what she meant by "sole care" which she said in her understanding was someone being left alone with responsibility for Lucy.

73. The mother's fourth statement describes a mechanism for how she held Lucy. A video clip of the mother holding a doll in this way was prepared and sent to the experts who did not consider that such handling could have caused Lucy's injuries.

74. In this statement, the mother also describes that the paternal aunt helped a little by Hoovering and washing pots and would also help out by giving Lucy a bottle or changing her nappy. In terms of the care that the paternal aunt undertook, she states that she was never left in the house with the children. The mother describes that there were occasions when [the paternal aunt] would watch the children whilst the mother was in the bath but that she would settle the children before she went into the bath. She said there were occasions when Lucy would wake up and she could hear her crying while she was in the bath. In this fourth statement the mother describes the paternal aunt's behaviour as difficult and describes an occasion when she began grabbing, slapping and punching the mother in the presence of the children. She says that there were other times when the paternal aunt lost her temper and that on occasion it would take her an hour or 2 to calm down.

75. Somewhat surprisingly, it is not until this statement that the mother refers to her friend Annabel as having cared for Lucy overnight during the relevant period.

76. Within this statement the mother also describes what a difficult time she had when she was pregnant with Lucy and following her birth. She had spoken to her GP about a termination but did not feel able to go ahead with it. She found it difficult to bond with Lucy as Lucy cried all the time. She suggests that she

allowed anyone to have care of Lucy because she was not bonding with her. She does however deny losing her temper with Lucy or causing injury to her.

77. In the mother's fifth statement (which was filed in June 2020) the mother strongly denies that she made any admissions at all to the IRO or the social worker that she may have caused the injuries to Lucy and feels that they have misinterpreted what was said.

78. In this statement she asserts that the paternal aunt undertook "the majority" of Lucy's primary care during the day. Mother goes so far as to say, for the first time, that Lucy cried more when the paternal aunt was caring for her. Mother says that she was "very dependent" on the paternal aunt and that the paternal aunt looked after Lucy "for a lot of the day" on 4th August.

79. In her 6th statement, the mother confirms that she does not put a positive case against her friend Annabel with whom she has now fallen out. She describes Annabel as being "brilliant with Lucy" and that Lucy did not cry at all when Annabel held her which caused the mother to feel jealous.

80. The mother in her oral evidence attempted to explain why and how her written evidence appeared to develop and change through the course of those six statements. Some of her explanation related to terminology such as her understanding of the term "sole care". She told me that her understanding of "primary care" referred to the paternal aunt "helping her by changing Lucy's nappy and feeding her". She told me that she was keen to teach the paternal aunt how to do these things as the paternal aunt would have her own children in the future. The mother confirmed that the paternal aunt "did not care for Lucy on her own" for "lengthy periods of time". She did say there would be *occasions* when she was in a different room and would ask the paternal aunt to give Lucy her bottle or put the dummy back in.

81. I was able to observe the mother in court over a number of days. I entirely accept that coming to court to give evidence about her children and about the injuries to Lucy will have been an extremely stressful experience for her. She became very agitated at times during the course of her evidence and repetitive

in her answers. She was however clear in confirming the very real difficulties she was experiencing around the time of Lucy's birth.

82. I have had a significant amount of evidence to assist me in ascertaining a picture of the circumstances in the home at the time that Lucy sustained her injuries and how on balance, those injuries were inflicted and by whom.

83. The paternal aunt was present, however, there is very little evidence that she undertook very much care for Lucy at all. The evidence largely comes from the mother and the inconsistencies in that evidence make it almost impossible to be clear about the paternal aunt's involvement. The evidence from the school, the paternal family and the paternal aunt herself suggests that she simply would not have had the capability to provide for any of Lucy's care needs. In reality, the evidence suggests that all she was capable of was playing with Peter, and possibly some very basic cleaning chores. I'm not even sure she would have been able to give Lucy a bottle.

84. I am unable to accept any suggestion from the mother that the paternal aunt played any significant part in the care of Lucy and could therefore have caused the injuries to Lucy. I find it far more likely that the paternal aunt avoided having very much to do with Lucy at all.

85. All of the evidence points to the incredibly difficult situation the mother found herself in at the time of Lucy's birth. I think it extremely likely that she was suffering from postnatal depression at time. She had limited financial resources. She found herself not only caring for two babies but also then had the additional responsibility of caring for a teenager who had some learning difficulties and was no doubt truculent at times. It is perhaps almost inevitable that the mother found herself to be extremely stressed and frustrated. Coupled with that, she struggled to bond with Lucy and believed that her daughter did not like her.

86. I find that the most likely explanation for what occurred and how Lucy's injuries were caused is the explanation that the IRO and the Social Worker believed the mother gave to them following the looked after review meeting in

November 2019. I find, on the balance of probabilities, that the mother in frustration and exasperation rather than with any intent to hurt her daughter, squeezed her too tightly causing the injuries to her ribs, and her eyes. I believe that on or around the same time and again out of frustration rather than intent to cause harm, the mother also caused the injuries to the vertebra.

87. I accept the evidence of the Social Worker and the IRO, preferring it to the account given by the mother, that on 27 November, the mother was actually giving a true account of what had occurred.

88. I believe that the mother recognised that she may have injured Lucy and that is the reason for presenting her to the hospital on 4 August. I believe that the mother probably invented the account of finding Lucy on the floor to provide some sort of explanation for presenting her at the hospital.

89. I would invite a response from the mother in respect of this judgment. I repeat that the local authority parenting assessment was otherwise positive with a plan of rehabilitation. All parties now need to reflect very carefully on a way forward that is most consistent with the welfare of these young children.

90. I therefore make the following findings: -

Physical harm

1. Lucy suffered the following injuries:

- a. Fractures at the spinal end of the 3rd, 4th, 5th, 6th and 7th right side ribs.
- b. Fractures at the spinal end of the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th and 8th left side ribs.
- c. Fractures at the side end of the 3rd, 4th, 5th and 6th ribs.
- d. Fractures at the side end of the 1st, 2nd, 3rd, 4th and 5th left ribs.
- e. Possible spinal vertebral fractures of the 12th dorsal and 1st lumbar vertebrae.
- f. Bilateral sub-conjunctival haemorrhages

2. These injuries are likely to have occurred within the week before the 6th of August 2019.

3. These injuries are inflicted and require the application of significant force.
 - a. The rib fractures by a blow or forceful gripping of the chest.
 - b. The vertebral fractures by over bending/over stretching of the back.
 - c. There were two or more applications of force.
 - d. The sub-conjunctival haemorrhages were caused by the mechanism of forceful gripping at the same time as the fractures
4. These injuries are non-accidental and would not be caused in the course of normal handling.
5. These injuries were caused by the mother

Emotional harm

6. Lucy will have suffered emotional harm in suffering these injuries.
7. Peter will have suffered emotional harm witnessing the infliction of these injuries.

Agreed legal principles to be applied

1. Under 31(2) of the Children Act 1989 the Court may only make a Care or Supervision Order if satisfied that:
 - (a) *That the child concerned is suffering or likely to suffer significant harm and*
 - (b) *That the harm, or likelihood of harm, is attributable to-*
 - i) *The care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or*
 - ii) *The child's being beyond parental control*
2. The local authority brings these proceedings and has pleaded certain facts which it contends establish the threshold criteria. Those matters have to be proved on a balance of probabilities by the local authority.
3. The Court is referred to the case of *Re S (A Child)* [2014] EWCA Civ 25. This case is critical of the use of the word “non-accidental” in cases such as this one, preferring a focus upon the statutory threshold criteria. As Ryder LJ says in that case:

“the true distinction is between an accident which is unexpected and unintentional and an injury which involves an element of wrong. That element of wrong may involve a lack of care and/or an intent of a greater or lesser degree that may amount to negligence, recklessness or deliberate infliction. Whilst an analysis of that kind may be helpful to distinguish deliberate infliction from say, negligence, it is unnecessary in any consideration of whether the threshold criteria are satisfied because what the statute requires is something different namely findings of fact that at least satisfy the significant harm, attributability and objective standard of care elements of section 31(2)”
4. The law is summarised in the judgment of Munby P in the case of *Re X* [2015] EWHC 3651 at paragraph 20 as follows:

*20. There is no doubt or dispute about the law. The principles are conveniently set out in the judgment of Baker J in **Re L and M (Children)** [2013] EWHC 1569 (Fam), to which I was taken. So far as*

material for present purposes what Baker J said (and I respectfully agree) was this:

"First, the burden of proof lies at all times with the local authority. Secondly, the standard of proof is the balance of probabilities. Third, findings of fact in these cases must be based on evidence, including inferences that can properly be drawn from the evidence and not on suspicion or speculation ...

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

Fifthly, ... Whilst appropriate attention must be paid to the opinion of ... experts, those opinions need to be considered in the context of all the other evidence. It is important to remember that the roles of the court and the expert are, and it is the court that is in the position to weigh up the expert evidence against its findings on the other evidence. It is the judge who makes the final decision.

Sixth, ... The court must be careful to ensure that each expert keeps within the bounds of their own expertise and defers, where appropriate, to the expertise of others.

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

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

In the present case, this last point is of particular importance.

21. To this admirable summary I add three further points.

*22. First, that the legal concept of proof on a balance of probabilities "must be applied with common sense", as Lord Brandon of Oakbrook said in *The Popi M, Rhesa Shipping Co SA v Edmunds, Rhesa Shipping Co SA v Fenton Insurance Co Ltd* [1985] 1 WLR 948, 956.*

*23. Secondly, that the court can have regard to the inherent probabilities: see Lady Hale in *In re B (Children) (Care Proceedings: Standard of Proof) (CAFCASS intervening)* [2008] UKHL 35, [2009] 1 AC 11, para 31. But this does not affect the legal standard of proof, as Lord Hoffmann emphasised in the same case (para 15):*

"There is only one rule of law, namely that the occurrence of the fact in issue must be proved to have been more probable than not. Common sense, not law, requires that in deciding this question, regard should be had, to whatever extent appropriate, to inherent probabilities. If a child alleges sexual abuse by a parent, it is common sense to start with the assumption that most parents do not abuse their children. But this assumption may be swiftly dispelled by other compelling evidence of the relationship between parent and child or parent and other children. It would be absurd to suggest that the tribunal must in all cases assume that serious conduct is unlikely to have occurred. In many cases, the other evidence will show that it was all too likely."

*24. Thirdly, that the fact, if fact it be, that the respondent (here, the mother) fails to prove on a balance of probabilities an affirmative case that she has chosen to set up by way of defence, does not of itself establish the local authority's case. As His Honour Judge Clifford Bellamy recently said in *Re FM (A Child: fractures: bone density)* [2015] EWFC B26, para 122, and I respectfully agree:*

"It is the local authority that seeks a finding that FM's injuries are non-accidental. It is for the local authority to prove its case. It is not for the mother to disprove it. In particular it is not for the mother to disprove it by proving how the injuries were in fact sustained. Neither is it for the court to determine how the injuries were sustained. The court's task is to determine whether the

local authority has proved its case on the balance of probability. Where, as here, there is a degree of medical uncertainty and credible evidence of a possible alternative explanation to that contended for by the local authority, the question for the court is not 'has that possible alternative explanation been proved' but rather it should ask itself, 'in the light of that possible alternative explanation can the court be satisfied that the local authority has proved its case on the simple balance of probability'."

*The issue and the forensic context in that case differ from what confront me in the present case, but the point identified by Judge Bellamy is quite general, as exemplified, for example, by what Lord Brandon said in *The Popi M*, 951:*

"... the burden of proving, on a balance of probabilities, that the ship was lost by perils of the sea, is and remains throughout on the shipowners. Although it is open to underwriters to suggest and seek to prove some other cause of loss, against which the ship was not insured, there is no obligation on them to do so. Moreover, if they chose to do so, there is no obligation on them to prove, even on a balance of probabilities, the truth of their alternative case."

5. The Court is also referred to the observations of Dame Elizabeth Butler-Sloss in the case of *Re U (serious injury; standard of proof)* [2004] EWCA Civ 567 at paragraph 23 following the decision in *R v Cannings* as follows:
 - i) *The cause of an injury or episode that cannot be explained scientifically remains equivocal*
 - ii) *Recurrence is not in itself probative*
 - iii) *Particular caution is necessary in any case where the medical experts disagree, one opinion declined to exclude a reasonable possibility of a natural cause*
 - iv) *The court must always be on guard against the over dogmatic expert, the expert whose reputation is at stake or the expert who has developed a scientific prejudice*
 - v) *The judge in care proceedings must never forget that today's medical certainty may be disregarded by the next generation or experts or that scientific research would throw light into corners that are at present dark*

6. Where the evidence allows, the court may come to a conclusion that is contrary to the body of expert evidence as per *Re B (Care: Expert Witnesses)* [1996] 1 FLR 667: reasons for disagreement must of course be given in these circumstances.
7. This is a case where the local authority had identified a pool of perpetrators whom it said were responsible for inflicting injuries. The Court should not strain to identify the individual who inflicted the injuries on a balance of probabilities.
8. The Local Authority has now updated its position to positively assert that these injuries were caused by the mother and refers to the Supreme Court in *Re S-B (Children)* [2009] UKSC 17. If the Court is unable to identify a perpetrator or perpetrators on a balance of probabilities, it is still important to identify the pool of possible perpetrators by asking whether the evidence establishes that there is a *'likelihood or real possibility'* that a given person perpetrated the injuries in question. In such circumstances, it is all the more important to scrutinise the evidence carefully and consider whether anyone, and if so who, should be included in the pool of possible perpetrators. The Court must weigh any lies told by any possible perpetrator against any evidence that points away from them having been responsible.
9. The Court is referred to the case of *R v Lucas* in relation to a party telling lies for a number of different reasons.
10. The Court is also invited to consider the so-called “Gestmin” principles in relation to the reliability of written contemporaneous records, in Lucy’s case the ones made by medical professionals – Gestmin SGPS S.A and Credit Suisse [2013] EWHC 3560 (Comm).
11. Para 22. *“In the light of these considerations, the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses’ recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of*

particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth.”