IN FAMILY COURT
IN THE MATTER OF THE CHILDREN ACT 1989
AND IN THE MATTER OF CHILD A (dob 2019)
BETWEEN:

A LOCAL AUTHORITY — Applicant

-and-

MOTHER (1)
FATHER (2)
CJ AND KJ
CHILD A (by his children's guardian)

Respondents

MW

Intervenor

JUDGMENT
FOR THE FACT-FINDING AND WELFARE HEARING COMMENCING 19 OCTOBER 2020
WITH JUDGMENT GIVEN ON 20TH NOVEMBER 2020.

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1. This case concerns a little boy Child A, born in 2019. Mother is TS and Father is AH. Child A has six half-siblings from the mother's former relationship and a younger brother, child B, born during these proceedings. Child A and child B are the father's first children.

2. The applicant is a local authority. The allocated social worker is KB. Child A's guardian is HF.

3. Child A was admitted to hospital at 22.05pm on 8.9.19 with a fracture to the right femur. The parents have alleged that Father sat on child A's leg and heard it snap. The parents have said that they had been out for the day and returned in the evening with a takeaway. On returning to the home, child A started crying. Mother went into the kitchen to prepare a bottle and Father took child A into the lounge. He lay child A lengthways on the sofa, then leant forwards to reach for a dummy which was in the car seat on the floor. As he sat back down, he lost his footing and sat back down on child A's leg. He heard a crack and child A immediately started crying. Mother came into the lounge, laid child A on the floor and checked him over. She then phoned 111 who advised they take child A to hospital.

4. A full skeleton survey of child A was undertaken on 10.9.19 which revealed 16 rib fractures. Subsequently, a doctor has identified three metaphyseal fractures. Both parents were arrested on 11.9.19 for causing grievous bodily harm. The Local Authority made an ex-parte application for an emergency protection order. The parents were released on police bail; however, bail conditions have subsequently been discontinued.

5. There were also concerns that child A was failing to thrive, due to his poor weight gain. The initial concerns related to irregular or inconsistent feeding. He was not taken by his parents to a GP appointment to review his weight on 22.8.19. This appointment was not re-booked by his parents. The health visitor was concerned that child A was ‘stick thin’ when she saw him on 2.9.19 and she booked a further GP appointment for him. On 3.9.19 at the GP appointment, the GP advised that he should be taken to the Child Assessment Unit in a hospital. Child A was not taken.

6. Upon child A’s admission to hospital, he was observed as being ‘*clearly underweight’* for his age. Child A was placed under the care of a dietician and speech and language therapist. He was diagnosed with posterior tongue tie and was then being fed with a bottle with a specialist teat because he was in traction due to his broken leg. Prior to the tongue-tie diagnosis, he had gained 90g in hospital between 8th September and 12th September 2019. It was observed in hospital that Mother needed prompting to feed child A.

7. There were also concerns previously and current about the home conditions being dirty and cluttered.

8. There have been no previous proceedings concerning child A. There were previous private law proceedings in respect of Mother’s older six children: SB, dob 18.2.06; WB, dob 18.4.08; HB, dob 17.10.09; CB, dob 11.8.11; HB dob 6.6.13; BB, dob 1.10.04. These proceedings concluded in 2018 by way of a child arrangements order, with all six children living with their father (MB) and having staying contact with their mother. These proceedings were taken back to Court by MB at the recommendation of the Local Authority, following the injuries sustained by child A. These proceedings remain ongoing and will be considered further at the end of this hearing.

9. Prior to 8.9.19, referrals were made by the school of Mother’s six older children. On 12.2.17 her older children moved to live with their father, MB. One of the concerns that led to the children moving to live with their father was that Mother had commenced a relationship in January 2017 with TD, who had a previous conviction for stabbing an ex-partner with a knitting needle and assaulting her with a hammer, for which he received a custodial sentence of 8 years. Mother did not seem to acknowledge any risk he may pose. There were also concerns about her ability to meet the care needs of her children, with professionals considering that her ex-partner MB had done the majority of the care. Private law proceedings commenced between MB and Mother. On 30.7.17 an anonymous referral raised concerns about the children having contact with their mother and not being returned to their father’s care by Mother. The caller also raised concerns about Mother’s then partner. The children were eventually returned to MB.

10. On 24.11.17, WB (one of mothers older children with MB) informed a member of staff at his school that Mother’s partner, AH (father), emotionally and physically hurts him. He described how Father grabbed him by the shirt and had his hands on his throat, he grabbed his toe and bent it back and then threw him on the bed, grabbed his hand and bent his finger back. He also said that Father swears at him. A strategy meeting was held and section 47 enquiries were completed, as was a child and family

assessment. No further action was taken as the children were deemed safe with their father and Mother agreed not to allow her partner to have contact with the children. That agreement was subsequently varied in the private law proceedings.

11. Father in his statement sets out that he picked WB off a freezer that he was jumping on, and did so by placing his hands under his armpits, and that he did not assault or physically harm WB. Father was not cross examined on this point.

12. Prior to child A's birth, the midwifery team made a referral as a result of concerns about the parents' ability to meet child A's needs due to the family history and poor parental mental health. A child and family assessment was completed and the case was stepped down to early help services. Child A was admitted to hospital with breathing difficulties on 6.7.19.

13. On 24.8.19 police attended the home address and were concerned about child A's welfare as a result of the dirty and untidy home conditions. The police had attended in relation to Mother's older child SB, who was there and refusing to return home to her father's care. The police were concerned by Mother's reports that child A was not gaining any weight. The police submitted a referral to the Local Authority on 25.8.19.

14. This 15-day fact-finding and composite final hearing is to determine the injuries caused to child A, to identify a perpetrator or the pool of perpetrators. The adults in the pool of perpetrators are currently the mother, father and MW. MW's adult daughter LB was discharged as an intervenor at the Pre-Trial Review. There are also some wider threshold matters to be determined, in respect of child A's failure to thrive and the home conditions.

15. The Local Authority applied for an ex-parte Emergency Protection Order on 11.9.19. The Local Authority subsequently applied for an interim care order/care order on 18.9.19. Child A now resides with his mother's cousin and her husband, CJ and KJ, under a child arrangements order. Child A moved to their care on 16.12.19. Prior to then, he was placed in foster care under an interim care order and prior to that an emergency protection order. Child A was having supervised contact with his parents prior to the lockdown. During the lockdown he had facetime contact and last month face to face contact resumed, alongside facetime contact.

16. I have case managed this case and I have read the many thousands of pages of evidence, including phone records of the parents and text messages between the parties as well as extensive police disclosure. This case has been very delayed due to the Covid emergency and Listing issues. If I don't mention a part of the evidence it is because of the sheer weight of the papers and not because I have not considered it. I heard this case as a hybrid trial, with some parties such as the mother and one of her counsel and MW and one of her counsel attending in person with the father only attending three days because of work commitments.

17. The Local Authority seek findings against either the father or the mother in respect of child A's injuries, his failure to thrive and the home conditions. They have notified me that they are no longer seeking findings against MW who is an intervenor. The final care plan for child A is that he stays with CJ and KJ and a Special Guardianship Order is made in their favour.

18. The mother says that she did not hurt child A. She does not say who she thinks hurt child A although in her written evidence she suggests it could have been MW or AH. It is submitted that she seeks the Local Authority to prove the case and the allegations that they allege. The mother seeks to care for child A and his brother, child B, together with the father.

19. The father denies hurting child A other than accidently sitting on his leg and causing the broken femur. If I find there are three metaphyseal fractures the father believes that he could have caused those at the same time as breaking child A's leg. With respect to the 16 rib fractures he does not know how they were caused. He says it could have been the mother or MW, the intervenor.

20. MW denies having caused any injuries to child A.

21. The Guardian wishes me to make findings, if possible about the perpetrator of child A's injuries. The Guardian does not support child A returning to his parents because of the injuries, issues of the mother's care of child A, the home conditions and the failure to thrive.

22. I have heard evidence from EK (previous social worker), AL (treating Speech and Language therapist), CG (health visitor), Dr O jointly instructed Radiologist from GOSH, Dr A (Jointly instructed Paediatrician), Dr J (Radiologist), Dr C who undertook a Psychological assessment of both parents and MW, Dr U, (treating Paediatrician), SO (previous social worker), KA (Early Help worker), JP (treating dietician), JF (Independent Social Worker) who undertook a parenting assessment, KB (current social worker), LB (daughter of MW), MW, Mother (TS), CJ (Cousin and proposed Special Guardian) and HF, child A's Guardian.

23. EK told me that she no longer works for the County Council but she was working for them on 16th September 2019. EK described visiting child A in hospital and she said that when she arrived child A looked awful, he had both legs in traction, he was in a great deal of pain and whimpering. EK said that the mother was on the phone to the father and she was surprised that the mother was not showing more attention to child A. EK and a nurse attempted to comfort child A. EK said she found it very, very upsetting.

24. EK described child A as looking 'grey and gaunt 'with thin legs and arms and EK described his arms 'as no bigger than my thumb.' EK said she thought that he looked very small for three months old.

25. EK said that she visited child A a lot whilst he was in hospital and he had a significant weight gain.

26. EK said that the mother had told her about leaving child A with MW. She didn't know her surname or her phone number or address.

27. EK said that she had seen contact between the mother and her other six children which she described as ‘challenging’. EK said that the mother had missed contacts or cancelled at the last minute which meant that the children were disappointed, let down and quite upset when they didn’t get to see their mother. EK said that the mother had admitted lying to her about missing contact as she had said that she had a midwife’s appointment and EK said that she knew this was untrue. Mother had admitted she had lied and that she did not have any money. EK said that the Local Authority had funded her travel to contact and the mother had claimed travel and then had a lift with her partner or her mother. EK said that the mother was aware of how to claim the travel expenses.

28. AL gave evidence. AL was the treating Speech and Language therapist who had been asked to see child A at the WH hospital because he was so underweight. Also it was difficult feeding him because he was in traction and flat on his back so it was difficult to wind him properly and there was a risk of him choking. AL told me that child A was tongue tied which could be a significant factor in failure to thrive and she told me that she had prescribed an orthopaedic teat and high calorie milk.

29. AL described child A as very still, very pale, very small and difficult to rouse and he appeared very shut down. AL told me that bottle fed babies rarely need an operation to correct tongue tie.

30. Dr. O gave evidence and confirmed his report dated 22 January 2019. His confirmed his findings that; Child A has suffered 20 fractures, namely 16 rib fractures of which 7 are close to the spine, a fracture of the shaft of the right thigh bone, and a total of 3 metaphyseal fractures (fractures between the shaft made of bone and knuckle made of cartilage in infants) around the knees.
    a. Timings are provided for each set of fractures accurately. Dr O confirmed that it is not possible to date the fractures individually.
    b. In his opinion there is no radiological sign of any underlying condition
    c. In his opinion on the balance of probabilities:
        i. The injuries had been caused by more than one event
        ii. The rib fractures required very significant trauma
        iii. The 7 rib fractures close to the spine had been caused by squeezing of the chest with forces in the region seen in road traffic accidents or by violent shaking. He felt because there was no bleeding on the brain or in the retina that violent shaking was a less likely cause of injury.
        iv. The fracture of the shaft of the right thigh bone had been caused by twisting of the right thigh with forces similar to those arising in moderate sports trauma in older children; and
        v. The metaphyseal fractures had been caused by pulling/twisting/unnatural bending of the knees with forces in excess of those arising from rough handling
    d. In his opinion the father’s sitting down on child A’s legs is unlikely to have caused the fracture of the thigh bone although it was possible and he couldn’t completely exclude it he said it was not probable that it occurred as the father had said.

31. In his addendum paediatric radiology report, dated 2 April 2020 Dr O said:

a. None of the rib fractures are explained by the explanation of the Father sitting on child A.
b. The fracture of the right thigh bone is on the balance of probabilities not explained by the event since it is unlikely any significant twisting of the leg resulted from the event; but
c. It remains possible that some or all of the metaphyseal fractures around the knees may have been caused by the event in case there might have been over extension of one or both knees.

32. Dr O said in relation to the metaphyseal fractures that on the balance of probabilities he considered that it was more likely than not that those irregularities on the x -ray do represent fractures. He said that he had spent several days looking at the rib fractures a considerable proportion of that looking at the radiographical images. He said that he had 8 sets of images to consider and he said that he spent hours looking at them. Whilst Dr J was equivocal about whether they were there or not Dr O was not. However, Dr O was clear that he could see an irregularity in the bone and Dr O said they were likely to represent discontinuity in the bone which was the definition of a fracture. It disappeared when it healed and he said that on the balance of probabilities these do represent fractures. He felt that they occurred less than a month ago.
33. In relation to the rib fractures he said that there was callus around all the rib fractures and they didn't occur in the last two weeks from 6th September 2019. Dr O said the quality of the images did not allow him to date them.
34. CG, child A's health visitor gave evidence. CG told me that she didn't see child A with a tongue tie as milk didn't appear to dribble out of his mouth but she was not an expert. CG told me that when she saw child A on 5th August 2020 he appeared gaunt and very thin and she was immediately concerned as to how he presented. She described him as looking like a 'third world baby' and she said that he looked emaciated and she didn't think he had been fed enough. His skin was tightly drawn around his skull and shins. CG said that child A had gone from the 9th weight centile to 0.4 centile and he was gaining weight very, very slowly.
35. CG said that when he was undressed you could see his ribs and she described the mother as not being very concerned although CG said that the mother did agree that he was thinner than he should be.
36. CG said that she got her phone out and made an appointment there and then for child A to be seen by the Doctor as she was worried about underlying health issues. CG said that he should have been on first milk powder rather than hungry baby formula because he needed to be fed more often. CG said that the weight gain didn't correspond to how much milk the mother said that she was feeding child A. CG said that she had asked the mother is she was 'eeking' out the formula and she said that the mother was angry about that and she saw plenty of formula in the kitchen.
37. CG described the mother as loving and caring towards child A and she described child A as being appropriately dressed and clean when she saw him although the house was untidy and very cluttered and dirty at times. CG said she didn't notice child A in any pain and she had no concerns other than the issue of weight gain.
38. Dr. U, the Consultant Paediatrician who saw child A gave evidence. Dr U said that she happened to be still at the hospital and went to see child A in Accident and Emergency. She told me that the parents told her that they had gone out for a day, they came home and the mother went to make child A a

bottle. The father took child A out of his car seat and put him on the sofa and reached forward to get his dummy and sat on him.

39. Dr U said that the parents appeared to have brought child A to hospital in a timely fashion. The lack of weight gain was a concern. Dr U said that the mother reporting how much child A was fed did not explain why he had not put on weight. Dr U said all child A's blood tests were normal and they had tested him for an extensive range of things to see if that was a reason for his failure to thrive. Vitamin D levels in child A's blood were normal and this meant that bone mineralisation was normal.
40. Dr U said that any baby over 38 weeks was described as full term and it was expected that his growth would be around the centile line that he was born on. Child A's weight was so low he was fed a high calorie formula and his weight was very worrying.
41. Dr U said that a posterior tongue tie such as child A had would not account for his difficulty in gaining weight. Bottle feeding would not have such an impact and Dr U pointed out that he developed a good weight gain in hospital
42. Dr U also saw the child with CJ and the social worker KB on 26 June 2020 at a clinic, face to face. CJ had been concerned that child A was possibly putting his right leg in an unusual positioning. In clinic he was well and he crawled around the room with symmetrical movements of his legs, and the posturing was not concerning. He could demonstrate pulling to stand from crawling and could take steps with his hands held. Dr U felt clinically there is no concern, and no further investigation is required.
43. Dr U said that her hospital trust had a contract with another hospital so that they would give a second opinion on radiographical images. That is how Dr J became involved in the case.
44. Dr U said that the fact that the mother reported bruising easily was not significant as child A was not showing any bruising just swelling around his broken leg. When it was suggested to Dr U on behalf of the mother that Ehlers Danlos Syndrome could account for child A's injuries she told me that it wouldn't account for multiple rib fractures or the other fractures and child A has had no issues since he was removed from his parent's care. The blood tests didn't show demineralisation and Dr U said that the pattern of the injuries and the number suggested non-accidental injury. Also rib fractures were unlikely to be from EDS.
45. Dr U said that lots of babies are tongue tied and they still manage to gain weight. Child A did gain weight in hospital when he was monitored. Dr U said such a big percentile drop in weight was a red flag hence why so many tests were carried out.
46. Dr C gave evidence and confirmed her report. In her written report she said that the most appropriate diagnoses for the Mother are major depression (recurrent, severe), generalized anxiety disorder and PTSD; She also considered that she may have some personality patterns which amount to a diagnosable personality disorder such as Dependent Personality Disorder.
47. Dr C considered that the Father is suffering from depression and post-traumatic symptoms which may be significant enough to warrant a diagnosis of PTSD. The Father reported difficulty with the control of anger in the past. He did not consider this to be a current problem. Dr C had some concern that Father's management of his anger may not be as controlled as he believes.
48. Dr C recommended that the mother would benefit from 12-20 session of CBT including trauma-focused CBT over a period of 4-6 months. She said that it would be appropriate for her personality

difficulties to be reassessed after she has completed treatment for her mental health difficulties. CTB could be undertaken whilst child A is in her care.

49. Dr C considered that the father would also benefit from 12-20 sessions of CBT over 4-6 months to address his childhood experiences and his interactions with others. Dr C considered that both parents have limited insight into the concerns. Each parent reported a long history of emotional difficulties. Dr C considered that the mother's mental health difficulties (because she is the primary carer) will interfere with her ability to prioritise child A's needs over her own at times. She felt that this would have a very big impact on her ability to care for child A.

50. Dr C described people suffering from depression being less upbeat, their interactions are less positive, they are more intolerable and more irritable. Dr C said that Mother did talk about Father's behaviour being abusive and at times she said that she felt Father's behaviour to some extent mirrors an abusive relationship. Mother talked about them arguing although she said that there was no verbal abuse. Dr C said that she did not have evidence that this relationship was controlling or abusive.

51. Dr C said that it was quite surprising that the parents would place child A in the care of someone else when he was so young and she felt it was indicative of the mother not coping very well or prioritising her relationship with her baby. Dr C felt that the father didn't prioritise his contact with child A and he struggled to interact with him.

52. I heard evidence from Dr A who confirmed her report. Dr. A's report dated 8 April 2020 said that it would be highly likely that child A would have been in pain and distress as fractures are very painful and this would have been immediately after sustaining the injuries. It would have been apparent to a perpetrator he had been injured. It would have been obvious to anyone caring for child A at the time of the injuries he was in distress. Child A would have required immediate medical attention for his injuries.

53. Dr A said that posterior tongue tie is likely to have contributed to child A's poor weight gain but it wouldn't be the sole reason and it would be likely that he was not receiving enough calories. The amount the mother alleged that she was feeding child A did not accord with his weight gain. The mother had not heeded medical advice regarding feeding. Child A had no evidence of any underlying medical condition. EDS was unlikely to account for multiple fractures and child A did not display any of the other symptoms such as hypermobility. The explanation given by the parents does not account for the injuries. Many of the injuries are highly likely to have occurred non-accidentally. In respect of the femur Dr A said she was not fully convinced about the history given and she didn't feel it matched how it happened. She felt it was highly unlikely but a possibility remained.

54. Dr A said that the weight gain in hospital from the admission in July was substantial and he was being fed regularly and this showed that child A didn't have any difficulty if he was having regular feeds. For the hospital admission in September child A still gained weight and he was not put on a high calorie formula until a couple of days after admission which was when he was prescribed a different teat as he was lying flat in traction.

55. Dr A said that it was unlikely the rib fractures were birth injuries, that normally occurred in very big babies and child A was not a big baby. Dr A said that all children experience pain differently and whilst she had said that he would be in pain from fractures for 2 to 3 weeks he might have been a baby that stopped being in pain more quickly. There would probably be an acute 72 hour window of pain. Dr A said that a number of rib fractures and metaphyseal fractures, if the court decided they are present, are indications of abuse.

56. KA, the Early Help worker gave evidence and confirmed her report. She described a home visit on 21st February 2019 and recalled overflowing ashtrays with ash over surfaces, empty fizzy drink cans on the floor with bags and clutter everywhere. The older children had recently left after staying contact and there was bedding everywhere with mattresses propped up against the wall. The plan was to support the mother with routines and to support the father in gaining employment which he did for himself. The plan was to step down the case to home start. KA described the health visitor as being very surprised and very concerned that she had not been notified of this.

57. KA said that she scored the home as 3 out of 10 and the parents scored it as an 8 out of 10. KA said that she felt that the home conditions were poor. KA said that she had challenged the parents about the state of the house but she was told that they were sorting stuff out. KA said that the mother had co-operated with her and she said that the family could be worked with despite the challenges. An improvement had been seen and once child A was born, KA felt that the mother was warm to the four children she saw her with and she felt that the mother was a protective factor as the mother had told KA that she felt the father had post-natal depression and was struggling from the lack of attention that he was getting from the mother. The mother had commented that Father had felt that child A was crying for attention and she had told him that it wasn't the case. KA said that she was hopeful that things would carry on well.

58. On 18th July the mother reported to KA that Father was getting on better with child A. KA said that she had four visits to the mother at home. KA said that the mother had never told her that anyone else was looking after child A and she was quite surprised.

59. JP, the dietician, who treated child A said that when she saw child A in hospital in September he looked very quiet, pale and thin. JP said that it was very difficult to get an accurate history from the mother and she didn't push her. She said sometimes she would wake child A up for a feed and sometimes she wouldn't and sometimes he would go longer than 6 hours for a feed. He had fallen down the weight centiles and she said that the mother was aware that people were watching her but she was vague about what had happened. The mother did not make her aware there was a feeding diary or that she should have taken child A for assessment at the hospital.

60. JP said that child A's failure to thrive was a result of too few calories and she had not seen a lot of underweight babies and child A's situation was not normal. JP said if there was a fall across more than two centiles of weight then it was worrying. Ms Price said that she had not seen any babies failing to thrive because of tongue tie.

61. JF, the independent social worker, who undertook a parenting assessment gave evidence and confirmed her report. In her opinion neither parent is able to provide safe care to any child now or in the future, unless or until they undergo and successfully complete long-term therapeutic intervention of the types recommended by Dr C.
62. JF said that the parents were very difficult to engage and she did not do a Pams assessment. JF accepted that she had not told the social worker. When she arrived to see the mother at a prearranged appointment the mother was not there and she had tried to phone both parents. She said that eventually the mother told her that she had an appointment with a Psychologist and hadn't let her know. She said that she tried to see Father on 29th January and 6th February but he was working. She suggested coming at a weekend but was told that he was working then and it was very hard to get an answer from them.
63. JF said that the mother was critical of child A's current carers and said that she didn't think he was being looked after properly. She reported that the father had said that if anyone took his baby he would kill them. JF asked the mother why she had left child A with so many different people and she had replied that she was tired and needed to catch up on her sleep and MW had offered. JF said that whilst she had no doubt that the mother loved child A and that others had seen a loving relationship. However, she had not seen that.
64. JF said she had found it extraordinary that the mother would say that she couldn't wait to give child A some lemon to see his face. JF said she felt that the mother had serious issues which affected her parenting. JF said it was very surprising given the fact that this was the mother's seventh child that CJ had to come into the contact visit and show the mother how to feed child A.
65. JF said that she felt that the trauma child A had suffered might have led to attachment issues and he might remember the trauma.
66. JF described the drop from the 9th weight centile to 0.4 centile as quite shocking. JF said that she didn't know why the parents left child A in pain as it must have been apparent he was injured and why they didn't feed him more.
67. JF described the mother as having a dependent personality disorder and said that was her understanding of Dr C's report. JF said that she felt that child A was settled and had come on so well that she didn't think that he could wait for the parents to sort their lives out for an indefinite period. JF said that the risks to child A of returning him to the parents' care were too serious. JF accepted that she had gone beyond her role in saying that she thought that the parents had hurt him.
68. JF said that the mother had told her that MW had spoilt child A because she picked him up and mollycoddled him. She didn't agree with MW spoiling child A. JF said that Mother told her that she had to show Father what to do and he was nervous of handling child A. JF considered that there were attachment difficulties between the mother and child A and she felt that she was emotionally detached from him.
69. JF said that the home conditions she observed were bad and everything was covered in dust, there were few light bulbs, none in the bathroom or hallway and large piles of clothes so it was hard to see what was clean or dirty. It was cramped with furniture in the passage way. JF said that the flat was hazardous and not very clean for a toddler. It was no better on her second visit. Mother said that she spent a lot of time playing games on her phone.

70. JF said asides from any injuries to child A, the parents have mental health issues and she said it would be extremely risky to place child A in their care. They also had considerable debts.
71. SO, a Senior Practitioner Social Worker, gave evidence and she told me that she had become child A's social worker in November 2019. She carried out a visit to the home with another social worker EK. They took photographs of the home conditions which were dirty and cluttered. SO said that it was a very small flat which was in a poor condition. The family also had a very large dog and SO said that she had flea bites after her visit along with a Police Officer who had also visited the property.
72. SO said that whilst the mother had had lots of support and guidance over the years and she was unable to keep on top of things. Father was working long hours so was unable to help her. SO said that the mother did not know MW's address or phone number. She had told SO that they had met on the bus and she thought that MW was pleasant and she had her own child.
73. SO said that the mother enjoyed adult interaction and came across as chatty and didn't present as being nervous in contact. SO said that she observed one contact when both parents were present and both parents required quite a lot of assistance with basic care skills. SO said that she thought that it was unusual to leave such a young baby for such a prolonged period with someone you met on a bus.
74. SO said that both parents had missed a lot of contacts and that although Father had a car and he was at work the mother did have lifts in her mother's car.
75. KB, child A's social worker gave evidence and she confirmed her statement and the Special Guardianship support plan that she had drafted. KB told me that she became the allocated social worker on 31st December 2019. She visited the family on 3 or 4 unannounced visits. She described conditions on 6th May as very poor. The kitchen was messy and cluttered. There were used pans, plates, food and packaging and it was untidy but not to the extent of the November visit. The light was not working in the toilet. The recent visit she attended was the best that she had seen the property but it was still very untidy.
76. KB said that she had referred the parents to a parenting class. Both attended the first session but after that they didn't attend as the mother was pregnant. Whilst KB said that the mother could show emotional warmth the father found it difficult to engage and simply called child A's name at contact. Both parents had missed a lot of sessions even when they had been rearranged.
77. KB said that the mother had not attended her assessment. The mother said that she had a subsequent appointment which she attended but KB didn't think that she had done so. Father hadn't referred himself to access CBT as he said that he was trying to contact the service but had not been successful.
78. KB described MW as gentle and calm and because she showed some care towards the mother this drew her in to her. MW had lost a baby boy and she believed that this had encouraged her to support the mother look after child A.
79. KB said that there were not just issues over mental health and the enormous number of injuries but the parents' ability to meet child A's basic care needs and for them to engage with social services. Child A was severely underweight and KB did not consider that she could produce a robust enough support plan to keep him safe. Whilst KB accepted that JF did not carry out a Pams assessment but she considered their basic care skills had been tested in contact.
80. KB said as this was mother's seventh child she assumed that she would have noticed if child A was hurt or in pain.

81. KB said the emotional attachment between child A and the parents was a concern and how child A presents after contact which is in a very distressed way.
82. KB described the parents' relationship as quite an odd one with the mother speaking for Father. Mother struggled with sleep and waking up and she wondered if the mother was depressed and how emotionally available she would have been to child A.
83. KB described child A as thriving in CJ and KJ's care and she said that the parents had not prioritised contact and this was why contact needed to be reduced if the court agreed the care plan and child A was placed in the CJ and KJ's care.
84. Mother gave evidence at length. She told me that she loved all her children and wanted them all to live with her. She said that she sometimes struggled to go out and went to see Father's grandmother once a week.
85. Mother told me that Father was a nervous first-time dad and did the night feeds if he was at home in time. Mother described how she met MW at the bus stop and said before she had child A they would talk. She said that she was friendly and she had found it difficult to make friends. Mother described MW as being confident around children and would get down to their level and play which she said that she found difficult to do. Mother said she dropped in to see MW 2 or 3 times before child A was born. She said that the first time she left child A was when he was four days old. It was only for a short time as they decided not to go out. On four occasions it was for extremely lengthy periods from early morning to later at night when the mother accompanied Father in his van whilst he was working. There were other occasions when MW had child A whilst she caught up on her sleep or house work.
86. Mother said that she told the health visitor how much milk she was making up not how much milk child A was drinking. In evidence she said that she gave him hungrier baby formula otherwise he wanted to feed frequently and she said that she gave him top up bottles. Mother said that she wanted answers as to why child A didn't put on weight.
87. Mother told me that she was in £6,000 of rent arrears, council tax and water rates. She had moved from a 3- bedroomed house to a 1 bed flat and she had too much furniture and all her other six children's clothes.
88. In respect of the broken femur Mother said that they had arrived home with a take away, child A had woken up when they had eaten. She had gone to make him a bottle as child A was crying and she heard child A scream and Father came to the kitchen carrying him. She took his trousers off; his leg was swollen and she had dialled 111 and they had told her to give him calpol and take him to hospital. Mother denied knowing how the rib fractures were caused and she told me that she wouldn't hurt her children and he was her first baby out of her seven children that she had connected with. She said that she did want child A home and she would do anything in respect of her mental health.
89. Mother described how she had come to lose her six children living with her. She said that her then boyfriend, TD had served 8 years in prison for stabbing his previous partner with a knitting needle and she said that she was given the choice of ending her relationship (which she did) but she still didn't get her children back. Mother said that no one should be judged for one thing that they were truly sorry for. She said that he didn't display any of this type of behaviour with her. She described TD pulling her into the front room and WB (one of her other children) becoming unsettled and giving her a black eye. She said that money was tight and her mother helped feed the children.

90. Mother said that the home conditions were fine at this time and the children were going to school sometimes in grubby clothes but she got them new uniform. Mother described her former husband MB as being abusive to her and she described him as lying to the court in order to get the children.
91. Mother said that Father would get wound up by child A crying but he was able to calm down. He did the evening feeds, unless he had gone to sleep and early morning feed but she cared for him during the day. Mother described one- day child A was grisly and she couldn't put him down.
92. Mother said that Father was not controlling and after he had asked her to delete her male Facebook friends she did to prove a point.
93. Mother said that her relationship with Father was good and whilst they sometimes argued they were able to talk to each other to resolve things.
94. Mother said that her six children came three weekends out of four and for alternate weeks in the holidays and the six of them slept on sofas and mattresses in the front room. Also, her grown up step children M and P also came over and stayed.
95. Mother said that she remembered being up all day and all night with child A on 14th August as he didn't want to be put down and she said that he wasn't in pain. She described 'tedious crying'. She said nothing worked to sooth him and he was overtired.
96. Mother described Father being stressed at work, he was always running late and it was all getting too much and he had three days off to reset himself. Mother also said that Father practiced on her if he was going to wind child A or to touch him. She told the Police that Father was heavy handed.
97. Mother described MW as very gentle and friendly. She said that she did not know that MW had a drink problem. Mother described how MW fed her other children and she said that she had been kind to her children and they wanted to go and see her. She gave MW a bunch of flowers from the children and a note from them to say thank you.
98. CJ, the proposed Special Guardian gave evidence. She and her husband had had a positive assessment. CJ said that she was willing to facilitate contact with the parents and said that she had always supported the mother. She said they had a different upbringing and described trying to help Mother have more meaningful contact with child A. CJ said that both parents had missed a lot of contacts but recently she felt that contact between Mother and child A had been better. CJ said that child A had thrived in her families' care and she asked me to make a Special Guardianship Order in her and her husband's favour.
99. Dr J, a Consultant Paediatric Radiologist gave evidence. He explained that there was a funding agreement to provide a second opinion. When child A was in hospital in September 2019, the hospital sought this second opinion. Dr J provided a consideration of the x-rays in brief letters/reports dated 11.9.19, 18.9.19 and 20.11.19. Dr J was asked some questions in these proceedings and took part in an experts' meeting with Dr O, facilitated by the child's solicitor, on 9.7.20.
100. There is a large amount of consensus between Dr O and Dr J. The main area of difference is in relation to the metaphyseal fractures around the knees noted by Dr O, which Dr J considered to be equivocal. There is some difference as to the timing of the rib fractures although both doctors state this dating is subjective. Dr J acknowledged that was not able to spend the amount of time examining the images as Dr O had but wasn't sure that it would make any difference.

101. Dr J said that to cause any fractures in a baby or child a considerable amount of force would have had to have been used. In respect of the femur fracture alleged to have been caused by the father he said that he couldn't preclude it depending on amount of the force.

102. The father gave evidence. Father described child A crying for a bottle and Mother went to the kitchen to make it. He said that he took child A out of his car seat and put him on the sofa. He lent forward to get his dummy out of his car seat and he said he wrong footed himself and fell on child A's legs. He said he heard a crack and he picked child A up and took him to the kitchen and Mother took child A from him and looked at his leg and they phoned 111. They were told to bring him into hospital. He said that it felt to him like sitting down normally and he described the sofa as being a metal sofa with wooden slats that was second hand.

103. Father said that he didn't know how child A's ribs were broken.

104. Father said that he worked long hours six days a week and he was frightened of child A at first because he was so tiny. He described the home conditions as being up and down and he said there were lots of things that had not been put away. He said that he didn't think the state of the home was a problem as things got done in the end. He said that he did the evening bottles and he changed child A. He said that it took a lot to make him 'snap'. He said of child A 'Keep on going at me and I won't snap'.

105. When Father was asked about Mother saying that he tried things out on her before he tried it on child A he denied this and said that Mother 'got her words wrong'.

106. Father described his relationship as a bit rough at the beginning but said that they had to learn and they sorted things out and he felt that they had a strong relationship. He denied being controlling with Mother and said that sometimes because of her difficulties with her former partner she reacted badly to things.

107. Father denied getting angry with child A and said that he had missed contact because he had to work.

108. Father said that he had two cars and had a car loan and there were money issues and debts.

109. Father denied that his dog had fleas and he denied being responsible for the Police Officer and the social worker saying that they had flea bites from being in his house.

110. Father denied hurting WB and in his statement, he said that he had to restrain him on occasions. He said that he had a good relationship with the older children and he helped transport them back from contact. He accepted that the mothers other children did not have any tooth brushes when they came to stay with them.

111. Father said he didn't know if he had been left with child A on his own. He said that he had someone with him most of the time. He told me that he wasn't nasty and he would have taken child A to hospital as he did with his leg, if he needed treatment.

112. Father told me that the knee fractures happened at the same time as the leg fracture and he had never hurt his son until he had accidently sat on him.

113. Father told me that MW had looked after child A on about ten occasions as far as he was aware. He described her as kind and gentle although he had suggested that either MW or Mother could have caused the rib fractures in his statement.

114. Dr C, a Psychologist, assessed MW the intervenor. MW was assessed as having a full-scale IQ of 70 (borderline). Specific factors that could impact her reasoning effectively may include short term memory problems, forgetting what has been discussed within a short timeframe, comprehending long

sentences, difficulty finding words frequently, trouble staying on topic, comprehension problems and difficulty adjusting to strategy changes. Dr C recommended an intermediary was put in place.

115. MW gave evidence. MW had the benefit of an intermediary. She told me that she was very tidy and she loved children and babies. She told me that she had child A nearly every Tuesday and she had asked to have him because she thought that Mother looked tired. She said that she had had child A for four very long days when the mother had gone to work with Father. She had first had him when he was four days old for a few hours.
116. She said that she thought that child A had tongue tie because his milk dribbled out of his mouth and she had told Mother but she didn't think she took it very seriously.
117. MW told me that she had lost a baby boy which is why she had especially wanted to look after child A. She had two daughters one 21 years old and who worked and another daughter L She said that after she lost her baby she had drunk heavily for two years and she accepted she was an alcoholic. She told me that she had received help with her drinking but had to have a drink before she went to her support group.
118. nt. She told me that she had never drunk whilst looking after child A.
119. MWsaid that her dog was very friendly and she had never left her alone with child A.
120. MW said that she had problems with L being aggressive at times and being unwilling to go to school but she was receiving help from Early Help.
121. MW said that she had become friends with Mother by meeting and talking to her at the bus stop and she had also cared for her six older children as they liked coming to play with L. She said that they had asked if they could stay for tea. She said that they were always hungry and asking for food.
122. MW told me about going to see the mother at her flat and not getting a reply and as the door was open she went into the mother's flat. She said that she was horrified by the state of the flat and the mother was fast asleep in bed and she didn't wake up. It was during the day and she didn't know where child A was. She said that she had told the mother that the flat was unacceptable.
123. MW denied hurting child A and said that she didn't know who had done so. MW said that child A was happy in her care and she bought him wipes and nappy cream as the mother did not always put any in child A's baby bag.
124. LB, MW's eldest daughter gave evidence. LB described her mother as loving and kind. She said that she was very good with children. She said that she had wondered why her mother was looking after child A so much. She had been named as an intervenor but had been discharged from that role earlier in the proceedings.
125. LB told me that child A had seemed happy and hardly ever cried and she had looked after child A for a short time whilst her mother had gone out on a date with her partner.
126. HF, child A's guardian, gave evidence. She told me that she had a lot of concerns about both parents, namely the state of the house, child A's weight, neglect of his medical needs, the parents' mental health issues and child A's injuries. She said that the mother had not developed her parenting skills in 13 years and this was her seventh child. HF didn't think that the mother was able to read child A's cues. She didn't believe child A was being fed properly and she felt that the mother had mistaken his cues in respect of that. HF did not accept that child A being tongue tied was the sole reason for his failure to thrive. HF was also critical of the parents for not taking child A to hospital.

127. HF described a visit to see the mother on 12th October and said that home conditions were poor. HF supported the Special Guardianship application made by CJ and KJ.

128. A cognitive assessment of each parent has been provided by Dr C. Mother's full-scale IQ was measured at 84 (low average). Dr C recommended that given her low average verbal IQ, comprehension monitoring, and checking her understanding of more complex material through questioning may on occasions be important. Mother may have difficulties writing more complex ideas, and with complex syntax or grammar, sentence structure, writing mechanics and organisation of more complex material. She may on occasions have difficulties writing ideas and/or organising thoughts on paper. She may exhibit problems in relation to more complex letter and word recognition, and words and ideas. She may take more time to perform verbal reasoning tasks under time pressure and make decisions that require quick understanding of any written material presented. She may have difficulty comprehending long sentences, which is needed for reading comprehension. Dr C considered that Mother was above the threshold for normal independent representation. Therefore, from her cognitive assessment, an intermediary did not appear necessary.

129. Dr C assessed Father's full scale IQ as being 79 (borderline). In relation to his cognitive profile, he may have difficult with memory, communication and language, and may take more time to make simple decisions. He may have difficulty in relation to remembering plans or instructions, comprehending long sentences, maintaining attention particularly when there are lots of distractions. Recommendations were made as to simple questions, a slow pace, allowing time for responses, breaking information into smaller, manageable segments with one issue at a time, repeating, paraphrasing and summarising. Comprehension strategies will be necessary to help support his understanding of written material. Father was assessed on the cusp of low average. On the basis of Father's capabilities, Dr C concluded that Father should operate without moderate effectiveness without the need for independent representation. From his cognitive assessment, an intermediary did not appear necessary.

130. The court followed these guidelines allowing the parents to have as many breaks as they felt were necessary and ensuring questions were understood.

131. The law in relation to fact finding is set out in the case of Devon County Council v EB & Others [2013] EWHC 968, Baker J summarized the correct approach to be taken by the Court when making Findings of Fact and the summary has most recently been approved by Jackson LJ in Re BR (Proof of Facts) [2015] EWFC 41. The law to be applied can be summarized as follows

(i) The burden of proof is on the Local Authority, who make the allegations. The parents do not have to prove anything. They have both been asked to explain how child A came to sustain his injuries, which both deny inflicting. It is accepted that there is no burden of proof on them to prove that the injuries are non-accidental in origin. However, I am entitled to take their evidence into account as part of the overall picture.

(ii) The standard of proof is the balance of probabilities. (Re B [2008] UKHL 35). If the Local Authority proves on the balance of probabilities any of the items within the Schedule of Allegations, the Court must treat those facts as established and all future decisions concerning the children's future will be

based on those finding(s). Equally, if the Local Authority fails to prove any or all of the allegations, the Court should disregard them completely. As Lord Hoffmann observed in Re B:

" If a legal rule requires the facts to be proved (a 'fact in issue') a judge must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are 0 and 1."

The Court should take into account the inherent probability or improbability of the relevant alleged incidents. The Court must not, guess or speculate or draw inferences from what are still only suspicions rather than proven facts.

131.Findings of Fact in these cases must be based on evidence. As Munby LJ, as he then was, observed in Re A (A Child) (Fact-finding hearing: Speculation) [2011] EWCA Civ 12:

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

132.The Court may, however, arrive at reasonable conclusions based on proven facts. In this case, one of the central issues is whether either Parent has a propensity to lose their temper and behave violently. This factual issue will turn on whether the Court believes the Parents, who deny this allegation, or those witnesses who claim to offer evidence to the contrary. I must give close attention to the details of their accounts; to assess their inherent plausibility and likelihood; to check their internal consistency or inconsistency, and their consistency, or inconsistency with external established facts. The credibility of each of these witnesses has been in issue and must be considered.

133.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. As Dame Elizabeth Butler-Sloss P observed in Re T [2004] EWCA Civ 558, [2004] 2 FLR 838 at 33:

"Evidence cannot be evaluated and assessed in separate compartments. 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."

134.As observed by Dame Elizabeth Butler-Sloss President in Re U, Re B, supra "The judge in care proceedings must never forget that today's medical certainty may be discarded by the next generation of experts or that scientific research may throw a light into corners that are at present dark". This principle inter alia was drawn from the decision of the Court of Appeal in the criminal case of R v Cannings [2004] EWCA 1 Crim. In that case a mother had been convicted of the murder of two of her children who had simply stopped breathing. The mother's two other children had experienced apparent life-threatening events taking a similar form. The Court of Appeal quashed her convictions. There was no evidence other than the repeated incidents of breathing having ceased and there was serious disagreement between the experts as to the cause of death. There was fresh evidence as to hereditary factors pointing to a possible genetic cause. In those circumstances, the Court of Appeal held that it could not be said that a natural cause could be excluded as a reasonable possible explanation. In the course of his judgment, Lord Justice Judge, as he then was, observed:

"What may be unexplained today may be perfectly well understood tomorrow. Until then, any tendency to dogmatise should be met with an answering challenge."

*135.*With regard to this latter point, recent case law has emphasised the importance of taking into account to an extent that is appropriate in any given case the possibility of the unknown cause. That was articulated by Lord Justice Moses in *R v Henderson and Butler and others* [2010] EWCA Crim. 126 at paragraph 1:

"Where a prosecution is able, by advancing an array of experts, to identify a non-accidental injury and the defence can identify no alternative cause, it is tempting to conclude that the prosecution has proved its case. Such a temptation must be resisted. In this, as in so many fields of medicine, the evidence may be insufficient to exclude beyond reasonable doubt an unknown cause. As Cannings teaches, even where, on examination of all the evidence, every possible known cause has been excluded, the cause may still remain unknown."

136. In Re R (Care Proceedings: Causation) Mr Justice Hedley, who had been part of the constitution of the Court of Appeal in the Henderson case, developed this point further at paragraph 10:

"A temptation there described is ever present in family proceedings too and in my judgment, should be as firmly resisted there as the courts are required to resist it in criminal law. In other words, there has to be factored into every case which concerns a discrete aetiology giving rise to significant harm a consideration as to whether the cause is unknown. That affects neither the burden nor the standard of proof. It is simply a factor to be taken into account in deciding whether the causation advanced by the one shouldering the burden of proof is established on the balance of probabilities."

*137.*Later in the judgment at paragraph 19 Mr Justice Hedley added this observation:

"In my judgment a conclusion of unknown aetiology in respect of an infant represents neither a provision of professional nor forensic failure. It simply recognises that we still have much to learn and it also recognises that it is dangerous and wrong to infer non-accidental injury merely from the absence of any other understood mechanism. Maybe it simply represents a general acknowledgement that we are fearfully and wonderfully made."

138.Finally, when seeking to identify the perpetrators of non-accidental injuries, the test of whether a particular person is in the pool of possible perpetrators is whether there is a likelihood or a real possibility that he or she was the perpetrator: see *North Yorkshire County Council v SA* [2003] 2 FLR 849. In order to make a finding that a particular person was the perpetrator of a non-accidental injury, the court must be satisfied on the balance of probabilities. It is always desirable where possible for the perpetrator of a non-accidental injury to be identified, both for the public interest and in the interests of the child, although, where it is impossible for a judge to find on a balance of probabilities, for example, that parent A rather than parent B caused the injury, then neither can be excluded from the pool and the judge should not strain to do so: see *Re D Children* [2009] 2 FLR 668, *Re SB Children* [2010] 1 FLR 1161.

139.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. They must have the fullest opportunity to take part in the hearing and the Court is likely to place considerable weight on the evidence and the impression it forms of them (see Re W and another (Non-accidental injury) [2003] FCR 346).

I40. I 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). I give myself what is now known as a 'Lucas warning'.

141.My attention has also been brought to the case of where the Court of Appeal gave consideration, on appeal allowed by consent, of court's reliance *GW and Another v Oldham MBC and Another [2005] EWCA Civ 1247* on a single expert in care proceedings.

142.The background involved care proceedings where a Judge had made findings that the injuries to the child, born in November 2004, had been caused by one of the parents (but the judge was unable to say which) and that the threshold criteria in section 31(2) of the Children Act 1989 had been met. In an otherwise impeccable judgment, the cause for concern was that the judge, in making the order, had relied on the evidence of a single expert in the critical field of paediatric neuro-radiology or, more specifically, non-accidental head injury (NAHI).

143.At the case management conference in February 2005, an application supported by both parents to instruct a second medical expert was refused by the judge; and renewed applications at a further directions hearing and at the outset of the fact finding hearing were similarly refused. The judge expressed her satisfaction with the medical evidence that had been presented, and rejected any suggestion that there had been a breach of the parents' ECHR Article 6 rights.

144.After the fact- finding hearing, permission was granted to release the papers to a second expert, whose report expressed a clear and fundamental disagreement with the first expert, and supported the

parents' case that the injuries had an innocent origin. In these circumstances, all the parties agreed that the judge's findings could not stand, and that the case would have to be remitted to a judge of the Family Division for re-hearing.

145.The purpose of this judgment, therefore, was to consider: (1) the advisability of the court relying on a single expert in care proceedings, when the issue that expert has to address is of central importance to the judge's findings; and (2) the propriety of permitting parents who deny abusing their child a second opinion.

146.The parents in the position of this mother and father were clearly entitled to a second opinion: whilst it would be both unrealistic and unnecessary for the court to permit parents to obtain a second opinion in every discipline, such a second opinion should normally only be permitted where the question to be addressed by the chosen expert went to an issue of critical importance for the judge's decision in the case.

147.The case of *Daniels v Walker* [2000] 1 WLR 1382, on the judicial approach to be adopted when a single expert who has been jointly instructed makes a report which one side or the other is unhappy with, was applicable – although it should be treated with some caution from a family law perspective, since experts in family proceedings are a scarce resource; also, it was not necessary to see any appeal along these lines in ECHR Article 6 terms, since the overriding objective in the Civil Procedure Rules (which applies in family proceedings) is that cases must be dealt with justly.

148.This judgment was not to be seen as an encouragement to a disappointed party to challenge pre-final hearing case management decisions; however, such decisions could, as in this case, throw up points of fundamental importance and, in such circumstances, a party should not hesitate to seek permission to appeal.

149.The court also drew attention to the importance of timetabling in care cases, in particular the Protocol for Judicial Case Management in Public Law Children Act Cases [2003] 2 FLR 719. Further, it commented on the position of the local authority and the guardian respectively: the former is faced with a difficult position in contested care proceedings involving NAHI, requiring a delicate balance between the need to make out a case and the duty to place all relevant information before the court; and the latter has a proactive role to play in ensuring that a case is ready for hearing, and that all the appropriate evidence has been assembled; accordingly, if a guardian takes the view that a second opinion sought by parents is properly necessary to achieve justice, he or she should not hesitate to say so.

150.I also have to consider the law in relation to welfare as this is a combined fact finding and final hearing.

151.I remind myself of the law. The Local Authority brings the case and it is up to the Local Authority to prove its case. The parents have to do nothing. The Local Authority have to satisfy the Court that child A was, at the commencement of these proceedings, at risk of significant harm. It has to satisfy the Court that their care plan is in the best interests of the child. Child A's welfare is my paramount concern.

152.The balance of probabilities is the test and I make clear that this is the standard that I have applied throughout. The threshold criteria, which in this case is not agreed in relation to child A's injuries, the twenty fractures, failure to thrive, the care given to child A by his mother, and the father. The question of whether they are met of course is a separate question from whether the Court should make an order.

153.Where the statutory threshold criteria are met under Section 31(2) of the Children Act the Court acquires a discretion to grant an order, and in determining whether to make an order and in determining which order to make in exercising my discretion I have to have regard to:

1. (a) the principle that the child's best interests are my paramount concern pursuant to the Children Act;
2. (b) to the factors set out in the statutory welfare checklist in the Children Act, Section 1(3);

3. (c) to the principle that no order should be made unless to do so would be better for the children than making no order; and
4. (d) to the principle that delay is ordinarily inimical to the welfare of the child.

5. In addition, when considering whether to make a Care Order I must have regard to the proposed arrangements for contact, having regard to the Children Act and to the contents of the care plan, having regard to the requirements of the Children Act Section 31.

   154.I have in mind too, in considering the evidence and reaching my conclusion, Article 8 of the European Convention on Human Rights. In considering which of the orders available to me is in the child's best interests I must have regards to the rights of the adult parties, the parents in this case, and the rights of the children under Article 8 of the European Convention on Human Rights, and in particular the principle of proportionality, namely that the means employed must be proportionate to the aim it is sought to achieve, in this case promoting and safeguarding child A's welfare. In considering the rights of the children I also have regard to the relevant provisions of the United Nations Convention on the Rights of the Child.

FINDINGS

155.I remind myself that the parents do not have to prove anything, and it is for the Local Authority to prove their case. In considering my findings, I have been asked by the father to consider the question of whether the metaphyseal fractures are fractures at all. The father, told me that if I find that they do exist, that they happened at the same time as the femur. On behalf of the father, it was said that because one expert was certain and one was equivocal this is not sufficient for me to say that the fractures existed.

156.My attention was drawn by the mother's counsel to the Court of Appeal case *GW and Another v Oldham MBC and Another [2005] EWCA Civ 1247* on a single expert in care proceedings. This case set out above gave consideration, on appeal allowed by consent, of the court's reliance on a single expert in care proceedings.

157.In my judgment, the Oldham case can be distinguished from the current case. In child A's case it is not a question of an expert saying that there is possibly an innocent origin of the injury since there is overwhelming evidence of other non- accidental injuries. One expert is unsure whether there are three metaphyseal fractures although they agree about the other seventeen fractures. Dr O, the Court appointed expert spent many hours and days looking at all the evidence. There were eight sets of imaging examinations and he spent hours comparing images between the different dates of the same bone. He looked at CT scans and over 400 images. Dr J accepted fairly that he had not spent a lot of time on this and I didn't accept his contention that this lack of time would make no difference. I was impressed by Dr O's very measured approach and the huge amount of time he had given to considering this case examining the x-rays in minute detail. He said that he had a good opportunity to have a real in depth look at all the imaging which has allowed him to advise the court as to which injuries he thought are present on the balance of probabilities.

158.I also consider that Dr J's role was to give a second opinion to the hospital rather than as the Court appointed expert. Both Dr J and Dr O saw irregularities in child A's metaphyseal x rays. That they agreed on. Dr O was sure on the balance of probabilities and he confirmed that it was more likely than not that they were fractures. Dr O said that he was not inviting me to say that they existed without any doubt because he accepted that it could be debated but he was aware of the standard of proof required in civil and family cases. Dr O said that they very strongly resemble the typical examples of metaphyseal fractures. Dr J was equivocal. He said he didn't know. Dr J said it was possible that they were there. I accept Dr O's evidence on this point as I considered that he was more thorough. Dr O identified a fracture of the metaphysis at the upper end of the right shin, and a fracture of the metaphysis at the lower end and upper end of the left shin.

159. I don't find that I need to adjourn this case to ask a third expert about these injuries as Dr J accepted they could be present. This is not a case where an expert is saying that the injuries could be

non -accidental and whilst it is important to establish whether they existed to identify a possible perpetrator, I am satisfied that Dr O was able to say from his expertise that they did exist.

160. That then brings me to whether the father, as he says, caused these injuries accidentally by sitting on child A? The father appeared to me in evidence to accept that he had caused the femur and the metaphyseal fractures albeit accidentally. Dr O said that the metaphyseal fractures require the least magnitude of force from literature and experience. Dr O said that compression was an unlikely cause of the metaphyseal fractures. In terms of how both sets of fractures could have been caused, he said they could have been caused if inappropriate or heavy handed or excessive force was used changing a nappy. He said if both knees were grabbed and the knee was bent and grasped firmly, if there was a rotation then that could lead to the femur fracture. Lifting a child and swinging by the knees and swinging him around would be a satisfactory explanation for the thigh bone fracture.

161. Dr O said it was unlikely both sets of injuries could be caused by one low energy domestic mishap. He said it was extremely uncommon to see more than one injury. Dr O works at GOSH and is very experienced and sees roughly 5000 x rays a year. He said that it was a very, very unusual mechanism for this injury.

162.In respect of the femur, Dr O and Dr J were clear that they considered it was unlikely it was caused by sitting on child A but they did both accept it was possible. Dr O saw his role as advising the court as to what was an acceptable explanation, what is not unlikely but not ruled out, and what is definitely impossible. He said the father just leaning forward and sitting back is~~a~~ fairly unlikely to cause a fracture of the thigh bone. It is a large sturdy bone with a cross-sectional diameter. He said it does take some force to break the thigh bone. There would have needed to be a twisting mechanism. He said that he couldn't see that twisting would occur if someone sat down on a leg or legs. At the same time, he could not completely exclude it. This is on the basis that child A had moved as the femur was a spiral fracture. They said that it was not likely but a possibility. They were both clear that all the fractures could not have been caused by the one incident.

163.I was very surprised by the father appearing to say that if the metaphyseal fractures were there he accepted that he had caused them together with the femur. I do find that they are there. I have to consider all the evidence in the round. If there was simply one broken bone it seems to me much more likely that there was a single accident. As there were twenty broken bones it seems more likely than not that someone deliberately caused these injuries to child A.

164.On behalf of the father it was put that the father had maintained his story of sitting on child A and both parents had been consistent in so doing. Because of both parents' cognitive limitations, it was submitted that they would have been unable to have done so if it wasn't true. I have considered whether the father caused some of these injuries by sitting on child A. Even if he caused one or more by sitting on child A it doesn't account for the totality of the three metaphyseal and the thigh fracture. As far as I can see this is an unlikely explanation. The father lent forward and he demonstrated half standing out of his seat and reaching for the dummy and then sitting down again. Even if he says the sofa was on the hard side the father is not a big man and I cannot see that he exerted sufficient force to cause any of these fractures by this process. There is also the issue of this being a spiral fracture and requiring a twisting motion. Dr O considered that compression was an unlikely cause of the three metaphyseal fractures. This does not seem plausible.

165.Both parents said that child A was crying and the mother says that child A had woken up whilst they were eating their pizza and she went out to the kitchen to make up a bottle of milk. She heard a terrible cry and the father brought child A into the kitchen. The father says that he was going to change child A's nappy but hadn't done so. The father made great pains to tell the Police that he had hardly anything to do with looking after child A which I was very surprised about as it was clearly untrue. I accepted the mother's evidence that he regularly did the two last feeds of the day, unless he went to sleep, changed child A's nappy and he fed child A in the morning and he talked about the difficulty of getting the mother to wake up in the morning even if child A was crying. The text messages between the parents confirm this arrangement.

166.Further the father when asked in his Police interview what child A was like as a baby he said: 'He cries some of the time when I'm there, sort of thing, but not all the time because he's asleep'. When the Police Officer asked how the father dealt with him he said 'I don't really deal with him because I am

not there' When asked why not he said it was because he was working all day and he had to sleep at night. He went on to say: 'But when I do deal with him, I try and keep my patience with him because I can get annoyed easily' and he talked about picturing an empty room. He said that if child was crying when he was on him he would just leave him crying on his lap.

167. Father also gave the impression to Dr C that he had less to do with child A than he did. When he was asked whether he had been left in the flat alone with child A he said that he couldn't remember, 'I might have been'. The mother said that the father had taken child A for a drive once when he wouldn't stop crying (after one of the step children said this had occurred) and Father denied it. Father said that he would not pick up child A without someone present, then he changed that to most of the time having someone there. Father said that the mother must have got her words mixed up when she said that whatever he did to child A he demonstrated on the mother. I find that the obvious inference from these actions by both parents was that they were presenting Father as someone who could not have harmed child A.

168.There is evidence that the mother gave that Mr Father thought that child A was simply crying for attention and she had said that he didn't understand that it was the only way that he could communicate as he was young and a first- time father. The mother said that there was one occasion when the father took his dinner and ate it in the hallway as child A was crying as it was winding him up. Father said that he felt he had to leave the room as he felt annoyed. Mother said that Father seemed to find the lack of attention from her after child A was born difficult, (which the mother commented on to the health visitor.) Father denied this.

169.The mother was clearly struggling with looking after child A and the housework. The property has been described by both the Police, Social workers, and the Guardian as dirty and squalid and dark from lack of light bulbs. The property was cramped and crowded with possessions and furniture as it appeared that the mother had not got rid of any of her possessions after moving from a three-bedroomed house to a one bedroom flat. She told me that she had never looked after any of her other six children on her own and she was also having them to stay regularly and for half of the holidays. This was a small one bedroomed flat and with a baby and six other children plus a very large dog as well. It must have been severely overcrowded and difficult for Father as a very young first- time father. The mother clearly didn't think that Father was pulling his weight and she said as much to the health visitor. Presumably Father had to walk the dog as well as Mother said that she was unable to as it pulled her over.

170.There was also the curious evidence given by the mother that when asked by a Police Officer in her interview whether the father admitted he can be heavy handed with child A? She replied: 'he can be but he doesn't know when he's being, he had to demonstrate on me, just to see if it was too hard.' The mother said that this happened every time Father did anything to child A. I simply don't accept this evidence as the mother was very often asleep when the father was feeding or changing child A. Also the father denied it and it seemed to be a clear attempt by the mother to suggest that Father was careful and didn't hurt child A.

171.I can't say how these injuries were caused and as they can't be absolutely accurately dated I was surprised that Father appeared to say to me that he had caused them. He told me that the leg injuries all happened on the same day. That led me to wonder whether he knew how they were caused? The father worked long hours, he was driving all day and he found his job delivering parcels stressful. It was certainly tiring. He accepted in his Police interview that he was aggravated by child A crying and Mother said he could be heavy handed. Mother thought that he was suffering from depression. It is accepted by Father that these injuries were caused by him accidentally but I find that the father did cause them deliberately. One occasion of sitting on child A cannot explain all these injuries and even if he did so I have said I don't think it would have caused fractures. This is much more than one unfortunate accident. Whether he caused these fractures at the same time I am unsure about. The timing of the fractures is uncertain although the timing of at least the thigh fracture seems to date from the admission to hospital.

172. In relation to the parents attending at the hospital whilst I was surprised that they didn't call an ambulance I don't have the transcript of the 111 phone call and I am unsure of the exact timing. I do find that whilst there might have been a short delay they did at least take child A to hospital in a reasonable time.

173. In relation to the rib fractures there were nine right sided rib fractures, 5 of which were posterior, and seven left handed rib fractures, two of which were posterior. Dr O said that the posterior rib fractures cannot be explained by non-specific compression and somebody must have put pressure where those fractures are and that pressure must have been considerable. In respect of timing both experts agreed that these were not birth injuries and Dr O was more generous in his time scale but agreed in evidence on the balance of probabilities he did not think they were more than 6 weeks old. Dr O said in his addendum report which he confirmed was correct that if the rib fractures were caused by a single incident it must have been a very severe trauma. He considered that it was more likely that they were caused by more than one incident which was also suggested by the number and different locations.

174. Dr O said that the rib fractures around the spine were most likely caused by an adult gripping around the chest applying pressure. He discounted an adult accidentally falling over against a wall as being a cause. He said that an adult landing directly on a child from standing would generate sufficient force to cause some rib fractures but not as many as identified and not posterior rib fractures.

175. It was accepted by both experts that as child A was not premature and his bones as a baby were soft and pliable that it would take considerable force to break his bones. Child A was not crawling or walking and he had been tested at length for failure to thrive and his calcium levels and all blood test results were normal. He did not exhibit any of the symptoms of EDS such as hypermobility. He was not at risk radiologically speaking of fragile bones and he has not sustained any further fractures. Both experts accepted that these were non- accidental injuries i.e. inflicted injuries.

176. The timing of the rib fractures is again uncertain I am unsure if they had all been caused by the 6th July and the admission to hospital. It could have accounted for child A's breathing difficulties but I am unable to say for sure. Although the Local Authority are not asking for MW to be in the pool of perpetrators and are not asking for any findings, the parents seem to still be saying that she could be. To be fair to her I have to consider the three of them as potential perpetrators or in the pool of perpetrators. Child A spent time with her when he was only four days old and on multiple other occasions. Nobody apparently noticed that child A was in pain and MW says that he was always happy with her.

177. MW was described by the mother as gentle and kind which was confirmed by the Social worker. I was struck by her genuine warmth and the kindness she showed to the mother including buying wipes and nappy cream not supplied by the mother. She readily accepted that she loved babies and because of her own loss she was keen to look after child A. Whilst of course she has a drink problem and is an alcoholic and I bear in mind that of course alcoholics do not always tell the truth about whether they have been drinking (as was evident with her breath tests). Ironically, she said she had to drink beforehand in order to attend an alcohol community service. LB, her daughter, didn't record her being drunk or appearing to have drunk whilst looking after child A. The Facebook posts show her having a lovely time with child A. Neither the mother or father noticed anything amiss. Whilst the mother complained that child A was unsettled and crying on 14th August I can not after seeing her give evidence consider that she would hurt child A.

178. MW has two daughters, her older daughter LB, told me that she was kind and a loving mother and I am quite sure that she was not involved in hurting child A. Whilst she had the assistance of an intermediary she tried her best to answer questions and I considered her to be truthful about her dealings with child A. I don't think she had it in her to hurt child A in this way. I accepted what she said about her dog too and her assurances that she didn't leave her alone with child A.

179. That brings me to consider the mother's role in this case. It was submitted on her behalf that if I found that the father had caused the leg injuries then it was unlikely there were two perpetrators. It was submitted that the mother's failings were failings of omission, such as not keeping the house in a good enough state, money issues, failing to ensure that the older children were clean and wearing clean clothes. It was submitted that the health visitor's observations about the warmth of the mother's relationship and the fact that this was the first baby that she had bonded with meant that she wouldn't have hurt him. There are also her older six children and it is not alleged that she has injured those children.

180. Having seen the mother give evidence I don't find it was the mother who caused child A these terrible injuries. I do find it was more likely to be Father for all the reasons that I have already given. Significant force must have been used and if it was on one occasion it would have been the same force likely in a car crash. I think for that reason it is likely to have been on more than one occasion. Father would of course have been aware that he had hurt child A, even if he didn't know how badly and he would have been aware that he required medical treatment.

181. However, this doesn't mean that the mother is not culpable. I am told that child A had been seen by lots of different people who did not report him crying. Looking at Dr A's evidence it could be that child A did not act as if in pain for long or that if his cries were ignored he simply stopped crying. The mother was very concerned about MW spoiling child A and I do think that she was able to sleep through him crying. I was concerned that both parents left child A for four very long days when he was so small with someone that they didn't know that well and also other people in the family or friends. It was accepted that pain varied for different children. I am unsure if all these people handled child A and if he was kept still in a car seat or a buggy he would not necessarily have shown that he was in pain. I do find that the mother should have identified that he was in pain. I am aware that visits were cancelled with Father's grandmother and I was not told why?

182. The day Mother said that she could not put child A down as he constantly cried sounds to me like an occasion that he had been hurt. This was out of the ordinary and I am surprised that the mother did not seek medical attention. I don't think the mother was attuned to his cues and it seems astonishing to me that she could have missed this as he would have been in tremendous pain.

183. If the mother knew that she hadn't caused these injuries and I don't think she honestly really believed that MW did, then she must have known that Father had done so. Mother is still very much with Father and is presenting as wanting child A returned to her and Father's care which I find really disturbing. I do find that the mother sought with Father to downplay his contact with child A to portray to the Police that it could not have been Father who had caused these injuries. I find that she continued to do so and could not contemplate that he might be the perpetrator even though if it wasn't her, it must have been him.

184.Whilst there are concerns about Father and the Mothers other children with WB reporting that Father had hurt him to his teacher. Whilst I am urged on behalf of Father not to consider this as it is alleged that MB has told the children to lie, I was very concerned about these allegations. As I have found that Father is the perpetrator of these terrible injuries to child A I am concerned about him having any contact with children. Whilst I am quite sure that he can be nice and the children appear to like him I am concerned for a child's safety with Father. I accepted Dr C's evidence in her report that she had some concern that Father's management of his anger may not be as controlled as he believes.'

185.With regard to the issues of feeding child A. Whilst the tongue tie might well have resulted in difficulties feeding and may have caused some issues I noted that child A put on weight whist in hospital in July and in September before he was on the high calorie formula. Whilst it is true that the mother did take him to most appointments I do find that the parents contrived to lie about why he had not been taken to the assessment unit at the hospital as arranged by the GP at very short notice as an emergency. That seems very clear from the text message that Father sent the mother. I note that both parents have seemingly stuck to this story.

186. The mother said she had told everyone how much milk she had prepared rather than how much milk child A had taken. This was the mother's seventh baby and I was very surprised that she hadn't grasped the fact that a baby has to actually take the milk given to nourish it. It is apparent that child A could not have taken the amount of milk the mother had said otherwise he would have put on weight.

187.The father in his Police interview talks about child A not crying for feeds and when at around 9 am on a Sunday he did eventually cry he was given a bottle. The father also talked about trying to get the mother to wake up to feed child A before he went to work. The mother said that on occasions child A did go longer than 4 hours and she said sometimes six hours. I do find that child A was extremely underweight and the parents should have noticed this as his ribs could be counted. The fact that the parents did not take him to hospital when it was arranged is in my view evidence that they didn't really regard this as much of a problem, even if the mother did accept he was underweight. I don't think the mother did feed child A enough even if her other children were slim and wiry. Child A was

malnourished and had a serious issue of failing to thrive. The description of child A in hospital is very upsetting.

188.In respect of the parenting assessment I was surprised that the Independent Social worker did not understand the role of the court in fact-finding hearings. Whilst the father did not really engage and the mother didn't either it seems clear that whatever bond the mother had with child A has gone. Both parents had to be shown how to do very basic things in contact and I don't think their skills are sufficient to care for a child- never mind the findings that I have made against the father. I noted that none of the older children had a toothbrush at their mother's home and they were staying for significant periods of time. MB said that he didn't send any tooth brushes because the mother never returned them.

189. If this was case where parenting skills were the only issue I might have said that a further assessment should be obtained but this is not that kind of case. I don't find that this gap in the evidence is going to change my findings. The parents failed to attend parenting classes. The father is working but the mother has no such excuse.

190. The home conditions have been accepted as poor by the parents and the descriptions given by the Police, the Social workers and the Guardian and the photographs taken show horrible conditions for adults and children. The parents scored themselves as 8 out of 10 when the Early Help worker thought it was more like a 3. MW was shocked by the state of the house when she went to see the mother and saw her asleep. I shared the Health Visitor's surprise that this was being stepped down to Sure Start. The Guardian visited shortly before this case started and conditions were unchanged with few light bulbs as well.

191. Mother was unable to prioritise her older children and whilst she may claim that MB lied to gain a 'live with order' it seems clear to me that these children had been neglected in her care. Their home conditions were not acceptable too.

192. Both parents have mental health issues and Dr C considered that both of them should have Cognitive Behaviour Therapy to deal with these issues which she said that they could access at the same time as looking after child A. The father had not sought to access this and the mother is waiting, having had an initial assessment very recently. In my judicial experience accessing this amount of CBT would be problematic as it is strictly rationed and it can take a very long time to access this even with a determined effort. Neither parent appears to have taken this recommendation on board considering how long ago this report was obtained.

193. I do think that the mother's mental health issues may have meant that she was unable to prioritise child A and she certainly seems to have prioritised her relationship with Father over child A by leaving him for lengthy periods of time and even feeding him hungry baby formula so she didn't have to feed him so much, against professional advice. Also, I have found that she has sought to deflect blame from him when she must have known that he had hurt child A.

194.The threshold in this case is clearly crossed and I have to go to consider whether to make an order and what type of order? I have considered the welfare checklist and considered the advantages and disadvantages of child A staying with CJ and KJ rather than return to his parent's care. In CJ and KJ's care child A is safe, fed, loved and cherished. He is still within the family and so hasn't lost all his familial ties. The disadvantage includes the fact that he will not grow up with his siblings or live with his birth parents. The advantages of him living with his birth parents include being with his close family and extended family. However, the disadvantages would be that he may be hurt further, live in terrible conditions and not receive proper care.

195. Child A has thrived in CJ and KJ's care. They love him dearly and he has become an integral part of their family. I make a Special Guardianship Order in favour of CJ and KJ in respect of child A. I approve the support plan and child A's final care plan. Whilst, the plan has been for contact for six times a year I will leave it to CJ and KJ's discretion to have the level of contact that they think that child A should have. This contact must be supervised for obvious reasons.

196.I would like to thank CJ and KJ and the earlier foster parents for looking after child A. I trust that this can be passed on to them. This has been a distressing case and I thank the social workers and the Guardian for their hard- work.

197. Lastly, I commend the army of solicitors and counsel who have worked on this case and thank them for their patience when there have been technical difficulties. All of them have worked hard and all advocacy and submissions were of a very high standard.

END OF JUDGMENT

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