



Neutral Citation Number: [2018] EWHC 1116 (Fam)

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 03/05/2018

**Before :**

**MRS JUSTICE KNOWLES**

**Between :**

**LOCAL AUTHORITY**

**Applicant**

**- and -**

**(1) X**

**Respondents**

**(2) Y**

**(3) Z**

**(4) A, B and C**

**(by their Children’s Guardian)**

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**Nick Goodwin QC and Sara Granshaw** for the local authority.

**Vanessa Meachin QC and Melanie De Freitas** for the mother

**Elizabeth Isaacs QC and Ian Robertson** for Y

**Sian Cox** for Z

**Alex Perry** for the children A, B and C

Hearing dates: 18,19, 20, 23, 25, 26, 27, 30 April 2018 and 1,2 May 2018.

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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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**THE HONOURABLE MRS JUSTICE KNOWLES**

This judgment is being handed down in private on 14 May 2018. It consists of 159 paragraphs, a schedule of findings and will be signed and dated by the judge. The judge does

not give leave for it to be reported or disclosed to anyone not involved in these proceedings without the expressed permission of the judge.

This judgment is being distributed on the strict understanding that in any report no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by his or her true name or actual location and that in particular anonymity of the children and the adult members of their family must be strictly preserved.

**Mrs Justice Knowles:**

1. On 2 June 2017 a four month old child, D, suffered a catastrophic collapse at the home which he shared with his parents, X and Y. At the time he was in the sole care of his father Y, his mother having gone out with her family to celebrate the birthday of her younger sister. Shortly after 7.30pm D was shaken by his father, Y, causing him significant brain and other injuries. Y called 999 at 19.36 and attempted to resuscitate D following instructions given to him on the phone by the 999 controller. When the paramedics arrived some 4 minutes after the 999 call was made, D was pale, floppy, breathing abnormally and had white fluid coming from his nostrils and mouth.
2. On arrival in the Emergency Department of the local hospital D was no longer breathing and was pale and cold to the touch. He was immediately intubated and ventilated and an initial CT scan showed subdural bleeding on the right side of D's brain. He was transferred that night to a much larger hospital where further CT scans were undertaken showing bilateral subdural bleeds and a diffuse hypoxic-ischaemic encephalopathy. The extent of the bleeding was confirmed by an MRI scan which also showed spinal subdural haemorrhages. An ophthalmological examination revealed extensive bilateral retinal and pre-retinal haemorrhages. Despite every effort by the medical and nursing staff to treat D's extensive injuries, D died at 15.31 on 4 June 2017.
3. Post-mortem investigations of D showed that he appeared to have sustained an additional head injury causing subdural bleeding shortly before the incident on 2 June 2017 which caused his collapse and eventual death.
4. A skeletal survey on 5 June 2017 of D's twin brother, C revealed that he had suffered rib fractures of two different ages, namely posterior fractures of the left seventh and eight ribs and acute fractures of the anterolateral aspects of the left ninth and tenth ribs.
5. The local authority has parental responsibility for C and his older sister B by reason of interim care orders made on 7 June 2017. B is aged 2 years and her parents are X and Y. X has an older daughter, A aged 8 years, by her former partner, Z. A is the subject of a child arrangements order and has been living with her father since 7 June 2017.
6. On 26 January 2018 Y pleaded guilty to the manslaughter of D and to an offence under section 20 of the Offences Against the Person Act 1861 in respect of C's acute rib injuries. The Crown has accepted neither plea and thus Y will stand trial for D's murder and for section 18 offences with respect to C in October 2018. The local authority has accepted that the mother played no part in causing the injuries to D or to C.
7. Over the course of a ten day hearing I have been dealing with a fact finding enquiry into the following matters:
  - a) The circumstances of D's fatal injuries;
  - b) Whether Y injured D on an earlier occasion causing signs of older bleeding on his brain post-mortem;

- c) The circumstances of C's acute rib fractures;
  - d) Whether Y fractured C's ribs on an earlier occasion;
  - e) The extent of Y's violence towards the mother of the children, X;
  - f) And the extent of the mother's failure to protect.
8. Y has explored during the hearing the possibility that the mother caused the older head injury to D and the older rib fractures to C. She strongly denied the same and also denied that she had failed to protect the children from the risk of physical harm as submitted by the local authority. I observe that the mother was not cross-examined by Miss Isaacs QC on the basis that she had caused the older head injury to D and the older rib fractures to C. I note that the mother accepted that the threshold criteria were crossed in this case and accepted that she had failed to protect the children from emotional harm by dint of them being in a household where she was the subject of domestic abuse. The Children's Guardian has remained neutral with respect to the findings sought by the local authority. Z did not oppose any of the findings sought by the local authority.
9. In determining the issues of fact in this case I have considered 8 lever arch files of documentary evidence and have had the benefit of hearing from the mother, Y and Z. I also heard oral evidence from the mother's sister; her friend NS; the mother's friend LR; the aunt of Y; the maternal grandmother; the mother of Y; the mother's cousin, VW; the grandmother of Y; and a friend of the mother and Y, CC.
10. I have also had the benefit of expert reports from Dr Cary (Home Office Pathologist), Dr Palm (Consultant Forensic Pathologist), Dr Jacques (Reader in Paediatric Neuropathology), Dr McCarthy (Consultant Pathologist), Professor Mangham (Consultant Histopathologist), Dr Stoodley (Consultant Paediatric Neuroradiologist), Dr Ehrhardt (Consultant Paediatrician), Mr Richards (Consultant Paediatric Neurosurgeon), Dr Carlidge (Consultant Paediatrician), Dr Jeanes (Consultant Paediatric Radiologist) and Dr Kinsey (Consultant Paediatric Haematologist). I heard oral evidence from Dr Jacques, Dr Stoodley, Dr Cary, Dr Carlidge and Mr Richards.
11. I have also considered a bundle of photographs of the twins in May 2017 taken on the mother's and Y's mobile phones and I have listened to a recording of the 999 telephone call made by Y on 2 June 2017.
12. I wish to formally record my thanks to the advocates who appeared on behalf of each of the parties. Cases such as these require advocates routinely to manage the late disclosure of evidence and to assist the court in managing what can be fraught and emotive court days. I could not have asked for more from all who appeared before me. Their respective clients could not have had better representation.

## THE BACKGROUND AND THE LAY EVIDENCE

### *The Parents*

13. The mother is X. She was born in 1989 and is almost 29 years of age. She has been in employment, latterly as a shop assistant though she stopped working prior to the birth

of the twins. In 2001 the mother received a caution for an offence of shoplifting and an offence of handling stolen goods.

14. In September 2008 the mother began a relationship with Z and their daughter, A, was born in July 2009. The couple separated in 2010. There is nothing remarkable about the relationship between the mother and Z insofar as the fact-finding exercise is concerned, specifically it was not a relationship characterised by domestic abuse. Following the breakdown of her relationship with Z, the mother permitted him to have extensive visiting and staying contact with A. Those arrangements were flexible and appear to have worked to the benefit of A until the mother began her relationship with Y.
15. Following the end of her relationship with Z, the mother began seeing another man, JT. There was little information about this relationship before the court save for a police log on 20 January 2015 recording that the mother sought help when JT came to her house after their separation to remove his bed. On 6 February 2015 the mother sought help from her GP with anxiety following the breakup of this relationship. She told the GP that JT had been going into the back garden at night to scare her; that he had broken into the property; that the police were involved; and that JT was on bail with a condition that he did not contact her. She said that she never thought he would behave like this and was very scared and “*paranoid*” to be in the house alone with her daughter as the slightest noise caused her to panic and hyperventilate. In her oral evidence, which on this point I accept, the mother told me that her relationship with JT was not characterised by domestic abuse, whatever may have been her fears once it ended.
16. The mother was described to me by her family and friends, including Z, as being confident and outgoing and not afraid to voice her own opinions. All were in agreement that her personality changed during her relationship with Y.
17. Y was born in November 1987 and is now 30 years of age. Y has worked as a bricklayer, builder and window fitter. He has an extensive criminal record, chiefly for battery and criminal damage. His previous relationships appear to have been characterised by domestic abuse, although these incidents were not litigated within these proceedings save where convictions resulted. Incidents of battery on 5 December 2008, 6 December 2008, 9 September 2012 and 8 November 2014 all arose within a domestic context, the last of these involving his previous partner with whom he has a three-year-old daughter. Y does not have contact with his daughter from this relationship. A conviction for wounding pursuant to s.20 of the Offences Against the Person Act 1861 arose when he head-butted someone in a pub, receiving a suspended sentence of imprisonment in October 2008. Probation records indicated that many of these offences occurred when Y was under the influence of alcohol. In July 2013 he was convicted of drink driving for which he was fined and banned from driving for 12 months. The mother and Y were in agreement that problematic alcohol use was not a major contributory factor in their relationship difficulties.
18. I also record that, when drunk, Y assaulted his own mother on 5 August 2016. She had been hosting a party at her home to celebrate his brother’s wedding when Y and X rowed outside the house. Y’s mother intervened in an attempt to calm the situation whereupon Y put his hands on her throat. She slapped him in self-defence and he took his hands off her throat. She called the police and, at some point during the police

attendance at the house, Y assaulted the officer arresting him. He pleaded guilty to this offence and was sentenced to 8 weeks' imprisonment suspended for 18 months together with a rehabilitation activity requirement. Y told me in his oral evidence that he had no memory of assaulting his mother as he was extremely drunk but did not deny that he had behaved as she had said in her evidence.

19. Y's probation records recorded him having a volatile temper apparent from childhood and that he recognised this to be a problem for him. One of the mother's friends, LR, described him as being explosive, escalating from 0-100 in an instant. In 2008 he was required to undertake anger management work as part of a suspended sentence. That work, like many of the rehabilitative courses prescribed by those sentencing him for various offences, was never completed because he repeatedly failed to attend thereby breaching his sentence. Y also used cocaine from time to time and in May and July 2011 he accepted two police cautions for possessing cocaine. The texts exchanged between X and Y showed that she suspected him of using cocaine during their relationship. Y told me that he had used cocaine about 10 times during his relationship with the mother and explained this infrequent use by saying that cocaine did not agree with him. He also told me that he had told the mother when he used cocaine. In addition, Y stated that he used cannabis often during the relationship, cannabis use being something of a substitute for alcohol.

*Relationship between the mother and Y to October 2016*

20. The mother began a relationship with Y in October 2014. There is a dispute about the extent to which the mother was aware of his violent behaviour towards former partners and when she knew about this behaviour. She told me that, at the start of their relationship, she knew Y had been in prison as he had told her this. She had only heard rumours of his violence to former partners at that time. It appears that Z, one or two of her friends and Y's mother told her about Y's convictions for domestic abuse prior to B's birth but the mother denied that this had happened at that time and asserted that Y had told her after B was born. It was however clear from her evidence that she knew of his convictions in this regard by summer 2016.
21. According to the mother, her relationship with Y was good until the birth of B in November 2015. A few days after B was born, the mother told me that Y had pushed her or had pulled her arm – she said she just could not believe he had done this so soon after the birth of their child. He apologised and said it would not happen again and explained that his tiredness was to blame for this incident. When asked about this incident in cross-examination, Y had no memory of it. However, a pattern of domestic abuse, separations, excuses and reconciliations quickly developed. Furthermore, until the birth of the twins in January 2017, the mother told me that Y provided little support to her with either child care or household tasks.
22. The mother described that, by June 2016, in addition to physical assaults such as pushing, shoving and pulling her hair, Y would call her names and tell her that she was fat and ugly. He threatened to kill himself if she left him and taunted her that no other man would have her because they would be scared of what he might do to them. She described him walking out on her; breaking and smashing things in the house; controlling what she wore; keeping her away from friends and family; snatching her phone from her and smashing it through jealousy (on one occasion when the mother was holding B); taking her car so she could not easily leave her home with the

children; and not allowing her to communicate with Z over the contact arrangements for A. Z's evidence confirmed that the mother asked him to stop calling her and coming to her home as it was causing difficulties in her relationship with Y. Z became aware of Y sitting in his van watching the mother walk A to school and that Y made her walk the long way round to A's school so that the mother did not pass Z's house. On one occasion the mother walked past Z's house and he went out to ask if he could have A for contact on a different day. Y came running down the road shouting "*why are you talking to her – it's fucking Monday morning*". Z tried to explain but Y was pushing Z and shouting at him. Y had picked B up out of her pushchair whilst he was doing this and the mother tried to stop Y. In his evidence Y accepted squaring up to Z during this incident and that Z had done nothing to warrant such behaviour. He also accepted that B had witnessed this incident.

23. By mid-2016 the mother's family and friends had noticed that her personality had changed. She was no longer outgoing and confident – her younger sister described her as being like a ghost and Z thought she was a shell of her former self. Her mother described her as not the daughter she knew and her cousin thought the mother was greatly changed and lacking in confidence after B's birth. Their evidence was confirmed by the mother herself who told me that Y's behaviour had changed her into someone she did not recognise.
24. Y accepted many of the behaviours set out in paragraph 20 above though he denied pushing or shoving the mother when she was holding B or pulling her hair. He also sought to minimise the number of times he had smashed the mother's phone and denied taking her car so that she could not use it. Nevertheless, Y accepted that his behaviour to the mother had been deeply unpleasant. However, his case was that the relationship with the mother had been one where both had shown unpleasant, abusive behaviour to each other. He told me that the mother was controlling and verbally abusive on a daily basis, making him feel that he was a failure and that he could never do anything right. His evidence to me was that the mother was dismissive of his feelings and opinions, often snapping at and berating him.
25. Following the birth of B in November 2015, the health visiting service noted the mother's vulnerabilities and maintained contact with her during 2016. During that time there were intermittent reports of domestic abuse inflicted by Y. In April 2016 the mother told her friend LR that Y had smashed her phone and asked for her help to obtain a replacement. At another time in April 2016 and on his own admission, Y removed all the white goods -including fridge, freezer, washing machine and so on - in the mother's home following a row.
26. On 9 June 2016 the mother attended the police station to report that she had separated from Y. He had attended her house the previous night "*gurning*", grabbed her by the dressing gown during an argument, pushed her onto a bed, then onto a sofa, had thrown her iPhone against a wall, and had repeatedly stamped on it. The mother reported to police that his behaviour had generally deteriorated since the birth of B. Y told the police that he had grabbed the mother and smashed her phone but asserted that she had abused him emotionally, calling him lazy, useless and pathetic. He said she was always jealous and accused him of sleeping with other women. He said he had retaliated when the mother had grabbed him first and thrown his phone on the floor. In July 2016 Y was convicted for battery and criminal damage arising out of this incident. I note that the mother told me in her oral evidence that Y would "*gurn*"

or make faces when he had used cocaine. The mother's health visitor discussed this incident with her on 15 June 2016 and the mother said she was well supported by family and friends. She was reported to be well aware of the effect of domestic abuse on her children.

27. By mid-2016 the mother was pregnant with the twins and told her GP on 17 June 2016 that she was "*pretty sure*" she would seek a termination. On the day of the procedure itself in July 2016, Y proposed marriage to her and the appointment was not kept. Notwithstanding this development, the domestic abuse in their relationship continued.
28. By this time the mother had become close to Y's mother, CW, who appears to have been her confidante. On 23 August 2016 the mother texted CW saying "*he's come home kicking off once again... God knows whatever I'm sick of this shit... I want him to stay away I will be better off alone*". On 8 September 2016 there was further involvement by the police when the mother texted Y saying "*I would rather be dead than in a relationship with you. You have done it now*". Y called the police complaining that the mother "*has had a meltdown and threatened to kill herself*". The mother left the house to calm down and, on her return, refused to engage with the police or to complete a risk assessment. Whatever altercation lay behind this incident had been witnessed by A. The mother admitted that she had rowed with Y and had sent him the text to stop him from pestering her when she sought some peace and quiet in her car. She was clear that she had no intention of harming herself.
29. The health visiting service discussed the domestic abuse with the local authority Children's Services and, in particular, whether there was a continuing role for the health visitor. In September 2016 the decision was made to continue with the universal health visiting service. The family was also referred to the Family Resource Team for some family focus work.
30. On 8/9 October 2016 the mother once again told Y that she wanted to separate after further arguments which had also affected A. Her text messages read as follows: "*Believe me I wouldn't bother I will make it clear you are not welcome I should have stuck to my guns and kept everything ended after the wedding*" [8 October 2016] and on 9 October 2016 "*I'm not going to work. Let's be honest I can't do this no more only time [A] is a pain is when you're around. It's just not going to work sorry I can't live like this*" and later on 9 October 2016 "*[A] is so upset, so I and you have upset everyone with the things you have said. I'm sorry but you are the problem like I said and have been saying for a long time*". The mother's text to CW on 10 October 2016 stated that Y was "*smashing and punching things*".
31. By this time, it was evident both to the mother's family and friends and to Y's family that the relationship between them was – as one witness told me – "*a nightmare*". The mother's friend, LR, described it as a relationship of broken promises made by Y but then not kept. Y's mother said that the mother and Y were as bad as each other and that she had told her son to separate from the mother. Most of the family and friends who gave oral evidence described a toxic relationship characterised by frequent separations and reconciliations. There was a dispute about the extent to which the mother was as controlling as Y but she admitted telling Y untruthful things about the children in an effort to make him change his behaviour. By October 2016 the mother admitted to me that they were living together in a home she agreed was miserable.



32. Additionally, it was clear that Y's relationship with A was very problematic. The maternal grandmother said he struggled to bond with A and according to the mother's friend, CC, he appeared to be jealous of the mother's relationship with A. On one occasion Y told the mother that he "*fucking hated*" A. The mother said in reply that he only hated A's behaviour but Y reiterated that he "*fucking hated*" A. This exchange was witnessed by LR, one of the mother's oldest friends. It was about this time that A began to express to her father her unhappiness with life at home and asked to spend more time with him.
33. On 23 October 2016 the mother reported to her own mother that Y had tried to strangle her. There were red marks on her neck and Y had also punched a hole in the bathroom door. A was present when Y punched the bathroom door and told her grandmother that "*[Y] strangled Mum*". It appears that A was either told or overheard someone talk about the fact that Y had tried to strangle her mother. The mother also texted CW on 23 October 2016, saying "*Just been strangled and grabbed up by your lovely son I want him away*". Y's statement in January 2018 said that he had grabbed the mother by her dressing gown whereupon she asked him to leave. He went upstairs and, in the course of further argument, he punched a hole in the bathroom door. He told me in his oral evidence that he had seen the mother in the bathroom rubbing at her neck to make it red and telling A to say that Y had tried to strangle her.
34. On 27 October 2016 a friend of the mother's made an anonymous referral to the police because she was concerned about the impact on the mother and A of Y's violence. When the police contacted the mother, she denied that anything untoward had taken place and was adamant that she had now separated from Y for good. However, within days of this incident, the mother was back in text and phone communication with Y. I note that, following this incident of domestic violence, A told her father that she wanted to kill herself. The mother also reported A saying she wanted to kill herself during a tantrum. Z's evidence was that A's behaviour started to change and she would shut herself away in her bedroom when she came to visit him and she stopped telling him what was happening in the home she shared with her mother. In her oral evidence, the mother accepted that the incident on 23 October 2016 had had an immense emotional impact on A.
35. Y has reported that the mother assaulted him on occasion. She admitted hitting him with a metal broom handle in October 2016 and on 31 October he texted her saying "*...don't make me out to be a complete bad person, it was only the other week that you beat me with a broom and Maci tray...*". The mother denied throwing a plastic high chair tray table at Y but in her oral evidence said she could not remember if she had thrown it or had put it down. The mother accepted that she had hit Y in self-defence on a number of occasions. On one occasion, the mother's friend, CC, witnessed the mother during a row with Y strike him on the lip causing it to bleed. The mother denied doing so. She had no memory of an incident witnessed by LR during which, when rowing with Y, she had smashed a coffee cup on the floor. She did however accept that on 29 December 2016 she had physically attacked Y by pushing him though she could not be sure if she had punched him as well. Her text to her friend, CC, on 29 December 2016 read as follows: "*Yeah I'm ok punched the shit out of him went mental x*".

*Relationship between the mother and Y: October 2016 to June 2017*

36. On 1 November 2016 the health visitor contacted the mother offering support as the mother was by then in the late stages of her pregnancy with the twins and a series of antenatal health visiting appointments were made. On 14 November 2016 the mother told the health visitor that she had no intention of reconciling with Y. On 25 November 2016 the family support worker, EH, undertook the first of 16 sessions with the mother as part of the referral to the Family Resource Team. The mother told her that Y had poured a drink over her, had pulled out her hair, had pushed her about and had punched walls and doors. The latest incident on 23 October 2016 was the first since the mother became pregnant and was the most serious hence the mother had asked Y to leave.
37. Even though the mother was telling professionals that she was determined to remain separated from Y, she remained preoccupied by him and was keen to establish what he was doing and who he was seeing. At some point during this period she had access to his phone and, with the assistance of her friend CC, she downloaded material from the phone onto the computer to find out if Y was seeing other women. On 28 November 2016 Y texted the mother saying “...your trying to keep everyone happy apart from us and our children wtf? All I want is last night every night...ffs I love you woman...I want to get things sorted for when the twins come please...”. The mother was asked by Mr Goodwin QC if the father had spent the night with her on 27 November 2016 and admitted that he had. She had no explanation as to why she told EH on 29 November 2016 that Y had not been in the house at any point.
38. The point at which the mother and Y finally reconciled was uncertain. On 13 December 2016 Y told his probation officer that he and the mother were once more in a relationship but were not living together. The mother denied this was so. It is, however, common ground that by December 2016 the mother and Y were meeting up, initially in public places, with the children. The mother assured the health visitor on 13 December 2016 that she would not allow Y back to her home and would call the police if he became abusive. On 14 December 2016 the mother texted CW, saying “The best thing he can do now is leave me alone and let me move on with my life I feel physically sick” and “I have caught him out far too many times I always give him the benefit of the doubt and always get proven wrong. I love that man the world and probably always will if you don’t have trust you don’t have anything”. However, on 30 December 2016 the mother accepted that she had reconciled with Y. He had been seen by the family support worker in the home on 28 December 2016 who noted in her records that she was surprised to see Y in the house as the mother had been adamant that she would not reconcile with him.
39. Following his return to the family home, Y agreed to participate in the Family Focus Programme and had his first session in January 2017. The family support worker thought he was engaging positively with the programme by mid-January 2017. On 18 January 2017 the twins were born. However, by 21 February 2017 Y had stopped participating in Family Focus work. The mother complained to CW on 22 February 2017 that Y was drinking and taking drugs again – “I swear he’s been doing that shit once again”. Their reconciliation was also affecting A as the mother texted CW on 11 February 2017 that “I’m not having my daughter put out she’s never here as it is because he doesn’t like her or want her here” and “I have no friends, no family because I picked him. I was so wrong to do that”. Yet after the mother’s complaint to Y’s mother on 22 February 2017 about his alcohol/drug use, the family support

worker observed the mother and Y on 23 February 2017 to be in “*good spirits and at ease with each other*”.

40. In April 2017 the family support worker spoke to the mother about her decision to reconcile with Y despite previously insisting that they would remain apart. The mother said she had been scared of managing on her own and that she loved him. She was pleased that they had reconciled as things were much better this time round because Y was much nicer and more considerate. The mother was at pains to stress in her evidence that Y was much more helpful and supportive with the twins than he had previously been in their relationship. Though their rows continued and he walked out on a regular basis, the mother sought to assert to her family and in her evidence in chief that Y was not physically violent to her after the twins’ birth. The text messages suggested otherwise: on 1 March 2017 the mother texted Y saying “...*never you is it always someone else all them things make you push me in the head did they. You offer to do night feeds then kick of get in a stress so you don’t have to...*” and again on 11 April 2017 “...*and once again put your hands on me your never going to change once a woman beater always a woman beater...*”. The mother admitted in cross-examination that Y had attacked her on both these occasions. Tellingly, the assault on the first occasion was precipitated by Y becoming angry during the twins’ night feed. Y however denied assaulting the mother after the twins were born.
41. On 3 May 2017 the health visitor conducted her fourth targeted health visitor home visit. Y was present and the atmosphere between the parents was reported to be relaxed and positive. The health visitor decided that no further targeted visits were necessary and an appointment was made for the twins to have a developmental check when they were nine months old. Following a Team Around the Child meeting on 17 May 2017 (convened as a forum in which Y’s probation officer, A’s headteacher and the health visitor could meet), the case was closed to the Family Resource Service.
42. Although the impression given to the professionals was that the couple’s relationship had improved, the mother was in fact texting Y on 6 May 2017 to say that “*The way you treat me is not love. She [presumably A] has had a massive meltdown crying asking why don’t you love her what does she do wrong and that she loves you why don’t you love her back it breaks my heart it’s not fair or nice [B] wouldn’t go to bed the boys just keep crying and once again I’m stuck at home alone looking after the kids when I could have had a night off*”. In her police interview the mother appeared to accept that some of what she was saying to Y about the children’s reaction to their arguments was untrue but said that she wanted Y to understand the general effect his behaviour had on them. On 7 May the mother texted Y saying “...*I’m sorry you have pushed me way to far this time you are turning me into a person I don’t like. My kids come first they want to make noise and play there lives without getting told off by hitler...You aren’t that man you have had 3 years to be that man and you haven’t...* [in response to Y texting you are not going to let me see my babies?] *No I’m sorry but they shouldn’t be around someone like you DNA doesn’t mean anything...*”.
43. Despite offering more assistance to the mother than he had when B was born, the mother told me in her evidence that Y would “*moan*” about feeding the twins at night so that she undertook almost all of these feeds herself. He would make up bottles, do feeds during the daytime and occasionally make dinner and wash up. When asked if Y pulled his weight after the twins were born, the mother said “*sometimes*”. I note that the twins were often fed strapped into their baby beanbags. A rolled towel was placed

across their chest and looped onto each shoulder and their bottle of milk was propped on the towel so that they could feed. The mother told me that, when being prop-fed, the twins should not be left alone as this was dangerous.

*Incidents involving C and D, May/June 2017*

44. In the weeks before D's death, two incidents took place in which D and C came to harm whilst in the sole care of Y. Some of the details of what occurred are in dispute but the mother gave an account to her younger sister and NS when they visited the mother's home together some time after this incident. She also told her cousin, VW, about this incident at some point in May 2017.
45. In mid-May 2017 Y was reported by NS and by the mother's sister to have phoned the mother, who was taking B to school, asking her to return home. NS reported that the mother had said Y told her during the call that D was red in the face and seemed flustered. The mother had no recollection of receiving such a phone call but accepted that this might have happened. On his account Y had been "*prop-feeding*" the twins, and then left them for a few seconds to go to his van, returning to find D blue and floppy. Y had laid D on the floor and compressed his chest. After a few minutes D's colour returned but his eyes were discoloured and a bit red and he was "*out of it*". When the mother returned home, she told me that the way Y had spoken to her about what had happened worried her. At that stage, Y told her that D had choked on his bottle. D appeared to the mother to be pale but otherwise showed no other symptoms. According to her sister, the mother told her sister and NS that D's eyes were red and he was crying. The mother wanted to take D to the doctor or to the hospital but, according to NS and her sister, Y persuaded her not to. The mother said she had monitored D, giving him a bottle of milk, and he had gone back to being normal within a short time. Both the mother's sister and NS reported the mother as telling them that D had experienced more persistent symptoms that day arising from this incident - his eyes had been disoriented for a while that day and he was "*out of it*" and sleeping a lot according to the mother's sister. NS remembered that D's eyes had "*gone down*" but were still red for a while.
46. Apparently, according to the mother's sister and NS, Y became upset later that day and cried (something the mother told her sister that she had not seen him do before). He told the mother that he had not been completely honest with her about what had happened to D during this incident. He said D had gone blue and floppy and that he had compressed his chest. NS also reported that Y had told the mother that D's eyes were bloodshot earlier in the day. The mother told NS that she was cross with Y as the incident could have been more serious than they thought but D appeared to be normal. The mother's sister maintained that, since that date, the mother had repeatedly told her that D had not been himself and had not settled or drunk his bottles.
47. The mother had also given an account of this incident to her cousin, VW. VW said that the mother had returned to find Y trying to sort D out and that D was blue. The mother told VW that she had taken over from Y to get D back to normal and that D was really white for quite a while but she did not say how long this pallor lasted. When D returned to a more normal colour, the mother said she wanted him to be seen by a doctor but Y had told her D was fine and was back to how he should be. In her oral evidence the mother's cousin said that it was Y who told the mother that D was blue rather than this being something the mother had seen for herself and that, had D

not returned to normal, the mother said she would have taken him to the doctors. VW was unable to explain when it was that Y had told the mother that D had gone blue.

48. Two to three weeks before 14 June 2017 when she gave a statement to the police, Y's aunt recalled a conversation between them at her home. Y had told her that on the day before he had been at home with the twins. Whilst he had been in the kitchen, he had heard one of them coughing. As the coughing did not stop but then went quiet, he went into the room where the twins were and discovered D had gone blue. D was still however breathing. Y "*ripped*" D out of his chair and started hitting him on the back and ran outside with him to get him some air. Y asked his aunt what she would have done in the circumstances and she said she would have got D some medical attention. Y told her that D was fine and smiling again.
49. The local authority submitted that this incident was likely to have been Y's first assault on D by shaking, most likely causing him the older cerebral bleed identified by Dr Jacques post-mortem.
50. The mother denied that D had discoloured eyes or had appeared flustered. She said he had been pale but otherwise appeared to be himself. On her return home, the mother had monitored D by agreement with Y though her first instinct on hearing of the choking incident was to get him medically checked. She denied being told by Y that evening that D had been blue and floppy or that Y had performed chest compressions. She was adamant that she had stopped Y that evening from telling her more about D's condition during the choking incident because Y had been crying when he started telling her about it and she wanted to reassure him that D was fine.
51. Around this time in mid to late May 2017, there was an incident involving C whilst he was in Y's sole care. Y told the mother when she returned home one day that he had slipped on the bathroom floor whilst holding C. The mother had thought that, when Y held C up to protect him from hitting the floor, C's head had hit the washing basket in the bathroom causing a small mark/bruise under the eye. This was described as a red mark which the mother's cousin, VW, saw a couple of days after the incident – she said it was dark red and went from the outer edge of the eye to underneath the left or right eye. She observed that the mark was slightly darker in the middle and lighter towards the edges and was about 2 inches long and half an inch wide. The mother's cousin remarked how close it was to C's eye and the mother said "*something like how bad it was*". VW told me in her oral evidence that the mother had not thought the mark was serious and that it had clearly been caused accidentally. The mother denied that the mark had persisted as recounted by VW and said it had faded some 15 minutes after her return home. That the red mark was short-lived was supported by the oral evidence of Y.
52. On 23 May 2017 the mother told her cousin, VW, during a conversation about whether she trusted Y that "*the way things are going [Y] would end up killing one of the [babies] ... because that's when the accidents always happen*". On 26 May 2017 when D was crying, the mother observed in the presence of her sister and of her sister's friend, NS, that "*you've not been the same since your Dad tried to kill you*". All these witnesses were at pains to stress that both these comments were made in jest and in a jokey fashion.

53. Y has alleged that the mother also handled D roughly, throwing him on one occasion into his chair. She was not cross-examined about this incident by Miss Isaacs QC. There is no evidence however that this incident – if it happened - caused D any injury and, in particular, that it was the cause of D’s earlier cerebral bleeding. A somewhat garbled text from the mother to CW on 29 May 2017 made reference to this incident as follows:

*“Being his usually fucked up self going on about how the weekend was so shit because of my spoilt twat of a daughter started as soon as he got up yet he laid in till 9 as I slept downstairs with the boys saying I have a problem with how much he loves B and that she would have a better life if I could have her recording me saying don’t chuck D down like that look at him crying you have hurt him when he feel[sic] asleep on my lap and I just put him in his chair and I million other things telling me I’m a useless mum ugly fat you name it I have asked him to leave and he won’t x”.*

54. Y’s third witness statement recorded that, a few days before D was taken to hospital, he had phoned the mother outside and told her that she had lost it when they were arguing about her having thrown D into his bouncer. Y sought in his final witness statement to delete that evidence because it was said to be a mistake by his legal advisers. His third witness statement continued as follows:

*“I recall saying to her on the evening that D died ‘why did you have to throw him so hard’. I had come home from work early one afternoon and [the mother] was in the front room is still in her dressing gown. [The mother] had D in her arms and shouted at him that she didn’t know was wrong with him; she threw him down in his bouncy chair in the front room. [The mother] was seated on the sofa and D was crying. I remember swearing at [the mother] and then comforting D who stopped crying. [The mother] upstairs and I took the boys for a 4-5 mile walk, then went to my grandparents’ house and told them and my mum what had happened”.*

#### *D’s Fatal Injuries: Aftermath*

55. D’s fatal injuries occurred as set out at the start of this judgment. At the local hospital the examining paediatrician took a history from the parents in which Y stated that D had coughed, vomited, gone stiff and started fitting. Following a referral to the police, both the mother and Y were interviewed after D had been transferred to the larger hospital. Y’s account to the police was as follows:

*“I was feeding babies, I prop them up on beanbag to feed. I came into living room. D was coughing. I put him on his belly on the dumbbell (for wind) milk started coming out of his nose. Picked him and rubbed his back, banging his back. D kept being sick (a few minutes) was coming out of his nose. One of D’s arms went solid (?) - I thought he was having a stroke so I called 999. I hit him 5 times sharply on his back and again on front as told on the phone. His arm was locked up, I told them on the phone he wasn’t getting better”.*

The police undertook a search of the family home with the consent of the mother and spoke to her sister who disclosed to them the mother’s recent comment to D “*you haven’t been the same since your dad nearly killed you*”. Her sister also described the occasion in May 2017 when D had gone blue/floppy in Y’s care.

56. After his Crown Court plea in January 2018, Y filed a statement within these proceedings dated 5 March 2018 containing his account of the events on 2 June 2017. This account reads as follows:

*“It was also around this time that D also started stirring so I prepared his bottle and fed him the same way that I did C. I left D propped up on his beanbag with his bottle in the front room while I took B upstairs to her bedroom so that she could sleep in her cot. I would say that I must have taken B upstairs around 7.15pm...*

*When I got downstairs I went into the living room and saw that the boys were still on their beanbags. C seemed fine but I saw that D had been sick and that his bottle was still in his mouth. I took the bottle out of his mouth so that I could wipe his mouth. I pulled him out of the beanbag and held him so that he was facing me. As soon as I picked him up under his arms he was sick again all over himself. I am normally very patient with kids and do not lose my control when I am with them but I panicked on this occasion as D was sick twice. I was pissed off and felt useless as I didn't know why he had been sick and felt like I had failed him as I hadn't fed him properly. That's when I had a moment of madness with D and briefly gave him a little shake. I didn't know that shaking a baby would cause great harm and had no idea that I could hurt D this way. At no stage did his head hit anything. This is the only time I have ever shaken D”.*

57. In his Addendum Defence Statement filed in the Crown Court it is recorded that D had been sick all down himself. Y is stated to have become exasperated and to have shaken him in frustration. Y is recorded as not shaking D for long and not intending or desiring to cause him serious injury.
58. Y has accepted that he inflicted C's acute rib fractures. He has not been indicted in relation to C's older/healing rib fractures and denied inflicting these. In his witness statement dated 5 March 2018, Y stated that he could not say when he squeezed C really tightly so as to cause the acute rib fractures. Additionally, he suggested that, as the mother was the primary carer for the children and was thus caring for them most of the time, it was possible that she might have squeezed C on another occasion so tightly as to cause his older rib fractures. He recalled an incident in April/May 2017 when he was sleeping in A's bed as she was staying with her father and he awoke at about 2am to find the mother shouting at the boys. He ran into their bedroom and saw her standing up with one of the boys at arm's length shouting at him very loudly. He could not remember if this was C or D but remembered telling the mother to leave the room immediately. Before the mother left the room, she threw the baby on the bed but came back later to their bedroom to apologise for what she had done. Y then fed the boys and noticed that they were very unsettled.
59. Both the mother and Y were arrested at hospital on 6 June 2017 and interviewed. The mother answered the questions put to her but Y gave a no comment interview. On 7 June 2017 a post-mortem on D was undertaken by Dr Cary and Dr Liina Palm. There was no evidence of any natural disease process which might have accounted for D's death and his death was provisionally determined to be attributable to a shaking/impact type injury.
60. Y was charged with D's murder and appeared in the Crown Court on 9 June 2017 when he was remanded in custody. The mother has had no contact with Y since they

were held in police custody after their arrest on 6 June 2017. She is adamant that their relationship is finally at an end.

## THE MEDICAL EVIDENCE

61. I summarise the medical evidence and identify where relevant the medical issues in dispute during this hearing.

### *D: Acute Injury*

62. **Dr Cary** and **Dr Palm**'s reports following their post-mortem examination make clear that there was no evidence of natural disease or congenital abnormality which caused or contributed to D's death based on both the naked eye findings and the results of all further tests and expert investigation. D was a normally developed and normally grown baby boy. He had no traumatic birth history and there had been no neo-natal problems. No bruising was detected either on external examination or on deep dissection of the skin and no bruising suggestive of an impact to D's head was identified. However, head injury with an impact component was not excluded as, in a domestic setting, this could occur with soft furnishings where bruising would not necessarily be anticipated. Death was due to head injury of the shaking/impact type.
63. **Dr McCarthy** examined D's eyes following death and established the presence of extensive bleeding around the optic nerves of both eyes together with confluent (that is merging or coming together) fresh haemorrhage within both retinas. The haemorrhage was predominantly in the nerve fibre layer and in the retina but there was extensive haemorrhage extending through all layers of the retina and involving the receptor cell layer. The bleeding appeared reasonably fresh and some Perls iron reaction was consistent with a survival period of 48-72 hours. There was no extensive iron deposition to indicate a previous episode of haemorrhage in the eyes. In addition, there was haemorrhage of the optic disc in each eye. Both eyes were anatomically normal with neither developmental abnormalities nor pre-existing pathological disease processes being present. The distribution and extent of the haemorrhage seen in D's eyes and optic nerves was that associated with head impact trauma or head movement trauma or a combination of both events. Dr McCarthy's opinion was that the bleeding in this particular case was quite extensive and he regarded it as being the more extreme end of the spectrum given the significant orbital bleeding, significant optic nerve bleeding, and significant confluent retinal bleeding. The damage to D's eyes was fresh and would be consistent with having occurred at and around the time that D collapsed. The amount of force required to cause this pattern and extent of haemorrhage was above that which is normally encountered in the day-to-day handling of an infant or indeed in episodes of so-called "rough handling". Dr McCarthy's overall conclusion, in the absence of firm evidence of head impact trauma, was that the damage to D's eyes was consistent with head movement trauma.
64. **Professor Mangham** examined D's cervical vertebral column which showed interstitial haemorrhage into the dorsal root ganglia as well as in and around the accompanying dorsal and ventral nerve roots. The source of the blood appeared, at least in part, to be from the spinal canal. The presence of haemorrhage in the cervical ganglia and nerve roots was abnormal and has been identified as a significant finding likely to contribute as a cause of death (due to consequent diaphragmatic paralysis



and resultant hypoxaemia) in shaken baby syndrome. No fractures were identified in D's cervical column.

65. **Dr Kinsey's** haematological investigations did not identify D to have any predisposing haematological condition which would have caused spontaneous bleeding or bruising or more extensive bleeding or bruising following trauma. She was of the opinion that non-accidental injury must be considered as a cause for the clinical features seen in D.
66. **Dr Jacques** examined D's brain, spinal cord and dura. He identified the following significant features: cerebral swelling with tonsillar herniation; neuronal ischaemia; vascular axonal injury; cranial and spinal subdural and subarachnoid haemorrhage; epidural haemorrhage in the spinal cord; nerve root haemorrhage and focal axonal nerve root injury; and haemorrhage in the dorsal root ganglia. His opinion was that this pattern of pathology in the brain and spinal cord was typically caused by trauma and the combination of subdural haemorrhage, and encephalopathy (abnormalities in the brain), and retinal haemorrhage was recognised by many experts as a feature of abusive head trauma.
67. **Dr Stoodley** reviewed the neuroimaging performed on D at various times on 2-3 June 2017. He identified multi-compartmental subdural bleeding, acute traumatic effusions, and extensive established hypoxic-ischaemic brain injury. He also identified evidence of spinal subdural haemorrhage which he described as "*potentially very significant*" as a marker of abusive head trauma. There was no evidence of fracture or soft tissue scalp swelling to suggest a recent impact injury against a hard or unyielding surface. The abnormalities seen in D were likely to be due to an episode of abusive head trauma involving a shaking mechanism and all of those abnormalities were likely to have occurred at the same time. Dr Stoodley's opinion was that there was likely to have been a major change in D's behaviour at the time of the event causing these injuries. The symptoms and signs seen after abusive head trauma were however variable and non-specific: they ranged from the child going quiet for a while, to going off their feeds, vomiting, reduced levels of consciousness, abnormal movements and seizures to frank coma.
68. **Mr Richards** confirmed that there was no underlying disease process or fragility in D which could account for all the features of his presentation. All of those features were caused by head injury. In the absence of a history of accident and where there were features of severe injury apparent (particularly multi-compartment subdural bleeding, spinal bleeding, retinal haemorrhage, and hypoxic ischaemic brain injury), this was clinically associated with an event where a child had been forcibly shaken by a carer. The injuries seen in D were caused by a force in excess of that encountered in normal life or in minor domestic accidents. It was more likely than not that the injuries to D were caused at the point he collapsed.
69. **Dr Ehrhardt** conducted a paediatric overview. He was of the opinion that D suffered a single, very severe inflicted head injury on the evening of 2 June 2017 having been shaken. That conclusion was supported by the finding of fractured ribs in his brother C. Dr Ehrhardt incorrectly understood that the imaging of D's brain showed some soft tissue swelling and, on that basis, considered that D had also suffered an impact of his head against a surface, that impact being sufficiently severe to cause the swelling. It is however clear that no soft tissue swelling was identified on the imaging and, in those

circumstances, I am entitled to disregard Dr Ehrhardt's conclusion that D had also suffered head impact trauma.

70. **Dr Cartlidge**, instructed within the family proceedings, also conducted a paediatric overview. He concluded that the intracranial bleeding, hypoxic ischaemic brain injury, retinal haemorrhages and spinal bleeding were caused non-accidentally and most probably by shaking. He could not exclude D's head having impacted with a semi-yielding object. The clinical signs of acute subdural bleeding were typically a sudden alteration in consciousness with floppiness, pallor, impaired breathing and possibly vomiting immediately after the causal event. The severity of the symptoms was linked to the degree of the brain injury. D had extensive hypoxic-ischaemic brain injury so his symptoms were very likely to have been at the severe end of the spectrum. The causal event was very likely to have occurred moments before the emergency services were contacted. The force needed to cause the head injuries would be obviously excessive to a normally competent and responsible person.
71. In his oral evidence Dr Cartlidge was asked by Miss Meachin QC whether a "*little shake*" as recounted by the father in his recent witness statement would account for the severity of D's injuries. Dr Cartlidge explained that a baby of D's age with normal development would by 2 June 2017 have had "*decent control*" of his neck. Thus, a "*little shake*" would not have induced the whiplash type of movement which would have been necessary to cause the profound injuries seen in D. All the findings about his acute injuries pointed to them being caused by a significant shake. That opinion was echoed by Mr Richards in his oral evidence who was also of the view that the injuries to D were not compatible with a "*little shake*" or a gentle shake. D would have collapsed immediately following the event which caused his symptoms - it was plain that these were symptoms at the catastrophic end of the range of head injuries.
72. There was no challenge to the medical evidence in respect of D's acute injuries.

*D: Older Head Injury*

73. During his post-mortem examination of D's brain, spinal cord and dura, **Dr Jacques** noted evidence of older bleeding associated with the deposit of iron pigment (haemosiderin) which was not a feature of an acute injury. This was only visible on dissection post-mortem once the Perls iron test was performed and was therefore not apparent on the CT/MRI scans conducted on 2-3 June 2017. Associated with the Perls positive haemosiderin was an area of membrane formation. In his report Dr Jacques concluded as follows:  
  
*"... In addition there is also significant organisation in the subdural space which is associated with iron pigment deposition (haemosiderin). While the latter may develop a few days after haemorrhage, in this case they are relatively extensive and well-established suggesting that there was an event that occurred many more days (or more) before death. In my opinion the likely explanation for the findings in the central nervous system is that there have been two distinct episodes that account for the pathology; one is relatively recent (e.g. occurring close to the time of the collapse) and one which is more remote..."*
74. Dr Palm noted Dr Jacques' observations as did Dr Cary, Mr Richards, Dr Ehrhardt, and Dr Cartlidge in their reports. All deferred to his expertise though, in his report, Dr

Carlidge said he could not exclude the possibility that this older brain injury was birth-related.

75. In his oral evidence Dr Jacques told me that haemosiderin would take 2 to 3 days to become apparent in the brain and represented a healing response to bleeding. The haemosiderin was inside the membrane seen by Dr Jacques microscopically. He was of the opinion that these extensive changes would have taken longer than a couple of days to develop but he could not be clear about the exact time period involved. He was however clear that the cause of these older changes was bleeding in the brain caused by physical trauma. He had found no evidence of an underlying disorder in D which might cause such bleeding and, although the presence of these findings might be explicable by subdural bleeding during the birth process, in his view that did not explain the extent of the haemosiderin seen together with membrane formation in D's brain. Dr Jacques told me that this older episode of subdural haemorrhage took place several days before the event which caused the acute changes in D's brain but he could not be certain when that was.
76. Miss Isaacs QC challenged Dr Jacques' evidence on the basis, first, that the findings suggestive of an older episode of subdural haemorrhage had only been seen microscopically and were not visible macroscopically on the CT/MRI scans and, second, by relying on the contents of a research paper which suggested that there was some significance in the distribution and intensity of haemosiderin deposits in the infant brain. With respect to the first limb of Miss Isaacs QC's challenge, Dr Jacques was clear that the gold standard for the identification of subdural bleeding was by tissue examination of the brain itself. Furthermore, there was often a discrepancy between what radiologists and pathologists saw with pathologists having the advantage of an examination in incredible detail under the microscope. As far as the second limb of her challenge was concerned, Dr Jacques described the paper she had produced as methodologically flawed because it was unclear how the authors had validated their results about the distribution and intensity of haemosiderin deposits in the infant brain.
77. In their oral evidence Dr Cary, Dr Stoodley, and Mr Richards all deferred to Dr Jacques with respect to the presence and timing of older subdural bleeding in D's brain. Dr Stoodley and Mr Richards were clear that pathologists could often see injuries in the brain which could not be detected on CT/MRI scans. Dr Carlidge also deferred to Dr Jacques as to the presence of older subdural bleeding and, though he initially said that he would question whether this was related to D's birth, he subsequently indicated that he would defer to Dr Jacques' expertise given Dr Jacques' extensive experience in examining the infant brain after death.
78. Dr Carlidge and Mr Richards were asked about the episode when D was said to have become unwell in his father's care in about May 2017 on the basis that his presentation during that incident might be consistent with an earlier episode of abusive head injury. The various descriptions of D's presentation were put and Dr Carlidge agreed that these might be symptoms of a head injury at the milder end of the spectrum of head injuries. He was however very clear that an episode of choking might cause a child to become blue or floppy but would not cause subdural bleeding. Mr Richards agreed that the symptoms presented by D would be consistent with encephalopathy or a subdural bleed at the lower end of the spectrum of head injuries. It would be rare though not incompatible to have such symptoms caused by a choking

episode. Choking events were very rare in children, even those who were very vulnerable. Mr Richards was clear that there was no association between choking and subdural bleeding in mainstream medical thinking and that such a link (found in the work of Dr Geddes and others) had been refuted by the Court of Appeal in recent years.

79. Finally, it was clear from the oral evidence of Dr Cartlidge and Mr Richards that, if D had been shaken on the earlier occasion in question, a non-perpetrator might not be able to link his presentation to having been shaken.

*C: Rib Fractures*

80. **Dr Jeanes** examined the skeletal survey of C undertaken on 5 June 2017 and concluded that there were no underlying features to indicate nutritional or metabolic bone disease. There was callus formation of the posterior aspect of the left seventh and eighth ribs consistent with healing rib fractures which were approximately three weeks old at the time of the skeletal survey [i.e. caused on approximately 15 May 2017]. In addition, there were fractures of the antero-lateral aspects of the left ninth and 10<sup>th</sup> ribs without evidence of healing, indicating that these were acute injuries and likely to be less than a week old at the time of the skeletal survey [i.e. caused after 29 May 2017]. Dr Jeanes was of the opinion that both these sets of rib fractures were highly likely to be inflicted injuries resulting from trauma to the chest on at least two separate occasions. Such fractures would usually be caused by either antero-posterior chest compression, by the direct impact of the chest onto a hard surface or following a direct blow to the chest wall. Rib fractures would be painful, perhaps leading to irritability in a child.
81. The mother indicated that Y had fallen with C in the bathroom some 7-15 days before the skeletal survey but Dr Jeanes thought it unlikely that the seventh and eighth rib fractures occurred during that event as the established callus indicated they were approximately three weeks old. If the acute rib fractures occurred as a result of the fall in the bathroom, Dr Jeanes was of the opinion that this incident would have occurred towards the end of the 7-15 day timescale, for example around 28-31 May 2017. The account of the fall in the bathroom would not, in Dr Jeanes' opinion adequately explain the rib fractures as there was no description of either C being dropped or Y falling with or onto C with C striking his chest onto a hard object or his chest being crushed by Y as he fell onto him.
82. Dr Ehrhardt identified two healing rib fractures and one rib fracture which showed no sign of healing and which was more recent. There was no reason to believe that C's bones were more susceptible to injury, there being no medical or organic cause for his fractures. All the fractures were due to two separate episodes of trauma. C would have been distressed at the point of fracture and experienced pain and fear which would have been obvious to anyone present when the fracture was inflicted. However, once C's distress wore off, it may not have been obvious that C had a fractured rib. A carer who was unaware of the traumatic incident which caused the fractures would not have reason to suspect that C required medical attention. Dr Ehrhardt thought it more likely that C had been shaken, the shaking causing his rib fractures by him having been twice grasped excessively firmly around the chest. However, at a later point in his report, he contradicted his assertion that C was shaken by writing that it was unknown whether this had happened to C.

83. Dr Cartlidge was of the opinion that C's rib fractures were most likely caused non-accidentally by a circumferential compression of the chest. The fractures would have been initially painful, probably for about 10 minutes but thereafter the pain would have lessened. Deep breaths, crying and handling around the chest would have exacerbated any ongoing discomfort, causing C to be more fractious than usual for at least a few days. As young babies cry so frequently without a specific reason being identifiable, the cause of C's distress was unlikely to have been recognised especially by a carer unaware of any traumatic event. In his oral evidence, Dr Cartlidge confirmed that posterior rib fractures seen in D were almost always caused by a squeezing mechanism.
84. There was no challenge to the medical evidence with respect to C's rib fractures.

#### THE LAW

85. The law which governs the court's task at this hearing is well settled and can be summarised as follows.
86. To establish the threshold criteria, I need to be satisfied that, on the relevant date, A, B and C were likely to suffer significant harm and that C was suffering significant harm attributable to the care given to them or likely to be given to them, if an order were not made, not being what it would be reasonable to expect a parent to give. The relevant date in this case was 4 June 2017, being the date on which protective measures were taken. The local authority may later rely on information that comes to light after that date, which is capable of proving the state of affairs and risks to the children at the date of intervention [Re G (Care Proceedings: Threshold Conditions) [2001] 2 FLR 1111].

#### *The burden and standard of proof*

87. The burden of proof is on the local authority. It is for the local authority to satisfy me, on the balance of probabilities, that it has made out its case in relation to disputed facts. The parents have to prove nothing and I must be careful to ensure that I do not reverse the burden of proof. As Mostyn J said in Lancashire v R [2013] EWHC 3064 (Fam), there is no pseudo-burden upon a parent to come up with alternative explanations [paragraph 8(vi)].
88. The standard to which the local authority must satisfy the court is the simple balance of probabilities. The inherent probability or improbability of an event remains a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred [Re B (Care Proceedings: Standard of Proof) [2008] UKHL 35 at {15}]. Within this context, there is no room for a finding by the court that something might have happened. The court may decide that it did or that it did not [Re B at {2}].
89. Findings of fact must be based on evidence, and the inferences that can properly be drawn from the evidence, and not on speculation or suspicion. The decision about whether the facts in issue have been proved to the requisite standard must be based on all of the available evidence and should have regard to the wide context of social, emotional, ethical and moral factors [A County Council v A Mother, A Father and X, Y and Z [2005] EWHC 31 (Fam)].

90. The court is not limited to considering the expert evidence alone. Rather, it must take account of a wide range of matters which include the expert evidence but also include, for example, its assessment of the credibility of the witnesses and inferences that can be properly drawn from the evidence. Thus, the opinions of medical experts need to be considered in the context of all of the other evidence. When considering the medical evidence in cases where there is a disputed aetiology giving rise to significant harm, the court must bear in mind, to the extent appropriate in each case, the possibility of the unknown cause [R v Henderson and Butler and Others [2010] EWCA Crim 126 and Re R (Care Proceedings: Causation) [2011] EWHC 1715 (Fam)].
91. The evidence of the parents and of 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 [Re W and another (Non-accidental injury) [2003] FCR 346].
92. It is also important when considering its decision as to the findings sort that the court takes into account the presence or absence of any risk factors and any protective factors which are apparent on the evidence. In Re BR [2015] EWFC 41, Jackson J (as he then was) set out a useful summary of those factors drawn from information from the NSPCC, the Common Assessment Framework and the Patient UK Guidance Health Professionals.

*Lies*

93. It is common for witnesses in these cases to tell lies in the course of the investigation and the hearing. The court must be careful to bear in mind at all times that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear, and distress. The fact that a witness has lied about some matters does not mean that he or she has lied about everything [R v Lucas [1981] QB 720]. It is important to note that, in line with the principles outlined in R v Lucas, it is essential that the court weighs any lies told by a person against any evidence that points away from them having been responsible for harm to a child [H v City and Council of Swansea and Others [2011] EWCA Civ 195].
94. The family court should also take care to ensure that it does not rely upon the conclusion that an individual has lied on a material issue as direct proof of guilt but should rather adopt the approach of the criminal court, namely that a lie is capable of amounting to corroboration if it is (a) deliberate, (b) relates to a material issue, and (c) is motivated by a realisation of guilt and a fear of the truth [H-C (Children) [2016] EWCA Civ 136 at paragraphs 97-100].
95. In this context I have borne in mind the words of Jackson J (as he then was) in Lancashire County Council v The Children [2014] EWHC 3 (Fam). At paragraph 9 of his judgment and having directed himself on the relevant law, he said this:

*“To these matters I would only add that in cases where repeated accounts are given of events surrounding injury and death, the court must think carefully about the significance or otherwise of any reported discrepancies. They may arise for a number of reasons. One possibility is of course that they are lies designed to hide culpability.*

*Another is that they are lies told for other reasons. Further possibilities include faulty recollection or confusion at times of stress or when the importance of accuracy is not fully appreciated, or there may be inaccuracy or mistake in the record-keeping or recollection of the person hearing and relaying the accounts. The possible effects of delay and repeated questioning upon memory should also be considered, as should the effect on one person hearing accounts given by others. As memory fades, a desire to iron out wrinkles may not be unnatural - a process that might inelegantly be described as 'story-creep' - may occur without any necessary inference of bad faith."*

## DISCUSSION

96. Having considered the evidence of fact and the evidence of opinion before the court, and applying the legal principles set out above, I have come to the following conclusions in this case as follows on the balance of probabilities:
- i) On 2 June 2017 D sustained the following injuries:
    - a) Multi-focal thin film bilateral subdural and subarachnoid haemorrhages;
    - b) Extensive and generalised hypoxic-ischaemic brain injury;
    - c) Axonal (nerve fibre damage);
    - d) Subdural, epidural and subarachnoid haemorrhage along the spinal canal and in the nerve roots and ganglia of the cervical vertebrae;
    - e) Bilateral and pre-retinal haemorrhages, macular folds, peri-optic nerve haemorrhages, orbital haemorrhages and peripapillary optic disc haemorrhages.
  - ii) All of these injuries resulted from a shaking type injury or from a shaking injury with impact.
  - iii) These injuries were inflicted by Y shortly before the 999 call made at 19.36 on 2 June when he shook D with excessive force in anger with or without an impact against a soft or semi-yielding surface.
  - iv) On his own admission Y waited 10 minutes between shaking D and calling 999, during which period of time it was obvious to him that D was acutely unwell.
  - v) On an earlier occasion to the above injuries, D suffered subdural bleeding caused by Y shaking him with excessive force in anger with or without an impact against a soft or semi-yielding surface. It is more likely than not that this incident occurred a few days before 26 May 2017 when D was left in Y's sole care and became unwell with vomiting, turning pale/blue, becoming floppy and being more unsettled.
  - vi) Y knew he had injured D but failed to seek any medical help for him on this occasion.

- vii) On her return home, the mother was worried by D's presentation and said to Y that D should be medically examined. She allowed herself to be persuaded by Y that D should not be medically examined for reasons which had nothing to do with how well, in due course, D appeared to have recovered.
- viii) Later that evening, in some distress, Y disclosed to the mother that the choking incident had been more serious than he originally led her to believe. D had turned blue and was either floppy or required chest compressions or both.
- ix) The mother failed to seek medical attention for D despite this fuller account of his symptoms.
- x) After this incident, D appeared to the mother not to be his usual self, did not feed easily and was unsettled. The mother did not inform any health professional of her concerns in this regard.
- xi) C suffered fractures to the posterior aspects of his left 7<sup>th</sup> and 8<sup>th</sup> ribs. These were non-accidental injuries inflicted by Y on or around 15 May 2017 either by forceful compression of C's chest wall or by a direct blow/impact onto the chest.
- xii) On a separate occasion C suffered fractures to the anterior aspects of his left 9<sup>th</sup> and 10<sup>th</sup> ribs. These were non-accidental injuries inflicted by Y on an unknown date between 29 May 2017 and 2 June 2017, either by forceful compression of C's chest or by a direct blow/impact onto the chest.
- xiii) These rib fractures were not caused during any occasion on which Y slipped in the bathroom whilst holding C.
- xiv) Each of C's rib fractures would have been painful and distressing for approximately 10 minutes. Thereafter the pain would have reduced but deep breaths, crying and handling round the chest would have exacerbated C's discomfort causing him to be more fractious than usual for at least a few days.
- xv) Y knew he had hurt C on each occasion he suffered rib fractures.
- xvi) Y failed to seek medical attention for C on each occasion he suffered rib fractures.
- xvii) The mother did not inflict physical harm to any of her children during the currency of her relationship with Y.
- xviii) Y has convictions for violence including 11 separate incidents of battery; wounding pursuant to s.20 of the Offences Against the Person Act 1861; and assault causing actual bodily harm pursuant to s.47 of the Offences Against the Person Act 1861.
- xix) In August 2016 Y assaulted his own mother during the wedding celebrations for his brother by placing his hands around his mother's throat.



- xx) Y has four convictions for domestic violence against a partner between December 2008 and November 2014. The mother knew prior to the birth of B of Y's domestic violence towards previous partners.
- xxi) On 9 June 2016 Y assaulted the mother by pushing her onto a bed, then onto a sofa throwing her iPhone against a wall and stamping on it repeatedly. He was convicted on those facts in July 2016.
- xxii) On 23 October 2016 Y assaulted the mother by grabbing her around the throat during an argument and punching a hole in the bathroom door. A witness Y punched the hole and was either told or overheard someone talk about the fact that Y had tried to strangle her mother.
- xxiii) On other non-specified occasions before 14 November 2016 Y pushed the mother around during the course of arguments, pulled her hair and smashed objects round the house. He assaulted her either by pushing her or pulling her arm when B was only a couple of days old. He smashed her mobile phone on 3-4 occasions including in April 2016 when the mother reported this to a friend, LR. Following the birth of the twins, Y assaulted the mother on or around 1 March 2017 by pushing her in the head and on or around 11 April 2017.
- xxiv) At times Y behaved in a controlling and derogatory manner towards the mother. Examples of this behaviour included constantly checking her phone and monitoring her use of it; undermining her relationships with her family and friends; calling her demeaning names and belittling her; and in about April 2016 removing the white goods from the family home.
- xxv) Y regularly used cannabis and, to a lesser extent, cocaine during his relationship with the mother. The mother knew about his use of cannabis and cocaine.
- xxvi) The relationship between the mother and Y was beset by constant arguments, short lived separations and reconciliations. Both adults were responsible for initiating and prolonging verbal altercations.
- xxvii) On several occasions the mother physically assaulted Y for example, hitting him with a metal broom handle in October 2016 and pushing/punching him on 29 December 2016.
- xxviii) On her own admission the mother misled the family support worker about the status of her relationship with Y, by failing to tell her of Y's physical violence in 2017 (representing to her that the relationship was much improved). On 29 November 2016 she told the family support worker that Y had not been to her home when in fact he had spent the night there with the mother two days earlier.
- xxix) All the children were exposed to the physical and verbal abuse within the mother's and Y's relationship.

- xxx) The mother failed to protect A from emotional harm by (a) taking no steps to separate or sustain a separation from Y despite knowing that A was suffering emotional harm as a result of witnessing their altercations; (b) knowing that A had threatened to kill herself following the domestic violence she had witnessed on 23 October 2016; (c) permitting Y to live in her home despite hearing him say to LR *“I fucking hate your daughter”*.
97. My reasons for making these findings of fact on the totality of the evidence before the court are as follows.
98. Whilst I accept that there are issues in respect of the credibility of the mother and Y, there were also in my judgment appreciable and forensically significant differences in their presentation in the witness box and the credibility of their evidence.
99. The mother’s oral evidence was characterised by raw emotion particularly when speaking of D’s time in hospital. Her grief for her son was palpable. Much of her evidence was coloured by bitter regret, if not exasperation with herself, for her failure both to separate from Y at an earlier date and to realise just how destructive her relationship with him had been to her wellbeing and, most importantly, to the wellbeing of all her children. I had the real sense that no one could blame her more than she blamed herself for what had happened to her family. At times she was so distressed and so racked with guilt that I wondered whether it was safe for me to rely on what she said at those points in her evidence. She was, however, at pains to distance herself from any suggestion that she had understood that Y might present a significant risk to her children and thereby failed to protect them.
100. In this context and having had the benefit of seeing the mother in the witness box, I have some concerns about the credibility of her evidence. In particular, having regard to the evidence I have recounted in this judgment, I am satisfied that the mother sought to misrepresent her relationship with Y as being non-violent after the birth of the twins. It was not, as confirmed by her own admissions in cross-examination. I am also satisfied that the mother’s account of the choking incident involving D in about mid-May 2017 was untruthful since three other witnesses who I found to be straightforward and reliable told me that she had given them an account of what had happened at variance in important respects with what she told me had occurred. Finally, I am also satisfied that her account of the injury to C’s eye on the occasion when Y slipped with C in the bathroom was untruthful.
101. Having observed Y in the witness box at length, his evidence to me was profoundly unsatisfactory in many respects. He was keen to portray himself as much a victim of domestic abuse as the mother. Though he accepted that his behaviour towards the mother had been abusive, he sought to minimise this or excuse it as being but a reaction to the mother’s own nasty and belittling behaviour towards him. At times his evidence was coloured by patent self-pity. He was by turns almost flippant, then defensive but then acknowledged his responsibility for D’s death and the need to make amends. There were some occasions when he appeared to be genuinely moved and, when I reminded him of C’s need for answers about what had happened to his twin, Y’s evidence was notably more frank and his demeanour sorrowful.
102. Before I address each of the matters listed in paragraph 7 above, I make the following observations. The mother was an experienced and skilful parent as attested to by

almost all the witnesses without demur. Y's own mother described her as a perfect parent to the extent that she would neglect herself for the sake of her children. I have no doubt whatsoever that she undertook most of the physical and emotional care for the children, including caring for the twins during the night. That was not an easy task given that, when the twins were born, she was caring for three children under the age of two years. Leaving aside the evident problems in her relationship with Y, she would have been physically exhausted throughout most of the period from January 2017 onwards. Y was, by contrast, an inexperienced parent who gave little assistance to the mother when B was a baby. Though he seems to have helped a little more when the twins were born, even on his own account Y absented himself from the home on many occasions to go fishing with his friends. I formed the very clear impression that he was a selfish man who did as little round the house as he could get away with. His parenting inexperience coupled with his short temper sheds light on the circumstances in which D and C came to be so seriously injured.

103. I am also satisfied and so find that the mother did not physically harm any of her children during her relationship with Y. She was out of the house when D was fatally assaulted by Y and was also not present on the earlier occasion when Y shook D. She bears no responsibility for the rib injuries to C. Y's case, as set out in his statements, was that the mother might have been responsible for D's earlier brain injury, Y asserting that he had seen the mother throw D into his bouncy chair which left D unsettled for several hours afterwards. Y also suggested that, as the mother was the primary carer for the twins, it was possible that she might have been responsible for the older rib fractures to C. In response to questions put by me, Y admitted that the mother was not responsible for C's older rib fractures and that he had lied out of spite in suggesting that she was. He also accepted in cross-examination by Mr Goodwin QC that he had inflicted C's earlier rib injuries. I regard Y's attempt to implicate the mother as a possible perpetrator of some of the injuries to the twins as utterly reprehensible given that he knew that he was wholly responsible for injuring his sons.

#### *The Extent of the Domestic Abuse*

104. Miss Meachin QC provided me with three documents relevant to the issue of domestic violence, specifically addressing why adults often stayed in abusive relationships. One was from the Independent newspaper and two were taken from the websites of charities supporting abused women. None of this material had been introduced into the evidence under Part 25 of the Family Procedure Rules 2010 or deployed in cross-examination. She urged me to have regard to their contents in support of her case that the mother was trapped against her own volition in the relationship with Y. Having considered this material which is general in nature, I find that it is no substitute for my analysis of the evidence I have heard about the specific details of the relationship between the mother and Y.
105. I am satisfied that the home shared by the mother and Y was beset by constant arguments, short-lived separations and reconciliations and, on occasion, by physical altercations perpetrated in the main by Y. I am not however able to accept in full the mother's submission that the paradigm in this relationship was one of the mother as victim and Y as perpetrator.
106. Y was convicted of assaulting the mother in June 2016 and I am also satisfied that he assaulted her as she and other witnesses described in October 2016. I reject his

account of what happened on 23 October 2016 for the following reasons. I can rely on the contemporaneous text message sent by the mother to Y's mother which complained of being strangled – Y's mother was the mother's confidante and I consider it unlikely that she would lie about this incident to her. A's behaviour was also congruent with her involvement in an extremely unpleasant incident which had convinced her that Y had tried to strangle her mother. That incident had a devastating impact on A as both her mother and Z attested. Finally, Y has put his hands abusively round the throat of a former partner, Ms I, so it is behaviour he has previously deployed within the context of an intimate relationship.

107. He was also violent to the mother on at least two occasions after the twins were born as evidenced by the contemporaneous text messages and the mother's eventual admissions to me about these incidents in her oral evidence. His evidence to me was that there were innumerable physical altercations between them, so many that he simply could not remember the detail of all of them. I find that his behaviour to the mother was entirely in keeping with his violent behaviour to former partners attested to by his convictions.
108. The weight of the evidence speaks to the corrosive effect on the mother's personality of sustained domestic abuse by Y which encompassed a wide variety of behaviours ranging from physical violence to verbal cruelty and the exercise of control over the mother's behaviour outside and inside the home. Yet this is not the complete picture. The evidence also demonstrated that both adults were guilty of initiating and prolonging verbal altercations, with the mother on at least several occasions physically assaulting the father (for example, hitting him with a metal broom handle in October 2016 and pushing if not punching him on 29 December 2016). These matters in no way negate or excuse the effect of Y's appalling behaviour towards the mother but illustrate a more complex and nuanced dynamic in their relationship.
109. The mother began her relationship with Y knowing that he had been in prison for offences of violence. I do not accept her evidence that, prior to B's birth, she did not know about Y's convictions for assaulting former partners. Her evidence was that she had heard rumours about Y's behaviour in past relationships but that no-one had told her about it at that time. Z's evidence on this point was, I find, clear and I accept it. He told me that he had tried to tell her about Y's violence to former partners before B was born and that he was positive that several of her friends would also have told her about Y's reputation. Having heard rumours about Y, I find it highly unlikely that the mother would have closed her ears to information about his past from close friends. In any event, it was clear from her evidence that she knew of Y's domestic abuse convictions by summer 2016. By that stage she was also well aware of the effect of domestic abuse on her children as she confirmed to the health visitor in June 2016.
110. I found myself hugely troubled by the enormous volume of text messages attesting to almost daily rows, separations and reconciliations. At times the relationship struck me as like a revolving door with Y returning almost as soon as the mother asked him to leave. Despite multiple opportunities to separate from Y and the support of her family and friends, the mother nevertheless reconciled with him time and time again. Though she told me that she could not see a way out of their relationship especially after the twins were conceived when she felt she could not manage alone and wanted them all to be a family, I suspected that it was not just fear of or control by Y which drew her back to him time after time. Her behaviour in autumn 2016 when she tracked his

movements with the assistance of her friend, CC, and her contact with him within days of the terrible assault on her in late October 2016 also stemmed from jealousy and need rather than fear. At that time Y had begun another relationship which was known to the mother – it would have been the perfect opportunity for her to end this profoundly dysfunctional relationship. Yet she sought out contact with Y both by phone, by text and in person and spent the night with him on 27 November 2016. Y, on the evidence available to me, was exerting no pressure on her to return to him – in fact he was flaunting his relationship with another woman. Yet, by 30 December 2016 they had reconciled despite her assaulting him the previous day.

111. Worryingly, the mother also misled the family support worker about the status of her relationship with Y. She simply could not explain to me why she had told her on 29 November 2016 that Y had not been to her home when in fact he had spent the night with her there two days earlier. She also failed to tell the family support worker in 2017 of Y's physical violence to her after the birth of the twins and led her to believe the relationship was much improved.
112. Despite the assertion by the mother that there were good times in the relationship after the birth of B, I saw and heard little evidence of this. In the middle of this domestic war of attrition were the children who witnessed several extremely unpleasant incidents and were exposed to an almost daily routine of rows, separations and reconciliations. They must have been very confused and anxious by what was happening and it is no surprise that, towards the end, A was begging to spend more time with her father, Z, and, at times, presented as a thoroughly unhappy little girl.
113. Standing back and looking at the evidence in the round, I have come to the view that the mother's need to be with Y was like an addiction where the desire to be with him overbore all rational thought and where the needs of her children came second to the demands of the relationship. In her written statement the mother's friend, LR, described her with considerable insight as being "*incredibly strong and would sometimes give as good as she got. There was something about [Y] that just seemed to get past her defences. As I said they loved each other but couldn't be together*". That insight was also apparent in her oral evidence when LR told me that the mother was a strong person who would never have anyone tell her what to do in any way whatsoever. Their relationship was a nightmare, LR said, full of broken promises made by Y. That evidence illuminated the addictive and damaging nature of the relationship between these adults.

#### *The Circumstances of D's Fatal Injuries*

114. Y has admitted shaking D and causing his fatal acute injuries. He did not do so until 5 January 2018 when his criminal defence counsel indicated in a position statement that he would plead to manslaughter when next arraigned. Since his plea to manslaughter on 26 January 2018, Y's approach to the family proceedings has been to minimise his culpability and to suggest that the mother may have physically harmed D on an earlier occasion.
115. From the moment D was shaken by Y, Y has failed to give a complete and truthful account of how D came to be hurt by him. Y withheld the truth from the paramedics first on the scene and from the doctors treating D. He candidly admitted to me that he had lied to everyone involved in D's medical care before he died on 4 June 2017. He

also admitted that he had wrongly sought to cast blame for D's death on the mother when he said to her after they returned home following D's death "*why did you have to throw him in that chair so hard*" (the chair referred to was D's bouncy chair). His mother and paternal grandmother heard this statement as he had no doubt intended that they should. I note that, as she confirmed in her oral evidence to me, Y has never asserted to his mother during her visits to him in prison that X was responsible for D's or indeed for C's injuries. I accept the submissions of Mr Goodwin QC that his behaviour in this regard was not only predominantly self-serving but also cruel to the mother.

116. Y's plea to manslaughter was founded on the proposition that he had had a "*moment of madness*" with D after D had been sick twice when feeding on 2 June 2017. He had given him a "*little shake*", not knowing that shaking a baby could cause great harm. Both Dr Cartlidge and Mr Richards were in agreement that a "*little shake*" was not compatible with the significant injuries sustained by D. On that basis, I reject that account given by Y. I do so additionally because, in his oral evidence to me, Y eventually made more realistic concessions about the circumstances in which he shook D.
117. Y told me that he had lost his temper with D in a "*moment of rage*" and forcibly shook him. The phrase "*moment of rage*" was one he had used to his mother when discussing what had happened when she visited him in prison (her oral evidence to me confirmed by Y in cross-examination by the local authority). He also accepted that he had used very considerable force when he shook D. The trigger event was trivial – no more than D vomiting over himself. Y told me that when he had taken D from his chair, D had vomited for the second time and Y initially said he had pushed D away from him. Later he said that this was the point when he had shaken D. I formed the distinct impression that D was shaken because, during or in consequence of the second vomit, vomit had either somehow got onto Y or that Y was repulsed by D's vomit. In that context, Y said on more than one occasion during his evidence that he and the mother used to joke that they (and the whole house) smelt of vomit because of the children's vomiting.
118. It is clear from the medical evidence that obviously inappropriate force was required to cause the injuries sustained by D. Y told me that he knew he had done wrong as he shook D and I find that was because he knew what he was doing to D would hurt him. I accept the local authority's submissions that Y knew well the consequences of losing his temper. He had assaulted previous partners, his own mother, X, C (twice) and D on a previous occasion in similar circumstances but with far less profound consequences. From past experience he understood that injury may follow assault and that this likelihood was enhanced in the case of a four month old baby. I find that basic common sense would have told him that a forceful shake of a tiny baby was likely to cause D significant injury even if Y did not know the precise mechanics of the brain and other injuries likely to occur following such an event.
119. In his written evidence Y asserted that 10 minutes passed between D first being sick and the 999 call. In his oral evidence Y confirmed that it was matter of seconds from the first vomit to him picking D up, the second vomit and the shake. The medical evidence from Mr Richards was that the impact of the brain injury on D's presentation would have been catastrophic and instant. D would not have appeared normal at all and would have collapsed at the point the injuries occurred. Y told me that he knew

straight away that there was something seriously wrong with D. However, he failed to ring 999 for either 8 or 10 minutes after D had collapsed and tried to suggest that the reason for this was that he was either jiggling D to rouse him or was searching for his phone with D in his arms. Though, on Y's account, he located his phone within a minute or two and he had jiggled D for a minute or two that does not account for the further delay in ringing 999. Y could not explain that delay to me at all. I have come to the conclusion that Y was panicking during this time and hoping that D would be alright as he had been on the earlier occasion in mid-May 2017 when Y had shaken him. The delay in ringing 999 cannot be reasonably explained and, I find, is deeply troubling.

120. At the conclusion of Y's evidence, I formed the impression that, despite some moments of candour, Y had not been as frank with me as he should have been about the circumstances in which he came to fatally injure D.

*D's Earlier Head Injury*

121. On the balance of probabilities, I am satisfied on the evidence before me and find that D had sustained a further head injury inflicted by Y shaking him with excessive force in anger with or without an impact against a soft or semi-yielding surface. This incident took place on an occasion a few days before 26 May 2017 when D was in the sole care of Y and became unwell, vomiting, turning pale/blue, becoming floppy and becoming more unsettled.
122. On post-mortem examination of D's brain, the presence of organised haemosiderin deposits surrounded by a cellular membrane was, on the balance of probabilities, clear evidence of an earlier subdural bleed entirely separate from the incident on 2 June 2017. Though the imaging did not show this older bleeding, all the experts agreed there was no conflict between the microscopic pathology and the macroscopic neuroradiology. Dr Jacques' evidence to me about the length of time it took for the haemosiderin/membrane to appear was that it would be several days before the event occurred which led to the acute changes in D's brain [i.e. June 2017]. He was unable to be more precise than this.
123. Though Dr Jacques could not exclude causation at birth, his experience told him that this would not explain the particular pathology he identified microscopically. I accept his evidence to me that, whilst it was not at all uncommon to see a very small amount of Perls material [material indicative of haemosiderin] without significant membrane formation in the dura of a child who dies later in life [bleeding arising from birth trauma], it was not usual to see the kind of membrane formation described here in that context. All the other experts deferred to Dr Jacques as to the significance of the combined haemosiderin and cellular membrane. Dr Cary said that, unless there was a very traumatic birth, one would expect most of the cellular membrane to have subsided by the time of D's post-mortem. Dr Cartlidge indicated that the key issue was how unusual the finding was in the context of Dr Jacques' experience of infant autopsies. I am satisfied that, given the evidence of the other experts, I can rely on Dr Jacques' evidence as to an earlier subdural haemorrhage in D's brain. The challenge to Dr Jacques' evidence mounted by Miss Isaacs QC did not get off the ground given (a) that the scientific paper she relied on was methodologically flawed as identified by Dr Jacques and (b) there was no inconsistency between the microscopic findings in the brain and the macroscopic imaging examined by some of the other experts.

124. I am also satisfied that I can rely on Dr Jacques' evidence as to the causation of the earlier episode of bleeding, namely that it was caused by physical trauma. However, the medical evidence alone does not allow me to determine the precise timing, mechanism or force of an earlier event and thus I need to consider the availability and weight of other supporting evidence.
125. No-one has identified an incident in which D might have sustained physical trauma causing subdural bleeding other than the episode when D was said to have choked in Y's care. The lay evidence about this incident is not easily reconciled. Y said in his oral evidence that D was fine despite having vomited and that his pallor was normal with nothing to worry about. This account contradicted both (a) his own written evidence dated 29 January 2018 which was that D was pale and blue in colour when Y returned from his van and (b) what he told his aunt the very next day, namely that D was blue on his return and thus Y had "*ripped*" him out of his chair to hit him on the back and had run outside with him to get him some air. Furthermore, Y denied telling the mother in some distress that evening that D had been blue and floppy and that he had had to perform chest compressions. His account in that respect was confirmed in part by the mother who said he was upset but that she had stopped him giving further details about D's presentation in an effort to reassure him.
126. The mother's sister and her friend, NS, were told about this incident by the mother prior to D's fatal collapse. Both recounted the mother reporting to them that, in the evening, Y had said D had gone blue and floppy and that he had performed chest compressions on D. Miss Meachin QC submitted in summary that their evidence should not be preferred to that of the mother as (a) their statements had been made in the context that the family had been told that D's acute haemorrhage must have happened prior to the date of his hospital admission and they were trying to remember anything however small which was of relevance; (b) there were some discrepancies as to when their conversation with the mother had taken place so their recollection might be flawed; (c) they both accepted that the mother would have taken D to hospital had she thought him to be poorly and had he not apparently recovered; and (d) the mother's sister had not told her own mother about this incident at the time. I reject those submissions for the following reasons. Both witnesses were palpably honest and straightforward whereas the mother had good reason to minimise what had happened later that evening. Whatever minor discrepancies there were in their accounts, both were in agreement that Y had told the mother in some distress that evening that D was blue and either floppy or requiring chest compressions. Their accounts chimed with what Y's aunt told me he had said to her. There is nothing in the point that the family were trying to explain D's acute collapse – everyone was at the time these statements were taken by the police. I also accept the mother's sister's evidence that she had told her own mother about this incident the same evening as her discussion with the mother. The maternal grandmother's evidence on this point was not evidence I can rely on given the unexplained contradictions between her oral evidence and her written evidence as to whether D turned blue during this incident.
127. I am thus satisfied that, contrary to his oral evidence and that of the mother, Y told the mother that evening in some distress that the choking incident was much more serious than he had originally led her to believe and that D had turned blue and was either floppy or required chest compressions or both. His account of an innocuous incident does not bear scrutiny. That conclusion is reinforced by Y's attempt to steer the



mother away from seeking medical attention. The mother's written evidence was that Y told her he did not want to seek medical help though she herself wanted to have D checked out.

128. I observe that the symptoms seen in D during this incident - pallor, going blue, floppiness, and requiring chest compressions – are symptoms consistent with brain injury at the milder end of the spectrum. The circumstances in which Y found himself that day were strikingly similar to those which triggered his assault on D on 2 June 2017 – D was in his sole care, the twins were being prop-fed but had been left unattended by Y, D vomiting and Y picking him up immediately after the vomit. Thus, though the medical evidence cannot assist with the precise timing or mechanism or force causative of this subdural haemorrhage, I am satisfied from my survey of all the other evidence that I can find on the balance of probabilities that the earlier subdural haemorrhage was inflicted during the choking incident by Y who shook D with excessive force in anger. Y knew that he had hurt D as was evident both by D's symptoms and Y's response to those symptoms when the mother returned home and later that evening. This incident happened a few days before 26 May as described by Y in his statement.
129. The above analysis indicates that I cannot rely on the mother's oral evidence about this incident. The local authority sought a finding that she failed to seek medical attention for D when she returned home notwithstanding his reported symptoms. In its amended findings produced to me on 30 April 2018, it also sought a finding that the mother had failed to protect D from risk of further physical injury. Both findings were strongly resisted by Miss Meachin QC.
130. The mother's consistent written and oral account was that, on her return home, she was sufficiently worried by D's appearance to say to Y that he should be medically examined. In her written evidence in the family proceedings, she said that Y had not wanted D to be medically checked though this was not something she told the police. Both her sister's and NS's evidence was that Y had persuaded the mother not to take D for medical examination. NS said that Y had told the mother that he was worried about taking D to hospital – she told me that she thought it odd that Y would say this but had later remembered that the local authority was involved with the family. She did not discuss that link with the mother at the time the mother was telling her about this incident. I accept the evidence of those two witnesses who had no motive for seeking to minimise the seriousness of what had taken place on this occasion. I am satisfied that the mother allowed herself to be persuaded by Y not to get help for D for reasons which had nothing to do with how well D appeared to have recovered. I am not satisfied that Y told the mother he feared getting into trouble – the only witness who mentioned this was the maternal grandmother. She had not heard this from the mother herself prior to D's collapse and the contradictions in her evidence about this incident have persuaded me that I cannot rely on her evidence unless it was corroborated by the evidence of others.
131. It is already apparent that I have rejected the mother's evidence about what Y said to her later that evening. He clearly told the mother about much more serious symptoms which ought to have alarmed her given that her first instinct on seeing D had been to get him medically checked. I am satisfied that, having been told about D's worrying symptoms, the mother failed to get medical attention for D for reasons which she has failed to explain to me. I also accept the evidence of her sister that the mother had

repeatedly told her that, thereafter, D was not himself, did not feed easily and was unsettled. The mother did not inform any health professional of her concerns in this respect.

132. My analysis of the evidence supports a conclusion that the mother was untruthful about aspects of this incident and I remind myself that lies are told in these proceedings for many reasons. In my judgment the mother's lies about this material issue were told to minimise her culpability in failing to get medical attention for D.
133. The local authority sought an additional finding arising from this incident that the mother failed to protect D from the risk of further physical injury. Whilst the mother was candid in her admission to the local authority in cross-examination that she had failed to protect D, I must stand back and dispassionately assess the evidence on this issue. At that point in her evidence, I remind myself that the mother was extremely distressed and, plagued by remorse and hindsight, she appeared willing to agree with any proposition put to her.
134. Y did not tell the mother that he had hurt D. D appeared unwell but, within a little while, had regained his normal colour and took a bottle. The mother had never seen Y be rough or inappropriate in his handling of the twins. I have found that I cannot be certain that Y told the mother he did not want to get into trouble by taking D to hospital. Though Y told the mother he had not been honest with her about D's symptoms later that evening, I am not persuaded that this admission alone would have been sufficient to trigger alarm bells in her about what Y might have done to D. For all of those reasons, I am unable to make the finding sought by the local authority that the mother failed to protect D from the risk of further physical injury.

#### *C's Acute and Older Rib Fractures*

135. I am also satisfied to the requisite standard about the presence of two sets of rib fractures in C seen on the skeletal survey dated 5 June 2017. There was no challenge to the medical evidence on this issue.
136. At the conclusion of Y's oral evidence, he had admitted to causing both set of rib fractures on two separate occasions. I found much of his evidence about the circumstances in which these injuries were caused highly unsatisfactory. His detailed recall of certain past events deserted him entirely when it came to providing an account of how he came to injure C in this way on two separate occasions.
137. Though Y has accepted responsibility for C's acute rib fractures within the criminal proceedings, he was wholly unable to explain how he caused them: "*I can't say what I did to [C]*". He accepted that he was capable of causing the rib fractures even if he had no memory of doing so and then admitted to me that he had broken C's ribs, causing both the acute and the older fractures. The expert evidence was that C would have been distressed and in pain at the point of fracture and for about 10 minutes thereafter. This would have been obvious to an onlooker (and I include the perpetrator of those injuries in that category). Both instances of fracture were thus likely to have been memorable events for Y and, that, in consequence he must have known that he had hurt C. He also failed to get medical attention for C at that time or any time thereafter.

138. For the first time in his oral evidence, Y spoke of an episode 2-4 weeks before 2 June 2017 when he may have caused the older rib fractures to C (though he told me that he could not tell which twin he picked up from the bed in question). He initially said he did not want to say more without obtaining legal advice until I asked him to explain what he had done. He then said that he may have squeezed C's ribs "*in frustration*" but claimed not to remember any details. When pressed, Y told me about an occasion when he had been sleeping in A's bed (during her absence on a contact visit to Z) and awoke at about 2 am to hear the mother screaming at the twins, both of whom were crying. He went into their bedroom and picked up C (or possibly D) who had been thrown on the bed by the mother. The mother stormed out of the room as Y tried to comfort the child he was holding. Y told me that this child was "*crying and crying and crying – I must have got frustrated and squeezed him*". He thought it was quite likely that he had fractured C's ribs on this occasion. This incident seems to be very similar to an event described at paragraph 17 of Y's statement dated 5 March 2018. In that paragraph Y sought to blame the mother for causing C's earlier rib fractures and gave a similar description to that he gave me in his oral evidence but omitting therein any account of him squeezing C in frustration. Because of the generally unsatisfactory nature of Y's evidence on this issue, I simply do not know whether his account in oral evidence was truthful or whether he was adapting an earlier account in his statement when pressed to explain how he had hurt C.
139. I am satisfied that the bathroom incident when Y fell holding C was not responsible for any of C's fractures. His older fractures were outside the timescale for this event as noted in Dr Jeanes' report and the incident itself did not involve the application of any compressive mechanism to C's ribs. In fact, C was held up protectively on Y's account as he fell. The mother's cousin, VM, was clear that the bathroom incident pre-dated 23 May 2017 which placed it outside the time frame for the acute fractures.
140. I will address the mother's response to the bathroom fall below.

*The Mother's Failure to Protect*

141. I have determined the local authority's submission that the mother failed to protect D from the risk of physical injury arising out of the choking incident. The local authority's case extended far wider than this since it sought findings that the mother knew from B's birth onwards that the children were likely to suffer significant physical injury from Y and that they were suffering or likely to suffer significant emotional harm by reason of their exposure to domestic abuse.
142. Taking the latter first, the mother accepted in her response to the local authority's schedule of findings dated 2 March 2018 that all the children were suffering or were likely to suffer significant emotional harm arising from the abusive relationship between herself and Y. In its final amended schedule of findings dated 30 April 2018, the local authority sought specific findings that the mother failed to protect A from emotional harm by:
- a) Taking no steps to separate or sustain a separation from Y despite knowing that A was suffering emotional harm as a result of witnessing their altercations;

- b) Knowing that A had threatened to kill herself following the domestic violence she had witnessed on 23 October 2016;
  - c) And permitting Y to live in her home despite hearing him say to LR “*I fucking hate your daughter*”.
143. Miss Meachin QC sought to persuade me that these findings added nothing to what the mother had already admitted. She also relied on the family support work in 2016/2017 which offered support to both the mother and Y in circumstances where the local authority knew about the domestic abuse in the couple’s relationship. Y was not required by the local authority to leave the mother’s home and no public law or other child protection measures were taken at that time.
144. I disagree with the submission that the specific findings sought by the local authority added nothing to that which the mother had already admitted. The general concession made by the mother in early March 2018 was not linked to any pleaded facts when it should have been [see the remarks of the President on threshold in paragraph 12 of Re A (A Child) [2015] EWFC 11]. It is in my view, crucial to establish the factual foundation for a threshold concession for all the reasons the President articulated but also because, as in this case, it provides a platform for future assessment and welfare decision-making,
145. Standing back and looking at the evidence on this issue in the round, I am satisfied on the balance of probabilities that the mother failed to protect A from the domestic abuse in her relationship with Y and that she failed to remain separate from Y despite, as she herself acknowledged in her oral evidence, recognising the effect on A especially after the October 2016 incident. Whether or not the local authority took protective action or condoned the status quo is, in my view, irrelevant given that the mother was not - on her own admission - being frank with the family support worker about, for example, assaults by Y following the birth of the twins. Likewise, the evidence supported a finding that the mother knew that A had threatened to kill herself following the October 2016 incident – a link made in paragraph 35 of the mother’s own statement dated 6 July 2017 which Miss Meachin QC accepted in her oral closing submissions. Finally, it was also accepted by the mother that Y spoke to A in the terms described above. LR said the mother was horrified and asked Y to leave her house which he did though he returned a week later. The mother told me calmly but honestly that she had let A down during her relationship with Y.
146. I turn now to the finding sought by the local authority that the mother knew from the birth of B onwards that each child was at risk of significant physical injury from Y. It was asserted that if the mother did not know, she ought to have known and that she knew or ought to have known that she should not have trusted Y to care for any of the children unsupervised. Additionally, the local authority submitted that the mother failed to seek medical attention for C when he sustained a mark under his eye following Y’s fall in the bathroom.
147. These specific findings were pleaded for the first time in a document served on the parties by the local authority on 29 April 2018. At the conclusion of the mother’s evidence, I had invited the local authority to consider if it wished to amend its schedule of findings and if so to serve the same in good time before the written submissions were finalised. I extended the same invitation at the conclusion of Y’s

evidence. I did so on both occasions as a matter of simple fairness to the mother and to Y who, in a case of this seriousness, should know in detail the case advanced by the local authority at the conclusion of the evidence.

148. Miss Meachin QC took issue in particular with the new findings sought with respect to the mother's knowledge of physical harm and the mark under the eye. She made the general point that much of what was relied on in support of these findings was known before the hearing commenced and should have been pleaded in this detail much earlier. Had the mother's legal team been aware of the findings sought in this respect, they might have wished to challenge witnesses who were not called to give evidence or posed additional questions of the witnesses who did give evidence. She invited me to strike out the finding sought about the red mark under C's eye.
149. There is some force in Miss Meachin's submission. Much of what was specifically relied on by the local authority was obvious from the written material. For example, the mark under C's eye was described in the statement of VW, the mother's cousin. Likewise, the mother's comment about Y having a short fuse and her thus being uneasy to leave B in his sole care was made to the family support worker who was not called and not identified as a witness relied on by the local authority in its witness schedule dated 29 January 2018. Though the text messages relied on by the local authority were not, for a variety of reasons, in a format capable of being served on the parties until early April 2018, some of this material was in the police disclosure which had been available for some time. Some of that relied upon by the local authority emerged with clarity during cross-examination but, as I have already remarked, much had been clear from the written material.
150. With those observations in mind, I consider the specific findings sought in relation to knowledge of risk of physical harm to the children. My approach is to test each fact relied on before looking at matters in the round. The mother was reported to have told the family support worker in November 2016 of her unease about leaving B in his sole care because Y had a "short fuse". This was said during a discussion about B's contact with Y when the family support worker noted that: "*[Mother] went on to say that she had tried to arrange contact between [Y] and [B] however [Y] had been inconsistent in this. [Mother] stated that she felt uneasy letting [Y] see [B] on his own due to his short fuse and him playing mind games. She stated that she had tried it for a few hours recently however [D] did not arrive with [B] at the correct time to bring her back. [Mother] stated that she telephoned [Y] who informed her that he was in [X] and would not be returning [B]. [Mother] said that this really upsets her however [Y] showed up behind her with [B] stating that it was just a joke*". In her evidence, the mother was adamant that she was worried about the father not bringing B back after contact and was not suggesting he was a risk to B. The family support worker was not called to give evidence and so I do not know whether the reference to Y's short fuse referred to his loss of temper with the mother rather than with the children.
151. VW's statement recorded that, whilst at the mother's home, she had told her grandmother (who had made mention of Y) "*I don't think so Nan, last time I was here [Mother] said she couldn't trust him with the babies on his own because that's when the accidents always happen*". VW was at pains during her oral evidence to stress that this was said during a jokey exchange with the mother, the aim being to amuse her grandmother. The mother responded by saying that "*the way things were going [Y] would end up killing one of them [i.e. the twins]*". VW, who I found to be a

straightforward confident witness, told me that neither she nor the mother meant anything sinister by this exchange. In those circumstances, it would be most unwise for me to ascribe significance to this exchange and to infer that the mother had knowledge of Y's physical risk to her children.

152. The mother's text messages contained statements which the local authority asserted showed a recognition that Y's presence in the house was inconsistent with the children's welfare, namely "*I'm not having you around my kids*" and "*[The babies] shouldn't be around someone like you*". I have already commented on the huge volume of such material attesting to rows, separations and reconciliations and, without more by way of corroboration, I am reluctant to ascribe significance to statements made in this volatile context. As Miss Meachin QC put it, the mother would not be the first or last adult to text something she did not mean.
153. Having analysed this material and standing back, I am unable to make the findings sought by the local authority as to the mother's actual knowledge of risk of physical harm. Does it then follow that the mother ought to have known that Y's violence to her and admitted short fuse placed the children at risk of physical harm or that he could not be left with the care of the children unsupervised? He had never been seen by the mother or anyone else to rough handle the children and nothing untoward about his behaviour when with the children had been observed by professionals. I accept the evidence (a) that Y shouted and swore in the middle of the night when woken by the twins crying (b) that trivial things triggered Y's temper and (c) that the mother was well-aware of his violence to her. In my judgment, it is a conceptual leap too far to assert that, in all the circumstances, such behaviour ought to have put the mother on notice that Y was a physical risk to her children or should not be with them unsupervised. She well understood though did not act on his risk to her but, on the evidence before me, the link between violence to a partner and violence to a child was not explicit for this mother.
154. Finally, the local authority sought a finding that the mother failed to seek medical attention for C when he sustained a red mark under his eye after Y slipped with him in the bathroom. I am satisfied on the evidence that C sustained a red mark under one of his eyes but there is a dispute as to how long that mark persisted. Y said in his written evidence that it had remained for "*two days max*" though in his oral evidence he said it went quickly on the day itself as did the mother. I was asked to consider a bundle of photographs of the twins as the mother told me that she had taken a picture of C and D the following day when the mark had disappeared. As I had no exact date for this incident, those photographs did not assist me a great deal.
155. Miss Meachin QC said that, had she known a finding on this mark would be sought, she would have challenged VW as to what she saw. Despite the absence of challenge in that respect by the mother's legal team, VW was asked by Miss Meachin QC whether the mother had been open with her about the mark under C's eye and whether she had seen the mark. To both questions, VW replied "yes". Looking at all the evidence, I do not accept that the red mark faded quickly and I accept the description of the mark given by VW.
156. Should the mother have sought medical attention? VW told me that the mother had not thought the mark was serious and that it had been caused accidentally. That was indeed what the mother thought as her evidence made clear – by C hitting his head on

the wash basket in the bathroom as she surmised when told by Y about his fall in the bathroom. There was no evidence that C was in any discomfort or distress either at the time or when seen by VW a couple of days later. He appeared to be perfectly well. With the benefit of hindsight, the mother recognised in her oral evidence that she should have taken C to hospital. I am however not persuaded that when, viewed objectively, her decision not to do so warranted the finding sought by the local authority. Mr Goodwin QC suggested that common sense should have prompted a visit to the GP or hospital but common sense might equally well have prompted a caring parent like the mother not to do so in circumstances where her child appeared well and where what had happened appeared to be consistent with an accident. In that context, I also observe that I had no evidence from Dr Cartlidge on what might have been reasonable for a parent to have done in the circumstances.

## CONCLUSION

157. For all the reasons I have set out in this judgment, on the balance of probabilities, I make the findings of fact set out in the Schedule of Findings that is attached to and is part of this judgment. It also follows that I am satisfied that the threshold criteria are made out in this case on the basis of my findings. It will, in due course, be necessary for me to give directions for the welfare stage of these proceedings.
158. I am satisfied that Y has not given an account of all he knows about the circumstances in which D and C came to be injured. I have had to try and divine what is more likely than not to have happened to D and to C in circumstances where the only person present at the relevant times has chosen not to assist the court fully with that task. If Y considers that my judgment does not represent the full picture of what happened to these two tiny babies, the responsibility for that lies solely with him.
159. That is my judgment.

## SCHEDULE OF FINDINGS

- i) On 2 June 2017 D sustained the following injuries:
  - a) Multi-focal thin film bilateral subdural and subarachnoid haemorrhages;
  - b) Extensive and generalised hypoxic-ischaemic brain injury;
  - c) Axonal (nerve fibre damage);
  - d) Subdural, epidural and subarachnoid haemorrhage along the spinal canal and in the nerve roots and ganglia of the cervical vertebrae;
  - e) Bilateral and pre-retinal haemorrhages, macular folds, peri-optic nerve haemorrhages, orbital haemorrhages and peripapillary optic disc haemorrhages.

- ii) All of these injuries resulted from a shaking type injury or from a shaking injury with impact.
- iii) These injuries were inflicted by Y shortly before the 999 call made at 19.36 on 2 June when he shook D with excessive force in anger with or without an impact against a soft or semi-yielding surface.
- iv) On his own admission Y waited 10 minutes between shaking D and calling 999, during which period of time it was obvious to him that D was acutely unwell.
- v) On an earlier occasion to the above injuries, D suffered subdural bleeding caused by Y shaking him with excessive force in anger with or without an impact against a soft or semi-yielding surface. It is more likely than not that this incident occurred a few days before 26 May 2017 when D was left in Y's sole care and became unwell with vomiting, turning pale/blue, becoming floppy and being more unsettled.
- vi) Y knew he had injured D but failed to seek any medical help for him on this occasion.
- vii) On her return home, the mother was worried by D's presentation and said to Y that D should be medically examined. She allowed herself to be persuaded by Y that D should not be medically examined for reasons which had nothing to do with how well, in due course, D appeared to have recovered.
- viii) Later that evening, in some distress, Y disclosed to the mother that the choking incident had been more serious than he originally led her to believe. D had turned blue and was either floppy or required chest compressions or both.
- ix) On her return home, the mother was worried by D's presentation and said to Y that D should be medically examined. She allowed herself to be persuaded by Y that D should not be medically examined for reasons which had nothing to do with how well, in due course, D appeared to have recovered.
- x) The mother failed to seek medical attention for D despite this fuller account of his symptoms.
- xi) After this incident, D appeared to the mother not to be his usual self, did not feed easily and was unsettled. The mother did not inform any health professional of her concerns in this regard.
- xii) C suffered fractures to the posterior aspects of his left 7<sup>th</sup> and 8<sup>th</sup> ribs. These were non-accidental injuries inflicted by Y on or around 15 May 2017 either by forceful compression of C's chest wall by a direct blow/impact onto the chest.
- xiii) On a separate occasion C suffered fractures to the anterior aspects of his left 9<sup>th</sup> and 10<sup>th</sup> ribs. These were non-accidental injuries inflicted by Y on an unknown date between 29 May 2017 and 2 June 2017, either by forceful compression of C's chest or by a direct blow/impact onto the chest.



- xiv) Y knew he had hurt C on each occasion he suffered rib fractures.
- xv) Each of C's rib fractures would have been painful and distressing for approximately 10 minutes. Thereafter the pain would have reduced but deep breaths, crying and handling round the chest would have exacerbated C's discomfort causing him to be more fractious than usual for at least a few days stop
- xvi) Y failed to seek medical attention for C on each occasion he suffered rib fractures.
- xvii) The mother did not inflict physical harm on any of her children during the currency of her relationship with Y.
- xviii) Y has convictions for violence including 11 separate incidents of battery; wounding pursuant to s.20 of the Offences Against the Person Act 1861; and assault causing actual bodily harm pursuant to s.47 of the Offences Against the Person Act 1861.
- xix) In August 2016 Y assaulted his own mother during the wedding celebrations for his brother by placing his hands around his mother's throat.
- xx) Y has four convictions for domestic violence against a partner between December 2008 and November 2014. The mother knew prior to the birth of B of Y's domestic violence towards previous partners.
- xxi) On 23 October 2016 Y assaulted the mother by grabbing her around the throat during an argument and punching a hole in the bathroom door. A witnessed Y punch the hole and was either told or overheard someone talk about the fact that Y had tried to strangle her mother.
- xxii) On other non-specified occasions before 14 November 2016 Y pushed the mother around during the course of arguments, pulled her hair and smashed objects round the house. He assaulted her either by pushing her or pulling her arm when B was only a couple of days old. He smashed her mobile phone on 3-4 occasions including in April 2016 when the mother reported this to a friend, LR. Following the birth of the twins, Y assaulted the mother on or around first of March 2017 by pushing her in the head and on or around 11 April 2017.
- xxiii) At times Y behaved in a controlling and derogatory manner towards the mother. Examples of this behaviour included constantly checking her phone and monitoring her use of it; undermining her relationships with her family and friends; calling her demeaning names and belittling her; and in about April 2016 removing the white goods from the family home.
- xxiv) Y regularly used cannabis and, to a lesser extent, cocaine during his relationship with the mother. The mother knew about his use of cannabis and cocaine.

- xxv) The relationship between the mother and Y was beset by constant arguments, short lived separations and reconciliations. Both adults were responsible for initiating and prolonging verbal altercations.
- xxvi) On several occasions the mother physically assaulted Y for example, hitting him with a metal broom handle in October 2016 and pushing/punching him on 29 December 2016.
- xxvii) On her own admission the mother misled the family support worker about the status of her relationship with Y, by failing to tell her of Y's physical violence in 2017 (representing to her that the relationship was much improved). On 29 November 2016 she told the family support worker that Y had not been to her home when in fact he had spent the night there with the mother two days earlier.
- xxviii) All the children were exposed to the physical and verbal abuse within the mother's and Y's relationship.
- xxix) The mother failed to protect A from emotional harm by (a) taking no steps to separate or sustain a separation from Y despite knowing that A was suffering emotional harm as a result of witnessing their altercations; (b) knowing that A had threatened to kill herself following the domestic violence she had witnessed on 23 October 2016; (c) permitting Y to live in her home despite hearing him say to LR "*I fucking hate your daughter*".